ACTA UNIVERSITATIS GOTHOBURGENSIS
ACTA PHILOSOPHICA GOTHOBURGENSIA 44

“A social engineer or a parasite on society”

The moral responsibility of enabling (un)ethical business conduct

Jasmine Elliott

UNIVERSITY OF GOTHENBURG

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Abstract

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I reflect on the role of professional service providers, with a focus on the corporate legal profession and commercial banking, and what they ought to do when advising corporates on and supporting corporates with business transactions that may be harmful or morally wrong. I discuss in particular harms related to corruption, human rights, and climate change. Reflecting on the conditions of indirect responsibility, I aim to understand in what ways an advisor or facilitator could be regarded as (or even held) morally responsible for the impacts of the companies they facilitate and in what ways the corporate profession, through its regulatory bodies, could be regarded as (or even held) collectively responsible for not addressing the tension between corporate interests and lawyers' ethical obligations. This responsibility can be seen as potentially in tension at times with their professional obligations, like acting in the interest of their clients versus serving the public interest, and I am particularly interested in situations where the lawyer can play an important enabling role that could be seen as complicit in the harms caused by their clients. Furthermore, I am interested in how these providers publicly respond to these claims of responsibility against them. Finally, noting that the issues discussed in this thesis are complex, systemic and multijurisdictional in nature, I look at professional advisors as another actor that should be involved in collective action initiatives.

List of Papers

I. Brülde, B., Malmqvist, E. and Elliott, J. (2024). Indirect Responsibility and Influencing Acts. *Manuscript.*

II. Elliott, J. (2024). The corporate legal profession's role in global corruption: obligations and opportunities for contributing to collective action. *Crime Law Soc Change* 81, p.185-201.

III. Elliott, J. (2024). Incorporating Responsibility Conditions into the UN Guiding Principles' Participation Terms and their Application to Corporate Lawyers. *Manuscript submitted to Business and Human Rights Journal.*

IV. Elliott, J. and de Bruin, B. (2024). Corporate Lawyers and Climate Change: Perspectives from Professional Ethics and Business and Human Rights. *Manuscript submitted as a book chapter to upcoming publication in the International Comparative Business Law and Public Policy series.*

V. Elliott, J. and Löfgren, Å. (2022). If Money Talks, What is the Banking Industry Saying about Climate Change? *Climate Policy* vol. 22, no. 6, p. 743-753.

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All my love,
Jasmine
London, 2024

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Introduction

When a major corporate scandal breaks, significant attention is naturally given to the company, including what responsibility the company has in terms of the negative impact of actions done in its name and what the company should do in terms of remedial action. Yet, looking beyond the company, notable public attention and scrutiny also have been given to the company's external advisors, including financial services, auditors, and lawyers, asking the same questions as above. To highlight a few examples:

- in the aftermath of the Enron bankruptcy, significant attention was given during a hearing at the US Senate to the lawyers and auditors enabling Enron to commit fraudulent reporting. The statement of Susan Koniack, Professor of Law at Brown University, pointedly called for reform to "rein in lawyers" and their perception that they can do whatever they want in the name of their client (Accountability Issues: Lessons Learned from Enron's Fall, 2002, p. 35). Subsequently, the Sarbanes-Oxley Act of 2002 requires, amongst other new regulations for accounting, audit, and financial reporting, lawyers who suspect a breach of fiduciary duty or corporate misconduct to report the misconduct up the ladder;
- following the reveal of Lehman Brother's manipulative accounting practices, an international law firm's legal opinion of the practices, while accurate in its assessment of legality, was noted as being a necessary precursor to the business's unethical and fraudulent conduct (Kershaw & Moorhead, 2013);
- a report by Global Witness linked the work done by advisors (namely, banks, accountants and lawyers) to the massive 1MDB corruption scandal in Malaysia (Global Witness, 2018);
- The International Bar Association recently updated their guidance on business and human rights for lawyers, which states that "law firms face the risk of enabling the human rights abuse of their clients," citing issues like the use of Strategic Lawsuits against Public Participation to silence public criticism of a client and the creation of offshore accounts to hide clients' involvement in human rights abuses (Brabant et al., 2023, p.6); and

- BNP Paribas is being taken to court by climate activist organizations, arguing that the bank is violating the French Duty of Vigilance law through its continued financing of fossil fuel expansion and insufficient plan to assess climate risks and incorporate Paris Agreement targets into their financing and investment activities (Notre Affaire à Tous Les Amis de la Terre, and Oxfam France v. BNP Paribas, 2023).

These examples show some of the ways these external advisors, referred to often as professional service providers or more controversially as professional enablers, are being publicly called to task for their involvement in fraud, corruption, human rights harms, and exacerbating climate change. Through their services, these actors are seen as able to either prevent or enable businesses to act in ways that would cause harm. The examples involving the legal profession are particularly interesting when considering their special public role within a country's legal system. Lawyers are expected to "balance their dual roles as guardians and advocates for the interests of their clients, and as gatekeepers for the interests of courts and society" (Sherman III, 2013, p. 57).

Following from the above context, I reflect on the role of professional service providers, with a focus on the corporate legal profession and commercial banking, in advising corporates on and supporting corporates with business transactions that may be harmful or morally wrong. I discuss in particular harms related to corruption, human rights, and climate change. Reflecting on the conditions of indirect responsibility, I aim to understand in what ways an advisor or facilitator could be regarded as (or even held) morally responsible for the impacts of the companies they facilitate and in what ways the corporate profession, through its regulatory bodies, could be regarded as (or even held) collectively responsible for not addressing the tension between corporate interests and lawyers' ethical obligations. This responsibility can be seen as potentially in tension at times with their professional obligations, like acting in the interest of their clients versus serving the public interest, and I am particularly interested in situations where the lawyer can play an important enabling role that could be seen as complicit in the harms caused by their clients. Furthermore, I am interested in how these providers publicly respond to these claims of responsibility against them. Finally, noting that the issues discussed in this thesis are complex, systemic and multijurisdictional in nature, I look at professional advisors as another actor that should be involved in collective action initiatives, like the promotion of anti-corruption initiatives and the protection of human rights. The key actors identified in collective action thus far generally include references to governments, companies, and civil society. Yet,

I hope to contribute to understanding professional service providers as another key actor that needs to be considered in their own right in solving these highly complex issues.

In this introduction to the thesis, I aim to highlight some more fundamental aspects that are touched on throughout the included papers and dive deeper into these discussions. Section 1 introduces the main actors of this project by defining the terms professional enablers and professional service providers and giving a short, descriptive overview of the two service providers I focus on, namely, the corporate legal profession and commercial banks. Section 2 introduces an example of professional ethics - legal ethics – by summarizing the traditional approach to legal ethics and how its principles have been challenged to consider how strongly these professional principles should be applied. Section 3 highlights potential tensions between moral responsibility and special obligations, with a focus on professional obligations as a kind of special obligation. Section 4 introduces collective action theory and how the discussion of these problems and initiatives to manage these problems have influenced the potential for large-scale collective action and collective action with businesses and the legal profession. Section 5 summarizes the overall methodology of the thesis and reflects on the more specific research questions asked throughout the thesis. Section 6 concludes by providing short summaries of the papers included.

The quote in the title of this thesis - "a lawyer is either a social engineer or a parasite on society" - is attributed to Charles Hamilton Houston (Scott, 2020). He was a civil rights lawyer who was formative in developing historic civil rights cases in the United States and mentoring a generation of lawyers, including Thurgood Marshall, the first African American US Supreme Court Justice. While this quote is particularly geared toward lawyers in the civil rights era, its message rings true in a number of professional contexts and for a number of systemic issues we have in society. Guided by this quote, I hope that this thesis contributes to the discussion of how professional service providers should contribute to society and solve the systemic issues it faces as well as how they might be held accountable for the harm they enable in a business context. I hope to challenge these providers to not fall into complacency and potential complicity but instead engage with the continued public discussion of what their professional role should be and should stand for in society. Furthermore, I recognize that there are many professionals already grappling with these questions, and I hope to promote the need for further collective guidance, support, and action on these issues.

1 - Professional Ethics and Professional Service Providers

The term professional enablers was initially used in relation to anti-money laundering to call out actors who should act as gatekeepers of the international financial system but instead launder illicit funds or proceeds of crime in their professional role (Barrington, 2021; France, 2021; Levi, 2021). The term is still predominantly used in relation to corruption and economic crimes, but this definition could be expanded to other instances where actors, typically considered professional service providers, can either prevent or enable other unethical or criminal business conduct, like human rights abuses or high emission of greenhouse gases (Ramasastry, 2021; Vaughan, 2022). Professional service providers include, for example, "consulting firms, lawyers, financial advisors, accountants, even architects and real estate brokers" who are "key advisors to the modern transnational corporation" (Ramasastry, 2021, p. 295). While these providers are all not technically considered professions in terms of the social science definition,[1] they are commonly referred to as professional service providers because of the technical advice or support that these providers give to manage aspects of a client's business. As with any business, professional service providers are businesses acting in the market and want to make a profit. Throughout their work, they are incentivized to fulfil the goals of the paying client, potentially overlooking the broader ramifications and externalities of their services or assuming that market forces or government regulation will ultimately correct any imbalances. Yet, these providers play a pivotal role in the functioning of their business clients, and it should be questioned to what extent they should be allowed to act against the public interest to enable their client's goals and how these providers should incorporate ethical considerations into their practices.

Corporate Legal Profession

The primary actors of focus in this thesis are corporate lawyers, law firms, and the corporate legal profession. This is a subset of the legal profession that primarily

[1] See section 3 for discussion on the definition of a profession.

works with businesses. Corporate lawyers are generally trained in the same way as other lawyers. Depending on the jurisdiction, this training may include an undergraduate or postgraduate degree in law, a more technical course after this degree focused on the practice of law, a professional examination, and/or a certain amount of training experience working in a legal context. Corporate lawyers are also regulated in the same way as other lawyers, typically through a self-regulated body like a bar association or a law society.[2] They follow the same professional codes of conduct that the regulatory body creates, and they may have to complete a certain amount of continuing education to maintain their membership in the profession.

Corporate lawyers advise businesses on a range of matters in relation to corporate law and corporate business conduct within the relevant jurisdictions. This may involve transactional work, such as advising on business transactions, leading contractual negotiations, and structuring mergers & acquisitions projects. This may also include advice on corporate governance issues, for example assessing whether a business's corporate governance policies and procedures are aligned with applicable regulations and relevant standards. Corporate lawyers can also be asked to advise companies on laws regulating key practices within a business, like labor law, health and safety, intellectual property, and data privacy. In these ways, corporate lawyers are essential to the functioning of businesses in a way that complies with relevant regulations.

Corporate lawyers primarily work in corporate law firms, though they also may work in-house within a company. Law firms can vary drastically in size, but the particular law firms that I have in mind are large, multinational corporate law firms. Because of the historical development of the US and UK legal professions and of New York and London as major financial centers, most global corporate law firms are headquartered in the US or the UK but have offices all around the world (Pistor, 2019, pp.176-178). This global scope is an advantage, enabling law firms to provide cross-jurisdictional advice that matches the footprint of large, multijurisdictional companies. These law firms also promote their expertise in various areas of law and business regulations or in specific business sectors.

In recent years, the role of lawyers has come under scrutiny in relation to their involvement in enabling various unethical practices, such as corruption and concealing illicit gains (Global Witness, 2016, 2018; Judah & Sibley, 2018; Kanji & Messick, 2020). For instance, the Financial Accountability Transparency and

[2] Self-regulation is a key characteristic of a profession, as discussed further in section 3 and paper IV.

Integrity Panel has highlighted how lawyers can assist in the establishment of offshore accounts or anonymous corporations to conceal proceeds of crime (Kanji & Messick, 2020). While the initial focus on lawyers as enablers centered on corruption, this discussion has expanded to encompass other ethical concerns, including respecting human rights and mitigating climate change (Ramasastry, 2021; Vaughan, 2022). Vaughan, for example in his discussion of how lawyers can exacerbate or mitigate climate change, identifies four ways lawyers act both for their clients and as "professionals with a commitment to the public interest and the rule of law" (Vaughan, 2022, p. 3). Lawyers can lubricate their client's actions by providing advice on and assistance in seizing business opportunities, for example through negotiations and financing. Next, lawyers can lobby for laws that may benefit their clients' interests. Lawyers, government lawyers in particular, are also involved in drafting relevant legislation. Finally, lawyers can litigate to protect or advance their clients' interests. All these actions can have a profound impact on a number of societal issues, and the first and second actions of lubricating and lobbying are most relevant when considering corporate lawyers. In this thesis, I primarily focus on the first action of how lawyers' advice and activities can lubricate clients' actions and goals.

Pistor delves into the role of transaction lawyers as well, emphasizing their actions in maneuvering the system of legal protections to serve the interests of their clients (Pistor, 2019). She identifies lawyers as masters of a global legal code that enables them to navigate state regulations where "[i]f certain financial assets face regulatory hurdles in one country, the intermediary…can be moved to a more accommodating jurisdiction; ditto with tax liabilities, and environmental or labor laws" (ibid, 2019, p. 159). With their professional training and authority, lawyers can shield clients from legal risks and explore potential legal innovations. Furthermore, through these legal innovations, lawyers test the limits of existing law which are only potentially vetted through a court if it is challenged. Pistor uses the 2008 financial crisis as an example to show that legal strategies, by "fuel[ing] the expansion of debt in the economy for years, before a massive correction of their value turned into a death spiral," have threatened the stability of the financial and economic systems and played a part in increasing wealth inequality (ibid, 2019, pp. 166–167). While Pistor concentrates primarily on wealth inequality in her book, her critique of the global corporate legal profession can be extended to other societal issues.

Commercial Banking

The second set of actors that are important to introduce as a part of this thesis is large commercial banks and the commercial banking sector. These banks provide financial services, like loans, credit, and banking accounts, to both individuals and companies. Large commercial banks also often engage in investment banking, which includes providing products and services to large companies or organizations like investment, project financing, and securities underwriting. Banks also provide services to their clients that are similar to lawyers but within the realm of finance, like financial advising or facilitating business transactions. Commercial and investment banking, while seen as a professional service provider, is not considered a profession in the same way as the legal profession. A person does not necessarily have to go through a specific accreditation or training process to work at a bank, and banks are not self-regulated like the legal profession.

Banks are often seen as enabling unethical conduct by providing financial resources or making financial resources available. Similar to lawyers, banks were initially considered enablers of corruption by letting proceeds of crime flow through their institutions without proper due diligence (Global Witness, 2018; Judah & Sibley, 2018). In both a human rights context and in relation to climate change, banks were also one of the first enablers that were discussed in the literature because of their ability to provide significant financing to companies who are committing human rights harms or exacerbating climate change (Herzog, 2017; Ramasastry, 2021; Van Ho, 2021). While providing money seems like a fairly direct way to contribute to harm, the literature still has difficulty in discussing the various different forms of financing that a bank can provide based on their products and services (i.e., general loans versus project-specific financing) and correlating these to how and to what extent a bank has actually enabled the business's unethical conduct (Sandberg, 2019). This difficulty is notably reflected in discussions of how banks have responded to claims of responsibility for enabling climate change with various net-zero or sustainability finance commitments[3] and how broader environmental, social, and governance (ESG) factors have been incorporated into banking activities, with varying degrees of success and criticism (Beltran et al., 2023; Greenfield, 2019; Hodgson, 2022; Light & Skinner, 2021; Mackenzie, 2021; Mussell, 2018).

It can also be contended that banks, in their role as financial institutions, bear certain obligations with respect to the mitigation of societal issues like human

[3] See paper V for further discussion.

rights, corruption, and climate change. In the aftermath of the global financial crisis in 2008, a body of literature emerged addressing the moral and role responsibilities incumbent upon banks within society. This literature emphasizes the following public responsibilities of banks: 1) ensuring the efficiency of financial payment processes; 2) prioritizing the financial well-being of their clientele over the self-interest of the financial institution; and 3) diligently assessing and managing risks, including the systemic risks that may adversely affect society as a whole (Graafland & van de Ven, 2011; Herzog, 2019). Following these responsibilities, banks are similar to lawyers in that they are also expected to prioritize their clients' goals while fulfilling a more public role of assessing and managing risks to the financial system as a whole within their work. Given that issues like corruption, human rights, and climate change is acknowledged as a substantial source of systemic risk, posing significant threats to both society at large and the functionality of the financial system, it can be posited that addressing these issues falls within the sphere of a bank's societal responsibilities.

2 – Legal Ethics and the Role of the Lawyer

Prefacing the more specific obligations of an advocate in Sweden,[4] the Swedish Code of Professional Conduct identifies the "primary responsibilities" of a lawyer:

> "A free and independent legal profession operating in accordance with sound rules developed by the Advocates themselves is an important part of a society governed by the rule of law and a prerequisite for the protection of individual freedoms and rights... The principal responsibility of an Advocate is to show fidelity and loyalty towards the client. As an independent adviser, the Advocate is obliged to represent and act in the client's best interests within the established framework of the law and good professional conduct. The Advocate must not be influenced by possible personal gain or inconvenience or by any other irrelevant circumstances. An Advocate must practise with integrity and so as to promote a society governed by the rule of law. An Advocate must act impartially and correctly and so as to uphold confidence in the members of the Advocate's profession. An Advocate must not promote injustice." (Swedish Bar Association, 2016, p. 5)

This preface interestingly highlights a number of approaches from legal ethics attempting to define the role of the lawyer and what they are supposed to do in this role. A primary question in legal ethics aims to address what the role of the lawyer is in society and what the justification for this role is.[5] Here, I would like to focus on outlining the various approaches in defining the lawyer's role. As we will see, these approaches to the role of the lawyer are often conflicting but, as seen in the quote above, represented all together in a way that needs further clarification if we are to understand what lawyers are supposed to do in their role.

The Standard Conception of the Lawyer's Role

The general starting point when discussing the role of the lawyer in legal ethics is the standard conception. The role of the lawyer in legal ethics is generally

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4 See section 3 for a table of these obligations.

5 For a discussion amongst notable contributors in the debate, see the Forum on Philosophical Legal Ethics: Ethics, Morals and Jurisprudence (Woolley et al., 2010).

summarized in the three principles of the standard conception (Dare, 2009). These principles include: 1) partisanship, which dictates that lawyers must be loyal to their clients and act in their best interests within the confines of the law; 2) neutrality, requiring lawyers to remain impartial about the moral aspects of their clients' interests; and 3) non-accountability, meaning that a lawyer should not be morally judged based on their clients' goals or the lawyer's assistance in achieving those goals.[6]

Furthermore, Parker and Evans present four different approaches in how the role of the lawyer has been considered (Parker & Evans, 2014).[7] The first approach, adversarial or zealous advocacy, emphasizes that the legally permissible interests of the client are the only morally relevant considerations for the lawyer. Second, the responsible lawyer (also described in certain contexts as an independent counselor or a wise counselor) approach seeks to incorporate both the legal interests of the client and the public interest as it relates to upholding the rule of law, highlighting that lawyers also serve as representatives of the court and of the law. Lastly, the moral activism and ethics of care approaches argue against different moral considerations for a lawyer. The moral activist approach argues that lawyers should be guided by general ethical considerations and promote substantive justice; and the ethics of care approach argues that a lawyer's responsibilities should include incorporating a more holistic view of the personal and relational concerns of both the client and others affected into the potential legal solution in order to best preserve relationships and avoid harm.

It may be helpful to highlight in what contexts these approaches are most applicable. Taking one side of the spectrum, the zealous advocate is commonly portrayed in a criminal law context under the adversary system of common law. When faced against the resources of the state, a lawyer should do everything possible to protect their client's freedom and liberty. On the other side of the spectrum, a stereotype of a more moral activist lawyer would be a public interest lawyer. These lawyers work to effect change or challenge current policies that affect marginalized or underrepresented people through actions like strategic litigation or class action lawsuits. Finally, in the middle of the spectrum, a responsible lawyer is normally portrayed in how lawyers discuss issues with and

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6 Note that the third "principle" is not addressed to the lawyer, as discussed below, and not part of legal ethics in the narrow sense, which is about how lawyers should act. It primarily addresses how the public should assess and hold lawyers responsible for their work.

7 The final two approaches, moral activism and ethics of care, are treated as more or less together in this introduction as they distinguish the least between lawyer's considerations and moral considerations.

advise the client, in either a criminal or transactional context. While these may be helpful illustrations to show how the approaches may be seen in practice, it is important to note that these approaches aren't specific to a certain type of law practiced, or lawyer doesn't pick a specific approach to use. A difficulty in legal ethics is understanding when these approaches are relevant, especially when the role of the legal profession as a whole is supposed to be justified (not just criminal lawyers or transactional lawyers). It is also relevant to note that these approaches are represented differently depending on the legal system and the country. For example, the civil law system in various countries in Europe does not have the same adversarial background as the common law legal system and therefore lawyers may not be trained with the "zealous advocate" approach that aligns more with the adversarial system in common law. That being said, when considering the international element of business and most large corporate law firms, the "global legal profession" has sort of merged into its own potential international culture as lawyers from both common and civil law jurisdictions "took advantage of…the globalization of the Anglo-Saxon legal practice" (Pistor, 2019, p. 177).

In the following sections, the three principles of the standard conception will be outlined in relation to these approaches to show the spectrum of how these principles have been proposed to apply to the activities of a lawyer. These principles will also be considered from the perspective of a corporate, transactional lawyer instead of the more commonly used perspective of the criminal lawyer.

Partisanship

Starting with partisanship, a lawyer should be loyal to the client and is obliged to act in the client's interests within the bounds of the law. This is a positive, special responsibility that the lawyer should act primarily in the interest of their clients with less regard for the interests of others. The client's interest in this way is to be understood as the client's goals (as decided by the client and their preferences) and legal entitlements to pursue this goal. This principle can be analyzed through its two claims, namely claim 1A: loyalty to the client and their interests, and claim 1B: within the bounds of the law. Each claim will now be discussed through the perspective of each approach, highlighting the spectrum of how this claim can be interpreted.

Claim 1A: Loyalty to clients and their interests

Starting with the zealous advocate, they would argue for the strongest loyalty to the client above all other interests and considerations. Under this approach, lawyers should act to advance only the goals of their clients. They can be ruthless in this pursuit, and use whatever skills and knowledge afforded to them as a lawyer to fulfil this role. The client is their only stakeholder. Legal ethicists have justified this narrow scope in various ways, ranging from the lawyer-client relationship as analogous to the special obligations we have to friends to how a lawyer's fidelity protects individual autonomy against state power (Fried, 1976; Woolley et al., 2010, pp. 200–201). This approach would then in practice support very strict conflict of interests rules to ensure that lawyers are not incentivized against their clients' interests and strict confidentiality in relation to what the client tells their lawyer, even if the client discloses something that could be harmful to others.

The following approaches discussed challenge the singular focus of claim 1A as written above by recognizing that a lawyer must balance their loyalty to the client with other considerations. The second approach from responsible lawyering would argue for the role of the lawyer to be an independent counselor. This counselor should balance loyalty to both the client and the best functioning of the legal system in the name of public interest. The lawyer is considered a mediating figure between law and client and a guardian of the legal system and the rule of law, and so the lawyer now has two stakeholders - their client and the public interest (although narrowly scoped as it only relates to the legal system). This approach still would restrict the ways that a lawyer could act on behalf of their client. Under this approach, the client is entitled to their legal rights (what the law allows them to do or have) but is not entitled to use the law to gain any potential advantages, and, in certain situations (generally as required by law), a lawyer may be obligated to disclose a client's harmful impact to the court or to regulators. An example of this type of obligated disclosure can be found in the European Union where lawyers are required to report to a regulator if they suspect that their client is violating anti-money laundering laws (European Parliament, 2018). While a zealous advocate may argue against these types of proposals for regulations in that they might threaten their obligation of confidentiality to the client (and the self-regulation of the profession), a responsible lawyer would see these types of regulations more as reflecting their duty to the court.

The final two approaches, moral activism and ethics of care, can be grouped together in that they largely dismiss that the lawyer is not allowed to consider other

moral considerations in their work. The client is an important stakeholder but still one of many stakeholders that should be considered in what is right for the lawyer to do to pursue justice (as promoted by moral activism) or in the context of the relations that may be affected by the lawyer's action (as promoted by ethics of care).[8] Therefore, the stakeholders that a lawyer may have to balance would be significantly expanded, ranging from substantive considerations of justice in their work to considerations of how acting for a certain client would affect their personal or other professional relationships (i.e., teaching, work in civil society organizations, etc.). These approaches therefore would affect both who lawyers would consider taking on as a client as well as how they would act in relation to the client. While these approaches are normally not seen in how lawyers should consider their loyalty to the client in their professional obligations, empirical research has shown that lawyers, while professing to not take other considerations into account in their role, do at least personally reflect on the conflicts between advancing their clients' interest and how their clients' goals may cause harm (Vaughan & Oakley, 2016).

Claim 1B: Within the bounds of the law

The second half of the claim, within the bounds of the law, is meant to be the boundary of obligated loyalty to the client, reflecting that the lawyer is still an agent of (and restricted by) the legal system (and meant to uphold the universal duty of not breaking the law and not helping others to break the law). While all approaches would agree that a lawyer should not help a client break the law, the approaches to this law set the boundary in different places. A zealous advocate, for example, would consider the boundary to be the letter of the law. Therefore, if the law is in some way vague or not clear in its application (which to be fair can describe most laws), a lawyer is allowed to use this lack of clarity to their client's advantage. For example, loopholes in tax law or the regulation of offshore accounts are noted as ways that people can evade taxes or launder proceeds of crime (Global Witness, 2018). On the other side of the spectrum, a moral activist approach to lawyering

[8] Drawing a comparison from traditional business ethics literature, the zealous advocate approach seems to align well with the shareholder primacy view, where maximizing profit for shareholders should be the only goal of companies (Friedman, 1970). On the other hand, the other approaches align to a certain degree with the stakeholder view of business ethics, where companies need to be run with consideration of a number of different interests from various stakeholders (Freeman, 1984). More research could be pursued to connect the trajectory of the development of the views within business ethics to the approaches of legal ethics to see how they relate to each other.

would argue that the lawyer is required to push or challenge law to consider issues of justice or ethical considerations. This approach is foundational to public interest lawyering. For example, climate change strategic litigation is being used to incorporate climate considerations into updated case law or legal reform and force states and companies to consider and act on climate-related risks (Milieudefensie et al. V. Royal Dutch Shell plc., 2021; Notre Affaire à Tous Les Amis de la Terre, and Oxfam France v. BNP Paribas, 2023; Golnaraghi et al., 2021). As the middle way in between these approaches, the responsible lawyering approach would argue that an independent counselor should consider both the letter of the law and the spirit of the law. Even if the law is in some way vague or unclear, the lawyer should interpret and apply the law based on the substantive considerations of the law and the goal of the law. They may not push the law further than its intended goal, but they can't manipulate the law to the client's advantage either.

Moral Neutrality

Claim 2: No judging of the client or client's goals

The second claim, do not judge the client or the client's goals, is specifically about the client's moral character or the moral value of their goal. A classic example highlighting the intent of this claim is that a lawyer should provide representation for a person accused of murder. Even if the lawyer sees murder as morally wrong and believes the client is evil and guilty of murder, the lawyer should still represent the client in court because they are innocent until proven guilty in court and deserves access to justice and the protection of their legal rights throughout the court proceedings. This claim also applies to non-criminal cases, for example, a lawyer should still advise a client even if the client is an unsavory person or their goals could be harmful (but not illegal). Like claim 1B and the distinctions noted above, a lawyer should not act to further a client's goal if they know the goal is illegal. Yet, the same grey areas of "within the bounds of the law" from claim 1B also apply to how a lawyer could judge the legality of a client's goal. Once again, looking at the various approaches highlights a spectrum of how this claim can be applied and would guide how lawyers should engage with their clients.

Taking the strongest application of this claim, a zealous advocate would be able to technically apply legal means to a client's goal without (or with little) question to other moral considerations or interests. This application is based on arguments that lawyers are not the decision makers in their client's goals. They are merely hired to apply the law to the situation or protect the legal entitlements of the client

(Allegre, 1991; Cramton, 1977). To incorporate their own moral judgment in their role and how they act in client mandates would introduce an unjustified aspect of moral paternalism to the legal system. While certain versions of this approach would give lawyers flexibility in choosing who they can act for, once the mandate is agreed, the lawyer should act with zealous loyalty to their client without further moral considerations (Freedman, 2012). That being said, in certain jurisdictions (for example, common law jurisdictions like the UK and Australia), a lawyer is required to represent anyone in a criminal case if the lawyer is competent in the legal area and available and if the person can pay their fee (also known as the "cab rank rule"). As Parker and Evans note, this rule and the corresponding reverence for lawyers who represent difficult or vulnerable clients has engrained "the principle that full-time advocates shall accept all comers as clients in all matters (civil as well as criminal)… as a norm of practice" (Parker & Evans, 2014, loc. 3888).

The middle swath of the spectrum shows the range of what kinds of considerations a lawyer can incorporate in accepting clients and providing advice, but it ultimately promotes that a lawyer should be able to discuss these concerns with the client and (to the extent that they can) influence the client to more ethical decisions. In this claim, a responsible lawyering approach can be divided into two counselors: the independent counselor and the wise counselor. The independent counselor should be able to consider issues related to how a client's goal aligns with the substantive goal of the relevant laws and would potentially affect the functioning of the legal system (similar to their role in Claim 1). The wise counselor would be able to take more non-legal considerations into their actions and advice for the client. For example, the developing landscape of environmental, social, and governance considerations incorporate both legal and non-legal aspects. A wise lawyer would be able to speak with the client about both aspects in a way that makes the client consider their impact on these issues with their actions (and how this might lead to reputational or long-term risks). This approach speaks to the balance of legal and non-legal issues that lawyers are usually asked to consider by the client anyway.

The final approaches, moral activism and ethics of care, would allow lawyers to include the broadest range of non-legal and ethical considerations into their advice and services for the client, including their own personal moral boundaries. They would also argue for the strongest right to refuse to act or to stop acting for a client because of these considerations. This approach has been critiqued on the

basis that it could conflict with the legal right of access to justice.[9] Interestingly, empirical research has shown that lawyers to a certain extent do choose who they work for based on several non-legal interests. Interviews with lawyers have shown that they do have personal moral boundaries regarding the clients that they would work for, saying that they wouldn't work with, for example, tobacco companies, gambling companies, or a company that endangered wildlife species like gorillas (Vaughan & Oakley, 2016).

Reflecting on how this claim of neutrality could be applied in a business context, the strongest case for the strongest application for this claim is in an adversarial criminal context, where lawyers should be neutral to the fact that they are representing a murderer. This could be, as discussed above, because of access to justice concerns and the need for people to have adequate representation against the state. Yet, there is also arguably more distance between the action of representation and the accusation of murder in that the lawyer is not actively enabling the murder.[10] In a more transactional context, the lawyer's actions can be more closely related to the client's goals or activities because the lawyer is in some way potentially able to influence or needed to produce the outcome. This claim may then be further considered in relation to what extent does the lawyer's enablement of the client and their goals obligate the lawyer to have more moral judgments about this goal.[11]

Non-Accountability

The final claim, that 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, is a different claim in comparison to the first two claims. Instead of reflecting how lawyers should act in certain situations, this claim addresses the public and other authorities and how we should consider lawyers' actions with regard to (i) appropriate responses (i.e., blameworthiness) and (ii) possible remedial duties that should be asked of the lawyer when they contribute to harm or wrong-doing.

The traditional stance arguing for the principle of non-accountability states that one of the integral principles that allow the lawyer to do her job is the principle of non-accountability. This principle asserts that, aside from doing something illegal or knowingly helping a client do something illegal, lawyers are not morally

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9 See further discussion in paper IV.

10 While the lawyer would potentially be complicit in the murderer getting away with a murder if not convicted, this outcome is where the principle of non-accountability should be applied.

11 See papers II, III, and IV for further consideration of this claim.

accountable for what they do as a lawyer to advance their clients' interests, e.g., they are not blameworthy. This principle of non-accountability is further instrumentally justified to society because the lawyer's role is integral to protecting key societal goods like the rule of law and conflict resolution in society (Pepper, 1995; Wendel, 2011). Therefore, the lawyer should be allowed not to consider certain standards of ordinary morality in their profession because their special role morality ultimately justifies itself in what the legal profession, in general, does for society. With the principle of non-accountability, lawyers can separate their personal values from their professional values so that these moral values do not conflict. If a lawyer must represent an unsavory character in court or use "creative" ways to achieve the unethical goal of their client, the lawyer can feel fulfilled in doing their best in their professional role without feeling like they may have compromised their personal values. Furthermore, lawyers in certain ways have been protected from public shaming because of this principle.

There are legal ethicists, though, that are against the blanket moral exemption for lawyers in the principle of non-accountability (Luban, 1988; Pearce, 2002; Rhode, 2003; Simon, 2010). They argue that, at least in certain contexts, the principle of non-accountability is not justified and that a lawyer should be morally accountable for their actions as lawyers. For example, in the aftermath of various corporate scandals and the financial crisis, this principle has been challenged in at least a transactional context, and the public, through civil society organizations have increasingly challenged this principle in a way that the legal profession should address (Cramton, 2002; Kershaw & Moorhead, 2013; Wendel, 2021).

Looking back at the Swedish Code of Conduct preface introduced in the beginning of the section, aspects of all of these approaches could be seen in the preface but in a way where it does not address the possible conflicting aspects of these approaches. If taken from different approaches or to different extremes, showing fidelity and loyalty towards the client act, acting to uphold confidence in the members of the Advocate's profession, and not promoting injustice could lead to very different actions depending on how it was interpreted. While, as described above, the various approaches are sort of covertly seen throughout different aspects of a lawyer's work, corporate lawyers seem to most readily identify with the zealous advocate approach, even in a transactional context (Vaughan & Oakley, 2016, p.57). The zealous advocate approach has been the predominant approach discussed in legal ethics, yet this has been primarily discussed in a criminal context and arguably assumed to reflect similarly in a corporate context. As shown by the discussion of the various approaches, though, this most

restrictive approach may not be the most justified in all contexts, and lawyers can be justified in incorporating, at least to a more significant extent, moral considerations into their professional work. In the papers that follow this introduction, I aim to show how corruption, human rights, and climate change are examples of issues where a broader moral approach for a lawyer is necessary.[12]

[12] See papers II, III, and IV.

3 – Moral Responsibility and Professional Obligations

This section will outline several moral responsibility considerations that are relevant to the various themes of this thesis. Then, professional obligations will be discussed as another source of responsibility that is relevant for this thesis but, at times, may conflict with ordinary moral responsibility claims. Approaches in legal ethics, as discussed in the previous section, seem to focus on what moral considerations or relevant stakeholders should be included. I would like to include in the focus when these moral considerations should be particularly included. I am particularly interested in when these sources of responsibility conflict, namely when a professional is indirectly, morally responsible for a harm that they enabled through their services but their professional obligations seemingly require them to act in the interest of the client.

Moral Responsibility Considerations

Traditional Moral Responsibility Considerations

Moral responsibility broadly aims to consider if, when, and in what ways should people be considered and held responsible for the actions they take and the consequences (outcomes) of these actions. This literature is vast, with a significant number of aspects to reflect on,[13] so in this thesis, I limit the scope of moral responsibility considerations to the conditions of (backward-looking) moral responsibility, more specifically what conditions need to be satisfied for a person to be morally responsible for an action or outcome. Traditionally, three "Aristotelian" conditions have been endorsed- a freedom (or control or voluntariness) condition, an epistemic (or foreseeability) condition, and a causal

[13] Questions include, as a start: can anyone be considered be morally responsible if determinism is true? Can anyone be considered morally responsible if it is only by moral luck or factors out of their control that a person is or is not in the relevant moral situation? How and why should we hold someone morally responsible or morally blame or praise them?

condition.[14] Taking these conditions as an assumption, a person can be regarded as morally responsible for a harmful outcome if they 1) voluntarily 2) acted in a way that contributed (causally) to the harm 3) knowing that the harm would happen or were culpably ignorant of it (should have known that the harm would happen).

Each of these three conditions have been further elaborated on or critiqued to understand how a person may or may not satisfy each condition.[15] For example, the causal condition has generally been interpreted as difference-making, where a person's action made a counter-factual difference to the outcome (Kutz, 2000, p. 3). Yet, under this interpretation, it is difficult to evaluate cases of overdetermination (where, for example, person A acts in a way to bring a harmful outcome, but if person A would not have acted, person B would have brought about the same outcome). In cases of overdetermination, it is unclear why person A should be morally responsible when the outcome would have happened anyway. Others have proposed that this condition could be interpreted as causation as production, where a person can fulfil this condition if a person's action can be seen as a part of the causal chain (Beckers & Vennekens, 2018; Brülde et al., 2023). This interpretation would be able to handle overdetermination cases but would then find cases where people fail to act (omissions) difficult. The epistemic condition considers if an agent both knew that their action would lead to a harmful outcome or should have known that their action would have this effect. This brings a further question regarding how we can judge if a person should have known, or when ignorance can reasonably excuse responsibility. The control (voluntariness) condition is often included to excuse cases of force or coercion in moral responsibility. Yet, this condition could be clarified further, incorporating, for example, excusing cases of manipulation or where avoiding the act would be very costly (Nelkin, 2016).

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[14] The epistemic and freedom conditions have been called "Aristotelian" conditions as they can be traced back to Aristotle discussing responsibility (Fischer & Ravizza, 1998). The third condition of causal responsibility is generally assumed when considering if an agent meets the epistemic and freedom conditions of responsibility, but the question of how causation relates to moral responsibility is also well-discussed. For further discussion, see, for example, H. L. A. Hart, Causation and Responsibility, in Causation in the Law (Hart, 1985); Michael S. Moore, Causation and Moral Blameworthiness, in Causation and Responsibility: An Essay in Law, Morals, and Metaphysics (Moore, 2009); David A. Lagnado & Tobias Gerstenberg, Causation in Legal and Moral Reasoning, in The Oxford Handbook of Causal Reasoning (Lagnado & Gerstenberg, 2017).

[15] See paper I for further discussion on these conditions.

Moral versus Legal Responsibility

The conditions discussed determine when a person should be considered morally responsible; these conditions can be compared with conditions of legal responsibility, namely when a person should be held legally liable for a crime. Moral responsibility is seen as a "template for more institutionalized forms of responsibility" like legal responsibility (Kutz, 2004, p. 551). Yet, the conditions for legal responsibility can still differ in notable ways. At least in common law, two conditions are used to determine if a person is criminally liable – mens rea and actus rea. Actus rea requires that a person acted in a specified way or caused a specific harm that is against the law; mens rea requires that a person had a specified mental state when breaking the law. While these conditions are similar to the epistemic, voluntariness and causal conditions, it is important to note that mens rea and actus rea are defined in relation to some specific crime. So, for example, looking at mens rea, being guilty of first-degree murder would require that a person had a "premediated intention to kill" while being guilty of second-degree murder would mean that the person believed killing would be "a likely consequence of his actions" (Kutz, 2004, p. 576). This example shows how mens rea can differ depending on the crime but for essentially the same action by, for example, including an element of intention that is normally implied with the epistemic condition. Both the epistemic condition and the control condition is preserved in legal contexts, but it is important to note that responsibility for acts is considered differently for potentially the same outcome. With regards to the relevance of intention, this is also important in morality but need not be added as a separate condition since it is covered by foreseeability (but, similarly to legal responsibility, intention might make the agent more responsible).

Direct versus Indirect Responsibility

The moral responsibility conditions above reflect how one can be directly morally responsible for an action or outcome, meaning that the outcome was not mediated or affected by another agent. Throughout most of the thesis, though, these conditions are applied to indirect cases, where a person contributes to the harm or violation by actions like influencing, enabling, manipulating, or coercing another agent to produce the relevant harm or violation.[16] Where indirect responsibility is

[16] See paper I and paper III for more discussion on how these conditions relate to actions of indirect responsibility and certain theories of complicity. See paper I for further discussion

concerned, there is a question of to what extent the influencing actor's actions may excuse the influenced actor's actions. For example, looking back at the control condition, if the influencing actor forces or coerces the influenced actor, then the influenced actor is seen as less (or not) responsible for the outcome. Yet, in this thesis, I am more interested in considering how the causal condition can be understood in relation to the indirect responsibility of the influencing actor, especially in relation to less coercive actions. By looking at the influencing actor's action (i.e., encourage, enable, motivate) in relation to the influenced actor's action, certain theories of complicity have reflected on how the influencing actor's action is still relevant to the moral responsibility of the outcome if the influencing actor's action contributed to the influenced actor's action or ultimately made the outcome more likely to occur (Kadish, 1985; Lepora & Goodin, 2013; Mellema, 2016).

Individual versus Collective versus Shared Responsibility

While individual responsibility is considered in this thesis, at least as it relates to individual lawyers working for clients, there are also questions regarding how law firms or the legal profession as a whole, as represented by their regulatory body and its members, might be to some extent morally responsible.

The actors considered in this thesis include both individuals, acting on their own or as affiliated with a group (like the legal profession), and group agents, like a business, a bank, a law firm, or (perhaps) the legal profession. Collective responsibility is attributed to groups qua groups, and it is important to reflect on if groups can even be considered a relevant agent for moral responsibility and how to hold groups responsible for actions that are attributable to a group. For the purposes of this thesis, I assume that groups like businesses, law firms and the legal profession can be regarded as collectively responsible for a harm. In this way, the profession, as represented by their regulating bodies, are important agents in considering how they foster and enforce these professional obligations and to what extent they challenge or assess the motivational structures of the profession in relation to systemic, societal issues.

Shared or joint responsibility is when individual or collective agents are co-responsible for the harm they create as members of a structured or unstructured group (Kutz 2000).[17] Shared responsibility is particularly poignant for large,

outlining the difference between direct and indirect responsibility in individual, joint, collective, and shared cases.

[17] Note that Kutz rejects that collective agents can be co-responsible.

complex harms. An example of this shared responsibility is the prevalence of sweatshop labor and how large numbers of consumers independently buy cheap shirts, incentivizing producers to cut costs by failing to pay a minimum wage. What (forward-looking) responsibility do these consumers have in preventing sweatshop labor in the supply chain production of their clothes (Herzog, 2016)? While shared responsibility can be shared by these large groups of actors (like global consumers of fast fashion), it can also be shared by members within a more structured collective. For example, in this thesis, I investigate to what extent members of the legal profession as individual members of the structured group can in some way be morally responsible for the harms their profession enables.

Backward-looking versus Forward-looking Responsibility

Finally, the moral responsibility conditions are all backward-looking, but can of course be a source of forward-looking responsibility, since a person's actions or contributions in the past might make them blameworthy or remedially responsible for the resulting harm. There are other sources of forward-looking normative responsibility beyond backward-looking moral responsibility. Forward-looking responsibility considers in what way people can be responsible for remediation or prevention of harm based on, for example, their capacity to act or remediate the harm, if they benefited from the harm (without contributing to it), or their social and professional roles (Björnsson & Brülde, 2017). Iris Marion Young's Social Connection Model is an example of a forward-looking model of responsibility that aims to identify obligations that various agents have when considering the "system of interdependence, cooperation, and competition" which contributes to structural injustice (Young, 2006, p. 119). Her model is discussed along with theories of complicity in this thesis to consider forward-looking remedial responsibility in the context of business and human rights.[18]

Professional Obligations

Special obligations can arise from both the relationships we have with people (i.e., being partial to a friend's welfare and happiness) as well the roles we hold in society. Professional obligations are a set of special obligations that people have based on their professional roles. These roles include jobs that would be considered professions, like accountants, doctors, and lawyers. They can have

[18] See paper III for further discussion.

special obligations in the relationships that they have with their clients. Yet, they often also have special obligations in relation to the professional role they hold in society. It can be useful to distinguish between special obligations in the narrow sense (a perfect duty that prescribes or prohibits certain acts, e.g., confidentiality) and special responsibilities (where there is an imperfect duty to promote or care about someone's interest or wellbeing, e.g., loyalty to the client and their interests) (Björnsson & Brülde, 2017).

First it is relevant to highlight the key characteristics of a profession (Bruin, 2013).[19] Professions often are dedicated to an important aspect of the functioning of society, like the healthcare system or the legal system, and therefore they have both special privileges and special obligations to fulfil this function. One of these privileges includes being a monopoly; only certain people who qualify as having the right expertise and training can be recognized within the profession. This training and qualification must also be continuously updated based on the new developments of the domain in which they work. Another privilege is that professions are (to a large extent) self-regulated. The regulatory bodies of the profession have the right to establish rules and regulations in their policies and Code of Conducts which are then enforced by the regulatory body. Members of the profession voluntarily go through this training as required by the professional regulatory body and agree to be regulated by their professional rules and obligations. A defining trait of a profession is the substantial power asymmetry between clients seeking assistance and professionals wielding specialized expertise and government-endorsed authority. Consequently, professional obligations serve as a safeguard against the potential exploitation of clients.

Professional obligations can be perceived as the embodiment of principles, values, and regulations that professionals commit to upon joining their respective fields. These ethics are intended to cultivate the dedication and proficiency essential for serving clients (patients, students, etc.) and carrying out their societal roles. Additionally, they mirror the obligations associated with the authority granted through governmental monopoly and self-regulation. For example, the table below shows the general professional duties (obligations and responsibilities) of a lawyer as outlined by the Swedish Code of Professional Conduct for Members of the Swedish Bar Association:

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[19] See paper IV for more discussion on the definition of a profession and how the characteristics of a profession differ from that of a business.

Table 1 – Professional Duties in the Swedish Code of Professional Conduct for Members of the Swedish Bar Association

Duty	Description
Executing a Mandate	An Advocate must carry out a mandate with care, accuracy and due timeliness. The Advocate must ensure that the client is not burdened with unnecessary cost. Legal advice must be based on the necessary examination of the law.
Duty of Confidentiality and the Duty of Discretion	An Advocate has a duty of confidentiality in respect of matters disclosed to the Advocate within the framework of the legal practice or which in connection therewith becomes known to the Advocate. Exceptions from the duty of confidentiality apply if the client consents thereto or where a legal obligation to provide the information is at hand. An Advocate is obliged to exercise discretion in respect of client matters.
Information to the client	A client should be kept informed of what transpires in the accomplishment of a mandate. Questions from the client concerning the mandate should be answered without delay.
Information from the client	An Advocate is not, except for special cause, obliged to verify the accuracy of information provided by the client.
Professional competence	An Advocate is obliged to maintain and develop his professional competence by monitoring the development of the law in the fields in which the Advocate is active and to submit to the necessary continued training.
Insurance obligation	An Advocate is obliged to purchase liability insurance cover appropriate to his practice and to maintain such insurance cover by complying with the applicable policy terms and conditions.
Economic transactions with the client	Economic transactions between an Advocate and his clients are prohibited unless resulting from a mandate. An Advocate's acquisition of, or holding of a share or participation in a client's business must not cause or be expected to cause a conflict of interest.
Client Funds and other Property Belonging to the Client	Monetary funds, valuable documents and other property entrusted to an Advocate by a client or by another on behalf of a client must be linked to the mandate. A mandate must not, except for special cause, entail only the management and brokering of funds or safekeeping of property.
Upholding of Human Rights in the Practice of Law	An advocate must not give advice with the purpose of counteracting or circumventing human rights and basic freedoms covered by the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (with protocols). An advocate should in his or her practice of law also otherwise work to uphold human rights and freedoms.

(Swedish Bar Association, 2016, pp. 7–14)

Professional obligations, in several ways, can conflict with ordinary moral duties (and at times even with other special or professional obligations). For example, if

Friend A does not disclose to you that they credibly think Friend B stole a hundred dollars from you, then Friend A is both violating a special obligation to you as their friend and could be seen in some way as responsible in a general backward-looking responsibility way for successfully helping Friend B steal the money. Yet, if Friend A is a lawyer and Friend B is their client, they may be professionally obligated to not disclose that information to you if you are alleging in court that Friend B stole your money, and Friend A is also excused from successfully helping Friend B allegedly steal the money if you can't prove the crime in court. This similar tension can potentially be seen in the obligations noted in the Swedish Code of Professional Conduct. A lawyer should work to uphold human rights, but what if they have reasonable suspicion that their client is violating human rights by displacing a community or polluting their land. If there are no regulatory requirements to disclose such violations, their duty of confidentiality may conflict with their duty to uphold human rights. When conflicts like these happen, it is important to assess a profession's obligations in relation to the role expected of them in society. A potential imbalance of these obligations, like a zealous loyalty to acting on behalf of or protecting the client,[20] may not be justified by the role of the profession in that particular situation.

It is important to consider how a profession should appropriately be guided and regulated to balance their professional obligations with their other moral duties. In the next section, I will introduce collective action theory as it has been discussed in social science literature and reframe how to consider potential initiatives to mitigate the collective action problems of businesses' causing or contributing to harms, especially in the context of corruption, human rights, and climate change, and lawyers' incentives to enable these harms in their work for their clients.

[20] See section 2 for further discussion on this obligation.

4 – Collective Action and Professional Service Providers

Collective action is needed to solve problems where actors need to coordinate and act to promote or maintain a collective benefit which may be antithetical to the actors' own short-term interests. Issues like reducing the emission of greenhouse gases and protecting the environment are classic but complex examples of collective action problems. Corruption and business corruption are also discussed in a collective action context.[21] This thesis engages with large-scale collective action issues like business corruption, business and human rights, and climate change, and therefore it is important to recognize the development of descriptive theories of collective action and to what extent they can apply to the normative contexts in which I am interested.

Collective Action Problems

A collective action problem can be described as "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) A collective action problem can describe a social dilemma - a particular situation where the individual's short-term, rational interest conflicts with a collective mutual benefit if everyone were to act in the same way. For example, as Parfit illustrates, these sorts of dilemmas are quite common – "It can be better for each if he adds to pollution, uses more energy, jumps queues, and breaks agreements; but, if all do these things, that can be worse for each than if none do" (Parfit, 1986, p. 62). Yet, a collective action problem can also describe more broadly a coordination problem, where it is difficult for other reasons to get a group of people to make the same decision which benefits the collective, or an assurance problem, where people would act collectively but do not trust that others will. In an assurance problem, actors are "willing to contribute" but need a "reasonable assurance of fair reciprocity… to contribute to a worthy social goal"

[21] See further discussion in paper II.

(Buchanan, 1996, p. 34). All of these problems can include a variety of interests which are interdependent and must be balanced collectively.

While climate change, human rights harms, and corruption have a number of collective action and non-collective action problems within their contexts, the particular collective action issues highlighted in this thesis are more like assurance problems, where there is a problem of overdetermination. Collective action problems for businesses is less of a managing a common or public resource and the corresponding free-rider problem (as is generally the focus in small and large scale collective action experiments) and more of an assurance problem of ensuring compliance (Buchanan, 1996). Businesses and their professional service providers recognize that climate change, business corruption, and human rights harms produced by businesses are issues to society and even risks to their businesses (i.e., reputational risks as the public calls on businesses more and more to not engage in practices that lead to these harms). It can be argued that they even recognize engaging in actions that exacerbate these issues are not sustainable in the long term. Yet, unless standards at a global level are able to be enforced, businesses do not believe that other businesses will act in a way to collectively stop their harmful practices. They fall into an overdetermination justification – why should I change my ways when it is not clear that others will, or why should I refuse this client if the client can just go to one of my competitors. They then continue to be incentivized by the competitive market to continue the status quo. These collective action problems are further exacerbated by their large-scale nature; the businesses that are generally the subject of these issues are multinational companies that are established or have supply chains in many jurisdictions, particularly jurisdictions that may not be able to enforce high standards. The same factors can be seen in collective problems facing the corporate legal profession; unless all corporate lawyers act with similar ethical considerations to their work, businesses can always find lawyers to continue to enable their harmful activities. Corporate lawyers are also incentivized by the competitive business market in ways that their professional obligations don't seem strong enough to counteract (and in some cases, for example the principle of non-accountability, seems to exacerbate) Furthermore, when considering that the legal profession is self-regulated within their jurisdictions, it is also difficult to ensure the same high standard globally to reinforce the potential gatekeeper role of the lawyer and address these multijurisdictional or global issues.

It is here that collective action can be used to solve the assurance problem and raise the collective standard of the businesses (Buchanan, 1996). Collective action

for business has "transitioned from being a major academic think piece into a … catchall term for industry standards, multi-stakeholder initiatives, and public–private partnerships" (Pieth, 2014, p. 94). These initiatives can include creating voluntary initiatives, which if successful can improve the reputation and trust within members of the collective and to the public, or establishing rules or regulations enforced by a third party, which can raise relevant standards while keeping the playing field even for businesses.

Collective Action Theory and Initiatives

Parfit highlights two types of solutions to these sorts of dilemmas: political solutions, where the situation changes to incentivize cooperation (i.e., regulations and enforcement), and psychological solutions, where the actors are incentivized to change (i.e. become more trustworthy or altruistic assuming that others in the group will do the same) (Parfit, 1986). Before highlighting how businesses have engaged in collective action initiatives, I summarize previous research that developed relevant theoretical frameworks for successful small scale and large-scale collective action.

Initial theory and experiments on collective action were defined by rational choice theory, arguing that "rational, self-interested individuals" will act selfishly according to their preferences and therefore "will not act to achieve their common or group interests" (Olson, 1965, p. 2). Moe identifies (and goes on to critique) this explanation of when people cooperate in collective action situations, which focuses on exclusively political institutions "built around mutual gains, credible commitments, self-enforcing equilibria, and other concepts that flow from the logic of voluntary choice" (Moe, 2005, p. 215).[22] Ostrom also argues against the "zero contribution thesis"[23] by noting significant empirical research that people do voluntarily organize to realize mutual benefits (Ostrom, 2000). She proposed an updated theory of collective action based on "a behavioral theory of boundedly rational and moral behavior" (Ostrom, 1998, p. 2). This theory aligns more with

[22] Moe goes on to critique that this focus in the literature on political institutions in relation to collective action problems assumes a sort of voluntary cooperation and does not engage with power as a key aspect, with the potential for an imbalance of (coercive) power in these institutions that can ultimately favor the interests or impose the will of some over others.

[23] "The zero contribution thesis underpins the presumption in policy textbooks (and many contemporary public policies) that individuals cannot overcome collective action problems and need to have externally enforced rules to achieve their own long-term self-interest. The zero contribution thesis, however, contradicts observations of everyday life" (Ostrom, 2000, p. 137).

Parfit's psychological solutions. Her theory centers factors like reputation, trust, and reciprocity in managing collective action problems, instead of pure self-interest. Ostrom's work in developing a framework to further implement these factors and identify how people can best organize for collective action are still based on a small to moderate scale examples of resource management which was notably limited in spatial considerations, number of actors and time period (Ostrom, 2009). Furthermore, Ostrom's work shows that voluntary initiatives to small scale collective action problems are possible if certain conditions are in place. This is not to say, though, that third party (political) action is redundant, even in small scale cases.

Previous empirical studies on voluntary collective action initiatives were initially developed using experiments and frameworks that addressed small to moderate cases of resource management (i.e., protecting a specific environmental resource in a locally bounded area). Yet, large-scale collective action issues, like climate change and biodiversity, "are at the heart of humanity's most pressing challenges" (Jagers et al., 2020, p. 1291). Therefore, the factors identified in small scale collective action need to be adjusted to fit a more global context (ibid.). For example, Jagers et al. develop a theoretical framework of how to translate small scale frameworks for successful collective action to a framework for large scale collective action, including discussion about various facilitators.[24] They note that facilitators of trust, reciprocity and reputation would interact in different ways when comparing small scale collective action to large scale collective action. In general, small scale collective action experiments show that trust is foundational for reciprocity and cooperation, and reciprocity incentivizes participants to maintain a good reputation. In contrast, these three values (trust, reciprocity, and reputation) do not directly translate from small scale collective action to large scale collective action. Trust is, for example, theorized in large scale collective action contexts as a sort of anticipation or expectation of cooperation in others generally or a portrayal of a moral stance (Harring et al., 2019). Notably, direct reciprocity based on cooperation is impossible in large scale collective action in the same way that it is in small scale collective action, but ethical reciprocity as a norm (a belief that one should contribute because others are) can still be present in large scale collective action. The value of reputation is still an underdeveloped consideration

[24] These facilitators include intra-actor facilitators like pro-social preferences and fairness; inter-actor facilitators like trust, reciprocity, conditional cooperation, communication, power, and punishment; and societal factors like social norms, local institutions, and technology (Jagers et al., 2020, p. 1288).

in large scale collective action, but it seems like theoretically reputation could play a role in justifying or motivating cooperation.

The development of regulatory standards and collective initiatives ultimately try to foster these factors of trust, reciprocity and reputation in practice. Governmental regulation and self-regulation can both produce cooperation while maintaining a level playing field and are associated with different kinds of sanctions. Businesses can also put pressure on governments to regulate them. Examples of collective action in business can be seen both through regulatory and voluntary initiatives. An example of regulatory developments includes the EU Sustainable Finance Disclosure Regulation. As part of the foundation of the EU Green Deal, the European Commission introduced in 2018 an action plan on financing sustainable growth and has since been developing legislation in relation to promoting sustainable finance (European Commission, 2018). This includes legislation requiring certain financial institutions to disclose relevant environmental and sustainability considerations as related to their financial products, legislation establishing a taxonomy for what can be considered a sustainable financial product, and proposed legislation for a green bond standard (European Parliament, 2019, 2020, 2021). This package of legislation focuses on standardization and standard-setting of what it means to promote a sustainable product and to require financial institutions to be more transparent in how they are taking climate change and the environment into consideration in their business. While the legislation is currently being implemented and so it is unclear how banks are responding to the new requirements, the hope is that these regulations will ultimately reduce greenwashing and promote more environmentally friendly behavior by providing clearer standards for sustainability. In a different context and showing examples of voluntary initiatives, research has examined how multinational businesses have actively developed and participated in voluntary collective initiatives targeting corruption (David-Barrett, 2019; David-Barrett & Okamura, 2016; Rose-Ackerman, 2002). Notable examples that David-Barrett and Okamura discuss include the Extractive Industries Transparency Initiative and the Marine Anti-Corruption Network, both of which represent international collective action initiatives formed within the affected industries or in collaboration with businesses and governments. These voluntary initiatives aim to establish higher standards within high corruption-risk industries, and researchers have observed how anti-corruption norms emerge and disseminate within such initiatives, eventually becoming industry-wide standards (David-Barrett, 2019; David-Barrett & Okamura, 2016). Through these collective efforts, David-Barrett and Okamura

argue that businesses leveraged mechanisms like clubs (which create initiatives based on cost to membership in the club, selective benefits to members in the club, and monitoring and enforcement in the club) can be used to foster trust, enhance reputation, and collectively elevate anti-corruption standards. As a result, the norm of anti-corruption permeated throughout the entire industry.

A key characteristic of a large-scale collective action problem is the number of actors. The larger number of actors involved in a collective action problem, the more difficult it will be for them to cooperate and coordinate. Yet, it is not just a larger number of people that needs to be considered. What role or group do the actors identify with in the situation (and what obligations do they have as a part of that group) should be reflected in the analysis of a collective action problem as well. For example, the typical actors involved in business collective action, particularly concerning corruption, are commonly identified as business, government, and civil society (World Bank Institute et al., 2008). However, there seems to be an oversight in acknowledging the role of professional service providers in promoting and participating in collective action. This presents a potential gap in the literature, as professional service providers represent a distinct actor in collective action dynamics. Like other businesses, professional service providers play a part in collective action through their own business practices, such as adopting measures to reduce their environmental impact or refraining from engaging in corrupt practices for their own benefit. However, professional service providers differ from typical businesses in that they also have a unique role concerning their corporate clients. Depending on the nature of their work for these clients, their advice and actions can significantly influence their clients. Furthermore, certain professional service providers, like lawyers, are professions that are defined by the government to fulfil a certain role in society, like promoting justice and the rule of law. It is essential to consider these two connections: the relationship between the profession and the business world, and the connection between the profession and the relevant government entities. These connections become vital when examining how professional service providers should potentially foster trust and reputation in collective action, either as third-party enforcers (like gatekeepers) or as a part of voluntary initiatives.

Yet, before corporate lawyers can act as a part of the management of business collective action problems, they need to (at least in tandem) work to address their own collective action problems of setting and assuring a higher standard in relation to incorporating ethical considerations into their advice and their role as a gatekeeper (Vaughan, 2022; Rousseau et al., 2014). This problem can also be

addressed by various voluntary initiatives and regulatory standards. As a profession, lawyers are self-regulated, and their regulatory bodies, as a first port of call, could take further steps at engaging with the tensions amongst professionals' ethical obligations and reinforcing relevant standards. They could add further considerations of ethical obligations or explicitly state that lawyers should be accountable for their advice in their professional codes of conduct (Pearce, 2002; Pepper, 2015; Rousseau et. al, 2014). Sweden, for example, updated its professional duties in the *Swedish Code of Professional Conduct for Members of the Swedish Bar Association* to state that advocates "must not give advice with the purpose of counteracting or circumventing human rights and basic freedoms" and "work to uphold human rights and freedoms" (Swedish Bar Association, 2018, p.14). From my rudimentary review of lawyers' codes of conducts, this kind of explicit statement incorporating human rights obligations into lawyer's advice is quite rare and can be taken in other jurisdictions to codify these kinds of ethical obligations. The International Bar Association also recently updated its guidance for business and human rights and explicitly includes a number of questions for lawyers and law firms to consider, including "what is the connection between the nature of the lawyer's advice and services and the likely harm (i.e., will the advice or services cause, contribute, or merely be linked to the harm), and similarly, what is the connection between the client's conduct and the likely harm?" (Brabant et. al., 2023, p.7). This guidance coming from the International Bar Association shows an attempt to promote a global standard that lawyer's regulatory bodies can use to further incorporate ethical considerations in their work.

That being said, while codification of these obligations is important, I note that it is unclear if and how professional regulatory bodies enforce these obligations. When an ethical business scandal is discovered, to what extent do the professional regulatory bodies (or even state regulatory bodies) investigate the relevant professional service providers and their potential role in enabling the scandal? In terms of enforcement, further research would need to focus on how regulatory bodies have or are expecting to enforce these kinds of obligations (on the lawyer as a lawyer through means of investigation, financial penalties or disbarment) or how state regulatory bodies should consider enforcing indirect responsibility (on the lawyer or law firm as an agent that to a certain standard enabled the harm through means of criminal or civil penalties). Taking an action against banks as an example, BNP Paribas is being sued by a number of NGOs in relation to its alleged violation of the French Duty of Vigilance Law (Notre Affaire à Tous Les Amis de la Terre, and Oxfam France v. BNP Paribas, 2023). The NGOs claim that the

bank's vigilance plan did not adequately account for various human rights and environmental risks within its financing and investment, especially as it relates to the development of new fossil fuel projects. The case is ongoing, but it is interesting to note that, if successful, this case would provide potential grounds for any company under the scope the French Duty of Vigilance Law to be sued for not adequately assessing their risks in relation to their clients or downstream impacts in exacerbating climate change or not having a Paris-aligned plan. Furthermore, state regulation could be used in specific contexts to obligate professions to do more to address certain issues. As discussed above, the EU is in the process of introducing regulations obliging certain financial service providers to disclosure more information assessing if their services are sustainable or not. Even in the context of lawyers, considering their self-regulation, state regulation has still been adopted in the context of money-laundering requiring lawyers to report if they suspect that their client is violating anti-money laundering laws, and in the case of modern slavery, where the UK Modern Slavery Act requires law firms, like any other company within scope, to report what actions they have taken to ensure that modern slavery is not in their business or supply chains (European Parliament, 2018; United Kingdom Parliament, 2015). While preserving the independence of the profession and their self-regulation, targeted state regulation could also be used to enforce a minimum standard of action towards issues like corruption, climate change, and human rights.

Finally, I argue that professional service providers as individuals still do have a role to play in their duty to organize and engage with other actors, like businesses and governments, to push for collective action. Professional service providers, like law firms and banks, are a particularly special actor in relation to collective action because of their influence on other companies. This influence is an important aspect of the relation between service providers and businesses and can be used to reinforce collective action - for example by stating a uniform position or lobbying for legislation that reinforces the gatekeeping role of these service providers or closes known legal loopholes, thereby reassuring businesses that their competitors can't use certain strategies to their advantage. If state regulation seeks to activate the profession's duty to the public by imposing certain obligations on lawyers (like a reporting requirement for example), lawyers should engage with these obligations and their duty to the public on a similar level as their duty to the client, instead of using their professional obligations to the client as a non-starter

dismissal to the legislation.[25] Service providers could also engage in their own collective action initiatives to raise voluntary standards on these issues and reinforce this gatekeeper position. There are, for example, developing voluntary initiatives that promote lawyers not acting in a way that enables kleptocracy (Rigby, 2023) or exacerbates climate change (Stucki et. al., 2021). These sorts of voluntary initiatives could be global in nature in a way that promotes a standard across multiple jurisdictions in a way that updates to a lawyer's professional body wouldn't be able to address (unless they acted collectively as well).

[25] For example, various regulatory bodies within the legal profession have been observed advocating against regulations that arguably could potentially reduce their involvement in corruption and money laundering (American Bar Association, 2020; Brasch QC, 2021; Levi, 2021). While acknowledging their legitimate concerns regarding the implementation of such regulations impacting the legal field, it's crucial to contemplate how resisting these regulatory reforms might perpetuate the existing state of affairs.

5 – Project Summary

Context

The thesis starts broadly with the question of how professional service providers should act. Questions of ethics as they relate to these actors can start initially within the realm of business ethics, assuming that these providers should have the same sort of ethical considerations as any other business would have. These questions of "should business have ethics" and "what ethical considerations should businesses have in general" are important and complex questions in and of themselves that have been significantly developed in the literature of business ethics, but they are outside the scope of this thesis. I assume that businesses have a responsibility to consider a broad range of ethical obligations in their operations, and in this thesis, I aim to consider specifically what obligations do professional service providers have in relation to how they can influence the actions of other businesses and their ethical obligations. Literature within legal ethics, as an example of professional service providers, has arguably gone quite far in creating a distinct set of principles based on their own role morality and justifications for why this role is special enough to be differentiated, especially when compared to professional service providers like banks. Yet, both sets of literature do not seem to focus on how these service providers can be indirectly responsible for the harm they enabled their clients to do. Furthermore, legal ethics has tended to justify the role of the lawyer based on their work in a criminal context, and these justifications have often been assumed to carry over in a transactional or corporate context.

Methodology

To understand the specific situation of professional service providers, like the corporate legal profession and commercial banking, this thesis uses methods of applied ethics to understand what ethical rules and obligations apply to how professional service providers should act and then considers in what way their formal and informal institutions are impeding or not incentivizing them to act

appropriately.[26] Starting from the assumption that people, including lawyers, generally should act in accordance with a basic principle of beneficence or at least a principle of nonmaleficence,[27] I consider principles found in professional and legal ethics' obligations, and I analyze to what extent these obligations align with their duties derived from these more general moral obligations, in what ways these considerations conflict or potentially have been exaggerated to conflict, and to what extent the proposed justification of the special, professional obligations translates to the context of corporate lawyers as related to issues like business corruption, business and human rights, and climate change. Furthermore, after considering the moral conditions of indirect responsibility (and if they differ from conditions of traditional moral responsibility), I take theories about indirect responsibility and use corporate lawyers as an example of professional service providers to reflect on their potential indirect responsibility in situations related to corruption, human rights, and climate change. I also use theories of complicity and forward-looking, shared responsibility to interpret current, practical guidance in relation to how corporate lawyers and commercial banks should consider their human rights obligations. Finally, I use an empirical, qualitative analysis of public annual reports to understand how these service providers, using commercial banks as the example, are responding to these assertions of responsibility, specifically the responsibility to mitigate climate change. Informed by the output of these analyses, I consider the institutions that regulate and incentivize lawyers and propose ways in which lawyers should be regulated and guided to consider their (generally) indirect role in harms like climate change, human rights violations and corruption, and I propose the opportunity for lawyers to collectively organize and lobby for these raised standards of conduct. I hope that these overall reflections can contribute to a revaluation of our intuitions concerning what professional service

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[26] While I recognize that a number of aspects that I engage could be theoretically challenged further, like the role of the lawyer in society in general, I have scoped this thesis based on the descriptive status of the profession and of business so as to more actively inform current discussions related to potential reforms.

[27] Here I broadly define the principle of beneficence as contributing to a better world by, for instance, "preventing or removing possible harms" and the principle of nonmaleficence as "prohibiting causing harm" (Beauchamp, 2019). I recognize that it significantly more complicated to define what it means for people to act under these principles and whether or to what extent ordinary morality requires beneficence, but I use these starting assumptions primarily to draw out the potential differences between what ordinary morality would consider a beneficent act and what lawyers qua lawyers would consider a beneficent act to argue if, in certain situations, these considerations should really be so different.

providers should and should not be able to do in their role, how these claims should be justified.

Discussion of Research Questions

The more specific set of research questions I address in this thesis and overall discussion of their answers are as follows:

1. What should corporate lawyers do when advising their clients on issues related to corruption, human rights or climate change? Considering these providers' roles in society and professional ethics, do these specialized roles excuse these providers from their indirect responsibility? When should professional service providers (in particular, corporate lawyers and corporate banks) be regarded as responsible for unethical business conduct that they facilitate through their services?

When considering the forward-looking responsibility of these providers, namely through the special obligations or special responsibility that these providers have through their role in society, I argue that they have obligations to incorporate ethical considerations into their services. For example, banks' have a societal role to appropriately consider relevant risks in their financing so as to contribute to the financial stability of society (Herzog, 2019). Non-financial risks, like climate change, are still expected to have massive financial implications in the not-so-far (but not short-term) future, and not appropriately considering these risks into financial services is an example of how banks are not fulfilling their role obligations. Lawyers have special obligations to the public and the rule of law written into their professional obligations and codes of conduct. When their activities for corporate clients contradict these obligations to the public, they also are not fulfilling these role obligations.

That being said, professional service providers also have professional obligations to their clients. These obligations are primarily highlighted through the discussion of legal ethics and the professional responsibilities of lawyers. As with a number of roles that people have in society and in their relationships with others, special obligations, like professional obligations, and general moral duties may conflict with each other. Therefore, it would be expected that there needs to be considered recognition and engagement with these conflicts to understand the weight of these obligations and in which context should certain obligations have

more or less weight. Yet, in the case of lawyers in particular, it seems as if the role of the lawyer as it has developed through the standard conception of the lawyer has resolved these potential conflicts by excusing itself from other responsibilities outside of the client through its principles of partisanship, neutrality and non-accountability. While these principles may be applicable and justified by the role of the lawyer in certain contexts, for example in criminal law where legal ethics was primarily developed, I argue that these principles may not be as justified in all contexts of the legal profession, like in the corporate context.

When considering a standard application of moral responsibility considerations, I argue that professional services can be regarded as co-responsible for the impacts of the businesses with which they work. This responsibility would often primarily take the form of indirect responsibility, and this thesis considers if indirect responsibility, as a subset of complicity, should be considered in a different way than other forms of complicity because the causal relation between the provider and the impact flow through another autonomous agent, like their business client. Would the fact that the causal flow is interrupted by an autonomous agent justify a claim of non-accountability by the provider? For example, a lawyer may be causally connected to the impact through the advice they give their client, which the client can listen to or not listen to. A bank may be causally connected to a harmful impact through a general loan to a business where they did not consider how that general loan could be used for that specific impact (but arguably should have considered). After showing that the conditions of traditional backward-looking moral responsibility (namely causation, knowledge/foreseeability, and voluntariness) should still similarly be considered for cases of indirect responsibility, and highlighting that both the provider and the intermediary agent (like the lawyer and the client or the bank and the business) should be assigned some degree of responsibility, I apply these conditions to examples found in corruption, human rights, and climate change to show when these service providers can be regarded to some extent as responsible for these harmful impacts.

Paper I at the start investigates what is meant by indirect responsibility as a subset of complicity and how influencing acts, like advising, should be assessed in terms of moral responsibility. Following this general description of indirect responsibility, papers II, III, and IV focus on the corporate legal profession and its role in enabling (or mitigating) potential harms related to corruption, human rights, and climate change, generally arguing that lawyers should be seen as at least in some part indirectly responsible or complicit for these harms they facilitate with

their clients. Paper V also discusses, as a starting point for the empirical analysis, how banks have been considered morally responsible for exacerbating climate change through their activities and financing. Papers II and IV highlight the role of the lawyer and how it has been used as an excuse to not hold the legal profession morally accountable. These papers discuss to what extent their professional obligations may conflict with duties not to contribute to these harms and to what extent an interpretation of their professional obligations may be used as an inadequate excuse not to consider these harms in their professional role.

2. Considering the systemic and multijurisdictional (or even global) nature of the issues discussed that service providers are involved in (namely corruption, human rights harms, and climate change), what should the corporate legal profession do to collectively to remediate their responsibility? How could the state regulate to address this collective problem?

While, as I argue in research question 1, these service providers are responsible to some extent for the impacts of the business clients they advise and enable, the collective and institutional context that these providers are working in also must be considered. Therefore, the profession needs to engage more thoroughly in managing and resolving conflicts within their role obligations and between their role obligations and general moral considerations in order to more accurately reflect their responsibilities and how the public should regard them as responsible for the impacts they have in their professional activities. Recognizing that issues like corruption, human rights, and climate change have aspects of collective action problems in their nature, the response to this question takes more of an approach from political philosophy and explores how lawyers' institutions have been promoting ethical engagement. For example, paper IV starts with a question from a law student considering whether or not to work at a law firm that acts on behalf of clients in ways that would conflict with her commitment to climate change action. The response from the Ethicist to her question bypasses her potential complicity (using the role of the lawyer as a generic excuse) and focuses on how she can individually act to feel less complicit, by for example doing pro bono work or using this experience to work at an NGO in the future. I argue throughout this thesis that this focus on the individual ethics, while important for establishing responsibility, ultimately does not tackle the bigger question of managing and resolving conflicts within their role obligations and between their role obligations

and general moral considerations as described in research question 1. The extent to which lawyers are systematically incentivized to incorporate ethical considerations in their work is lacking and could create a potential divide within the profession. Instead of focusing on the individual level and the individual's ethics in deciding whether or not to work as a lawyer or for a certain client and potentially feel obligated to be complicit in issues of corruption, human rights harms, or climate change, these discussions of incorporating ethical obligations into the profession need to happen at the collective level, be it through voluntary, self-regulation or through regulation.

As a first step, professional regulatory bodies could take further measures to address the ethical tensions among professionals and fortify relevant standards, like enhancing ethical considerations within their codes of conduct and guidance, such as explicitly outlining accountability for advice. That being said, while codification of these obligations is important, enforcement of these obligations is key and remains to be seen. Furthermore, state regulatory bodies could explore further investigating the involvement of relevant professional service providers in facilitating business scandals or adopting regulation to oblige professional service providers to act in certain contexts. Finally, I note that individual professional service providers still bear responsibility in collaborating with other stakeholders, such as businesses and governments, to advocate for collective resolutions, be it lobbying for better regulations or voluntary initiatives. These voluntary efforts could transcend borders, fostering global initiatives that establish a standard across various jurisdictions in a way that updates to a lawyer's professional regulations at the jurisdictional level might not encompass unless they act collectively too.

Paper II highlights collective action as a way for the corporate legal profession to establish and promote better standards. This paper also discusses ways in which the profession has started to engage in anti-corruption collective action initiatives. Paper IV also alludes to similar initiatives in relation to climate change, arguing that professions need to address their role in climate change instead of potentially outcasting individual lawyers who are raising concerns. If these obligations ultimately do not excuse the actions of corporate lawyers in the situations discussed, these papers argue that is the primary responsibility of profession's regulatory body and the members of the corporate legal profession to re-evaluate and engage in public discussion about their obligations and how they can be reformed. Finally, paper V gives specific attention to the industry initiatives on climate change to which banks have made some commitment.

3. Empirically, in what ways are professional service providers recognizing and discussing claims of responsibility?

As a secondary question to the research questions above, I am interested in how these providers are publicly recognizing these claims of further responsibility for issues like human rights, corruption, and climate change. It is also important to investigate how these providers reflect on (i) their individual duties and obligations, and (ii) what institutional arrangements they think would promote the right actions. To consider this question, I primarily use a qualitative analysis of commercial banks discussion as it relates to climate change mitigation. Throughout the thesis, I have used commercial banks as an example of a service provider in their own right as well as a sort of foil to corporate lawyers. As discussed in paper III for example, banks have engaged more actively and publicly in considering their role in incorporating human rights in their activities. I see this discussion as an example of how banks can be considered in a way more advanced (or forced to be more publicly advanced) in considering their indirect responsibility of their activities. This difference in how banks have engaged in ethical issues as compared to lawyers may be because banks are not considered a profession, are more directly regulated by the government, and have a public, consumer facing profile that the public has used to engage with banks and push them to consider their ethical obligations (i.e. through protests and calls for changing banks in relation to what the public can do to get banks to divest in the fossil fuel industry). Law firms generally don't have these same pressures to deal with, but the public still, at times, discusses lawyers' roles in societal issues (Wendel, 2021). While I argue for more public engagement between lawyers and the public on their responsibility, we can look at the already developed discussion between banks and the public on issues such as climate change as a harbinger of how other service providers may respond to these public claims of responsibility (Greenfield, 2019; Banktrack & Fossil Banks No Thanks, 2024; Bowman, 2013).

Paper V uses a methodology of qualitative analysis to categorize how banks talk about climate change in their annual reports, with a focus on highlighting when banks are reflecting on their responsibility in mitigating climate change. This paper is significantly more empirical in nature, but it is included in the thesis as it aims to prompt a discussion about the role that commercial banks, and the financial sector more broadly, should have in responding to ethical issues like climate change. By analyzing what banks are saying through their public disclosures, we aim to understand how banks perceive their role in climate change mitigation. For

example, based on our qualitative analysis, we see that a selection of banks that are the top financers of fossil fuels do increasingly talk about climate change in their annual reports from 2015 to 2019, a lot of this discussion has been in relation to the products and services that banks can create or use as opportunities to benefit the banks and little discussion of commitments to reduce fossil fuel financing. This analysis can then contribute further to the discussion of if this perceived role by banks aligns with what banks should be doing to mitigate climate change. This final paper also shows the breadth of skills and collaboration taken on through this thesis.

Looking at the results of these research questions as a whole, this discussion can contribute to a number of other questions that I hope can be further developed in the future. My arguments at this point still focus more on these actors recognizing their responsibility, as I see this is as the current state of awareness of the issue, and I offer some examples of potential reforms that can be taken or are being developed. Yet, these discussions can be pushed further to consider and address the remedial duties of lawyers who have contributed to harm, what reforms or mechanisms to hold these actors responsible would practically look like, and what specific institutional changes need to be taken to incentivize ethical engagement. This discussion could also help to address another key question, namely what responsible engagement or exit could look like for a service provider when a client potentially or actually causes or contributes to a harm. For example, how would a bank or a lawyer justify continued engagement with a business with the purpose of being able to influence the business to be more considerate of these issues. On the other hand, if the bank or lawyer sees themselves as too complicit in these harms (without being able to influence the business), how would these actors be able to exit in a responsible way while still addressing the issues at hand. Both discussions of how to hold these providers accountable and what responsible engagement or exit looks like point to a final question that can be developed further which relates to public accountability. What should the public expect to know in relation to the activities of these providers and how can the public be engaged in potential reforms or discussions of responsibility? While these providers would still have professional responsibilities and special obligations to their clients, given that these roles have a societal justification to exist, they should be able to justify their activities to society and incorporate public criticism into their professional role. I hope the results and considerations included in my thesis helps to ultimately progress these questions at least a small step further.

6 – Summary of Papers

This final section provides abstracts of the following papers included in this thesis:

I - "Indirect Responsibility and Influencing Acts" (co-authored with Bengt Brülde and Erik Malmqvist)

II - "The Corporate Legal Profession's Role in Global Corruption: Obligations and Opportunities for Contributing to Collective Action"

III - "Incorporating Responsibility Conditions into the UN Guiding Principles' Participation Terms and their Application to Corporate Lawyers"

IV - "Corporate Lawyers and Climate Change: Perspectives from Professional Ethics and Business and Human Rights" (co-authored with Boudewijn de Bruin)

V - "If Money Talks, What is the Banking Industry Saying about Climate Change?" (co-authored with Åsa Löfgren)

I - Indirect Responsibility and Influencing Acts

Co-authored with Bengt Brülde and Erik Malmqvist

This manuscript focuses on how to understand the indirect responsibility of agents who contribute to harm or wrongdoing by influencing others through actions like hiring, encouraging, or advising. We seek to determine the conditions under which influencing agents are morally co-responsible for the harms caused or wrongs committed by those they influence. Our purpose for doing this is ultimately to determine how and why ascribing such backward-looking responsibility matters to the distribution of forward-looking, remedial responsibility.

Our approach contributes significantly to the philosophical debate on the complexities of moral responsibility in cases involving more than one agent. There is a significant literature on shared responsibility; yet there is less of a focus on influencing agents specifically, in particular as regards the distribution of remedial responsibility between such agents and those they influence. Issues concerning indirect responsibility arise in interactions between individuals, for example, in discussions of how people interact and influence each other on social media or in

commercials and endorsements. Furthermore, these issues often arise between professional advisors – like doctors, lawyers, and consultants – and their clients, and we use these situations as examples in our manuscript.

In this paper, my specific author contributions include development of the initial research question, background research to formulate arguments and provide examples, drafting aspects of sections, editing, and revising based on comments and feedback.

II - The Corporate Legal Profession's Role in Global Corruption: Obligations and Opportunities for Contributing to Collective Action

Published in Crime, Law and Social Change

This article seeks to shed light on the corporate legal profession's involvement in enabling corruption. Professional services, including corporate lawyers, play a pivotal role in facilitating activities that enable corruption by working within diverse standards, regulations, and global financial networks that enable the movement of illicit funds across the world. The primary objective of this paper is to examine the inherent tensions between the philosophical principles of complicity and the principles guiding the professional role of lawyers in society as they relate to enabling corruption.

Moreover, this article delves into strategies for addressing these tensions and situates lawyers in collective action against corruption. For instance, the legal profession bears a collective responsibility to uphold and monitor its ethical standards, primarily through regulating authorities. It is essential to assess the extent to which these authorities promote anti-corruption standards and take action against lawyers complicit in corrupt activities. Furthermore, the corporate legal profession can leverage its societal role to initiate anti-corruption collective action initiatives. This includes advocating for higher ethical standards in providing legal advice and lobbying for legislators to address corrupt practices through improved regulations and legislation. By exploring these dimensions, the paper seeks to provide valuable insights into the multifaceted role of lawyers in combatting corruption and promoting ethical conduct within the legal profession.

III - Incorporating Responsibility Conditions into the UN Guiding Principles' Participation Terms and their Application to Corporate Lawyers

Submitted to Business and Human Rights Journal

This manuscript aims to provide a more aligned approach to defining the participation terms outlined in the UN Guiding Principles on Business and Human Rights (UNGPs), drawing from recent discussions in business and human rights literature and theories of moral responsibility. The UNGPs participation terms, "causing," "contributing to," and "directly linked to", aim to describe a company's involvement in human rights harms and related remedial duties. However, evaluating these terms in a systematic way and understanding the spectrum between these terms has highlighted challenges in their use.

Van Ho's system of interpretation for these terms and her noted factors share certain similarities with philosophical discussions of moral responsibility. Complicity, for example, considers how agents should be accountable for contributing to a harm beyond a jurisdictional definition of legal complicity. Human rights harms additionally can include various issues related to structural injustice. In connection with this, a theory of forward-looking, shared responsibility, such as Young's Social Connection Model, explores how to consider groups of agents responsible for addressing issues related to structural injustice without necessarily holding them liable for causing the issue. While these theories offer valuable insights on defining participation terms more uniformly, their potential application to these terms has not been extensively discussed. The aim of this paper is to incorporate factors drawn from these theories to Van Ho's system of interpretation. By doing so, a more comprehensive understanding of the participation terms can shed further light on the nuanced nature of a company's involvement in human rights harms and their corresponding remedial responsibilities.

IV - Corporate Lawyers and Climate Change: Perspectives from Professional Ethics and Business and Human Rights

Co-authored with Boudewijn de Bruin and submitted as a book chapter to an upcoming publication in the International Comparative Business Law and Public Policy series

This manuscript examines the corporate legal profession's role in addressing climate change, drawing insights from an analysis of lawyers' professional obligations and developments in business and human rights with the United Nations Guiding Principles on Business and Human Rights (UNGPs). While acknowledging concerns about potential conflicts between the lawyer's professional role and their obligations towards business and human rights, namely that integrating human rights obligations may impede clients' access to justice and compromise lawyers' independence, we argue that these conflicts are often overstated when applied to the UNGPs. Yet these perceived conflicts point to key challenges that can still be overcome, like defining the limits of legal advice and understanding the diverse incentives influencing corporate lawyers.

Addressing these challenges at an institutional level is crucial to providing better guidance for lawyers in navigating climate change issues. For instance, the legal profession's regulating authorities bear the responsibility of upholding and monitoring the profession's ethical standards. The extent to which these authorities are facilitating the incorporation of climate change and human rights considerations in lawyers' work is key and can be accomplished through, for example, the development of new regulations and guidance as well as fostering improved communication and collaboration between legal practitioners and the public. By addressing these institutional aspects, the corporate legal profession can play a more effective and responsible role in addressing climate change and fulfilling their obligations towards business and human rights.

In this paper, my author contributions include development of the initial research question, development of key arguments of the paper, significant drafting and editing of the paper, and revisions based on comments and feedback.

V - If Money Talks, What is the Banking Industry Saying about Climate Change

Co-authored with Åsa Löfgren and published in Climate Policy

This article examines the stances of large commercial banks, particularly those heavily involved in financing the fossil fuel industry, concerning their perceived role in addressing climate change. Using qualitative analysis of banks' annual reports, we develop a method of categorizing their statements about climate change into four overarching types: general statements considering climate change as a risk (risk), statements describing a product or service related to climate change or sustainability that can be seen as a business opportunity for the bank (opportunity), general statements about climate change (general), statements describing an activity the bank discusses to address their emissions related to climate change (commitments). Drawing from the philosophical literature on moral responsibility and economic literature on burden sharing, we then reflect on whether these statements indicate any acknowledgment by banks of their contribution to exacerbating climate change through their financing activities. While the banks' reports mention various activities taken to mitigate climate change, there appears to be a lack of critical self-reflection on their role in financing fossil fuel-intensive activities and potential responsibility for remediation.

The approach taken in this study offers valuable insights into how researchers can constructively analyze businesses' responses to climate change. This methodology and the defined categories can be replicated to analyze publications from various businesses, beyond the banking industry, to assess the actions they claim to be taking in response to climate change. Although beyond the scope of this paper, this approach and the analysis of trends in banks' actions regarding climate change could be used to hold businesses accountable for if they have achieved their stated actions and to help evaluate the effectiveness of these actions. By examining how businesses address climate change, researchers and policymakers can encourage greater transparency and responsibility in the corporate sector's efforts towards climate mitigation.

In this paper, my author contributions include development of the initial research question and methodology, manual analysis of bank reports, development of the framework used and arguments in the paper, significant drafting and editing of the paper, and revisions based on comments and feedback.

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