

Business Ethics Should Study Illicit Businesses: To Advance Respect for Human Rights

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ABSTRACT. Business ethics should include illicit businesses as targets of investigation. For, though such businesses violate human rights they have been largely ignored by business ethicists. It is time to surmount this indifference in view of recent international efforts to define illicit businesses for regulatory purposes. Standing in the way, however, is a meta-ethical question as to whether any business can be declared unqualifiedly immoral. In support of an affirmative answer I address a number of counter-indications by comparing approaches to organized crime and to corporate crime, comparing the ethical critique of businesses studied in business ethics and those socially banned, and comparing the business ethics assumption as to businesses' ethicality to societal ethical neutrality regarding war-related businesses. My conclusion: to help advance respect for human rights, business ethicists should apply their expertise to the task of defining illicit businesses.

KEY WORDS: illicit business, human rights, UNGC, corporate crime, organized crime, international law, corporate social responsibility

Introduction

The UN has made illicit businesses a target of opprobrium in both a general and a specific way. In a general way, the ten principles of its Global Compact (UNGC) proscribe abuses that correspond fairly accurately to the activities of some illicit businesses; and the UN has also been directly involved in defining illicit businesses. This is significant because besides violating human rights illicit businesses preclude proper economic development and collectively make up as much as ten percent of the global economy. Given the scope of this complex ethical problem, it is fortuitous that law-making

institutions, including the UN, have been clarifying the issues at stake.

In 1988 the UN issued a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; and its International Drug Control Program (UNIDCP) has been monitoring the steady growth in this area. In 2000, the UN devised common language to describe illicit trade and shortly thereafter other international bodies formulated standards to address some of these (Naím, 2005, p. 5). Specifically,

The UN General Assembly in 2000 passed a convention against international organized crime, with a protocol against "Smuggling of Migrants By Land, Sea, and Air" and another to "Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children." The trafficking protocol reached its threshold level of forty signatures in late 2003, and the smuggling protocol in early 2004.... Other multilateral efforts include the development of common standards against smuggling and trafficking within the European Union, and the International Criminal Court's expansion, in 2002, of the definition of "crimes against humanity" to include the forms of enslavement that occur in human trafficking (Naím, 2005, pp. 103–104).

This enhanced attention to illicit businesses has not as yet proved of interest to business ethicists. But given their scope and influence, illicit businesses should be included on business ethicists' agenda. Indeed, collective avoidance could be perceived to be endorsement by indifference. Philosophers, in contrast, have for many years been studying human rights, albeit mostly with a view to persuading political institutions to protect them. Philosophical work along these lines has been intense and productive, ranging from multi-author collections (e.g., Hayden, 2001; Ishay, 2004) to impressive theoretical

monographs (e.g., Gould, 2004). What philosophers need to do in addition to such studies is examine the ethical complexity of industries and institutions that prosper by disregarding any normative restriction on behavior that interferes with their arguably immoral aspirations (e.g., Donchin, 2010). I think business ethicists should too, so I will take on some obstacles that perhaps hinder their doing so.

As currently conceived, business ethics involves identifying norms that should govern business practices, procedures whereby those engaging in business may apply these norms, and the extent to which adherence to these norms is being or can be achieved in practice. The process of exploring these components of ethically “good business” has become a robust enterprise, as witness just the pages of this journal. It arose in response to a plethora of business practices that undermine the personal and social well-being of comparatively defenseless people. Absent an adequate regulatory framework, business ethicists in effect constructed a normative dimension by giving meaning and substance to such previously superficial concepts as stakeholder theory and corporate social responsibility. And now due to monumental mismanagement in various industry settings, e.g., finance and oil recovery, governments are being pressured to impose more limits on what businesses may do without incurring liability. And one aspect of this pressure is the international attention to human rights.

Nation-state constraints do not rise beyond legality. In other words, they do not constitute ethical norms as such. Rules enacted for businesses to follow are mostly border-bound laws; and these laws remain subject to change as the political and juridical climate into which they have been inserted changes. What remains open to theorizing is whether with or without legal constraints a business might be altogether, inherently ethically bad. Might a business, in other words, be unqualifiedly immoral? I support the affirmative, as noted, with a view to expanding the list of international bans.

In asking whether any business can be unqualifiedly immoral I assume that there are ethical norms which human beings take seriously and seek to follow in their activities. I further assume that these norms can be applied to what individuals do in the name of organizations that they own or supply or by which they are employed. I also assume, however,

that meta-ethically there is an insoluble impasse between deontological and consequentialist ethical approaches and that accordingly a real-world reliance on human rights determinations becomes imperative. With these assumptions in mind, I will examine some possible reasons why illicit businesses are not yet on the business ethics agenda. These reasons I elucidate by comparing

- (1) approaches to organized crime and corporate crime;
- (2) the narrow-gauged ethical critique ordinarily at work in business ethics and the comprehensive critique ordinarily involved in a societal banning of a business in toto on the grounds that it is unqualifiedly immoral;
- (3) the tendency of business ethicists to treat companies they study as somehow extra-ethical and the societal tendency to treat war-related businesses as though they inhabit an amoral realm in which ethical norms as such have no place.

Collectively, these exploratory considerations help contextualize the general question of whether any business is ethically bad in and of itself or whether, to the contrary, no business, however, immoral can be shown to be lacking in any socially redeeming features.

The negative response to the general question looks to mitigating circumstances that would exempt a business, however, ethically bad from absolute rejection on moral grounds. Inversely, a business ordinarily thought to be ethical might be considered unethical because of circumstances that undermine its usual ethical status. This might be the case, for example, where an arms industry that is ordinarily assumed to be ethical becomes involved in equipping war-makers engaged in a war that knowledgeable people believe is unjust (Byrne, 2010). Similarly, a business characterized as being ethically vile may be so only circumstantially because banned by a particular society on the basis of that society’s idiosyncratic ethical norms. Elsewhere, the business or businesses that a given society bans may be tolerated on alternative ethical grounds, e.g., businesses involved in producing pork, distributing marijuana, charging interest on loans, providing sexual pleasure to paying customers, or even torturing or assassinating anyone targeted by a paying client.

Common to all these profit-generating activities is the fact that each provides a livelihood to some and even great wealth to a few individuals and their families. And as is often the case those benefitting from one or another controversial enterprise may have no other means of earning a living. This fact alone does not constitute a justification; but there is broad support for the human rights claim that each human being has a right to life and that given this right, as John Locke argued, each may appropriate some of the world's wealth so long as "as much and as good" is left to others. Inspired by this life-prioritizing right of appropriation (pace Victor Hugo's Inspector Javert), one could expand the scope of its applicability to challenge global appropriations based primarily on superior power. For example, rather than acquiesce in the conceit that an imperialist army has every right to gain control of whatever resources its country needs, one might instead assert that people in the underbelly of the world order, e.g., in Somalia, have every right to resort to piracy if need be, to gain at least a survival-assuring share of the world's wealth.

Further complicating the issue of equitable distribution, the ownership claims of many present proprietors of the world's lands and resources are based on their forebears' blatant disregard of the claims of indigenous occupants, e.g., in North America (Banner, 2005; Robertson, 2005) and in the South Pacific (Banner, 2007). The unconscionable dispossession of these and other historians document is beginning to be rectified (Scholtz, 2006); but neither restoration nor even restitution is likely to be a widespread outcome of ongoing negotiations. For, a common response to being informed of this history of misappropriation is an attitude of ethical indifference. And it is precisely this sort of attitude that enables people to limit their ethical agenda to what mainstream opinion deems worth the bother and from that perspective be predisposed to the view that no business is absolutely immoral. I shall defend the contrary by reflecting on reasons why business ethicists should not be procedurally indifferent to violations of human rights.

Corporate crime and organized crime

Business is about making a profit. And for the record both corporate crime and organized crime involve

institutions so structured as to maximize profit. In spite of this common goal, their criminality is viewed differently: the former's is typically attributed to distinct individuals whereas the latter's is attributed not only to distinct individuals but also to an organization as a whole. That the behavior in question is identified as criminal is in each instance due to the enactment and enforcement of relevant law in a particular jurisdiction. Rarely are these two distinct categories of crime (corporate or criminal) treated as overlapping. Rather is each the subject of a separate body of research, analysis, and proposals for further expansion in law. These separate approaches, moreover, are reinforced by an ideological barrier between the two, namely, the respective assumptions that one (organized crime) involves inherently, preeminently, and strategically chosen unethical behavior whereas the other (corporate crime) involves behavior that is unethical only incidentally and/or circumstantially. To show that this disparity is exaggerated, I will consider assessments of each and suggest that they mirror one another.

Organized crime, first of all, has been meticulously studied in the last several decades, mostly by scholars in criminal justice and related fields. Their analyses, both statistical and substantive, aim to provide data on which to base policy decisions that enhance containment of the antisocial behavior associated with organized crime (Beaton-Wells, 2007; Beaton-Wells and Haines, 2009). Towards this end, a number of legislatures, especially in the US, have of late sought to define a gang as a group that engages in criminal activity (see Langston, 2003) and, without regard to due process protection of individuals, criminalize gang membership as such. Analogously, "criminologists describe organized crime as criminal activities for material benefit by groups that engage in extreme violence, corruption of public officials, including law enforcement and judicial officers, penetration of the legitimate economy (e.g., through racketeering and money-laundering) and interference in the political process" (Van Dijk, 2007, citing Kenney and Finckenaer, 1995 and Levi, 2002).

It seems incontrovertible that organized crime has a negative impact on any society in which it is entrenched; yet efforts to uproot it may also have negative consequences (see, e.g., Amenta, 2009). Accordingly, criminologists are not of one mind

regarding whether and how to exclude organized crime practitioners from influencing government entities charged with suppressing them. Indeed, precisely because such people do generate massive amounts of money, some formulators of public policy are tempted to blend them into the structure of legitimate society. But as the World Bank warned (2005), “crime... increases the cost of business, whether through direct loss of goods or the costs of taking precautions such as hiring security guards, building fences, or installing burglar alarm systems. In the extreme, foreign firms will decline to invest, and domestic ones will flee the country for a more peaceful locale.” On balance, then, governments should beware of letting “the Trojan horse of racketeering and grand corruption into the walls of government.” For, its presence “has a pernicious impact on governance” and “impedes sustainable development in the long run” (Van Dijk, 2007).

What is striking about these cautions is that they apply, with slight changes in terminology and emphasis, to the impact of modern corporations on governmental processes and procedures. So the commonalities would seemingly merit careful study. But few business ethicists recognize examining a corporate entity’s political influence as a fruitful endeavor (Néron, 2010). Some scholars, however, have been studying corporate crime, especially in the wake of massive frauds recently uncovered in this new century. And perhaps others will extend this research to include the complex ways in which a modern corporation might undermine any and all structures that interfere with its goals and procedures.

That has in fact been done with respect to the 2008 collapse of Wall Street businesses (Financial Crisis Inquiry Commission, 2011). Commentators have already begun to note, though, that this extensive (and far from unanimous) report is not likely to result in either prosecutions or even major tightening of regulations regarding the financial industry. And this, it seems, implies that “too big to fail” takes precedence over “too bad to let live.” This quasi-exoneration of persons and institutions responsible for that catastrophic global meltdown is said by some to be an idiosyncratic response to a special situation of global import that merits special treatment. If so, why do these amorally tolerant attitudes and responses resemble those regarding the Somali pirate business?

If subjected to serious ethical critique, piracy is an unsavory business. Its success depends on applying methods not deemed appropriate outside the military realm. Yet it has existed for millennia, often under the aegis or at least with the tacit approval of a government. In recent years, of course, it has not benefitted from imagery built into an expression like “swashbuckling.” As poverty-stricken people in Somalia have turned to piracy cum kidnaping, ransom, and killing to bolster their slender resources, local government, having neither a law against piracy nor resources to enforce substitute statutes, cannot cope. So the burden of containment falls on affected businesses and foreign governments. Yet even as the Somali pirates’ business model becomes ever more sophisticated, taking on highly valuable products, e.g., in oil tankers (Wright, 2011), the victimized entities that ply the coast off Somalia have decided that accommodating the pirates’ demands is still the least costly course of action (Carney, 2009; Percy and Shortland, 2010). This adaptive stance is defended on the grounds that the problematic piracy will dissipate as Somalia’s economy improves. There are indications, however, that the very opposite may occur on a global scale (Frodl, 2010); and this is arguably the case more broadly with regard to other forms of illicit business (Naím, 2005). So instead of applying ethical relativism to the situation, one might better reinstate the old-fashioned approach to morally bad businesses, namely outright bans.

Unethical businesses in business ethics and in societal bans

Business ethicists generally recognize that some actions performed by individuals in a workplace setting are unethical. These misbehaviors they variously refer to as “unethical business practices” (e.g., Garrett et al., 1989; Giacalone and Jurkiewicz, 2003; King, 1986) or “unethical business behavior” (Moore, 1990; Sethi, 1994; Shaw, 2009). These range from petty theft to deliberate mistreatment of employees or customers or suppliers; and they are studied assiduously to identify discernible patterns, causal connections, and possible remedies. For the most part, researchers assume rather than articulate why the disapproved behavior is unethical. And only a few consider whether the business in

which such individual misbehavior occurs is itself unethical.

The expression “illicit business” seems not to exist in the business ethics vocabulary. But Chakraborty (1997) talks about “unethical businesses”, and Erondu et al. (2004) deal with “the ethics of banking organizations.” Wible (2004) discusses whether “the morally good business” can have good side-effects; and Allinson (2004) questions whether any businesses, however well-intentioned, can be “ethical business institutions” in an inherently unethical market system. Boatright (1999) similarly puts the burden of ethicality on markets; and Rossouw (1998) contends that to be moral a business needs the support of a “moral business culture.” Smith (2005) sees no need to choose because “moral markets and moral managers” are mutually reinforcing.

These instances of attention to institutional and contextual ethicality are rare in the business ethics literature. In crime studies literature, however, attention to such matters is commonplace. For example, the business of “protection,” as provided by a crime syndicate, is commonly deemed inherently unethical and as such better excluded from a society. But given that such businesses are deemed criminal by definition and are subject to a panoply of regulatory constraints, business ethicists are perhaps inclined to feel that any input on their part would be superfluous. This write-off is premature, however, because non-enforcement of regulations is a continuing problem, as recently exemplified with regard to investment banks and drug cartels. That such problems endure is due in large part to the schizophrenic characterization of corporations in our capitalist world.

First, in order to maximize a corporation’s autonomy, the corporation is declared to be a person and as such entitled to the same rights as are attributed to a person. Yet for regulatory purposes a corporation is literally an address where (usually but not always) are located identifiable human agents, i.e., natural persons, who are the usual subjects of normative assessment. Coterminous with that characterization is the free enterprise assumption that a corporation as such involves no flesh and blood individuals but is only an amoral abstraction “the most important feature of (which) is that it exists entirely separate and apart from its owners” (Poznak, n.d.). However, abstract a corporation may be to a

corporate attorney, though, as operationalized by its altogether existent agents, it is the institutional principal for which countless dispositions and decisions are made regarding the world at large. From this reality-based perspective, the impact of these dispositions and decisions may constitute what one critic calls a “pathological pursuit of profit and power” (Bakan, 2004).

The corporation qua principal, then, and as directed by its living and breathing agents seeks to provide ever more goods and services of every imaginable kind while attending only to their cost per unit of utility. These may in a given instance involve a more destructive ICBM or a more flavorful hot dog. With the link between power and profit ever intensified, consumers with no identifiable traits more distinguishable than those of *homo economicus* are provided with whatever tools might enhance the quality of their lives. Thus, among newborns’ parents, pricier disposable paper has replaced reusable cloth diapers; among men who consume pornography, violent images are replacing those merely sexually explicit; and among insurgents, bomb-making equipment is more in demand than hand guns. From an amoral business perspective, these purchasing preferences are simply data to be taken into account when allocating supply to demand.

From a normative perspective, any one of these examples might be found so detrimental to society and/or environment as to justify regulatory intervention. Such intervention is routinely contested by affected supply-and-demand oriented interests; and all too often their concerns prevail for reasons associated with the free enterprise assumption. This assumption does not always prevail, however, especially not in contexts where ethical limits are in force. This is exemplified on a global scale by the growing controversy over the US-based Alien Tort Claims Act (ACTA): in the wake of successful claims against egregious corporate violators of human rights, company lobbyists are working hard to have this statute emasculated (EarthRights, n.d.). Meanwhile, some corporations base the legal defense of their actions or inactions on a human rights claim (Bader and Young, 2009). Such efforts by corporations to avoid liability point to their longstanding desire to be set apart from a world in which social controls can affect their bottom line. Societies,

inversely, have to this day perceived their interests otherwise.

People almost anywhere might ban certain behaviors, either directly through their cultural mores or indirectly through their governments. Sometimes the banned behavior amounts to or is associated with a business; sometimes, not. Behaviors banned without regard to business implications include, for example, eating pork or appearing in public (if Muslim female or Tuareg male) without covering one's face. These social taboos may affect business incidentally (as the first example affects butchers negatively and the second bolsters the cloth-making trades). But here I will concentrate on bans that directly target an identifiable business.

Businesses targeted for banning have been many and varied over the centuries but include such "usual suspects" as prostitution, usury (charging interest on loans), producing and/or selling alcoholic beverages or mind-altering drugs, engaging in extortion, bribery, forgery or counterfeiting, providing protection from the protector, performing abortions, or spying for a foreign country. A targeted business might be free-standing or, especially in more complex societies, part of a multi-faceted enterprise such as organized crime. A targeted business that is free-standing might be recognized as a money-making activity yet still be banned because it consists of socially disapproved behavior. The disapproval might be based on a concern for human rights, e.g., opposition to forced prostitution or female circumcision, or on uncontested social mores, e.g., opposition to abortion in Ireland (now being challenged). Inversely, as I will discuss below, a business that a society deems off-limits for civilians might be tolerated or even actively endorsed if done by military or quasi-military personnel. Whatever the ban, then, it may be based on conventional standards or on standards extraneous to that society, and vice versa. This flexibility gives rise to the meta-ethical question about the best reasoning to support or to challenge a blanket condemnation.

Meta-ethically, it is far more difficult to defend a blanket condemnation on consequentialist than on deontological grounds. For, one can usually identify positive if not socially redeeming features in any organized activity, however despicable, in other respects. Consider, for example, the many benefits that individuals and their families derive from partic-

ipating in organized crime be it shady or white-collar. On the other hand, a deontological denouncement of a given behavior closes the door on that behavior no matter what benefits its operatives may gain from it. In a religious setting, for example, a no-exceptions-allowed reading of the Fifth Commandment would prohibit "hired gun" assassinations because regardless of circumstances such activity involves killing. Similarly, there are religion-based bans on eating certain foods (among Jews, Muslims, or Hindus). But to what secular principles might one turn to justify such absolute condemnation?

Kant's maxim that persons should be treated always as ends and never as means is certainly important in this regard, especially as a foundation for bans based on human rights, which I will discuss below. Apart from such theoretically grounded bans, though, effective top-down condemnations ordinarily depend on power and/or authority. Authority alone might drive a vegetarian-inspired ban on eating meat. Power becomes a factor where a ban is based on religious or quasi-religious dictates. Bans imposed by a totalitarian government typically include curtailment or outright denial of free speech rights, exclusion from activities deemed contrary to state interests, e.g., China's one-child policy or Cuba's prohibition of private enterprise (both now being modified). As exemplified also by recent changes in US law regarding homosexuals in the military, a ban may in time be subject to rethinking and revision if not eventual abandonment.

For this to happen in any given instance typically requires articulating and disseminating consequentialist arguments against maintaining a particular ban. This is done quite effectively, as it happens, where those with political power promulgate consequentialist – and even pseudo-deontological – reasons for exempting individuals in their charge from ethical bans on behavior they want exercised to maintain and expand their power.

Business ethics and business amorality

Moral assessments of multi-layered collective activities are often complex and, across different societies, starkly inconsistent. This is especially the case with regard to a group's use of violence as a means to achieving desired ends. Bullying, for example, is

generally disapproved albeit not by those who benefit from exercising such behavior. On a larger scale, when bullying takes the collective form of imposed protection, people who suffer under the yoke of this diminution of their freedom often find themselves compelled to comply. This is by no means irretrievably the case, however. In Sicily, for example, where the Mafia has long maintained enterprises blatantly based on coercion, people have of late risen up in opposition to this yoke and been discernibly successful (Hammer, 2010). Regrettably, largely defenseless people who oppose the practice of military rape or coercion of children into soldiering have yet to find any adequate correctives. One reason for this tragic state of affairs is the collaborative business arrangement between arms merchants and well-paying organized bullies in developing countries. In contrast, many developed countries have managed to impose fairly strict limits on the availability of weapons to their citizens. A yawning exception is the United States, where being armed is touted by millions (now supported by the US Supreme Court) as a constitutional right that keeps the otherwise uncontrollable government at bay. For commercially explicable reasons, however, the ideological underpinnings of this warrior mentality are transferred whole cloth to a host of government-serving war-related businesses: the defense industry.

Although extensive, the terrain covered by business ethics barely touches the warrior-serving defense industry. To be sure, this industry has been subject to ethical criticism, especially with regard to excess profits (Brandes, 1997). But apart from such procedural irregularities, the basic task of producing and providing armaments and other goods and services to whoever is in charge of a nation state is commonly considered exempt from ethical critique. At times the world community declares a weapon too destructive and/or indiscriminate in its effects – not on ethical grounds but for politico-diplomatic reasons. The process of having an unscrupulous killing device declared out of bounds typically involves drafting a treaty that many countries, though rarely all, agree to sign.

Of course no treaty-banned weapon has anything like the destructive potential of nuclear weapons. But during the Cold War era the emergent nuclear weapons industry wanted to grow exponentially; and American military leaders helped them realize

this objective by storing up tens of thousands of hydrogen bombs and actively preparing to drop them on pre-selected Russian and Chinese cities (Carroll, 2006, pp. 154, 195, 266, 274). Fortunately, civilian leaders in time introduced at least a semblance of good sense to the management of nuclear armaments. This led to treaty bans on nuclear armaments. These in turn have since become diplomatic cudgels against non-signing nations. But the efforts of superpowers to constrain potential competitors (e.g., Iran) affect neither the massive nuclear arsenals maintained by major powers (US and Russia) nor even those possessed by second-level powers (e.g., UK, Israel, India, Pakistan, and North Korea). In this global context, the rhetoric of arms control plays a major role in international diplomacy; but it is carried on by means of bullying tactics, notably sanctions, rather than uncontested moral standards.

At least on the surface, then, there seems to be no way to relate mainstream thinking about war-related businesses to the possibility of an unqualifiedly unethical business. But beneath the surface an altogether different line of thinking can be developed by questioning its intrinsic morality, ultimate ability to contain harm, and legitimation of warring agents' credentials.

Cultural tools of all kinds have long promulgated the myth of militarism as the ultimate fulfillment of human potential; and politicians the world over know how to exploit that myth in support of their objectives. In part because of the destructiveness now technologically possible, this militaristic myth-making is no longer accepted at face value. Numerous writers unmasked the fraudulent rationale that the US Bush II administration proffered for invading Iraq (e.g., Rich, 2006; de la Vega, 2007). This fear-fostering duplicity, moreover, is not without precedent. As historians have demonstrated, identifiable individuals in leadership positions deliberately manufactured and maintained the danger-based justification of the US's post-World War II military industrial complex. In particular, the very concept of "national defense" can be traced to a particular individual (James Forrestal, Jr.) whose aim was precisely to undermine an alternative foreign policy then being proposed that favored peace-oriented accommodations with the Soviet Union (Carroll, 2006, pp. 126–127, 152). That such proponents of the belligerency stance have not yet used nuclear weapons against their self-created enemy is

scarcely more than a historical accident (Carroll, 2006, *passim* pp. 206–353; Schell, 2007)! And to their brinkmanship approach to catastrophe we must also add the concerted effort of many military technocrats to rule the world from outer space (Moore, 2008).

This history of the quest for incremental mayhem leads to the second question about the ultimate potential for harm, namely, the possibility that an unrestrained pursuit of national defense might bring about the total extinction of the human species if not of all life on this planet. Here too there is evidence that this possibility is indeed realizable. To bring it about would require a *de facto* merger of military, government, and commerce; a totalization of that merger; and a combination of real or perceived crisis-level opposition and available means to suppress that opposition. The first condition is exemplified at present in military-controlled North Korea and Myanmar/Burma. The second condition exists inchoately in the US and has been fully exemplified in various dictatorships but nowhere more tragically than in Nazi Germany. The third condition was gruesomely realized in Cambodia/Kampuchea under the Khmer Rouge. As recently analyzed by business ethicists (Cunha et al., 2010), this latter condition involved a total institution that relied on absolute obedience (Milgram, 1974).

The horrors thus inflicted on innocent people cry out for an answer to the third question regarding the legitimization of violence. Each cited instance of open-ended mayhem was authorized by the government of a state. And according to Westphalian political theory a state is unqualifiedly competent to use whatever violence it deems necessary to achieve its ends. As fleshed out over the past half-millennium, this justified violence is to be carried out only by duly authorized military forces acting on the orders of a legitimate government in accordance with generally accepted rules of warfare. But neither the constraints on warring actions nor those on warring actors are reliably enforced. Just war theory notwithstanding, governments increasingly base their war-making strategy on preempting and even preventing potential enemies from becoming serious threats (Shue and Rodin, 2007; Byrne, 2011). Constraints on warring actors have largely disappeared due to the decline of conscription and the emergence of privatized military agents (Pelton, 2006).

Combining the answers to the three questions raised, one is left with the counter-cultural conclusion that the business of warring (euphemistically undertaken in behalf of national defense and/or national security) is circumstantially if not always in fact absolutely immoral. But the moral indifference that permeates military-dominated societies classifies such criticisms as attitudinal curiosities. Is this acquiescence any different from the standard assumption of business ethicality among business ethicists? To some extent, but not entirely.

By definition, business ethics presupposes the existence of moral flaws in our world. And in keeping with this outlook, business ethicists are busy identifying, measuring, and proposing remedies for moral flaws in the business-related behavior of individual employees and other stakeholders of a firm or industry. They rarely ask whether the very business in which their subjects are engaged might itself be morally flawed. Instead they assume that the businesses whose agents they study are wholesome. So the business being studied, usually a firm or firms, may not even be identified. Thus, no question arises, e.g., as to whether a highly profitable agribusiness should be able to gain global control of all seeds and their planters, or whether a financial institution whose employees' productivity is being assessed should inform its investors truthfully as to the practices whereby it earns profits. Still less likely to be raised are questions about the practices of crime syndicates because they are assumed to be the subject of criminal investigations rather than of business ethics research. Nor are providers of military goods and services likely to be investigated as to the moral legitimacy of their endeavors.

Where questions about a corporation as such do arise in business ethics discourse is, of course, with regard to the scope of corporate responsibility, i.e., whether it exists only to maximize profits or for some additional purposes as well (e.g., Michalos, 2010). On that level, however, the ethicality of a corporation is not being challenged in its entirety but only as to the completeness of its list of responsibilities. So if the corporation is found deficient in regard to its acknowledged responsibilities, it will be deemed immoral not absolutely but only circumstantially. That is certainly the case if the assessor adopts a consequentialist approach and *a fortiori* finds the company effects more good than harm. A deontological assessment might find a particular business totally immoral, as

noted above. But any such finding might face a consequentialist rejoinder if the allegedly unsavory business also engages in some arguably wholesome activity, such as a slaveholder who enables his slaves to learn how to read, or a smuggler who fairly compensates all his employees. It is at this point that the need to base bans on human rights becomes apparent.

These thoughts about legitimating total bans become difficult to concretize, unfortunately, in the global economy wherein transnational corporations operate. For, in this cross-border realm it is increasingly difficult to distinguish licit from illicit businesses (Naím, 2005). This is especially the case because people engaged in illicit businesses actively redirect their income into licit businesses and coopt potentially adjudicatory governments whereas people engaged in purportedly licit businesses may deliberately violate criminal laws while buying off any potential enforcers of such laws. In particular, TNCs sometimes behave like invading armies and engage in activities that bring great harm to people who happen to get in their way. Not even an army, however, is exempt from the limitations imposed on it by human rights claims. So the same should be the case, should it not, for corporations?

In theory, an affirmative answer is appropriate. So perhaps this affords us a way to distinguish good businesses from bad? I believe it does – not in any straightforward way but by way of a corollary to other findings as to the status of human rights as norms regarding business practices. This involves joining in with others' efforts over the past decade to bring human rights to bear on corporate practices. These efforts have to date produced a framework of influential but non-binding norms. Debate over applying these norms to TNCs is intense; but few participants in this debate have suggested that behavior in violation of these norms is ethically defensible. Yet there are businesses that engage in precisely and even exclusively just such ethically indefensible behavior. Therein lies a basis for claiming that some businesses are unqualifiedly unethical.

Some human rights violating businesses are unqualifiedly unethical

In this world of global commerce, only a small percentage of the countless business transactions that

take place every day is monitored and policed by national governments. Comparatively few transactions even come to the attention of law enforcement agencies. Among those that do, manifest illegality is not easy to prove in court, so only a few are subject to prosecution; and the still fewer successful prosecutions do not diminish the volume of illicit business activities. So national laws, i.e., the laws enacted by nation states, need to be enhanced and, as some argue, eventually superseded by the law of nations, i.e., international human rights law. This need, long recognized among international law scholars, has been addressed inchoately in important United Nations guidelines; and these are being studied by business ethicists. Their focus, however, is the connection between these rights and the behavior of structurally complex TNCs – not that of entities whose very *modus operandi* consists of profiting from one or another human rights violation.

Applying human rights principles to criticize corporate behavior has for decades been the forte of such NGOs as Doctors Without Borders, Human Rights Watch, and Amnesty International. The latter in particular investigates and posts online (see citation) accounts of demonstrable business disregard for people's human rights. Since the UN initiated the Global Compact in the year 2000, however, it has begun to be viewed as the principal international body through which to assess corporate respect for and protection of human rights.

The UN first set forth a list of human rights in its Universal Declaration of Human Rights, on which are based the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Now the UNGC sets forth ten principles to guide business behavior (listed verbatim in Janney et al. 2009, p. 408; Runhaar and Lafferty, 2009, p. 480). These involve (1) supporting and protecting internationally proclaimed human rights; (2) not being complicit in human rights abuses; (3) upholding freedom of association and the right to collective bargaining; eliminating (4) forced and compulsory labor; (5) child labor, and (6) discrimination in employment and occupation; helping protect the environment via (7) a precautionary approach to environmental challenges, (8) initiatives to promote environmental responsibility, and (9) environmentally friendly technologies; and (10) opposition to corruption in all

its forms, including extortion and bribery. The UN document associates only the first two principles with human rights; but all ten could be so classified (Seppala, 2009, p. 404). More significantly, these principles address the three areas of governance, social and environmental practices that independent rating systems measure (see Smith, 2011).

The UNGC is meant to constitute a forum for policy dialogues, learning, local networks and projects. It now has some 8,700 participants, of which 6,200 are businesses of all sizes and sectors; and as of 20 January 2011 over 2,000 companies had been expelled for failing to communicate on their progress in implementing the Global Compact principles. The principles themselves are criticized for being selective if not arbitrary, and the UN itself is faulted for having no effective monitoring or enforcement provisions and thus being manipulable for corporate public relations purposes. And some now address these concerns routinely on an online informal network called the Global Compact Critics (<http://globalcompactcritics.blogspot.com/>). But a number of business ethicists deem the UNGC important enough to determine very methodically how effectively it is being implemented in various contexts. Consider some examples.

Chen and Bouvain (2009), applying concept and word frequency analysis to UNGC reports, find they vary by country and overall have better results than other CSR procedures only with regard to environment and workers. Hamann et al. (2009) find that South African companies do not manifest greater due diligence in light of the UNGC standards. Williams and Zinkin (2010) find the UNGC business-related tenets compatible with those of Islam. Runhaar and Lafferty (2009) find the UNGC a useful but by no means singular basis for evaluating the CSR efforts of three large telecommunications companies.

The significance of these business ethicists' use of the UNGC is difficult to assess in light of problems others point to. Muechenbecker and Jastram (2010) find the UNGC and other norm-setting guides unable to keep pace with the post-nation state global process they call "decentration." Janney et al. (2009) add substance to this finding by showing how differently the UNGC principles are accepted in different regions of the world. The environmental principles in particular are favored in Europe where

they are already mandated but not in the US or developing countries where they are not and thus would add costs to companies opting to comply. Similarly, Nina Seppala, drawing on her experience in the UN bureaucracy, describes how business leaders, having had no involvement in the UNGC-based Norms of 2003, pressured the states where they are located to kill these norms (2009, pp. 407–408). The basis of this opposition, according to Ann Mayer (2009), is that the UN formulators of the UNGC and the Norms went beyond the scope of human rights as specified in the Declaration of Human Rights by making TNCs and not just governments responsible for their being respected. She does note, however, that the principal formulators of these principles, notably John Ruggie and Georg Kell, expected business ethicists to step forward to "construct a normative framework for the Compact" (pp. 569–571).

As other business ethicists have been pointing out, this outcome preference of the UN principle formulators is not at all likely in the foreseeable future. Why? Because few if any TNCs want such ethical considerations disturbing their strategic practices – and they have the means to prevent its coming to be, at least in the near term. Meanwhile, as Nolan and Taylor (2009, p. 445) recommend, an International Charter of Responsibilities would be "a useful step in clarifying the human rights standards that apply to all business activities, not just to those companies who opt into a particular set of voluntary guidelines." Moreover, some such charter is in effect being formulated and drawn upon by the various ratings systems to which businesses are now invited to commit themselves, e.g., regarding governance, social and environmental practices.

Whether business ethicists will help advance a charter of responsibilities remains to be seen. Hopefully they will. For, recent business ethicists' analyses of the UNGC's impact have already extended the scope of this discipline in several ways, notably regarding the enforcement of corporate social responsibility principles. If future analyses can be better coordinated by creation of a suitable common ratings system that is widely applied, the ranking of some businesses might be so low as to merit labeling, in whole or in part, unqualifiedly immoral. Targeted analyses of this sort would, in turn, contribute to the process of dealing with specific illicit businesses that

is already underway thanks to documents and reports promulgated by the United Nations. Under some circumstances, admittedly, personal involvement in the necessary research could entail a higher than usual degree of risk. But the fact that human rights law is beginning to be applied to corporations (Pilkington, 2009) should put egregious offenders on notice that they are being watched.

If business ethicists would analyze illicit businesses more frequently, their work could have two historically important results. For, by helping define an illicit business, e.g., de facto enslavement of workers, a study would facilitate efforts to control such a business under law, not only as a free-standing but also as a subsidiary enterprise of larger, more complex business institutions. Indeed, a display of carefully delineated similarities between illicit and so-called respectable businesses would advance efforts already underway to enforce violations of human rights by either kind of organization.

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