The Panama Papers:  
A Discussion of Some Ethical Issues  
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ABSTRACT

The Panama Papers refers to a massive leak of information encompassing more than 11 million documents involving more than 200,000 offshore entities. The leak originated in Panama. Some of the documents involve transactions as far back as the 1970s. Numerous wealthy individuals, including top government officials from many countries, have been implicated. The release of information and documents has led to several resignations and numerous lawsuits. The end of litigation is not in sight, as lawyers and government agencies in several countries continue to read and digest the information. Although there is nothing illegal per se about having offshore entities, some such entities have been used to hide assets, evade income taxes, launder money and evade sanctions. The whistleblower who leaked the information to Süddeutsche Zeitung, a German newspaper, called himself John Doe to maintain anonymity. He leaked the information because of his strong distaste for income inequality and because of his view that there were many injustices being perpetrated by some of the entities and individuals who were availing themselves of the entities.

This paper discusses some of the underlying ethical issues that lurk beneath the surface of most discussions about hiding assets and income offshore. The discussion will focus on the ethics of parking profits (or hiding assets) offshore. The discussion will focus on the ethics of parking profits (or hiding assets) offshore, tax evasion, bribery, and whistle blowers.

This paper also includes links to more than 80 studies on tax evasion and 11 studies on bribery.

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1. Introduction

Lawrence J. Trautman (2016) has written an excellent manuscript on the *Panama Papers*. I will not attempt to critique, duplicate or summarize that paper here. My intent is much more modest, namely, to address some of the underlying ethical issues that are lurking in the shadows of any discussions about the *Panama Papers* and other attempts to hide assets and income from governments.

Basically, the *Panama Papers* refers to a massive leak of information encompassing more than 11 million documents involving more than 200,000 offshore entities. The leak originated in Panama. Some of the documents involve transactions as far back as the 1970s. Numerous wealthy individuals, including top government officials from many countries, have been implicated. The release of information and documents has led to several resignations and numerous lawsuits. The end of litigation is not in sight, as lawyers and government agencies in several countries continue to read and digest the information.

Although there is nothing illegal per se about having offshore entities, some such entities have been used to hide assets, evade income taxes, launder money and evade sanctions. The whistleblower who leaked the information to *Süddeutsche Zeitung*, a German newspaper, called himself John Doe to maintain anonymity. He leaked the information because of his strong distaste for income inequality and because of his view that there were many injustices being perpetrated by some of the entities and individuals who were availing themselves of the entities.

The International Consortium of Investigative Journalists (ICIJ) assisted in the dissemination of the documents. Journalists from 107 media outlets in 80 countries combed through the documents and began publishing articles about them and releasing some of the documents on April 3, 2016 (Wikipedia, 2016), which triggered a feeding frenzy among the media.

Trautman (2016) has already outlined many of the details in the case, and a search of the internet makes it easy to get additional information and updates, so there is no need to regurgitate those details here. Any details I would give here will quickly become outdated anyway, and more details seem to become available on a daily basis. The purpose of this paper is to discuss policy and the ethical implications of certain acts and arrangements, not to attempt to keep the reader informed about recent developments.

The remainder of this paper will discuss some of the underlying ethical issues that lurk beneath the surface of most discussions about hiding assets and income offshore. The discussion will
focus on the ethics of parking profits (or hiding assets) offshore, tax evasion, bribery, and whistle blowers. The mainstream media either ignores discussing these topics or, when they are discussed, they often get it wrong. That is understandable. Journalists need to write copy that sizzles in order to sell newspapers and magazines. Publishing rational discussions that apply ethical principles to topics like offshore entities, tax evasion, bribery and whistleblowing would tend to put readers to sleep, which would not help sales. Furthermore, many journalists, perhaps most, lack an understanding of ethical principles, and so would not be suited for the job of analyzing these topics by applying ethical principles.

2. Parking Profit Offshore

In a recent article, Richard Ruben reported that the largest U.S. companies added $206 billion to their stockpiles of offshore profits in 2013, an 11.8 percent increase since 2012. Total offshore profits for these companies are now $1.95 trillion, which is more than the GDP of all but the largest nine countries in the world. If these multinational corporations formed a separate nation, they would be slightly larger than India and slightly smaller than Italy in terms of GDP. Ruben pointed out that large multinational companies will likely continue to keep their profits offshore until Congress gives them a reason not to.

The scary part of that assessment is that Congress can take several approaches to resolve this problem, assuming that it is a problem. One approach would be to penalize companies for continuing this practice, which would lead to negative unintended consequences. Another approach would be to reduce tax rates so that companies would not feel compelled to shelter their profits from the excessive tax rates the U.S. government and various state governments impose of them.

Some people would challenge the assertion that U.S. tax rates are excessive. However, a comparison of U.S. corporate tax rates to those of other developed countries finds that U.S. corporate tax rates are the highest in the world. Table 1 compares corporate tax rates of various developed countries.

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4 A strong case can be made that parking cash or any other asset offshore is really none of any government’s business, since having the right to property means that anyone can do whatever they want with their own property. Governments have no inherent right to claim an ownership interest in the property of others.
### Table 1
Marginal Effective Tax Rate on Capital Investment, OECD Countries

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Note: G-7 countries are in bold.


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It must be pointed out that these U.S. corporate tax rates are for the federal tax only. One must add the appropriate state and perhaps local tax rates to get the complete picture. Table 2 ranks the states based on their top marginal corporate income tax rate.

Table 2
Ranking of State Corporate Tax Rates (as of January 1, 2013)

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Note: Ohio, Texas and Washington do not have a corporate income tax, but they do have a gross receipts tax. Delaware and Virginia have both a corporate income tax and a gross receipts tax. For specifics, see Tax Foundation, Facts & Figures: How Does Your State Compare? 2013.

Iowa imposes the highest corporate tax rate, 12 percent, followed by Pennsylvania, Washington, DC, Minnesota, Illinois, Alaska, Connecticut, New Jersey and Rhode Island, all of which have a top rate of 9 percent or more. Nevada, Ohio, South Dakota, Texas, Washington and Wyoming do not have a corporate income tax, although some of these states have other taxes to compensate for the lack of a corporate income tax. If one adds the federal, state and (sometimes) local corporate income tax rates, plus some of the other taxes assessed on corporations in the United States such as property and sales taxes, the total could come close

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to, or even exceed, 50 percent of profits in some cases. Thus, up to half of corporate profits are skinned off the top by a party (government) that is not even a shareholder.

3. Some Moral Issues

The underlying assumption of many people who complain about the practice of shifting profits to low-tax jurisdictions is that there is somehow something wrong or immoral about parking profits in a foreign country, that there is something unpatriotic about it. Setting aside for a moment the fact that patriotism is the last refuge of a scoundrel, if one examines this issue from the perspective of wertfrei economics, the issue is a little more complex than what may first appear.

One obvious point to be made is that corporate board members have a fiduciary duty to their shareholders to safeguard the assets of the corporation. Earning profits in high-tax jurisdictions tends to dissipate those assets to a greater extent than would be the case if those profits were instead reported in a lower-tax jurisdiction. Thus, the argument could be made that the top management of a corporation has a fiduciary duty to export profits if doing so is in the best interests of the shareholders.

Robert Nozick, the eminent Harvard philosopher, took the position that the income tax is the equivalent of slavery, since it robs the workers of the fruits of their labor. For example, in substance it does not make much difference whether someone takes 40 percent of your income or forces you to work for them two days a week. In both cases, you only get to keep 60 percent of the fruits of your labor and you are someone’s slave two days a week.

It might be argued that the government provides services in exchange for these exactments, and that there is therefore a moral duty to pay, but the same argument could be made for slave owners. They provide food, shelter and clothing for their slaves, yet no one argues they have a duty to work for the slave master. In many cases, government does not even provide services, at least not for the individuals who have to pay the taxes. What is more likely is that the people who do not pay taxes receive the benefits. If there is any moral duty to pay taxes, that duty must be directly related to the extent of services provided by the government that insists on skimming a portion of the corporation’s profits. One might begin this conversation by asking, “What does the federal government do for the average multinational corporation?”

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It has been argued that the government provides services that corporations benefit from using. Police and fire are two services that come to mind. However, most police and fire services are provided by the local governments. In some communities, more than half of the police function is performed by the private sector through security guards. Many fire departments are volunteer, and thus are not a burden even on the local government. The argument that the federal government is morally entitled to receive tax payments because it provides these services falls apart under this analysis. The infrastructure argument is another argument that has been used to justify corporate income taxation at the federal level. However, most infrastructure is provided either by the state and local governments or by the private sector. State and federal gasoline taxes pay for the roads. Income taxes do not.

National defense is provided by the federal government. However, the extent to which this expenditure benefits multinational corporations is questionable. One reason why U.S. citizens and U.S. corporations feel threatened is because of the U.S. government’s aggressive and interventionist foreign policy. Such a policy causes some people to hate Americans and American corporations, making them more likely to be attacked. In the absence of such a foreign policy, the need to defend the citizenry would be greatly reduced. It might also be pointed out that the federal government does little or nothing to defend multinational corporations, especially the branches located outside the United States. The federal government sometimes makes them targets, but does little or nothing to defend them. Table 3 provides a statistical summary of U.S. federal government spending.

Table 3
Federal Government Summary of Spending (2014)

<table>
<thead>
<tr>
<th>Category</th>
<th>%</th>
</tr>
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<tbody>
<tr>
<td>Health care</td>
<td>27</td>
</tr>
<tr>
<td>Pensions</td>
<td>25</td>
</tr>
<tr>
<td>Defense</td>
<td>22</td>
</tr>
<tr>
<td>Welfare</td>
<td>11</td>
</tr>
<tr>
<td>Interest</td>
<td>6</td>
</tr>
<tr>
<td>Education</td>
<td>3</td>
</tr>
<tr>
<td>Transportation</td>
<td>3</td>
</tr>
<tr>
<td>Protection</td>
<td>1</td>
</tr>
<tr>
<td>General government</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
</tr>
</tbody>
</table>

It is questionable how much the federal health care system benefits multinational corporations, especially the branches outside the United States. Even for those locations within the United States it is questionable how much the federal health care system benefits them. The system imposes costs, but the benefits are more difficult to assess.

Federal pension payments do not have any visible benefits for multinational corporations. However, the pension system (Social Security) does impose costs on multinationals as well as on all other businesses, even those in the nonprofit sector, since they have to pay more than 7 percent of employee wages into the system, with no visible benefits.

The U.S. tax system taxes American citizens and U.S. corporations on their worldwide income, which means that American citizens living and working in France and U.S. corporations doing business in Germany have to pay taxes to support the federal welfare and pension schemes that benefit people living in the United States, a policy that is inherently unfair. Multinational corporate units located outside the United States do not benefit from these expenditures, and it is questionable whether their domestic units benefit, either. Since that is the case, where can one find a moral duty to pay corporate taxes to the U.S. government?

The point is that the federal government provides little in the way of services to multinational corporations, although the myriad of federal regulations imposed on them does increase their cost of doing business. According to one estimate, the cumulative cost of regulations added between 1949 and 2011 has cost $38 trillion in terms of reduced economic growth.11

The current regulatory and tax system also places U.S. corporations at a competitive disadvantage worldwide. Their costs of capital and other costs of doing business are higher than would otherwise be the case, and the regulatory burden makes it more difficult to do business. Can it be said that there is still a moral obligation to pay the corporate tax when the recipient of that tax is doing more to you than for you?

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4. Tax Evasion

Authors have written about the abusive techniques of the Internal Revenue Service (Burnham, 1989; Hansen, 1984). Others have written about how to protect yourself from the IRS (Frankel & Fink, 1985; Kaplan, 1999; Wilson, 1980). Studies have been done of how tax dollars are wasted or how the tax burden is excessive (DioGuardi, 1992; Fitzgerald & Lipson, 1984; Grace, 1984; Payne, 1993; Shlaes, 1999).

There have been calls for tax reform because of the perception that the tax system is unfair, but scholars and commentators cannot agree on what reforms should be made. Some authors call for higher taxes or support the concept of a graduated tax that charges higher rates on the rich (Johnston, 2003, 2007), while other studies dispute the efficacy of the graduated income tax (Blum & Kalven, 1953). Some authors have called for the abolition of the income tax and its replacement with a flat tax or a fair tax (Boortz & Linder, 2005; Champagne, 1994; Hall & Rabushka, 1985). Others have called for an abolition of all coercive taxes and their replacement with a voluntary system (Curry, 1982; Sabrin, 1995).

Numerous studies on various aspects of tax collection and tax evasion have been done over the years. Richard Musgrave is perhaps the most famous theoretical researcher on this topic for the last half of the twentieth century (Musgrave, 1959, 1986; Musgrave & Musgrave, 1976; Musgrave & Peacock, 1958). He took a rather statist approach. His basic premise is that the state is entitled to take more or less whatever it wants to take, at least in a functioning democracy. His main focus was on how the government should extract taxes. He investigated issues of efficiency and, although he also addressed fairness at times, his concept of what is fair could be challenged by those who believe that the graduated income tax is either unfair or inefficient (Blum & Kalven, 1953).

James M. Buchanan, the 1986 Nobel Prize winner in economics, is far less statist in his approach (Buchanan, 1967; Buchanan & Flowers, 1975). He recognizes, as did James Madison, one of America’s founding fathers, that the state can get out of control at times, even in a democracy, and that constitutional limits have to be placed on the legislature. Buchanan and Musgrave (2001) co-authored a book that presented their two contrasting views on the relationship between the individual and the state.

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An examination of the philosophical literature on the ethics of tax evasion found that there are three basic positions on the issue (McGee, 2006a). Tax evasion is never ethical, sometimes ethical or always ethical. In terms of frequency, the most popular position in both the philosophical and empirical literature is that tax evasion is sometimes ethical, although scholars cannot agree on when tax evasion is ethical and when it is not.

It has been suggested that there may even be a positive duty to evade taxes, at least in some cases (McGee, 2012). For example, where the state is evil or corrupt or engages in unjust wars (McGee, 1994; Pennock, 1998), a case can be made that society’s best interests could be served by evading taxes, because evil regimes would not be fed the tax funds they need to carry on their evil activities.

Other instances where evasion might be a duty have also been suggested. For example, if one takes the efficiency strain of utilitarian ethics, which holds that the only ethical act is the one that is most efficient, a case can be made that keeping money in the more efficient private sector meets that utilitarian test, because paying taxes shifts the funds to the less efficient government sector (McGee, 2012).

Another case for advocating a duty to evade taxes is when doing so reduces the property rights violations that take place in society (McGee, 2012). If one takes the Nozick (1974) position that taxation is theft, a violation of property rights or a form of slavery, then one may reasonably conclude that evasion reduces the amount of theft, property rights violations and slavery in society.

Perhaps the strongest argument to justify tax evasion would be the case of Jews living in Nazi Germany. Surely if tax evasion were ever justified it would be in this case, since arguing that Jews have a duty to pay taxes to Hitler is unthinkable, or at least so it would seem. Several surveys have asked participants their opinions on the strength of various arguments that have been given over the centuries to justify tax evasion and the strongest argument in support of the tax evasion on moral grounds have often been the case of Jews paying taxes to Hitler. However, it was not always perceived as the strongest argument to justify tax evasion. A survey of students in Argentina ranked it in first place, tied with the ability to pay argument (McGee & Rossi, 2008). However, in a survey of Australian students it did not even rank in the top six (McGee & Bose, 2009). The top six reasons to justify tax evasion in the Australian study were in cases where tax rates were too high, where the tax system is perceived as being unfair, where a large portion of the money collected is wasted, where the government discriminates against
the taxpayer on the basis of religion, race or ethnic background, where a significant portion of the money collected winds up in the pockets of corrupt politicians or their families and friends, and where the government imprisons people for their political opinions.

A survey of Orthodox Jewish students (McGee & Cohn, 2008) ranked the Jewish argument first place in terms of justifiability out of 18 arguments justifying tax evasion, but even among Jewish students it was perceived that there was some duty to pay taxes to Hitler, not because Hitler was worthy of their tax money but because of the perception that there is a duty to God to pay taxes and a duty to the Jewish community as well. There is a strain of thought within the Jewish religious and philosophical literature that one must obey the law regardless of what the law might be – “the law is the law.” The Jewish literature also teaches that one must never do anything to disparage another Jew. Thus, if one Jew evades taxes it makes all other Jews look bad; therefore, a Jew must never evade taxes. Another reason for paying taxes is that Jews are obligated to do good works (mitzvos). Evading taxes might cause one to be imprisoned, where the possibility of doing good works is greatly reduced. Therefore, a Jew must not evade taxes. (Cohn, 1998; Tamari, 1998; McGee & Cohn, 2008).

These viewpoints may be challenged philosophically, but those were the reasons given by the Jewish sample for justifying paying taxes to Hitler. Surveys of other sample populations generally ranked the Jewish example high on the list of arguments to justify tax evasion, but it was not always in first place. The results of some other studies are given below.

**BOSNIA & HERZEGOVINA (McGee, Basic & Tyler, 2008)**

1st Tax evasion is ethical if a significant portion of the money collected winds up in the pockets of corrupt politicians or their families and friends.

2nd Tax evasion is ethical if the government discriminates against me because of my religion, race or ethnic background.

3rd Tax evasion is ethical if the government imprisons people for their political opinions.

**COLOMBIA (McGee, López & Yepes, 2009)**

1st Tax evasion is ethical if a significant portion of the money collected winds up in the pocket of corrupt politicians or their families and friends.

2nd Tax evasion is ethical if the government discriminates against me because of my religion, race or ethnic background.

3rd Tax evasion is ethical if a large portion of the money collected is wasted.
4th Tax evasion would be ethical if I were a Jew living in Nazi Germany.

**ESTONIA (McGee, Alver & Alver, 2008)**

1st Tax evasion is ethical if a significant portion of the money collected winds up in the pockets of corrupt politicians or their family and friends.

2nd Tax evasion is ethical if the government imprisons people for their political opinions.

3rd Tax evasion is ethical if the government discriminates against me because of my religion, race or ethnic background.

4th Tax evasion is ethical if the tax system is unfair.

5th Tax evasion would be ethical if I were a Jew living in Nazi Germany.

**FRANCE (McGee & M’Zali, 2009)**

1st Tax evasion would be ethical if I were a Jew living in Nazi Germany.

2nd Tax evasion is ethical if the government imprisons people for their political opinions.

3rd Tax evasion is ethical if the government discriminates against me because of my religion, race or ethnic background.

4th Tax evasion is ethical if a significant portion of the money collected winds up in the pockets of corrupt politicians or their families and friends.

It is somewhat surprising that the Jewish argument did not rank higher. Apparently, different cultures and countries have different values when it comes to ranking reasons for justifying tax evasion.

Several religious literatures address the issue of tax evasion. The religion that comes out strongest against tax evasion is the Church of Jesus Christ of Latter-Day Saints (Mormons). There is absolutely no excuse for tax evasion in their literature (Smith & Kimball, 1998). The religion ranked in second place in terms of lack of support for tax evasion is the Baha’i faith. Its religious literature would justify tax evasion only in cases where the government persecutes members of the Baha’i faith (DeMoville, 1998).

Other religions are more mixed on the issue. The Jewish religious literature frowns on tax evasion in general but does provide justification in some cases. Where a king usurps power or where the laws are discriminatory or capricious the king may be disobeyed, including in the area of tax laws (Tamari, 1998). There is no moral duty to pay taxes where a king forces himself onto a country if the people do not accept him. There is no duty to pay taxes where the
leadership or government is not legitimate (Cohn 1998). In cases where evasion is not justifiable, tax evasion is regarded as theft (Tamari, 1998).

Not much has been written on Muslim religious views regarding tax evasion. Murtuza and Ghazanfar (1998) have discussed Zakat, the moral duty to provide for the poor, but they did not address the ethics of tax evasion directly. Ahmad (1995) and Yusuf (1971) addressed the ethics of tax evasion in their books on Islamic business ethics and economic justice. Their views basically coincided. In fact, Ahmad cited Yusuf several times. According to these Muslim scholars, there is no duty to pay customs duties, restrictive tariffs, court fees, revenue stamps, or any tax on income. Their reason for opposing income taxation is because it curbs initiative and it assumes the illegitimacy of the income of the rich. They suggest that the state should levy a proportional tax along the lines of Zakat on accumulated wealth.

They were also against indirect taxation, since they believed all taxes should be direct. There is no justification for the death tax. Any tax that causes prices to rise artificially is illegitimate. Presumably, that would include sales and use taxes as well as tariffs and attempts to fix prices. McGee (1997; 1998a&b) discussed the work of these two scholars from a non-Muslim perspective.

Jalili (2012) wrote a response to these studies and presented a different view. According to Jalili, in cases where the state is an Islamic state that follows Shariah law there is an absolute duty to pay whatever taxes the legitimate rulers demand without question. Thus, income taxes, sales taxes, death taxes, etc., are all legitimate and must be paid, provided one is paying to a legitimate Islamic state. Where the state is not a pure Islamic state or where the state is not Islamic at all, the ethics of paying taxes is less clear. Where the funds are spent on good deeds or the prevention of bad deeds it seems like there is a duty to pay. Where the state violates Islamic law or engages in bad deeds, it appears that there is no duty to pay. It may even be argued that there is a duty not to pay, although Jalili does not go into this possibility.

The Christian literature (other than the Mormon literature, which has already been discussed) is the most eclectic on the ethics of tax evasion. The most comprehensive treatise on the duty to pay taxes from a Catholic perspective was a doctoral dissertation written by Martin Crowe (1944). He reviewed 500 years of Catholic literature, some of it in Latin. There is no way to summarize this body of literature briefly. Basically, one might attempt a summary by stating that there is somewhat of a duty to pay just taxes and somewhat less of a duty to pay unjust
taxes. Payment may be forgiven where there is no ability to pay. It might be acceptable to evade taxes imposed on the necessities of life in certain situations.

There is some Catholic literature to the effect that a person should pay taxes based on benefits received. If the state confers no benefits on a particular taxpayer, there is no moral duty to pay taxes (Crowe, 1944, pp. 24-25). There is some duty to government but that duty is not absolute. Where tax funds are used to provide for the common good there is some duty to pay but where they are not used for the common good there is no duty to pay, according to some Catholic scholars.

Schansberg (1998) discusses the duty of paying unto Caesar what is Caesar’s but he does not identify quite what Caesar is entitled to receive. Pennock (1998) discusses the issue of whether there is a duty to pay taxes to a state that is engaging in an unjust war. Gronbacher (1998) discusses Catholic social thought from the perspective of classical liberalism.

Several secular studies have been done on the ethics of tax evasion. Martinez (1994) wrote a wide-ranging treatise, which cited an earlier article by McGee (1994). An edited book on the ethics of tax evasion (McGee, 1998c) included several secular studies. Block (1989, 1993) conducted studies of the public finance literature but could not find an adequate justification for taxation, presumably because the authors of public finance texts begin with the assumption that taxation is justified. Leiker (1998) discussed Rousseau’s view on taxation. Morales (1998) discussed tax evasion from the viewpoint of Mexican workers and concluded that at times feeding the family takes precedence over paying taxes.

Some empirical studies have been done on attitudes toward tax evasion. Alm, Martinez-Vazquez and Torgler (2005) investigated Russian tax morale. Alm and Torgler (2006) discussed cultural differences and tax morale in the United States and Europe. Torgler and Valev (2010) examined public attitudes toward corruption and tax evasion from the perspective of gender. A number of survey research studies have been done to discover student views on the ethics of tax evasion. Surveys were completed for students in Armenia (McGee & Maranjyan, 2006), China (McGee & Guo, 2007; McGee & An, 2008), Poland (McGee & Bernal, 2006), Puerto Rico (McGee & López, 2007) and Romania (McGee, 2006b). In each of those studies, various arguments that had been used in the past to justify tax evasion were ranked. In some cases, comparisons were also made based on gender, age, academic major, student status to determine whether those demographic variables made any difference. In some cases, they did make a difference and in other cases they did not make a difference.
5. Bribery\footnote{Some of the material for this part was taken from Teresa Hernandez and Robert W. McGee. 2012. A Longitudinal Study of French Attitudes on Accepting Bribes. Published in the Proceedings of the Allied Academies Summer International Conference, July, 2012.}

Both the literature and business practice view bribery in negative terms, and with good reason. Much of the bribery that occurs involves a one-way transfer, where the recipient of the bribe does not give any value or render any service in exchange for the payment. Government officials merely use their office to abuse their power and enrich themselves at the expense of those who pay, as well as the general public.

The Organisation for Economic Cooperation and Development (2011) and others (Bonucci & Moulette, 2007; Cuervo-Cazurra, 2006, 2008; Darrough, 2010; Moran, 1999; Pacini, Swingen & Rogers, 2002; Scharf, 2008) have taken this position, which seems reasonable, in general.

Popular opinion suggests that bribery is always unethical. However, such a conclusion is premature. Before one can arrive at the ethics of giving or accepting a bribe, one must apply ethical analysis. Doing so may not be easy, since several ethical systems have evolved over the centuries, and the tools of ethical analysis they use are not identical.

Baron, Pettit and Slote (1997) discuss three ethical systems. Graham (2004) discusses eight. The main ethical systems in use today include utilitarianism (Baron, Pettit & Slote, 1997; Brandt, 1992; Frey, 1984; Goodin, 1995; Graham, 2004; McGee, 2012a), rights theory (Baron, Pettit & Slote, 1997; Brandt, 1992; Frey, 1984; Graham, 2004; McGee, 2012a & c), virtue ethics (Aristotle, 2002; Baron, Pettit & Slote, 1997; Graham 2004) and duty ethics (Baron, Pettit & Slote, 1997; Brandt, 1992; Graham, 2004; Kant, 1952, 1983). There is a lot of overlap between and among these main ethical systems, and this paper will not explore their similarities and differences in depth. However, we will discuss ethical principles from time to time, since any discussion of bribery is incomplete without a mention of ethics.

The vast majority of economists are utilitarian, either all of the time or most of the time. Many policy makers and legal scholars also embrace utilitarian ethics to a greater or lesser extent. Thus, any discussion of ethics from an economic or legal perspective would be incomplete without a discussion of utilitarian ethics.

There are several approaches to utilitarian ethics. Economists would conclude that an act or policy is good if the result is a positive-sum game, which means there are more winners than losers. Such an approach might be a good starting point for analysis. However, there are some
structural difficulties that must be overcome. For example, it is not always easy, or even possible, to identify all the winners and losers.

Another problem is measurement. What if a few benefit a great deal, while the vast majority lose just a little? How can one tell if the result is a positive-sum game? Another deficiency of utilitarian ethics is that it totally ignores rights violations, or if it considers them, it lists them as a negative in the utilitarian calculus.

One strand of utilitarian thought holds that an act or policy is ethical if the result is an increase in efficiency. Richard Posner, the eminent legal scholar, is one proponent of this view (Posner, 1983, 1998). The efficiency approach has its critics (McGee, 2012a), but we will not go into the merits and demerits of the efficiency argument here.

The rights approach is another way to look at ethics. This approach basically holds that an act or policy might be ethical if no one’s rights are violated, while violating one’s rights always constitutes unethical conduct, even if the result is a positive-sum game, or even if the majority benefits (McGee, 2012a, b & c).

Virtue ethics holds that a policy or act is ethical if the result is human flourishing (Aristotle, 2002; Baron, Pettit & Slote, 1997; Graham, 2004). Sometimes such a result is easier to see than at other times.

Another approach is to look at duty (Kant, 1952, 1983). If one has a duty to perform or not perform and one does not do one’s duty, one is acting unethically. This approach is used to determine whether the agent is acting in the principal’s best interest, for example.

One may justify bribing a prison guard to release a political prisoner (Roy & Singer, 2006), if the prisoner is being kept by a corrupt or evil regime. The fact that the guard (agent) is working against the interest of the employer (government) can be disregarded in such cases. Bribing guards to pass along food or medicine to a prisoner might also be considered an ethical act. Thus, one cannot say categorically that bribery always constitutes unethical conduct.

However, Logue (2005) takes the position that bribery is always unethical because it violates absolute moral principles that cannot be compromised. He discussed the unfairness of bribery, the inefficient allocation of resources it produces, and the violation of a divine paradigm.

Carson (1987) concluded that accepting a bribe is almost always unacceptable because it violates an implicit or explicit duty associated with the role one is in. If breaking promises is prima facie wrong, then bribery is wrong because it involves the breaking of a promise.
However, he makes exceptions in cases of conscripted soldiers, some prostitutes and those who are held as virtual slaves.

Colombatto (2003) take the approach that corruption is a rational approach to institutional failures. Houston (2007) examined whether corruption might expand a country’s economic activity in some cases. For example, bribery might be used to circumvent a bad law or to lubricate commerce when few other options are available. Bribery and other forms of corruption are beneficial when they result in trade and productive investments that would not otherwise be possible. He sees corruption as having a positive effect when it is a substitute for bad governance.

What about the case of bribing tax officials to reduce the tax liability? This act presents some interesting ethical issues, especially in cases where there is no moral duty to pay the tax anyway. Is it unethical to bribe a tax official in a case where there is no moral duty to pay the tax in the first place?

In some cases, there may be a moral duty not to pay the tax. A popular example in the tax evasion literature is the case where the tax funds collected will be used to prosecute an unjust war (McGee, 2012). If there is a moral duty not to pay such a tax, could it be said that bribing a tax official to reduce the tax burden constitutes an unethical act? An even more outrageous example (one of my favorites, which I have used many times in my articles on tax evasion) is the case of a Jew living in Nazi Germany evading taxes. If it is not unethical for a Jew living in Nazi Germany to evade taxes, would it be unethical for that same Jew to bribe a tax official to reduce the tax that is legally but not morally owed?

The acceptability of bribery sometimes has cultural dimensions (Armstrong, 1996; Getz & Volkema, 2001). A study of a Korean company found that bribery was not unethical because it served a higher utilitarian purpose (Aupperle & Camarata, 2007). Husted (1999) found that corruption is correlated to per capita GNP, power distance, masculinity, and uncertainty avoidance. Napal (2005) found that giving gifts to government officials in Mauritius was a normal way of doing business. Sanyal and Samanta (2004) examined bribe indices for 19 countries and found that factors such as per capita income, degree of economic freedom in the country, and cultural factors, such as power distance and masculinity, and legal factors, such as accounting and tax treatment, played a role in determining the acceptability of bribery. A few other studies have also used the Hofstede approach to examine the bribery issue (Chen, Yasar & Rejesus, 2008; Sanchez, Gomez & Wated, 2008).
Whether corruption and bribery enhance or reduce foreign direct investment (FDI) is subject to debate. Several studies have concluded that bribery decreased FDI (Cuervo-Cazurra, 2006, 2008; Mauro, 1995), while Egger and Winner (2005) found that it enhances FDI. Egger and Winner’s study of 73 developed and less developed countries found that corruption stimulates FDI, which supports the view that corruption can be beneficial in circumventing regulatory and administrative restrictions. Sanyal and Samanta (2010) found that bribery has a negative effect on economic growth.

Weitzel and Berns (2006) examined 4979 cross-border and domestic takeovers and found that host country corruption was negatively associated with target company premiums. They concluded that local corruption does not constitute a significant market barrier to foreign investors, but rather represents a discount on local takeover synergies.

Johnsen (2009, 2010) viewed bribery from a utilitarian perspective and concluded that bribery sometimes has positive effects on the economy or on individuals or groups. One way of looking at bribery from a utilitarian perspective is whether it involves a helping hand or a grabbing hand. If the person on the receiving end of the bribe does nothing to help the payer, it is a grabbing hand by someone who merely abuses his or her power. The result is a negative-sum game because it does not involve a mutually beneficial exchange. However, when the bribe receiver performs valuable services in exchange for the payment, it is a helping hand scenario, which can justify the payment of the bribe on ethical grounds (Egger & Winner, 2005; Wong & Beckman, 1992).

A few prior studies have been made using the World Values data. A comparative study of the USA, Brazil, Germany and China (Hernandez & McGee, 2012a) found that, although opposition to bribery was strong in all four countries, the Brazilians were significantly less opposed to bribery than were participants in the other three countries.

A comparative study of Argentina, Brazil and Colombia found that accepting a bribe was least acceptable in Argentina and most acceptable in Brazil (Hernandez & McGee, 2012b). A third study was conducted of Egyptian attitudes (Hernandez & McGee, 2012c).
6. Whistleblowers

The morality of whistleblowing – A lot of people think that whistleblowers perform a valuable function because they expose corruption. For example, Edward Snowden is viewed by some as an American patriot because he blew the whistle on government officials who were violating the U.S. Constitution on a regular and systematic basis. However, others think he was a traitor because he weakened national security and revealed classified documents and state secrets.

How should we view the people who revealed the existence of offshore accounts, etc.? If we begin with the premise that governments do not have a moral claim on 100% of a person’s income, then it follows that some people who resort to offshore accounts to protect their property from greedy, evil and/or corrupt governments are acting morally, and that those who place other people’s property in jeopardy by revealing the existence and location of their assets and offshore accounts are assisting in the violation of their property rights. In other words, just because someone is hiding assets from some government does not automatically mean they are acting unethically. In some cases, they are merely protecting their property from greedy or evil governments.

The bottom line is that we cannot say categorically that a whistleblower is always acting morally or always acting immorally. It depends on the facts and circumstances. Whistleblowers who violate someone’s rights are acting unethically. Those who do not violate anyone’s rights may be acting ethically.

If we apply utilitarian ethics to the question of tax evasion, one might conclude that evading taxes can be an ethical act if the result is to keep assets in the more productive private sector rather than shifting those assets into the less productive public (government) sector. There is a strain of thought within utilitarian ethics that the ethical outcome is the most efficient outcome (Posner, 1983, 1998). Since it is more efficient to keep assets in the private sector because the private sector is more productive than the government sector, tax evasion is ethical (McGee, 2012). If one accepts this premise, then whistleblowers who inhibit this evasion are acting unethically because they facilitate the government’s efforts to confiscate private wealth, with the result that assets will be transferred from the more efficient and productive private sector into the less productive and less efficient government sector.

To the extent that the funds sitting offshore are the result of ill-gotten gains, the whistleblowers have performed an ethical act – if ill-gotten gains are the result of bribery, etc. Tax evasion is a different issue, because not all tax evasion is unethical, as has been pointed out elsewhere.
7. Concluding Remarks

It remains to be seen whether the John Doe who blew the whistle on activities that were illegal was acting ethically or unethically. There is nothing ethically improper about exposing government corruption, so exposing bribery would be considered ethical, and even praiseworthy in cases where the bribery was of the greedy hand variety. However, where the bribery was of the helping hand variety, the conclusion is less clear. In helping hand situations, both parties to the transaction benefit. It is a mutually beneficial exchange. The fact that the transaction might be illegal is irrelevant from an ethical perspective. As Martin Luther King used to say, everything Hitler did was legal, and everything Gandhi did was illegal. Just because something is illegal does not mean it is unethical, and vice versa.

If the John Doe happened to be an employee of the company from which the documents were retrieved, he is probably guilty of a breach of fiduciary duty. He was expected to remain silent, and he did not remain silent. However, the moral duty not to disclose information where there is a fiduciary duty involved is less than absolute.

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