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Towards Enforceable Bans on Illicit Businesses: From Moral Relativism to Human Rights

Edmund F. Byrne

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Abstract Many scholars and activists favor banning illicit businesses, especially given that such businesses constitute a large part of the global economy. But these businesses are commonly operated as if they are subject only to the ethical norms their management chooses to recognize, and as a result they sometimes harm innocent people. This can happen in part because there are no *effective* legal constraints on illicit businesses, and in part because it seems theoretically impossible to dispose definitively of arguments that support moral relativism. Progress is being made, however, towards a "second best" arrangement consisting of widespread institutional agreements regarding ethical norms. This development might eventually enable us to transcend moral relativism in some respects. Indeed, although some business ethicists who examine illicit business practices accept moral relativism, others attempt to surmount it. The latters' endeavor, I show, is cross-cultural in nature in that it involves businesses that are deemed illicit in at least one but not every culture. I then recall some traditional solutions and their limits: ideological teachings are culture-specific, hence both temporally and spatially limited; legal constraints, though potentially helpful, are too diverse hence often narrow in reach. Especially problematic are defense industry businesses, which are inherently transcultural and, though uniquely harmful, are not effectively banned in any culture. Harm to quality of life (QoL) can, however, be measured. So I recommend institutional support for international human rights tied to QoL data as a workable way to counter moral relativism regarding illicit businesses.

E. F. Byrne (✉)
Indiana University, Indianapolis, IN, USA
e mail: efbyrne@optonline.net; ebyrne@iupui.edu

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Introduction

A practice may be called illicit on either moral or legal grounds (Illicit Trade n.d.). Businesses that are illicit in either or both senses constitute a large part of the global market (Naím 2005). Counterfeiting alone, for example, generates an estimated $250 billion a year (UNODC 2012). Additional formats for illicit businesses stem from the emergence of new technologies and methodologies. Some of these are free standing; but increasingly illicit businesses are embedded in the legal economy (Naylor 2004). For such reasons numerous unregulated business practices that should be prohibited by law are not or at least not effectively so. Diminution of this lacuna would advance conditions that contribute to fundamental fairness. Its total elimination would facilitate maximum feasible fairness to all interests in all transactions. Such a state of affairs is no doubt utopian. But that is no reason not to seek its attainment; and to this end business ethics should study illicit businesses (Byrne 2011c).

In a sense, morally and/or legally illicit business encompasses the subject matter of business ethics. For, business ethicists study ethical flaws in the operations of otherwise legitimate businesses. In so doing they may study an arguably legitimate business in its totality as a way to approach an internal problem or practice that is deemed unethical. This holistic approach to partial flaws is addressed via any number of models and methods, including corporate social responsibility and stakeholder theory. Among the flaws addressed, corruption has been studied in a significant body of work. Far less often,

however, have business ethicists studied businesses that are inherently illicit. The latter is the focus of this essay; but in order to place its remarks in their proper context, I will first distinguish between studying an illicit business practice and an illicit business as such.

When business ethicists examine the ethicality of one or another business practice, the practice in question is usually within a business organization that is assumed to be otherwise ethical. For example, several authors recently debated whether banks were using depositors' money licitly (Cachanosky 2011; Bagus and Howden 2009; Barnett and Block 2009). Others have sought to determine the ethical limits of gifts or favors connected with business transactions (McCarthy et al. 2012; Su et al. 2007; Millington et al. 2005). Bribery too has been studied (Gao 2011; Pedigo and Marshall 2009; Wu 2009), as have proposed remedies for corruption. These include in-house corrections (dela Rama 2012; Bishara and Schipani 2009; Schwartz 2009; Collins et al. 2009), especially via corporate social responsibility or stakeholder theory, and legislation, either national (Weismann 2009; Kaikati et al. 2000), or regional (Hustead 2002), or at the level of the United Nations (Argandoña 2007). Truly groundbreaking studies tie Iceland's recent economic collapse to its "weak business culture" (Vaiman et al. 2011) and its banks' narrowly strategic commitment to CSR (Sigurthorsson 2012).

A few studies by business ethicists target collective endeavors thought to be inherently illicit (e.g., Vaccaro 2012). More typical are business ethics studies that target some purportedly illicit business practice. Such studies usually examine freelance individuals who engage in behavior that is deemed monetarily harmful to a licit business and presumably itself illicit. In this genre of research are studies of the piracy of software (Phau and Ng 2010; Chen et al. 2009; Robertson et al. 2008), media (Cronan and Al-Rafee 2008), and music (Easley 2005). Software piracy has been studied for several decades, and now media, or digital, piracy is being studied as well. These studies commonly assume that the targeted behavior is unethical. By contrast, an author studying an allegedly illicit corporate behavior, e.g., transaction-related gifting, might concede that the practice is arguably ethical (see, e.g., McCarthy et al. 2012).

This concession to moral relativism is represented on a grander scale by work that in effect seeks ethical redemption for industries that are "controversial." These include three so-called "sin industries," namely, alcohol, tobacco, and gaming (Hong and Kacperczyk 2009). Finance-oriented analysts of this "triumvirate" (Jo and Na 2012) accept the list's exclusion of such likely additions as adult entertainment and weaponry. Their reasoning: few companies in the former industry are publicly traded and "it is not perfectly clear," according to Hong and Kacperczyk, "whether weapon or defense is considered a sin by many American people" (Jo and Na 2012, p. 444). Given, though, how destructive these industries are, especially the latter (Byrne 2010, 2012), it is hard to rationalize their not being assessed as harshly as are the oil and mining industries. Precisely because of the harm-causing behavior of companies in the oil industry relativist ethicists have struggled mightily to determine whether these companies' reputation can be salvaged via CSR initiatives (e.g., Du and Vieira 2012; De Roeck and Delobbe 2012).

Of course, merely studying such businesses will not ipso facto reduce their ubiquity or their egregious consequences. Some scholars are skeptical about ever achieving even this limited objective because of humans' moral disorientation, or their apparently ineradicable quest for hegemony. Others blame the futility of effecting appropriate changes on cultural diversity or on structural obstacles such as the banking industry's control of fiscal policy and practice. Such reason-based despair is countered, however, by the longstanding quest for defensible rules of law and order oriented to constraining illicit businesses.

Among the world's legal constraints comparatively few aim to spread benefits more widely. A quest for consequentialist goals cannot easily succeed where the operative ethic of business interests is moral relativism. For, one seeking "the greater good" may well deem no consequence a greater good than success, and that may cause harm to innocent people. But if human well-being for all is ever to take root we need to impose universally honored legal constraints on illicit businesses. These constraints, in turn, should be supportable on ethical grounds. And though no moral norms are universally endorsed, progress is being made towards a "second best" arrangement consisting of widespread institutional agreements regarding ethical norms. Might this development enable us to transcend moral relativism?

I have no definitive answer to this question, but can point to substantial efforts to lay the groundwork. I first note that some business ethicists who consider illicit business practices do address the problem of transcending moral relativism. Then, to show the scope of the problem, I give examples of businesses deemed illicit only in one or another culture. Then I turn to traditional solutions and acknowledge their principal limitations: theoretical defenses of universally binding ethical norms are no longer widely endorsed within or beyond academe; and serious legal constraints, though potentially helpful, are too diverse hence often narrow in reach. In particular, arms industry businesses, though uniquely harmful, are not banned in any major culture. I then envision as a remedy a system of institutional monitoring of human rights violations on the basis of social indicators research. This system, I suggest, represents an attainable antidote for moral relativism.

Declaring a Business Illicit

Implicit but unexamined in most studies of corporate-related illicit behavior are broad and basic questions about how a business as such comes to be declared illicit and on what bases such a declaration should be assessed. These matters need to be rendered explicit.

According to one author (Allison 2004), no business today can be considered ethical so long as it functions within and in accordance with the market system. This view is by no means vacuous; but such business sub-contexts as the Mondragan cooperative movement (Whyte and Whyte 1991) and stakeholder-managed companies (see, e.g., JBE 109:1) show that there are viable alternatives to the unhampered market system. So it is my operative premiss that some businesses are ethical and others are not. How are the latter identified? In the absence of universally agreed moral norms, this is ordinarily done on the basis of a given society's concerns, often as these are explicated politically and/or economically.

Countless societies throughout history have identified certain types of business enterprise as socially unacceptable and prohibited them. The list of such banned businesses is not the same in all societies, nor is any society's list either comprehensive or definitive or unchanging. A specific ban might be introduced only after years of acceptance or relatively quickly after a change in regime or law or public opinion. Thus, after prospering for centuries in England, monasteries were "dissolved" under an emergent Anglican government; in predominantly Catholic Mexico an emergent Communist government banned priests; and when the Taliban governed Afghanistan they banned musicians and the education of females. In 2009, the US government introduced a renewable energy program whereby producers of diesel fuel from animal fats and vegetable oils earn renewable energy credits and refiners buy them to satisfy their mandated quota; but now a number of bogus producers are being indicted for selling fraudulent credits to refiners who are required to meet mandatory quotas of these credits (Wald 2012). More troublesome to those concerned about privacy rights are money-transferral businesses long considered licit but declared illicit by the US government under the Patriot Act following the 9/11 attacks on stateside properties (Naylor 2004, pp. 326 338). Public opinion (at least prior to the age of social media) tends to change much more slowly. However, much public controversy focuses on the acceptability of a business, which may be determined on moral grounds, especially if it is egregiously harmful to innocent people.

There is now fairly widespread agreement about certain businesses once deemed acceptable but now considered to violate human rights: e.g., the slave trade, kidnaping for ransom, and extortion. Some would include the global sex trade and, on grounds not tied to human rights, trade in endangered species. Others who claim to be "pro-life" seem relatively untroubled by these global travesties but do seek to abolish abortion to protect the unborn and would even ban contraception to protect potential human embryos.

Because of ethical diversity, a business acceptable in one society may be banned in others. Some societies ban outright any sexual activity outside marriage and/or involving an exchange of money; but in some countries prostitution is in itself legal albeit subject to regulation. What is banned may change over time, depending on which background values a society stresses at a given time. To counter alcoholism the liquor business was once constitutionally prohibited in the United States, but the even more deleterious consequences of enforcement efforts eventually led to a reversal of the ban. Christian leaders banned interest on loans during the Middle Ages; Muslim leaders still do. Genital cutting, once widely approved in African societies, is now banned or restricted in some. Some African governments ban homosexual acts even as some state governments in the US and elsewhere are legalizing same-sex marriages.

Some fraudulent financial activities, including Ponzi schemes, are widely banned; but others are not so universally condemned. The longstanding corporate practice of using "paper corporations" and off-shore tax havens may be legal in a company's place of incorporation and yet generate countless lawsuits aimed at having such activity declared fraud (Blank and Staudt 2012). A fortiori, a business long deemed ethically unproblematic may become ethically and/or legally controversial if it engages in practices which the concerns and standards of a later time deem to be clearly illicit. The target of belated condemnation may be a private sector business or a function of government.

Many arguably unethical private sector businesses are not yet widely condemned. For example, the market for so-called toxic assets, though a major cause of recent financial turmoil, is still accessible to investors willing to accept the risks involved. Also, though recently castigated as operators of an unethical business (Smith 2006), journal publishers continue to profit greatly from the work of ordinarily unpaid researchers/writers. Unfortunately, powerful interests protect their sources of profit no matter how ethically problematic these may be. But not even long-standing acceptance of such practices guarantees their stability. For example, the Mafia's control of businesses in Sicily long enjoyed popular acceptance, yet now seems genuinely challenged by the anti-bribery organization Addiopizzo, founded in 2004 (Vaccaro 2012). This is in part a response to Italy's severe economic crisis (Nadeau 2007; Kington 2008, 2012).

Similarly, the public sector may function as a business and be accepted by society as a whole. When people's attitudes change from acceptance to opposition, they may revolt. This is exemplified most recently by the so-called Arab Spring movement against the arguably illicit business known as tyranny. Analogous but otherwise motivated are neo-conservative assertions that government in and of itself is an illicit business. This stance is not generally endorsed by those who rely on government for benefit; but blanket anti-government sentiment is rising in the wake of fiscal crises that generate diminished entitlements and increased taxes. On another but comparable plain are governmental practices called collectively "corruption".

Egregious and widespread corruption in government has often been tolerated as socially embedded beyond possibility of reform; but this is no longer the case in countries whose people are deprived of assistance in the face of overwhelming obstacles to their well-being. Similarly, investigative researchers point to certain parts of government operations as singularly unethical. For example, the financial recession in the United States has led to recognition that the private businesses running prisons cost too much for taxpayers and victimized prisoners to bear (Gopnik 2012).

Going one step further, there may be a discrepancy in a given society between a business's legal status and its moral status with regard to liceity. In such a situation, a business that is legally licit may be subject to various constraints because many deem that business morally illicit. This is the status of abortion in the United States. Inversely, a business might be legally illicit and yet deemed morally licit by many, as is selling marijuana and to a lesser degree other controlled substances in the United States. Similarly, although it is legally illicit for private individuals to obtain and sell oil in Nigeria, many people there, especially in the Niger Delta, deem it morally licit, even heroic, to carry on an illegal trade for the sake of their families (Ross 2012; Murdock 2012).

The task of identifying a per se illicit business is further complicated by the fact that a problematic practice engaged in by an illicit endeavor may be engaged in even more effectively by supposedly licit enterprises (Naylor 2004, pp. 194, 246). This ambiguity regarding perpetrators of illicit business practices has led many countries to include the value of illicit commerce in their assessment of GDP and raises a question about whether licit or illicit business people perform more illicit acts (Naylor 2004, pp. 253, 259). This conundrum is further complicated by the undocumented tendency to attribute higher moral standards to licit than to illicit businesses.

Adding to this complexity, discrepancy between the legal and the moral liceity of a business exists on a massive scale with regard to businesses that transcend national borders. The businesses involved range from money laundering to guerilla and terrorist enterprise (Naylor 2004); but a declaration of illicitness may be a matter of outsiders' interference rather than principle. This was quite routinely done during the colonial era, e.g., when the British colonizers of India insisted that their subjects not make cloth as they had done for centuries but purchase it from British manufacturers. In these post-colonial times many cross-border oppressive policies still prevail, e.g., the US effort to stamp out indigenous Latin Americans' use of coca leaves on the fallacious grounds that this centuries-old source of nourishment is indistinguishable from cocaine.

If we are to rely more on principle in the future, we need to establish universal rules that can be applied to identifying and constraining illicit businesses. To this end, I consider first the extent to which circumscribed cultural norms determine moral standards and thus business liceity and then the special case of the arms trade, which to a great extent is immunized against moral and/or legal criticisms both intra- and internationally.

Is Business Liceity Insurmountably Culture-Specific?

People have for ages sought to distinguish acceptable from unacceptable behavior by appealing to norms of conduct deemed to be beyond dispute. These norms become influential via religious, philosophical, or legal processes. Each of these may nullify moral relativism (for better or worse) in a particular society. But none seems able in and of itself to overcome illicit business on a global scale.

Norms said to be based on religious teachings have to some extent directed conduct towards the good; but they have also been used to justify such pernicious behavior as self-immolation, ritual mutilations, penal stoning or immolation, torture, wars, and even genocide. Such negative consequences have been much too extensive to be excused simply as aberrations. Rather do they manifest the often insidious role of self-serving agents in determining what a given religion requires. The English prosecutors of Joan of Arc, for instance, may actually have believed that she was a heretic because she heeded God's voice rather than Church authorities; but they could easily have overlooked that had she not been a hindrance to their desire to control France. Similarly, Muslims are persuaded that certain texts in the Q'uran disfavor charging interest (*riba*) for a loan; but obviously the enforcement of this prohibition, however nuanced, benefits some people and not others. The Q'uran itself does not ban images of Mohammed, but some Muslims (Sunnis, less so Shiites) follow supplementary teachings (*hadith*) that oppose visual images even if created by non-Muslims. Recent Islamists' violent responses to nonbelievers' imaging are almost certainly

politically motivated. As these problematic applications of religious norms illustrate, ways must be found to monitor attempts to impose religious norms on otherwise secular societies (see, e.g., Byrne 2011a; Burleigh 2007).

Philosophers have long sought through reasoning and debate to validate rules of good behavior that all people with good intentions towards others will adopt in their own lives. However, they have produced no definitive system of rules but only a variety of strategies for determining what is ethical and for assessing the epistemic status of any ethical determinations they or others may put forward (Gowans 2012). To be sure, some theorists continue to believe it is possible to achieve ethical objectivity; but others acknowledge that this is achievable by fallible human beings if ever only after a very long period of time. The latter view is bolstered by anthropological defenders of moral relativism, e.g., Westermarck (1932).

Among philosophers Immanuel Kant is the paradigmatic defender of ethical objectivity; but Robert Nozick's heavily science-oriented search for "invariances" (2001) also exemplifies objectivism at its best. Moral relativism has been defended by a number of philosophers (e.g., Taylor 1958; Rorty 1979; MacIntyre 1988). Their fallibilist view of ethics is at least as old as Aristotle, who stressed the limits of ethical knowledge in his *Nichomachean Ethics*, and Thomas Aquinas, who agreed with Aristotle (while exempting dogma-based theology) that human decision-making is permeated by probabilities (Byrne 1968).

Persuaded that the better arguments support moral relativism or what he calls constructivism, Margolis (1996) advises moral philosophers to be satisfied with and pursue their research in accordance with a "second best" strategy (pp. 9 12). He traces this view to Plato's acknowledgment that we mortals lack access to the Forms of things (pp. 207 210) and concludes that we cannot escape moral relativism no matter how meticulously we try to apply our ethical system of choice. Margolis, however, is unnecessarily pessimistic on this point. For, in part because of the horrors perpetrated against people during the twentieth century, philosophers mounted a vibrant defense of universalist standards regarding what ought or ought not be done to any other human being (Perry 1997, pp. 472 475). These standards, as defended by such philosophers as Martha Nussbaum, Stuart Hampshire, and Philippa Foot, look to natural law understood as human well-being as the basis for rules that apply both intra- and inter-culturally and are well enough argued to put the burden of response on historicists/relativists (Perry 1997, pp. 478 481; Donnelly 2003; Drum 2011).

Business ethicists meanwhile are divided regarding the normative validity of philosophically derived ethical standards. Fewer refer to philosophical sources than was the case in decades past. A major exception is Donaldson and Dunfee's (1999) proposed system of socio-cultural "hypernorms," which draws on social contract theory yet remains relativist in orientation in that it aims to be a more flexible alternative to human rights moral guidelines (Barnett and Block 2009). Needless to say, people in general, including those who run businesses, are less inclined to consult philosophical norms when they make decisions that may incidentally or systematically harm others. But as intimated above, a growing number of business ethicists are now attempting to sort through workplace issues on the basis of international human rights law.

As a guarantor of philosophical righteousness, laws have been enacted and enforced to channel behavior towards the good; but not all laws have good effects nor are they all enacted to advance the common good. Rather, many laws and regulations aim to advance the well-being of influential vested interests (Greenwald 2011). These might consist of a group as nondescript as "the business community." They might also address the needs of special interests, e.g., laws that mandated confiscation of a felon's personal property, healthy males' participation in a war, return of escaped slaves to their masters, and so on. Controversial as these latter enactments now seem, they are, like any enactment deemed to conform to the rule of law, limited in applicability to businesses deemed licit. Much rarer is legislation aimed at protecting and/or compensating customers of businesses deemed illicit. A case can be made, nonetheless, for enacting such legislation (Gangarosa et al. 1994).

Inversely, as already noted, history is full of examples of businesses declared to be legally illicit. If done in a compliant if not activist society such laws may be effective. But in this age of globalization merely local, even sovereign state, legislation is minimally able to constrain and certainly not to eradicate illicit businesses. To do so effectively requires attention to the myriad obstacles that arise out of cultural and legal diversity (Eicher 2009).

Institutionalizing standards of good behavior, in a word, has not been an easy task for our species given the conflicting routes to determining righteousness and the ubiquity of mixed and even malicious motives. These setbacks, however, are not reasons for despairing. Rather do they show all the more forcefully the importance of social indicators and the human rights movement. This is in no way meant to understate the gravity of the challenge these movements must take on. For the world is cursed with businesses that ought to be declared illicit but are nonetheless largely exempt from derogation. This is true a fortiori of the arms trade.

The Arms Trade: Bastion of Special Case Liceity

One characteristic of a (nation-state) military endeavor is that the people in a country so engaged rarely associate it

with illicit business. Some may protest against it on the grounds that it is immoral, but others will view it in its totality as an honorable activity. Only a few activists and academic specialists raise questions regarding the role of businesses in the prosecution of a war. In such a milieu neither ethical nor legal concerns are likely to turn fault-finding into calls for restitution and/or retribution. This is because the businesses involved in making war are typically a subset of a country's business complex and as such are focused not on battle-front heroics but on systematic, government-sponsored profiteering.

There are many academic and/or authoritative treatises that discredit the corruptive behavior on which illicit businesses thrive. Occasionally someone who has engaged in such business is singled out for punishment, thereby conveying the impression that government is committed to righteousness. But such punishment of wrongdoers is rare. This is especially the case with individuals engaged in institutionalized corruption who are backed by the power and resources of a military establishment. This they use directly to advance without substantive legal or moral constraints whatever may be the priorities of businesses that thrive on providing military materiel and military personnel. In the guise of a corruption elite they manage the activities, including wars, sought by the military establishment. They may or (increasingly) may not be identifiable by any uniform.

In complex societies, the military establishment constitutes only a segment of the total economy. This sort of segmented profiteering is less likely to be operative in a (developing) country in which the military dominate every aspect of government and society. There the military establishment may control all the most profitable businesses. This is the case in the Peoples' Republic of China, where control remains largely unchallenged, in Burma/Myanmar, where global challenges have led to a semblance of reform, and in Arab Spring countries, where recent revolts have been only partially successful given the economic dominance of the military establishments. Such co-optation may be incalculably detrimental to the vast majority of a country's citizens. But does that render the businesses themselves morally illicit?

The relationship between a military establishment and illicit businesses is by no means simple and straightforward, as so well stated in President Dwight Eisenhower's warning about "the military-industrial complex." But a growing body of research is making it ever clearer that the connection between arms and business is stronger than that between arms and military priorities. Where such is the case, as was the US invasion and occupation of Iraq, the purportedly military endeavor may be de facto one vast complex of illicit businesses (Byrne 2010, 2012).

From the earliest times warfare has not been subject to a society's ordinary rules of behavior. Its consequences in death and maiming are limited only by the efficacity of the technologies available to warriors at a given time. Thus, high walls and wide moats once protected people living behind them until sieges and catapults invalidated that security. Subsequent efforts to perfect a just war theory have given well-meaning scholars a worthy cause to pursue within academe; but their security paradigm has constantly been invalidated by power mongers' access to ever more dominance-delivering technologies. To achieve dominance, though, a particular buyer may not need state of the art technology. So there is a vast market for usable weapons and other military hardware regardless of their original sell-by date.

Tangential to military endeavors as such, the corruption elite exercise dominance over military resources by exercising power that is de facto (not de jure) military in nature. This widespread and increasingly global phenomenon arguably characteristic of business/government relations in our times points to an unprecedented marriage between businesses deemed licit and organized mayhem that arguably is not. "Where this kind of relationship exists," I once noted, "governments are to corporations as priests once were to the warrior class: they are responsible for the ritual that lends respectability to the power" (Byrne 1990, p. 281).

The way this moralistic ritual is carried out, legislators duly enact laws purportedly aimed at keeping arms from inappropriate buyers, then complicit bureaucrats and merchants see to it that the arms reach their buyers nonetheless. At the outbreak of World War II, for example, the US Congress banned shipping arms to warring countries. So 200 Hudson planes were flown to a base that spanned the US/Canadian border, where they were towed into Canada and from there flown to the UK (Feinstein 2011, p. 250). In the 1980s, the Pentagon and the CIA facilitated the illegal (under the Bolden Amendment) purchase and shipment of arms from Iran to Nicaraguan rebels. Eleven government officials were tried and found guilty for their roles in the affair, but all were either exonerated on appeal or pardoned by President George H. W. Bush (Feinstein 2011, pp. 51 53). On a larger scale, these arms industry companies are legally untouchable because deemed too important to be seriously cut off from the ample funding to which they are accustomed (Feinstein 2011, pp. 13, 140, 353 358, 365, 516, 523).

This characterization of military/corporate power states extends well beyond the reach of one country's legal system. Indeed, the globalization of the process of spreading death and destruction results in one of the major flaws in a country's attempt to bring an arms merchant to justice. The offending merchant typically does not reside in the country that wants to try him, hence is not a violator of that country's laws (Feinstein 2011, pp. 155 165). Hence, the need for transnational laws and law enforcement regarding

weapons and the consequences of their use (Feinstein 2011, pp. 171 172). These consequences involve countless violations of human rights. But absent transnational prohibitive laws, unconstrained militarism reigns supreme.

As is generally true of illicit business, societal acquiescence in military/corporate dominance over government systematically ignores the great harm done to innocent people whose only misbehavior involves being in the wrong place, or circumstances, at the wrong time. Just war theory is fostered to ameliorate this problem, i.e., to safeguard innocent civilians from the effects of war. But this theory is no longer able to diminish the mayhem perpetrated in the world. For, war-makers no longer admit to being constrained in their killing by such notions as just cause, self-defense, and last resort (Byrne 2011b).

Preemptive war is now a regrettable fact of realpolitik, having emerged from the amoral mind set of espionage into one that routinely directs drones at anyone and anything deemed a threat to the operative country's interests. This is a new development, however, only with respect to its technological subtlety. For, to cite just one example, during the Cold War era the so-called hawks who favored preemptively obliterating their enemies with nuclear weapons came perilously close to prevailing (Douglass 2008, *passim*). This fact intensifies the call for ethics to play a major role in dealing with international affairs including global business. But in military and diplomatic circles decision makers rarely feel a need to transcend moral relativism. Consequently, the arms market constitutes a singular lag in the advancement of human rights enforcement. This is not, however, a reason for despair. Rather is it an incentive to develop data that bypasses "body counts" in favor of a systematic before-and-after application of social indicators research to the destructive business called war (Marshall 2002).

Norms Proposed to Transcend Moral Relativism

It would seem that a business could not survive in a context where large numbers of people deem it to be illicit. But because of the disproportionate influence of vested interests, that is not the case. So a concerted effort is required to challenge such a business with empirical data that demonstrates how egregiously a business violates people's human rights.

For such efforts to succeed a strong case must be made in spite of moral relativism that the business in question is morally and should be legally illicit. For, if the business in question serves vested interests, any attempt to label it illicit will be countered by politically well-situated parties who benefit from its continuation. Neither cost/benefit nor principle-based moral arguments to the contrary seem able to dislodge defenders' insistence on normative flexibility. On this view, decisions about what actions a company may or should take need take into account only financial and commercial priorities. To be guided by this amoral stance borders on engaging in illicit business. If this state of affairs is to be superseded, then, more effective ethical tools are needed. These are being fashioned, by philosophers, business ethicists, and others.

Among the various relevant approaches of philosophers, the most important involves identifying and defending a concept of global justice that "breaks down the traditional separation of international and transnational relations and includes moral analysis of the whole field" (Follesdal and Pogge 2005, p. 5). Moving beyond the intra-state concepts of justice produced by Kant and Rawls, this call for a universally binding ethic proposes a cosmopolitan concept of justice that transcends nation-states and extends to every human being wherever situated (Mertens 2005). To this end, it relies not on philosophers' "orthodox" but on a "practical" theory of human rights that directly limits the actions of state officials and other institutional leaders towards those over whom they exercise power (Wenar 2005). Among the latter are corporate executives, who are now invited by the UN to sign on to the UN Global Compact which is being administered by the UN Global Compact Office. This voluntary commitment to CSR is incentivized by the work of NGOs such as Transparency International and would benefit even more from giving non-state actors standing before, e.g., the International Court of Justice (Kuper 2005).

These action-oriented approaches to a cosmopolitan concept of global justice constitute a normative underpinning for the efforts of business ethicists to argue that business leaders have ethical obligations beyond their bottom line. Especially important in this regard are such movements as stakeholder and corporate social responsibility theories. The implementation of these theories in business settings has made managers more sensitive to their company's need to avoid illicit practices. It has not, however, persuaded many global businesses that they have any strict responsibility for honoring human rights, this being, they still contend, solely the responsibility of governments as such. Denial of any strict obligation to honor people's human rights, though, amounts to a claim that businesses are constrained only by the flexible parameters of moral relativism. Whence the need to continue the process of building human rights into international law and to challenge appeals to moral relativism as normatively retrograde. There is more than one kind of moral relativism, however, so let me be clear about what is and what is not incompatible with binding ethical norms.

Among scholars there are a number of different formulations of moral relativism. Here I shall mention three of these. The most common but least well-reasoned version, called simply *moral relativism*, contends that culturally

diverse practices however cruel or bizarre are impervious to external criticism and hence are circumstantially autonomous and unchangeable. Linked to this version is that of *epistemological relativism*, which denies the possibility of moral dialogue across cultures. Neither of these is empirically sustainable, as I have already shown. But, as per a third version, one may nonetheless endorse up to a point a *cultural relativism* that accommodates a diversity of practices that are constrained within the bounds of universal norms (Perry 1997, pp. 508 509).

Perry's insistence that moral relativism is circumscribed by universal norms is consistent with the position still defended by a majority of philosophical ethicists. During the twentieth century, however, this absolutist or universalist position was seriously challenged by "postmodernist" thinkers such as Rorty (1979) and Johnson (2011, pp. 281 283). Meanwhile, feminist philosophers have sought ways to criticize standards harmful to women without falling into either a universalist or a relativist stance (Saharso 2008). Few philosophers declare themselves to be unmitigated moral relativists. One who comes close is Wong (2006), who argues that there is a "plurality" of true moralities and that this is observable as "moral ambivalence," which is experienced when different individuals with comparable values hold contrary but equally reasonable moral positions. This moral variability, says Wong, necessitates mutual accommodation, but only within the constraints imposed by human nature and circumstances (see Gowans 2007).

This philosophical discourse about how if at all to accommodate moral relativism does involve unquestionably important theoretical and practical issues. But it is far removed from the concrete realities of people's lives and hence from the crucial task of calculating what they need and how much they have. As such, that discourse contributes little to the task of constraining illicit businesses. Potentially more helpful in this regard are the quality of life (QoL) standards that social indicators researchers have developed over more than a quarter of a century. This important work provides means to measure objective and subjective welfare and has been adopted by many countries and international organizations, including the OECD (Noll n.d.). It has also influenced the World Health Organization, which has been publishing a quality of life report (WHO-QOL-BREF) since 1991.

Another attempt to address people's QoL is the so-called capabilities approach, founded by economist Sen and advanced by him and philosopher Martha Nussbaum. Like QoL, the capabilities approach seeks to address directly the problem of identifying what people need to lead a good life and determining in practice who has in fact obtained what is needed and to what extent. The list of needed capabilities, according to Nussbaum, include life, bodily health, bodily integrity, senses, imagination and thought, emotions, practical reason, affiliation, other species, play, and control over one's environment (1997, pp. 287 288).

These capabilities, in turn, interconnect with human rights (Sen 2005; Nussbaum 1997) and thereby become goals for institutional actors to pursue. This the United Nations Development Program (UNDP) has been doing since 1990, when it established the Human Development Index (HDI) and began annual publication of a Human Development Report. In 1995, it added a Gender-related Development Index (GDI) and a Gender Inequality Index (GII), and since that time other indices have also been created to indicate how human well-being is being experienced not in abstract generalities such as a GDP or a GNP but in particular by individuals.

Whether the capabilities approach and its linkage to human rights advances or impedes the QoL studies done by social indicators researchers is an unresolved but quite controversial issue. This became apparent after the 2011 publication of the Stiglitz Sen Fitoussi Report, which was prepared by economists for then French President Sarkozy in order to use capabilities and other criteria to supplement GDP abstractions. The response of QoL researchers to this work was mixed at best. This characterization is especially applicable to Michalos's (2011) assessment. Noll (2011) said it added nothing new to QoL work but did help stir political action on the problems at issue. Tsai (2011) found its suggested measurements inadequate but acknowledged that it "has a strong potential of directing future theories and policy actions of human progress monitoring" (2011, p. 364).

These various quantitative constraints on moral relativism are meant to have ongoing practical import on policies and practices. That they do so is empirically demonstrable from data in the reports issuing from various institutions. It is also discernible from known historical transformations. For, sometimes a society that long endorsed a practice that is reprehensible may change its stance to deal with changed circumstances. For example, Chinese girls no longer bind their feet because bound feet ceased to be a precondition for marriage and after the Revolution became a detriment to useful work. More generally, female infanticide and the banning of females and lower caste people from education (all once deemed socially beyond controversy) have now been officially banned in cultures that no longer condone such practices, e.g., contemporary Afghanistan. Now slavery, once deemed consistent with the existence of differently endowed humans (or humans and sub-humans), is no longer morally defensible anywhere. Female genital mutilation, by contrast, is still practiced in many societies both within and beyond Africa. But there is now an extensive global dialogue in opposition to the practice (Perry 1997, pp. 487 490). Moreover, it has been declared

a violation of human rights by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities (1988).

Given the reality of globalization, it is not surprising that a number of business ethicists have addressed problems that arise when trying to reconcile international human rights law with local customs and practices (Whelan et al. 2009; Scholtens and Dam 2007; Radin and Calkins 2006; Hindman and Smith 1999). What needs to be added to such concerns is a foundational set of standards that are applicable cross-culturally. These standards may be linked to those arising out of our various cultural traditions, and may be grounded in values fostered in those cultures. But ultimately they need to be based on standards that are universal (Johnson 2011). This, of course, is the goal of human rights defenders; and to facilitate their achieving that goal they would do well to draw on the QoL empirical studies reported by social indicators researchers in the journal with that title and in major tomes that have recently become available (Møller et al. 2008; Michalos 2013, forthcoming; Land et al. 2012). This scientific work leaves many challenging questions unresolved; but it does produce data that bolsters the growing movement to hold corporations directly responsible for the effects of their policies and practices on individual human beings.

No Business Licit That Violates Human Rights

Even philosophers who recognize no theoretically satisfying way to transcend moral relativity may nonetheless appreciate the significance of efforts to institutionalize human rights. One, for example, asserts there are serious power-based flaws in "so-called international law," yet acknowledges that "there is no effective alternative to the model of international law" as an institutional defender of human rights (Margolis 2004, p. 91). Others ground human rights in natural rights (e.g., Donnelly 1982). Another (Etzioni 1997) points with satisfaction to a number of human rights experts who believe human rights are coming to be considered universally valid. That academic specialists look beyond their theorizing for signs that ethics is taken seriously in international affairs is encouraging and to some extent justified. For, thanks especially to the United Nations the institutionalization of human rights has been making real progress.

Decades ago the UN adopted three foundational human rights documents (known informally as the International Bill of Rights): the Universal Declaration of Human Rights (UDHR), 1948; a treaty called the International Covenant on Civil and Political Rights (ICCPR), 1966, in force 1976; and a treaty called the International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966 (Perry 2004, pp. 101 102). Then in 1993 at a UN-sponsored World Conference on Human Rights, representatives of 172 states adopted by consensus the first of 100 Vienna Declarations which repudiates the relativist position regarding human rights and affirms their being "the birthright of all human beings" and "the first responsibility of Governments" (Perry 1997, p. 481).

Other UN documents have been adopted dealing with specific practices that violate human rights. For example, a document known as the United Nations Convention on Transnational Organized Crime, with protocols on trafficking and smuggling, was adopted November 15, 2000 and came into force September 29, 2003 (now signed and ratified by well over 100 countries). In spite of its open-ended title, though, this document is directed only against corrupt public officials. The UN has, however, expanded its role in the fight against corruption. The United Nations Convention against Corruption was signed in 2003 and came into force in December 2005 (Argandoña 2007). Its enforcement powers are limited, but it now functions as a coordinator of less global programs.

There now exist organizations in every corner of the world devoted to fighting corruption. One of these, Transparency International, has been especially important in this global endeavor. Most of these organizations, in turn, are linked to the central clearing house for anti-corruption activities, called ACT. ACT is a campaign organized by the United Nations Development Program (UNDP) and the United Nations Office on Drugs and Crime (UNODC). It coordinates the endeavors of anti-corruption intergovernmental organizations, other international organizations, notably Transparency International, and intra-governmental organizations, e.g., Argentina's Anticorruption Office (http://www.unodc.org/yournocounts/en/resources/index.html). Some of these institutions contribute primarily to public awareness of crimes that affect them (e.g., UNODC 2012) but others are directly involved in criminal prosecutions (e.g., Argentina's Corte Suprema de Justicia).

In tandem with these multifaceted efforts to contain and control corruption in both the public and the private sector, there is now a burgeoning literature within business ethics that studies how well a given business or business sector embeds concerns about human rights in its ongoing practices. This literature is too extensive to report on here, but citing just a few examples, mainly from the *Journal of Business Ethics*, will convey a sense of the scope of this literature. One recent study examines the practices of FTSE 100 companies (Preuss and Brown 2012). Several study how firms that join the UN Global Compact are affected commercially (Janney et al. 2009; Kell 2005). An altogether fundamental assessment of this movement is Ann Elizabeth Mayer's (2009) elaboration of the need to sort out moral and legal aspects of UN human rights

documents. Complementing such research is model work that addresses corruption as a negative influence on QoL (Song 2012).

Genuine progress has been made towards tying human rights to empirical data, translating these rights into international law, and paving the way for effective enforcement of human rights legislation in globally respected courts. It is satisfying to note that many business ethicists are joining in this challenging endeavor. Business leaders, including a fortiori those in the arms industry, may still disclaim responsibility for human rights; but they are now pressured to endorse them at least rhetorically. Someday their rhetoric will reflect reality.

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