*Business Ethics and Human Rights: An Overview**

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Abstract

In the last several decades a diverse movement has emerged that seeks to extend the accountability for human rights beyond governments and states, to businesses. Though the view that business has human rights responsibilities has attracted a great deal of positive attention, this view continues to face many reservations and unresolved questions.

Business ethicists have responded in a twofold manner. First, they have tried to formulate the general terms or frameworks within which the discussion might best proceed. Second, they have sought to answer several questions that these different frameworks pose: A. What are human rights and how justify one's defence of them?; B. Who is responsible for human rights? What justifies their extension to business?; and C. What are the general features of business's human rights responsibilities? Are they mandatory or voluntary? How are the specific human rights responsibilities of business to be determined?

Within the limited space of this article, this article seeks to critically examine where the discussion of these issues presently stands and what has been the contribution of business ethicists.

Keywords: business ethics, complicity, human rights, Ruggie, sphere of influence

I. Introduction: The Context and Central Issues

Several decades ago the responsibility of businesses for human rights was, at best, a marginal topic among those concerned with the ethics of business. Some doubted whether business could have any ethical responsibilities at all. Others doubted that human rights made sense. And many in business (and elsewhere) believed that human rights, if they existed, were a matter for governments, not businesses. Consequently, the attribution of human rights responsibilities to business faced multiple challenges and obstacles. This situation changed dramatically towards the end of the twentieth century. The globalization of business raised new human rights questions due to the significant increase in size and power of business organizations, and the speed and extent of their activities. These developments resulted in many positive outcomes for certain individuals and societies, but they also produced numerous far reaching impacts on

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individuals, societies and the environment that often were negative—and glaringly so. Nevertheless, many of the old reservations and challenges regarding business responsibilities for human rights remained latent. Though some businesses have responded positively to the call to recognize their human rights responsibilities, most have not.[1] Many businesses, for example in the United States (US), have been reluctant to become part of United Nations' (UN) or other institutional efforts to create codes of conduct, treaties or covenants that might serve as the basis of litigation against them.[2] Further, the understanding of what human rights are and what are a business's responsibilities for human rights varies greatly among businesses as well as those with concerns to foster the ethics of business. Accordingly, there are practical and theoretical obstacles to the acknowledgement by business of responsibilities for human rights.

In this context, a diverse movement emerged that aims to extend the accountability for human rights beyond governments and states, to businesses. Somewhat akin to civil rights movements in the US, India, South Africa and elsewhere, this has been less a philosophical than a social and political movement with diverse ethical and philosophical implications. Among those taking part in this movement, business ethicists have sought to contribute their insights on the main questions at issue. The purpose of this article is to provide a critical overview of these contributions to the business ethics literature.[3]

Business ethicists have responded in a twofold manner. First, they have tried to formulate the general terms within which the discussion might best proceed. John Ruggie's comment regarding this situation seems particularly relevant: 'the business and human rights agenda remains hampered because it has not been framed in a way that fully reflects the complexities and dynamics of globalization and provides governments and other social actors with effective guidance'.[4] Such framing is something that business ethicists do. What are the general formats, frameworks, conceptual distinctions, and guidelines that business ethicists have offered to business so that it might recognize and address the human rights challenges it faces?

Second, business ethicists have sought to answer three main questions that these different frameworks pose. First, what are human rights and how justify one's defence of them (Section II)? There remain important differences over the nature of human rights and the various human rights for which businesses and governments are deemed responsible. Second, who is responsible for human rights (Section III)? The traditional view has been that the state is responsible for them. The revisionist view is that

[1] Aaronson contends that 'as of December 2011, less than 1% of the world's some 80,000 multinationals have actually adopted human rights policies, performed impact assessments or tracked performance, devised means to ensure that they do not undermine human rights, or developed means to remedy human rights problems'. Susan A Aaronson, 'How Policy Makers Can Help Firms Get Rights Right' (n.d) 5, http://www.gwu.edu/~iiep/events/Boell_GPs_FinalCopy.pdf (accessed 22 June 2015).

[2] Nina Seppala, 'Business and the International Human Rights Regime: A Comparison of UN Initiatives' (2009) 87 *Journal of Business Ethics* 404.

[3] Given the significant number of essays and books on business and human rights over the past 20 or 30 years, it is possible to consider only a small portion of this discussion. This article focuses on contributions by those academics with interests in the normative ethics of business. However, it also gives significant attention to the work of John Ruggie, UN Special Representative of the UN Secretary General, whose work has drawn considerable attention to business and human rights. Accordingly, I interpret 'business ethicist' in a broad fashion in this article.

[4] John Ruggie, 'Protect, Respect and Remedy: A Framework for Business and Human Rights', A/HRC/8/5 (7 April 2008), para 10.

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businesses also share human rights responsibilities, but under what conditions and to what extent remains a matter of considerable discussion. Part of what is at stake here is the rejection of a state-centric view of the world for a new 'politicized' role for corporations. But how far should such views go? Third, what are the general features of business's human rights responsibilities (Section IV)? Are they mandatory or voluntary? At times it seems as if human rights, like the physical universe, are rapidly expanding. Yet for businesses to operate efficiently they desire some clarity and determinateness on this front. What are their human rights specific responsibilities and how are these to be determined (Sections V–VI)? Finally, when are businesses complicit in the violation of human rights (Section VII)?

Within the limited space of this article, this article seeks to examine where the discussion of these issues presently stands and what has been the contribution of business ethicists.

II. What are Human Rights?

Though the question, 'What are human rights?', is a theoretical question its answer has very practical implications. Those who fail to consider this question may, as a consequence, make various practical assumptions that may or may not be justified, and that may raise problems for the answers to the other two main questions noted above. Consequently, an important group of business ethicists argue that a solid ethical foundation for the discussion of human rights is needed if it is 'to command reasoned loyalty and to establish a secure intellectual standing'.[5]

Most business ethics accounts attribute a number of common features to human rights, viz., they are a) rights; b) held by individuals; c) matters of significant importance (high priority); and d) inalienable, i.e., they cannot simply be waived. Hence, even though a person is not interested in this or that human right, he or she cannot simply waive that right when some other agent, whether a government or a business, violates it. However, not all views have held that human rights are universal in scope, or independent of the recognition or enactment by the particular societies in which they exist. In fact, business ethicists take three different stances regarding the scope of human rights. Some argue that these are culturally based (Relativists). Those defending a universal view may either hold a restricted view of universal human rights (Restrictivists) while others support an expansive view (Expansivists). In short, there is a considerable and disturbing variety of answers to this first question.

A. The Relativist View

There are different species of relativists. In one sense or another they hold that human rights are an historical development tied to Western culture. Relativist views are

[5] Amartya Sen, 'Elements of a Theory of Human Rights' (2004) 32:4 *Philosophy & Public Affairs* 317; Ivar Kolstad, 'Human Rights and Assigned Duties: Implications for Corporations' (2008) 10 *Human Rights Review* 569f; Wesley Cragg, 'Ethics, Enlightened Self-Interest, and the Corporate Responsibility to Respect Human Rights' (2012) 22:1 *Business Ethics Quarterly* 10; Florian Wettstein and Sandra Waddock, 'Voluntary or Mandatory: That is (Not) the Question: Linking Corporate Citizenship to Human Rights Obligations for Business' (2005) 6:3 *Zeitschrift fur Wirtschafts-und Unternehmensethik* 309.

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defended by Rorty, Donnelly, and Walzer.[6] Versions of this view are also held by those who defend an Asian perspective on human rights and supporters of the Cairo Declaration of Human Rights that proclaims the subordination of human rights to sharia interpretations of the Koran. As Donnelly notes, 'the idea of equal and inalienable rights that one has simply because one is a human being … was missing not only in traditional Asian, African, Islamic, but in traditional Western, societies as well'.[7] Thus, Donnelly charges that human rights defenders 'misunderstand and misrepresent the foundations and functioning of the societies in question by anachronistically imposing an alien analytical framework'.[8] Though this is a minority view these days, it cannot simply be dismissed but must be engaged since it has significant implications for business ethics.

Numerous business ethicists (including Arnold, Cragg, Donaldson, Sen, Wettstein, and Werhane) have challenged this view arguing that human rights are universal moral phenomena that hold across all societies and cultures as well as across historical periods. The Relativist position, they argue, is subject to many objections involving determining the nature and boundaries of different cultures. Further, they contend that just because different people have different moral views and make different moral judgments it does not follow that their underlying ethics or morality must be different. If their particular moral views and/or judgments can be shown to be derivative from more basic moral principles or human rights, then even though people may have different (particular) moral views they may hold similar more general views. The differences among them would be the result of other historical, economic, or factual views they hold, not different general moral principles or human rights. By and large, however, business ethicists have agreed that human rights imply universal responsibilities to which all appropriate agents are subject. What this universality involves is also a matter of contention.

B. The Restrictive View

Restrictivists argue that human rights must be understood in a strict sense as basic moral rights.[9] Cranston says that 'a human right, by definition, is something that no one, anywhere, may be deprived of without a grave affront to justice. There are certain actions that are never permissible, certain freedoms that should never be invaded, certain things that are sacred'.[10] It is particularly significant that what is at stake here are rights, since rights imply duties and without identifying the duty holders, as well as the rights holders, any account of (human) rights remains incomplete and potentially illusory. As such, rights carry implications that goods, interests, and values do not. In fact, if 'rights' didn't

[6] Richard Rorty, 'Human Rights, Rationality, and Sentimentality' in Stephen Shute and Susan Hurley (eds.), *On Human Rights: The Oxford Amnesty Lectures* (New York: Basic books, 1983) 112–34; Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29 *Human Rights Quarterly*; Michael Walzer, *Thick and Thin* (Notre Dame: University of Notre Dame Press, 1994).

[7] Donnelly, ibid, 285.

[8] Ibid, 286.

[9] Patricia H Werhane, *Persons, Rights and Corporations* (Englewood Cliffs: Prentice-Hall, 1985) 8; see Amartya Sen, 'Human Rights and the Limits of Law' (2006) 27:6 *Cardozo Law Review* 2913–27; Stephen J Kobrin, 'Private Political Authority and Public Responsibility: Transnational Politics, Transnational Firms, and Human Rights' (2009) 19:3 *Business Ethics Quarterly* 349–74.

[10] Maurice Cranston, 'Are There Any Human Rights?' (1983) 112:4 *Daedalus* 12.

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have this special characteristic, there would be little reason to invoke them beyond other evaluative notions.

Restrictivists maintain that there are a limited number of human rights, in part because they don't cover all aspects of morality, and because they are supposed to be of basic or fundamental importance. On their view, anything that could be said to be an individual right for all individuals, of basic importance, inalienable, and not dependent on recognition by governments must be fairly limited in nature. Thus some Restrictivists have objected to economic and social human rights (i.e., positive human rights) on the ground that with their recognition 'there began to be no fixed limits to the rights that people claimed or were said to possess'.[11] Still, this need not follow, so long as duty holders can be identified for such rights. In fact, identifying the parties who have duties that correspond to the rights humans hold is yet another way of limiting the number of human rights.[12] Thus according to Locke, the natural rights were those to life, liberty, and property; the US Declaration of Independence spoke of life, liberty and happiness. Werhane identifies approximately two dozen basic moral (human) rights in her book, *Persons, Rights & Corporations*.[13] In *The Ethics of International Business,* Donaldson lists ten basic human rights.[14] Though this view holds that there is a strongly limited number of basic human rights, this does not mean that there are not derivative rights or responsibilities one has due to these basic rights. Though these would be subsidiary or derived rights, they might still be called 'human rights', due to their basis or origin. Thus there would be a (logical) hierarchy of human rights.

C. The Expansive View

Some business ethicists, NGO members and business people hold an importantly different view of human rights that is much more expansive. Though they may treat human rights as forms of entitlements (i.e., rights in some strict sense), they may also treat them (usually without particular notice) as desirable ends or ideals as well as perhaps manifesto rights.[15] On this view, human rights are things we might strive to realize for people, e.g., a healthy life, but are not something (in all cases) for which we may necessarily be condemned or punished if we fail to achieve them. They are said to be rights but they are often treated more as desirable ends or ideals. The upshot is that no specific responsible parties for these 'rights' need be identified. For those who hold this view, there is a much larger number of human rights that need not be distinguishable into basic and non-basic. This means that these rights are treated as, more or less, on the same level. They may constitute much more of a complete business ethics.

D. Justification of these Views

One way of sorting out the complexity of these three main views of human rights is to look to the general justifications offered for the human rights they identify. Though there

[11] Ibid, 6.

[12] Kolstad, note 5, 569f.

[13] Werhane, note 9.

[14] Thomas Donaldson, *The Ethics of International Business* (New York: Oxford University Press, 1989).

[15] Joel Feinberg, *Social Philosophy* (Englewood Cliffs: Prentice-Hall, 1973).

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is not a one-to-one correspondence between each of these views and different justifications, still there are important connections and implications.

Defenders of a Restrictivist view have tended to argue that human rights are based upon (and hence justified through) some feature(s) that humans have.[16] One feature they link with human rights is human agency, i.e., abilities to act consciously and reflectively. Arnold holds that members of the species Homo sapiens have human rights not because they are members of this species, but because they are persons: 'to be a person one must be capable of reflecting on one's desires at a second-order level, and one must be capable of acting in a manner consistent with one's considered preferences'.[17] Preferences are first-order desires that one embraces at a second-order level.[18] Werhane holds similar views regarding human rights and human agency.[19] A second human characteristic they link with human rights is important or crucial human interests. Cragg holds that human rights are based on fundamental human interests.[20] Sen maintains that freedom is the single fundamental human interest that undergirds human rights.[21]

On the other hand, Expansivists have tended to identify other bases for human rights. Some link human rights with human dignity. The United Nations Universal Declaration of Human Rights (UDHR) appeals to this concept.[22] Campbell also holds that the basis of human rights is human dignity and the high and equal worth of all human beings.[23] Kobrin maintains that human rights 'flow from the "inherent dignity" and "equal and inalienable rights" of all members of the human family'.[24] Bishop and Wettstein and Waddock hold similar views.[25] 'Human dignity' tends to be a flexible concept that can generate a wide variety of claims regarding human rights.

Others, however, argue that human rights are justified based upon their beneficial effects on society. For example, Bishop notes that some business ethicists '… assess corporate rights obligations by trying to balance the public goods of rights recognition with the private (or corporate) costs/benefits of the rights obligations'.[26] Such an approach can generate a wide range of claims regarding human rights, however, most business ethicists reject this basis for human rights. For example, Bishop argues that corporations are not structured to make decisions based on calculating and balancing

[16] Werhane, note 9; Denis Arnold, 'Transnational Corporations and the Duty to Respect Basic Human Rights' (2010) 20:3 *Business Ethics Quarterly* 384f; Florian Wettstein, 'CSR and the Debate on Business and Human Rights: Bridging the Great Divide' (2012) 22:4 *Business Ethics Quarterly*.

[17] Denis Arnold, 'Human Rights and Business: An Ethical Analysis' in Rory Sullivan (ed.), *Business and Human Rights* (Sheffield: Greenleaf Publishing Limited, 2003) 71.

[18] Ibid, 71f.

[19] Werhane, note 9, 6f.

[20] Cragg, note 5, 17; Tom Campbell, 'A Human Rights Approach to Developing Voluntary Codes of Conduct for Multinational Corporations' (2006) 16:2 *Business Ethics Quarterly*.

[21] Sen, note 9, 2921.

[22] United Nations Universal Declaration of Human Rights, UN Doc A/810, GA res. 217A (III) (adopted on 10 December 1948).

[23] Campbell, note 20, 259.

[24] Kobrin, note 9, 351.

[25] John D Bishop, 'The Limits of Corporate Human Rights Obligations and the Rights of For-Profit Corporations' (2012) 22:1 *Business Ethics Quarterly* 129; Wettstein and Waddock, note 5, 304–20.

[26] Bishop, ibid, 125.

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public goods and costs; they are private organizations and can internalize only private costs and benefits.[27]

And yet others argue that human rights derive from various social contracts, which can be revised and whose number of human rights can be expanded—even though not all social contract theorists hold an Expansivist view. Those holding such contractual views may base them on *actual contracts*, e.g., between actual nation states, businesses or NGOs, or on *ideal contracts* between idealized contractors. Actual contractual views focus, primarily, on various documents associated with the International Bill of Human Rights, which is usually said to be composed of the UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[28] Thus, Seppala contends that it is the various UN documents and texts regarding the International Bill of Human Rights which are 'the principal source of texts and deliberation on which the international rights regime rests'.[29] Contracts in this sense give rise to legal rights or, for example in the case of the UDHR, to a form of moralized or manifesto rights. Similarly, Ruggie accepts what has been agreed to in several declarations and covenants by members of the UN as determining the authoritative list of human rights. On this view, the contract is among the various nations of the UN that agreed to and ratified the covenants and treaties regarding human rights. However, this means that NGOs, corporations and individuals are not part of these agreements, even though they are directly and indirectly impacted by them. Accordingly, some businesses have objected that they do not have human rights responsibilities under these contracts. If one views those agreeing to actual contracts as assenting on the basis of self-interested (short term or long term) reasons, then one may see a business case for human rights as part of (or underlying) the contractual view of human rights. Ruggie defends such a business case for human rights when he appeals to social expectations and the company's license to operate, as a basis for these contracts. Similarly Archie Carroll has suggested that a corporation's responsibilities derive from societal expectations.[30] In short, since human rights violations may damage corporations' reputations and thereby their operations and success, business enterprises have good reason to acknowledge and operate on the basis of human rights.[31]

On the other hand, the contracts involved might be idealized, hypothetical contracts, i.e., agreements that the contractors would come to under special conditions designed to eliminate self-serving contracts, bias, etc. Such hypothetical contracts are said to give rise to moral rights (of various sorts) rather than 'simply' legal rights. How members to such a contract identify certain 'human rights' would depend on the circumstances and conditions under which they agree to a contract. Those conditions and circumstances would have to foster the selection of human rights, rather than just the fulfilment of their own interests.

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[27] Ibid, 111.

[28] United Nations Universal Declaration of Human Rights, note 22; International Covenant on Economic, Social and Cultural Rights, UN Doc A/6316, 993 UNTS 3, GA res. 2200A (XXI) (adopted on 16 December 1966, entered into force on 3 January 1976).

[29] See, e.g., Seppala, note 2, 402.

[30] Archie Carroll, 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) 38:3 *Business & Society*.

[31] Cragg, note 5, 13; David Weissbrodt and Muria Kruger, 'Human Rights Responsibilities of Businesses as Non-State Actors' in Philip Alston (ed.), *Non-State Actors and Human Rights* (Oxford: Oxford University Press, 2005) 337.

It should be noted that some business ethicists leave the basis of human rights undetermined, even though they seek to identify the characteristics of human rights (e.g., that they are held by individuals, are universal, etc.). Donaldson and Dunfee nicely exemplify this approach in their book *Ties That Bind*.[32] They hold an Expansivist view of hypernorms, which includes but is not limited to human rights. Still they hold that hypernorms do not derive from a social contract. However, they argue that there are indications that hypernorms exist and they offer a mechanism of convergence by which human rights might be recognized. Even though this mechanism does not, as such, offer a justification of such human rights, still, in the case of Donaldson and Dunfee, it would seem that it would convey some form of justification through public reasoning.

Finally, one point on which both Restrictivists and Expansivists agree is that human rights are not based on (or the same as) legal rights. They are basic moral rights. Nevertheless, the identification of human rights with legal rights has received strong support over the decades. Some legal theorists maintain that moral rights are of a dubious nature. They ask where human rights come from, if they are not linked with laws that have been approved by some official governing body. Talk about non-law based human rights is viewed as simply loose talk.[33] This view is widely rejected by business ethicists today on the basis of the preceding justifications. Second, another rationale for linking human (moral) rights and the law is that as moral rights they are (or may be) ineffective. They require the force of law to back them up, much as the wanton killing of another individual is defended with the force of law. There is some truth to this claim, but human rights have proven to be effective when embraced as moral norms and not simply when exercised as legal rights. Achieving effective human rights responsibilities is a challenge business ethicists confront in multiple ways.[34] Third, a fundamental issue here regards the (in)determinate nature of human rights. If they are to guide businesses, governments and individuals, we need a greater degree of determinateness than human rights as moral norms tend to give us. However, defenders of the moral nature of human rights need not turn simply to the law to address this problem. Laws themselves may conflict as well as leave indeterminacies. Businesses can draw on guidelines and best practices from the UN, NGOs, business associations, and business ethicists! As Sen notes, human rights have some indeterminacy but are not simply parasitic on legal talk.[35]

E. Important Challenges, Differences and Implications

Each of the above three views and their justifications face multiple challenges and have various important practical consequences. The Relativist view must explain how businesses are to respond, without tying themselves in moral knots, to strikingly diverse ethical views of different societies. How can they respond to those who seek to criticize the moral stances (e.g., torture, child labour) that their own society may presently defend—which, on the Relativist view are, ex hypothesis, moral?

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[32] Thomas Donaldson and Thomas Dunfee, *Ties that Bind* (Boston: Harvard Business School Press, 1999).

[33] See Cranston, note 10, 1–6.

[34] See Sen, note 9.

[35] Ibid.

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Restrictivists hold that human rights are entitlements that impose obligations on others. Such rights do not depend upon a person's demanding them. They may still be violated. Thus, if a Chinese person is not concerned about his or her freedom of speech, their right to freedom of expression may still be violated by Google's filtering of the Internet.[36] On this view human rights impose duties that are not morally voluntary, though legally they might be. Restrictivists face the challenge of identifying a limited number of human rights and the basis upon which these claims are made.

Expansivists allow for a range of interpretations of rights, not only as entitlements, but also as desirable states, ideals, etc. which society, through government or business, should strive to attain. Thus, Expansivists face an opposite challenge. How can they limit the number of rights identified as human rights? On this view the duties attached to human rights might be voluntary both legally and morally. Human rights become other ways of appealing to the important interests of people. For example, when Shell talks about its human rights approach to drilling for gas in Appalachia, the description of what it does sounds more like stakeholder management than a human rights approach.[37] Accordingly, some Expansivist views appear to appropriate 'human rights' as a term to be used for the development of an international ethics that draws upon the emotive force of 'rights' to accomplish ends that standard or traditional accounts of 'rights' would not, or could not, aim to achieve. The danger this approach faces is that the notion of 'rights' gets so watered down that anything can be the subject of a right subject to some international agreement, which may be influenced by politics, economics, etc. De George and Enderle are among those who have warned of such exaggerated uses of 'rights language'.[38] If we do not use a notion of human rights that has certain bounds to it, the notion may become a catchall phrase for anything a person wishes to defend. Thus it is not surprising that in some cases human rights have been extended to 'periodic holidays with pay',[39] ethical education, and health itself (rather than the resources for health). Similarly others tell us that human rights violations include: funding the environmentally harmful coal industry, hydraulic fracturing, refusing to use fair trade labour, and promoting mono-cropping.[40]

An implication of the Restrictivist view is that business human rights responsibilities do not encompass all the dimensions of a complete business ethics.[41] They do not take into account other responsibilities business might have regarding social justice or beneficence towards various stakeholders but for which they could not claim entitlements. Human rights management might be part of a stakeholder management

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[36] George G Brenkert, 'Google, Human Rights, and Moral Compromise' (2009) 85:4 *Journal of Business Ethics* 453–78.

[37] Global Business Initiative, 'The Corporate Responsibility to Respect Human Rights in China and Globally' (2014), http://www.global-business-initiative.org/work/china1/china-report/ (accessed 7 April 2014).

[38] Richard T De George, *Business Ethics*, 3rd edn. (New York: MacMillan Publishing Company, 2010); Georges Enderle, 'Toward Business Ethics as an Academic Discipline' (1996) 6:1 *Business Ethics Quarterly* 43–65.

[39] United Nations Universal Declaration of Human Rights, note 22.

[40] Global Exchange, '"Most Wanted" Corporate Human Rights Violators of 2012' *Global Exchange* (2012), www.globalexchange.org/corporateHRviolators (accessed 10 July 2013).

[41] Thomas Donaldson, 'Values in Tension' (1996) 74:5 *Harvard Business Review* 48–56; Tom Sorrell, 'Business and Human Rights' in Tom Campbell and Seumas Miller (eds.), *Human Rights and the Moral Responsibilities of Corporate and Public Sector Organizations* (Dordrecht: Kluwer Academic Publishers, 2004).

approach, but (as above) it would not be the whole of it. Such a view is compatible with ISO26000 that presents human rights as only one aspect of corporate social responsibility (at least as ISO conceives the two).[42]

The business case approach to human rights has been widely attacked, by all three accounts, for various reasons. Cragg argues that 'enlightened self-interest is not capable of sustaining the human rights agenda against competing business imperatives'.[43] Cragg notes that where there are not such expectations, corporations would be under no pressure to respect human rights.[44] Most business ethicists similarly defend a moral basis—and not simply a self-interested basis—for human rights (e.g., Arnold, Donaldson, Sen).

In spite of the preceding, the contribution of business ethicists to these foundational questions has been very modest. They have not, in general, spent a great amount of time exploring these issues. Many have simply worked with what others have identified as human rights. A great diversity of answers remains. Their major contributions with regard to business and human rights have come elsewhere with the nature and complexities of business's responsibilities for human rights. Nevertheless, some of the major problems they face are rooted in views and assumptions that they make (or do not examine) at this initial level of the discussion.

III. Who Is Responsible for Human Rights?

Defenders of human rights must ask on whom (or what) responsibilities to address human rights fall, before they ask what those responsibilities are. There are two different ways of answering this question. Historically, the standard view has been that states are legally responsible for addressing the human rights of individuals within their boundaries. Two reasons stand out. First, states ratified the UN documents that articulated human rights. This means that an important part of the human rights movement has focused on the national and international legal structures that formulate those human rights. Secondly, states have the sole legitimate force over certain sovereign areas within which they claim authority over the individuals living and working there.[45] Most generally this legitimacy is seen as a legal one referring to the international system of states with sovereign authority that emerged out of the Treaties of Westphalia in the seventeenth century.[46] In this traditional view, 'states are the only subjects of international law, the only entities which possess international legal personality and the capacity to have duties and rights'.[47] Furthermore, states oversee not only how different

[42] See Stepan Wood, 'The Case for Leverage-Based Corporate Human Rights Responsibility' (2012) 22:1 *Business Ethics Quarterly*; International Organization for Standardization (ISO), 'ISO 26000:2010, Guidance on Social Responsibility', (1 November 2010).

[43] Cragg, note 5, 10. Cragg argues that Ruggie has shifted his stance somewhat such that the latest version of the Framework he proposes 'entails due diligence … [that] for all intents and purposes shifted to an ethical framework'. Cragg, note 5, 25.

[44] Ibid, 14.

[45] See Jacob Mchangama, 'Why free countries should resist the newest wrinkle in international law' (10 November 2011), http://www.nationalreview.com/article/282792/businesses-and-human-rights-jacob-mchangama (accessed 25 April 2015).

[46] See Kobrin, note 9.

[47] Ibid, 352.

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branches of government treat their citizens, but also how other organizations (businesses) and individuals within their boundaries impact human rights. Under this system, a crucial responsibility of the state is to ensure that transnational corporations and other business enterprises responsibly address human rights.[48] In this sense, the state-centric view is compatible with other organizations and individuals having derivative or secondary human rights responsibilities. However, these responsibilities arise through the role of the state, not out of any direct relation of those organizations or individuals to human rights holders. In short, the state is the prime responsible party when it comes to human rights.

Several practical implications arise out of this view. First there appears to be an increased tendency towards the Expansivist view of human rights. If human rights arise out of UN (or similar) treaties, then the only limit on the number and kind of human rights are the agreements that various states or governments ratify. However, the parties to these contracts may see such rights more as ideals or desirable aims, rather than obligations arising out of entitlements that their citizens have. Hence, there has been a tendency to expand the realm of human rights. Second, the international system of states, according to the Westphalian view, amounts to a self-enforcing system of human rights.[49] However, states may not seek actively to protect the most important human rights or to fulfil the various ideals or aims linked with human rights. It may simply not be in their self-interest to do so. Third, the growth of transnational corporations and the development of globalization have resulted in businesses having increased influence on states themselves as well as significant impacts on workers, the non-employed, indigenous peoples, and the environment. In this context, states have experienced a decline in their abilities to control business operations and their impacts, not only in general but also with regard to the human rights involved. The upshot has been that governance gaps have developed with respect to the ability of various states and their governments to oversee business's impact on human rights.[50] Such 'governance gaps' are situations in which there is a lack of jurisprudence over 'bad behavior'.[51] As Ruggie says: 'The root cause of the business and human rights predicament today lies in the governance gaps created by globalization—between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences'.[52]

It is for the preceding reasons (among others) the second major response to 'Who is responsible?' deserves attention. This second reply holds that businesses themselves have human rights responsibilities. This position takes two forms. The first is closely associated with Ruggie and the framework for human rights he developed. This view attributes human rights responsibilities to business on the basis of social expectations (or social norms). Ruggie comments that 'whereas governments define the scope of legal compliance, the broader scope of the responsibility to respect is defined by social expectations—as part of what is sometimes called a company's social licence

[48] Weissbrodt and Kruger, note 31, 336.

[49] See Kobrin, note 9.

[50] See Ruggie, note 4, para 3; Glen Whelan, Jeremy Moon, and Marc Orlitzky, 'Human Rights, Transnational Corporations and Embedded Liberalism: What Chance Consensus?' (2009) 87 *Journal of Business Ethics* 374.

[51] Seppala, note 2, 405.

[52] Ruggie, note 4, para 3; see also Wettstein and Waddock, note 5, 305f., 310.

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to operate'.[53] Here Ruggie refers to a 'collective sense of "oughtness" with regard to the expected conduct of social actors',[54] as well as various 'soft law' mechanisms such as 'the Voluntary Principles on Security and Human Rights (VPs)', and 'the Kimberley Process Certification Scheme (Kimberley) to stem the flow of conflict diamonds'.[55] These norms (or expectations) attribute to business the responsibility to respect human rights. If businesses do not meet these responsibilities they may be subject '… to the courts of public opinion … and occasionally to charges in actual courts'.[56] In short, a business's responsibilities are tied to self-interested reasons to protect reputations, avoid financial risks, etc. The difficulty this approach faces is that the identification of human rights responsibilities through such social expectations and norms is largely self-defined. Some accounts will identify human rights that others do not. More importantly, Cragg has argued that this appeal to enlightened self-interest:

> is not a compelling reason to respect human rights in many of the markets in which multinationals and domestic corporations are active. In many parts of the world, respect for human rights … is not consistent with local custom and is therefore not something that the public expects from corporations.[57]

The other form the second major response to 'Who is responsible?' takes is that businesses are indeed responsible—but morally so—for human rights. There are, of course, important challenges to this view. For example, it is frequently pointed out that no businesses or NGOs signed any of the documents that constitute the International Bill of Human Rights. If moral responsibilities may arise out of agreements reached, then how can businesses have moral responsibilities linked to documents they did not sign? Further, Hsieh argues that because businesses are private, profit-making entities, assigning human rights obligations to them undercuts the ideal that human rights embody of treating 'all members of society as moral equals …'.[58] Since businesses are private organizations their focus is on their own interests rather than adopting 'a perspective of impartiality and equal treatment' that human rights obligations require.[59]

In response, advocates of corporate human rights responsibilities have argued, first, that corporations have a moral agency that is sufficiently appropriate to sustain moral responsibilities. If they can have other moral responsibilities, there appears no reason why they could not also have human rights responsibilities. This moral agency is not, in general, taken to be sufficiently rich so as to justify the view that businesses have human rights themselves. Second, corporations have significant impacts on the individuals who work for them, their customers, the community, and the environment. Agents who have such impacts on others tend to have moral responsibilities for those impacts unless there are disqualifying characteristics of the agents, e.g., lack of decision making capabilities.

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53 Ruggie, note 4, para 54.

54 John Ruggie, *Just Business: Multinational Corporations and Human Rights* (New York: W. W. Norton & Company, 2013) 91f.

55 John Ruggie, 'Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts', A/HRC/4/35 (19 February 2007), para 52.

56 Ruggie, note 4, para 54.

57 Cragg, note 5, 14.

58 Nien-Hê Hsieh, 'Should Business Have Human Rights Obligations?' (2015) 14 *Journal of Human Rights* 219.

59 Ibid, 226.

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Further, some commentators have emphasized that power implies responsibilities.[60] Others, however, such as Sorrell, argue that it is not 'huge wealth and power', as such, that are the basis of corporate human rights responsibilities, but rather the 'moral risks associated with one's commercial and other activities'.[61] Third, the hypothetical social contract view argues that corporations can be parties to a hypothetical or ideal social contract that calls for them to be responsible for human rights. Donaldson as well as Santoro hold such a view: 'the human rights responsibility of business is a special case of a corporation's general duty to exercise social responsibility: "The terms of the contract demand that [the corporation] honour rights as a condition of its justified existence"'.[62] Hence, business's ability to engage in (hypothetical) contracts is defended as a basis for attributing moral human rights responsibilities to them. On the basis of this and the preceding arguments, businesses are said to have moral responsibilities for human rights that are independent of the state's legal responsibilities for human rights. Finally, some argue that Transnational Corporations (TNCs) have, in fact, become political (and quasi-state) entities and so the concern that some have had regarding attributing human rights obligations to them is misplaced.[63]

Might business also have legal human rights responsibilities? This has been the subject of considerable debate for the past couple of decades. It has been pointed out that any argument that corporations have direct legal human rights responsibilities challenges the international system of law and national sovereignty. Kobrin notes that 'Westphalian orthodoxy suggests that corporations could not have any direct obligations under international law and thus any positive duty to observe human rights'.[64] Similarly, Seppala points out that 'The rule and decision-making procedures of the international human rights regime are based on the principle of national sovereignty. Accordingly, it is states that have the ultimate authority to negotiate and ratify human rights treaties within the UN'.[65] The response has been that, in fact, corporations (and other organizations) have been acquiring direct legal rights and responsibilities.[66] Kobrin notes that the development of international law has expanded to the point that some argue that both individuals and corporations have duties as well as rights.[67] As Kobrin points out (following Ratner), 'international law has imposed human rights obligations on rebel groups, individuals accused of war crimes or human rights atrocities and others (Ratner 2001)' (Kobrin, 2009: 356).[68] Wettstein and others have argued that businesses

[60] Keith Davis, 'Can Business Afford to Ignore Social Responsibilities?' (1960) 2 *California Management Review*; Weissbrodt and Kruger, note 31, 315; Florian Wettstein, *Multinational Corporations and Global Justice* (Stanford: Stanford Business Books, 2009) 18; Kobrin, note 9, 350.

[61] Sorrell, note 41, 139.

[62] Michael A Santoro, 'Engagement with Integrity: What We Should Expect Multinational Firms to do About Human Rights in China' (1998) 10:1 *Business & the Contemporary World* 34. See also, Michael A Santoro, *Profits and Principles: Global Capitalism and Human Rights in China* (Ithaca: Cornell University Press, 2000) 144f.

[63] Wettstein, note 60; Guido Palazzo and Andreas G Scherer, 'Corporate Legitimacy as Deliberation: A Communication Framework' (2006) 66 *Journal of Business Ethics*.

[64] Kobrin, note 9, 352.

[65] Seppala, note 2, 406.

[66] Weissbrodt and Kruger, note 31, 329–35.

[67] Kobrin, note 9, 353.

[68] Steven R Ratner, 'Corporations and Human Rights: A Theory of Legal Responsibility' (2001) 111 *Yale Law Journal*, in Kobrin, note 9, 356.

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have acquired a status that is similar to states; hence they may also acquire (legal) human rights responsibilities.[69] Accordingly, if Westphalian orthodoxy is currently under challenge, if the state-centric view is being transformed, businesses might acquire direct legal human rights responsibilities in ways they previously have not. This will involve not only new legal questions, but issues of political philosophy as well. Further, if the relationships among states, corporations, and individuals are altering, this will have direct impacts on questions that business ethicists have been asking for the past several decades. It will also mean that they need to view their enterprise more broadly so as to include legal and political philosophy.

In short, though business ethicists recognize that states have legal human rights responsibilities, central to their discussions has been the defence of the view that businesses have moral human rights responsibilities. As Cragg maintains, 'an ethical grounding for the human rights obligations of corporation is the only grounding available that can justify building human rights responsibilities systematically into the strategic management of contemporary corporations active in the global marketplace'.[70] Similarly, Wettstein argues that 'corporate human rights obligations cannot be convincingly defended and justified on the grounds of legal and political conceptions of human rights alone'.[71] This is not an argument that UN documents or Ruggie have directly engaged. Accordingly, most business ethicists claim that the responsible parties for human rights are not to be determined solely by looking to those who sign international legal documents, but to certain features of humans or rational beings, or to hypothetical social contracts. This view presupposes that business can be moral agents and have moral responsibilities—a topic business ethicists focused on several decades ago.[72] Whether businesses have direct legal human rights responsibilities that do not derive simply from the states within which they operate is a topic that has received scant attention from business ethicists. Views of this relationship and the human rights responsibilities of business remain divided between those who claim that business's human rights responsibilities derive from the primary responsibilities of the state and those who see such responsibilities as independent of the state but deriving either from social expectations (Ruggie) or from underlying moral grounds. If one views human rights in this second manner, then business's human rights responsibilities (or duties) may be supported (or perhaps, at times, hindered) by the state, but they will not be conditioned by flowing through the state.

IV. For Which Human Rights Is Business Responsible?

Even if we conclude that businesses can have human rights responsibilities, this does not tell us which human rights responsibilities businesses have. My concern, in this section, is with the general characteristics of the human rights for which business is responsible and not the specific duties or responsibilities themselves. There are four general issues here. First, are businesses responsible for only some, or for all, human rights? Second, in what

[69] Wettstein, note 60, 207.

[70] Cragg, note 5, 26.

[71] Wettstein, note 16, 745, referring to Arnold, note 16.

[72] See Patricia H Werhane, 'Corporate Moral Agency and the Responsibility to Respect Human Rights in the UN Guiding Principles: Do Corporations Have Moral Rights?' (2016) 1 *Business Human Rights Journal*, 5–20.

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ways (if at all) are business's human rights responsibilities different from those of the state? Third, is the general nature of human rights at stake helpfully distinguished into negative and positive rights? Finally, are business's responsibilities mandatory or voluntary?

Some hold that businesses are responsible only for a limited list of human rights. After all, businesses do not conduct judicial proceedings, offer or deny citizenship, etc. such as states do and for which they have human rights responsibilities. However, others contend that businesses are (potentially) responsible for all human rights, depending on their relationship to the persons involved and/or how the actions the business takes may impinge upon their human rights. It turns out that the answer to this first question is bound up with which responsibilities or duties human rights entail. At first blush it seems reasonable that business is only responsible for some sub-set of human rights. In *The Ethics of International Business*, Donaldson identified a limited number of fundamental international (human) rights for which nation-states and corporations are responsible.[73] His list of ten human rights is, Donaldson notes, a minimal list that he views as fundamental moral rights. He acknowledges that some may wish to add others, however, his list (see Table 1 below) is not as extensive as those identified in UN documents. Whether corporations (or nation-states) are responsible for this or that human right depends upon (a second use of) his 'fairness-affordability' test 'to help determine which obligations properly fall upon corporations, in contrast to individuals and nation-states'.[74] This involves distinguishing (following Shue) among duties to avoid depriving, to help protect from deprivation and to aid the deprived. He argues that businesses have duties to avoid depriving each of the ten basic international rights he lists, but that they have duties to help protect from deprivation for only six of the ten. Finally, considerations of fairness and affordability imply that corporations have no duties to aid the deprived in case of any of the ten fundamental international human rights.[75] Only states have duties in this third case.

Table 1: Fundamental rights and multinational duties

	Correlative Duties of Multinational Corporations		
Fundamental Rights	**To avoid depriving**	**To help protect from deprivation**	**To aid the deprived**
Freedom of physical movement	X		
Ownership of property	X		
Freedom from torture	X		
Fair trial	X		
Nondiscriminatory treatment	X	X	
Physical security	X	X	
Freedom of speech and association	X	X	
Minimal Education	X	X	
Political participation	X	X	
Subsistence	X	X	

[73] Donaldson, note 14, 81f., 86.

[74] Ibid, 83.

[75] Ibid, 86.

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His rationale for this division of responsibilities is that 'the profit-making corporation … is designed to achieve an economic mission and as a moral actor possesses an exceedingly narrow personality. It is an undemocratic institution, furthermore, which is ill-suited to the broader task of distributing society's goods in accordance with a conception of general welfare'.[76] Here we have Donaldson's reply to those who seek an answer to the second question above regarding differences between corporate and state human rights responsibilities.

The UN Draft Norms also identified a sub-set of human rights norms for which business was to be responsible. Weissbrodt and Kruger claim that 'the new draft of the Norms consisted of eighteen fundamental human rights norms with regard to business activities of transnational corporations and other business enterprises …'.[77] Depending on how human rights are individuated, this number might differ, but it is clear that the Draft Norms focused on a limited number of human rights. In contrast to Donaldson, the Draft Norms understood the nature of a business's responsibilities for these human rights in the same manner as those of states, i.e., as having a legal nature. Similar to states, all business enterprises were said to have, within their respective spheres of activity and influence, an 'obligation to respect, ensure respect for, prevent abuses of, and promote human rights recognized in international as well as national law'.[78] Of course, since their circumstances (and spheres of influence) are different this would not mean that both governments and businesses do the same things regarding human rights, but the nature of underlying responsibilities would be the same.[79]

In contrast to the previous authors' defence of business's responsibility for a limited number of human rights, some argue that businesses may be responsible for any or all of the human rights identified by the UN. For example, Ruggie argues that '[a]ny limited list will almost certainly miss one or more rights that may turn out to be significant in a particular instance, thereby providing misleading guidance'.[80] Ruggie argues that business enterprises are potentially responsible for any human right. For example, it may seem that since firms never are involved in conducting jury trials they would not be potentially responsible for human rights regarding jury trials. Still, if one of a business's executives were subject to a jury trial and it tampered with the jury, then in such cases a business might have human rights responsibilities even with regard to jury trials. Accordingly, on this view, a business might be (potentially) responsible for any human right they might impact—which means virtually all human rights. The weakness in this point, which otherwise seems very plausible, is that if its proponents also hold an expansive view of human rights, then we might not be able to say with confidence that any future human right that is identified is one that a business might impact. We would just have to wait to see.

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[76] Ibid, 84.

[77] Weissbrodt and Kruger, note 31, 325.

[78] Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UN Doc E/CN.4/Sub.2/2003/12/Rev.2 (2003) #A. The Draft Norms held that 'corporations only have such duties where they fall within a corporations' sphere of influence and that such duties are "secondary" rather than "primary"'. David Bilchitz, 'The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations' (2010) 7:12 *International Journal on Human Rights* 205.

[79] One disadvantage of the Draft Norms is that there was not, seemingly, a principled manner in which certain rights were identified as ones business was responsible for while others were excluded from that list.

[80] Ruggie, note 4, para 6; Seppala, note 2, 403.

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Though Ruggie argues that businesses are responsible for all human rights, he shares with others the view that there is a distinction between corporate and state human rights responsibilities. Similar to Donaldson and Santoro, Ruggie argues that business enterprises and states have different natures, purposes and capabilities, and hence, they have different responsibilities when it comes to human rights. Ruggie captures this in his distinction between three purportedly different kinds of human rights responsibilities—those of respect, protection, and remedy. In his view, all businesses have a duty to respect all human rights that they might impact. 'Respecting rights' here means '… not to infringe on the rights of others, but simply, to do no harm'.[81] This is similar to Donaldson's view (above), however, Ruggie holds that businesses do not have a duty to protect human rights from violations—this is the duty of the state. Donaldson and Ruggie differ here. Donaldson and others argue that, in some cases, businesses do have responsibilities to protect people from human rights deprivations. In addition, both the state and businesses have duties of mitigation or remedy when they violate someone's human rights. Thus, Ruggie and Donaldson end up with overlapping views though applied to very different lists of human rights. For those, however, who take a different view of the nature of business, i.e., as having a political nature, the responsibilities of business may be similar to those of the state, while at times exceeding those of states. Palazzo, Scherer, and Wettstein have prominently defended a view of the political nature of corporations.[82] According to Wettstein, because of shrinking capacities of states to govern, businesses '… have a direct obligation to engage in the proactive realization of human rights'.[83] This includes an obligation 'to protect human rights against governments'[84]—an obligation which states don't have with regard to other states, at least under the Westphalian view.

Another way of distinguishing between human rights that has led some to advocate that business is only responsible for some, rather than all, human rights, is to say that some are negative rights, i.e., they require only that businesses (and others) refrain from certain actions, while others are positive rights, i.e., they require engaging in certain actions to provide rights holders with various resources. Negative rights are often associated with civil and political human rights. Positive rights are often associated with economic and social rights that require the provision of various goods and resources.[85] At times the distinction between respect (avoid depriving) and protecting (protecting from deprivation) is tied to this distinction between negative and positive rights.[86] Nevertheless, this is a distinction that many business ethicists have strongly criticized as being too simple.[87]

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[81] John Ruggie, '*Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Clarifying the Concepts of 'Sphere of Influence' and 'Complicity',* A/HRC/8/16 (15 May 2008).

[82] Palazzo and Scherer, note 63; Wettstein, note 60; Florian Wettstein, 'Silence as Complicity: Elements of a Corporate Duty to Speak Out Against the Violation of Human Rights' (2012) 22:1 *Business Ethics Quarterly*.

[83] Wettstein, note 60, 164.

[84] Ibid, 309.

[85] Kolstad, note 5; Mchangama, note 45.

[86] Wettstein and Waddock, note 5, 314.

[87] Cragg, note 5; Bishop, note 25; Wettstein, note 16; George G Brenkert, 'Business, Respect and Human Rights' in Karen E Bravo and Jena Martin (eds.), *Human Rights and Business: Moving Forward, Looking Back* (Cambridge University Press, 2014).

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Table 2: Human rights: mandatory or voluntary?

	Mandatory	**Voluntary**
Legal	Draft Norms; Weissbrodt	Ruggie; UN Global Compact
Moral	Donaldson, Sen: perfect and imperfect obligations	Views of CSR as voluntary

Those who reject this distinction have argued that even so-called 'negative rights' may require positive actions and resources (e.g., ensuring that one's business refrains from discriminatory behaviours towards minorities may require education and training programs for one's employees, creating monitoring systems to ensure discrimination is not taking place, etc.). Consequently, the negative/positive distinction seems rather porous. Businesses may have both negative and positive responsibilities towards human rights demands. Those positive responsibilities may, in fact, be rather demanding for businesses. For example, Wettstein and Waddock maintain that in 'a corporation-controlled food system that produces more than enough food to feed the world population' corporations 'share a direct responsibility for realizing the right to food'.[88]

Regardless of whether a business's human rights responsibilities encompass all human rights or only some, and whether they are of a negative or positive nature, are these responsibilities voluntary or mandatory? The Global Compact situates human rights principles within a voluntary process that emphasizes learning and transparency: 'We are a voluntary initiative based on CEO commitments to implement universal sustainability principles and to take steps to support UN goals.'[89] However, the sense of 'voluntary' here is a legal—not a moral—one. These responsibilities are voluntary because there are no international (legal) laws by which businesses could be brought to court, tried, and (if found guilty of a human rights violation) punished. In contrast, the Draft Norms sought to tie human rights with various laws or legal mechanisms. Weissbrodt called the norms 'soft law' but sought to link them (see above) with various international treaties and laws. However, the strong objections raised by business against the Draft Norms proposed view of human rights as direct international legal obligations led to the collapse of this initiative. Business's objections were importantly self-interested in nature, though some might also say that they were philosophical in the sense of defending a view of the international order in which states have sole legal responsibility for human rights. In short, they could also be seen as defending a Westphalian view of the international order. Those who view human rights as fundamentally moral in nature (Donaldson, Sen, etc.) take a very different tack. They interpret the demands that human rights place on those responsible for them as being morally mandatory, not simply voluntary.

There is, then, no simple answer to whether the demands human rights impose on responsible parties are mandatory or voluntary (see Table 2 above). Any answer rests upon a set of assumptions regarding the nature of human rights as well as the best measures by which an effective system of human rights can be supported. It does seem

[88] Ibid, 315.

[89] UN Global Compact, https://www.unglobalcompact.org/about (accessed 30 December 2015).

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plausible, however, that businesses may justifiably be held responsible at least for respecting any human right. Still, as Donaldson and Ruggie argue, the nature of business is such that it would be unreasonable to require business to undertake protection of other positive responsibilities regarding all rights. However, those who view business as having a political nature (Palazzo and Scherer; Wettstein), would not blanch from maintaining that businesses have broader positive responsibilities that resemble, in various ways, those of states.

V. Determining Particular Human Rights Responsibilities

Even if we know the range of human rights responsibilities that businesses have, this does not tell us what their particular responsibilities are. There are several difficult issues here including: a) What particular procedures can a business use to determine its specific responsibilities?; b) May (or should) the notion of one's sphere of influence play a role in these determinations?; and c) When is a business complicit in abusing human rights?

There is a variety of approaches to the question of how businesses should go about determining their specific human rights responsibilities. Some appeal to additional rules or algorithms, others to good reason making considerations, and yet others to forms of risk management. There are two major issues here: a) What matters should one appeal to in order to make these determinations?; and b) What is the scope or the range of those considerations? This second question is taken up in the following sections on 'Sphere of Influence' and 'Complicity'.

Donaldson is a good example of supplementing one's deliberations on basic rights with guidance provided either by subordinate algorithms or rules of thumb in order to determine one's specific responsibilities. In 'Values in Tension' Donaldson suggested appealing to various algorithms such as: 'Would the practice be acceptable at home if my country were in a similar stage of economic development?'[90] Another algorithm was: 'Is it possible to do business successfully in the host country without undertaking the practice?'[91] Together they were intended to aid the determination of a business's responsibilities. Unfortunately, even though a certain practice might have been engaged in by one's home country at a certain stage of economic development, it is not obvious that 'stages of economic development' must be linked to such practices. A country economically under-developed in the twenty-first century is quite different from one in the nineteenth or early twentieth centuries. They have different possibilities that may render certain practices today unethical and violations of human rights that would not have been so one hundred years ago. Besides, any decision using the first algorithm would depend on the nature of the human rights involved—did it primarily require a lack of action as opposed to a response requiring material and substantive resources? In *Ties that Bind*, Donaldson and Dunfee take a different approach. They look to the authentic rules of each micro-society and their compatibility with hypernorms. However, since there may be conflicts between hypernorms, they offer six rules of thumb. Among these

[90] Donaldson, note 41, 58.

[91] Ibid, 60.

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rules are: a) 'Transactions solely within a community,[92] which do not have significant adverse effects on other humans or communities, should be governed by the host community's norms'; and b) 'The more extensive or global the community that is the source of the norm, the greater the priority which should be given to the norm'.[93] The challenge these priority rules face is whether they can, in fact, provide the kind of guidance that businesses seek when they confront complex situations involving multiple human rights and multiple communities. Clearly the use of these priority rules within the framework of moral free space and cultural diversity give this approach a greater sophistication over the previous algorithms.

A different kind of answer to the determination of specific responsibilities amounts to a good reasons approach. Important decision-making considerations are offered, against which a business or moral agent must make a decision or judgment as to where the strongest weight of reason lies. For example, Sen emphasizes that 'human rights generate reasons for action for agents who are in a position to help in the promoting or safeguarding of the underlying freedoms'.[94] He adds: 'the induced obligations primarily involve the duty to give reasonable consideration to the reasons for action and their practical implications, taking into account the relevant parameters of the individual case'.[95] And to give reasonable consideration involves judging:

> … how important the freedoms and rights are in the case in question compared with other claims on the person's possible actions … Furthermore, the person has to judge the extent to which he or she can make a difference in this case, either acting alone or in conjunction with others. It will be relevant also to consider what others can be expected to do, and the appropriateness of how the required supportive actions may be shared among possible agents.[96]

Though this is stated rather generally, clearly Sen is appealing to notions of the capability one has to make a difference, the impact that the actions—or inactions—of others will have in the situation one faces, and the continued significance of a reason for action even if its over-ridden by others. Hence, Sen notes that 'it is still possible that other obligations or non-obligational concerns may overwhelm the reason for the action in question, but that reason cannot be simply brushed away as being "none of one's business"'.[97] Somewhat similarly, Santoro's fair-share theory argues that we can determine which responsibilities a business has based upon three factors: relationship, effectiveness and capacity.[98] By 'relationship' Santoro argues we should consider the nature, duration and physical proximity of the business to the rights holder. The closer, longer lasting, and more involved, 'the more that can reasonably be expected'.[99] 'Effectiveness' requires that we consider 'the abilities of different actors to carry out

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[92] 'Community' here refers to micro-social communities, not simply all encompassing communities that might be cities or groups of people involving many different micro-social communities.

[93] Donaldson and Dunfee, note 32, 184–6.

[94] Sen, note 5, 319.

[95] Ibid.

[96] Ibid, 339f.

[97] Sen, note 9, 2922.

[98] Santoro (2000), note 62, 154.

[99] Ibid, 154.

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different human rights duties'.[100] Lastly, he argues that an allocation of human rights duties requires that we consider the costs and the capacity of various actors to absorb different costs involved in the enforcement and promotion of human rights.[101] Finally, one's view of the good reasons approach depends on how one sees the corporation—as a strictly private body or as a (quasi) political one. For example, Kobrin argues that TNCs have become actors with significant power and authority in the international political system; they can set standards, supply public goods, and participate in negotiations; political authority should imply public responsibility.[102] Accordingly, Palazzo and Scherer maintain that determining one's responsibilities involves '… participating in public discourse and providing good reasons and accepting better reasons'.[103] They view this as a form of deliberative communication that they link with the work of Habermas and argue that it is central to businesses establishing their moral legitimacy.[104]

A third approach to determining specific responsibilities is exemplified by Ruggie's defence of risk management as a tool for businesses determining '… the human rights risks that the proposed business activity presents and [to] make practical recommendations to address those risks'.[105] This involves determining which risks of adverse human rights impacts are the most significant[106] where this involves determining not only the probability of such impacts occurring but also their severity and the vulnerability of those who might be impacted:[107] 'Where possible and appropriate to the enterprise's size or human rights risk profile, this risk determination should involve direct consultation with those who may be affected or their legitimate representatives'.[108] According to Ruggie, this approach to determining one's human rights responsibilities does not involve a simple cost-benefit analysis: 'human rights risks cannot be the subject of a simple cost-benefit analysis, whereby the costs to the enterprise of preventing or mitigating an adverse impact on human rights are weighed against the costs to the enterprise of being held to account for that harm'.[109] Further, he says that 'this exercise can be undertaken without normative assumptions, like scenario planning or other similar exercises'.[110] The upshot is that 'potential impacts should be prevented or mitigated through the horizontal integration of findings across the business enterprise'.[111] However, the moral implications of a risk management approach to human rights responsibilities remain problematic. We are not told what weight must be

[100] Ibid, 155.

[101] Ibid.

[102] Kobrin, note 9, 350; see also Palazzo and Scherer, note 63.

[103] Palazzo and Scherer, note 63, 79.

[104] Ibid, 74.

[105] John Ruggie, 'Human Rights Impact Assessments – resolving key methodological questions.' A/HRC/4/74. (2007), #15.

[106] John Ruggie, *'The Corporate Responsibility to Respect Human Rights: An Interpretative Guide',* HR/PUB/12/02 (2012) 42.

[107] Ibid, Q88, 83f.

[108] Ibid, 33, 36, 38.

[109] Ibid, 40.

[110] Ruggie note 105, #26.

[111] Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', A/HRC/17/31 (21 March 2011) 21.

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given to the consultations with those affected or whether the impacts are negative effects on human rights holders themselves or 'simply' on their rights. If 'mitigation' is an appropriate response to potential human rights impacts, under what conditions might a business acceptably 'pay' for its human rights impacts rather than seek ways to avoid them? Risk management would have to answer such questions if it is to provide moral guidance to businesses regarding their human rights responsibilities.

There are, then, considerable differences over how businesses should go about determining their specific human rights responsibilities. Some approaches have a straightforward moral nature, while others do not, however, there is also overlap. The presupposed capacity of a business to address human rights responsibilities is common to these approaches. Also, each of these methods recognizes the importance of contextual factors for determining a business's human rights responsibilities. An underlying issue here that is infrequently noted is the distinction between 'all-things-considered decisions' versus 'principle-specific decisions'. The honesty principle tells us not to lie, even to a criminal. However, an all-things-considered decision might be that we should lie, all things considered, if a criminal is threatening someone's life. In short, other considerations, principles, values, etc. might be seen as justifiably over-riding the moral determination that follows from some single principle or right. This is not a question of compromise, but of balancing different moral considerations. It does raise the question of what weight we attribute to human rights responsibilities and how we are to determine this when other weighty matters are at stake. However, as some have argued, in some cases of moral conflict, moral compromise might be justified.[112] Finally, another aspect of the determination of one's specific human rights responsibilities involves the range or scope of those responsibilities. This deserves separate attention since it raises issues surrounding the 'sphere of influence' of a business as well as when it might be said to be complicit in the human rights violations of others. I turn to these issues in the following sections.

VI. Sphere of Influence

The scope of one's responsibilities concerns how far they reach. Surely a business is responsible for the workplace safety of its employees, but what about discrimination against women or the treatment of prominent dissidents in a country where one has major suppliers? One major response has been to appeal to a business's sphere of influence, a notion defended by the Draft Norms, the UN Global Compact and ISO 26000.[113] The idea is that a business has different relations with different groups. Its influence over some of these groups, e.g., employees, is much greater than other groups, e.g., one's suppliers, while over some it has virtually no influence. This idea seems to make intuitive sense. Ruggie notes that 'a survey of the Fortune global 500 firms … showed that respondents appeared to prioritize their obligations to stakeholders in approximately this order': workplace, supply chain, marketplace, community, government.[114] The more

[112] Brenkert, note 36; Rosemarie Monge, 'Institutionally Driven Moral Conflicts and Managerial Action: Dirty Hands or Permissible Complicity?' (2015) 129 *Journal of Business Ethics*.

[113] Draft Norms, note 78; UN Global Compact, note 89; ISO 26000, note 42.

[114] Ruggie, note 81, paras 8–9.

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influence, control, or authority a business has over some group or situation the greater, many have argued, are its responsibilities.[115]

This view of a business's sphere of influence has, however, been the subject of considerable criticism. There is wide agreement that any simple spatial interpretation of circles of responsibility extending out from a central point is too simplistic. Granted this objection, Ruggie raised a more significant concern in his report clarifying the concept of 'sphere of influence' (SOI).[116] Ruggie argued that SOI conflates two different views of influence: viz., influence as the impact a business has on those with whom it does business, and influence as the leverage a business might be able to exercise over groups or individuals even if it does not do business with them. The issue at stake here is whether a business's responsibilities for human rights (as well as its responsibilities more generally) are limited to those impacts to which it contributes, or whether it extends to those over whom it may have some leverage and thus an ability to influence. Ruggie maintained that 'companies cannot be held responsible for the human rights impacts of every entity over which they may have some leverage, because this would include cases in which they are not contributing to, nor are a causal agent of the harm in question'.[117] Further, the SOI concept cannot be given useful meaning through the notions of proximity, control or causation within one's sphere.[118] Thus, he held that SOI lacked the rigor needed to provide guidance to businesses on this topic.[119]

Others, however, have offered a defence of the notion of a 'sphere of influence'. Kate Macdonald, for example, argues that if we consider the mediating social institutions (e.g., business networks, supply chains) that exist between the exercise of corporate agency and resultant human rights outcomes, we may argue that businesses have responsibilities for their indirect (as well as their direct) impacts. 'Institutionally mediated causal processes enable businesses to "do harm at a distance"'—for which they are responsible.[120] Through an account of the negative and positive duties that such mediated social institutions involve, Macdonald seeks to specify reasonable limits of business responsibility for respecting human rights that provides a substantive meaning to a business's sphere of influence.

Stepan Wood offers a more thorough-going critique of the concept of a 'sphere of influence' that departs from Ruggie's.[121] Wood argues that instead of the 'sphere of influence' metaphor by which the scope of corporate responsibilities are to be understood, we should think in terms of a 'web of relationships' within which businesses have both impact-based and leverage-based human rights responsibilities. To avoid the charge that if a business can use its leverage to improve or correct some human rights situation, it then has a responsibility to do so, Wood lays down four conditions for leverage to serve as a basis for human rights responsibilities: a) The company has a

[115] Ibid, footnote 8.

[116] Ibid.

[117] Ibid, para 13.

[118] Ibid, para 15f.

[119] Ibid, para 6.

[120] Kate Macdonald, 'Rethinking "Spheres of Responsibility: Business Responsibility for Indirect Harm"' (2011) 99 *Journal of Business Ethics* 553.

[121] Wood, note 42.

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morally significant connection with the rights-holder or rights violator; b) the company has the capacity or the ability (either by itself or with others) 'to make an appreciable contribution to ameliorating the situation'; c) the enterprise can do so at a modest cost to itself; and d) 'the threat to the rights-holder's human rights is substantial'.[122] He argues that this provides a justified account of the situations in which businesses may justifiably be said to have a responsibility to exercise their leverage regarding human rights. Together with Ruggie, Wood believes we should jettison the phrase 'sphere of interest' due to the misimpressions it may give. Wood argues we should speak, instead, of a 'web of activities and relationships' when addressing the scope of business's human rights responsibilities.[123]

There is, of course, no 'natural' meaning of 'sphere of influence'; it is a technical term (introduced, ironically, in part through Ruggie's work with the Global Compact). The dispute here is best seen as not over this term and who has been able to capture its 'real meaning', but over whether businesses are responsible only for those impacts they have on people's human rights in the course of their business activities, or whether their responsibilities extend to those over whom they have leverage, even if their business activities themselves are not impacting the individuals or organizations at issue. However, since to have leverage over someone is to say that one is capable of having an impact on them, the issue isn't really whether the impact on others or one's leverage over others is at stake. Both boil down to impacts. Instead, the real issue has to do with the relation of impacts that come about through one's business activities and those that one is able to impose on others. Ruggie's impact view limits one's responsibilities to one's standard business activities while the leverage view extends this to possible impacts one may have outside those activities—though through one's business powers, presence, etc. Though Ruggie dropped the phrase 'sphere of influence' by the time of the 'Interpretative Guide',[124] he began speaking both in terms of impacts and leverage. He continues to hold businesses responsible only for human rights abuses a business's operations themselves bring about. If an organization with which one does business abuses human rights, then one's business is not responsible for those abuses; however it does have, Ruggie claims, a 'responsibility to use its leverage to encourage that organization to prevent or mitigate those abuses'.[125] This is still a more restricted view than that held by Wood (and others).

The implications of these different accounts can be quite significant. The dispute here has direct implications for such well-known business and human rights cases as that of Shell Oil in Nigeria, where many argued that Shell should use the leverage they said it had over the Nigerian government to prevent the execution of Ken Saro-Wiwa. The challenge the leverage view faces is limiting such responsibilities to cases where a business's intervention outside its own business activities can be viewed as justified and not the unwarranted intrusion of a private, for-profit organization into the affairs of others. The serious violation of human rights may provide such warrant, but the concerns

[122] Ibid, 93.

[123] Ibid, 73.

[124] Ruggie, note 106.

[125] Ibid, Q11.

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raised with regard to the leverage account of the 'sphere of influence' concept require close attention. We have only to think of the role of some businesses in destabilizing or overthrowing governments to be sensitive to this point.

VII. Complicity

Discussions regarding a business's sphere of influence (or web of activities and relationships) include both direct and indirect contributions to human rights abuses. When the focus is human rights violations occasioned by others but in which, directly or indirectly, a business enterprise plays a role, the question of complicity arises. The Global Compact captures this nicely when it says that complicity involves 'An act or omission (failure to act) by a company, or individual representing a company, that "helps" (facilitates, legitimizes, assists, encourages, etc.) another, in some way, to carry out a human rights abuse'.[126] Accordingly, accounts of complicity may give us further insight into the human rights responsibilities of business. The topic is important, since, as Kobrin notes, 'corporations … are rarely accused of direct violations of human rights, of removing populations, mounting attacks against civilians or enslavement. The vast majority of corporate rights violations involve complicity, aiding or abetting violations by another actor, most often the host government'.[127]

There is a variety of different formulations of complicity. They all agree, however, that there must be some (relevant) relation between the business and the human rights violator. One cannot be complicit with the acts of an agent who violates human rights if there is no relation whatsoever. They also agree that the complicit business does not itself carry out the human rights abuse. It is undertaken or directed by another business or a government. Beyond these two points there are significant differences that, in part, pick out different kinds of complicity.

First, must one be aware of the human rights abuse by the agent with whom one is complicit? Ruggie maintains that at its core complicity means that 'a company knowingly contributed to another's abuse of human rights'.[128] And the Global Compact holds that complicity requires '… knowledge by the company that its act or omission could provide such help'.[129] In contrast, Wettstein contends that complicity may occur when we '… contribute to harm without being aware of it, or at least without intending to do so'.[130] On this view, business enterprises can be complicit and not realize it, just as in the case of a conflict of interest. Still, they must recognize that they are engaging in certain actions, providing various products or services; they just don't perceive that to do so involves them in someone else's abuse of human rights. In part the difference here may stem from some authors focusing on legal complicity while others look to moral complicity. For example, Ruggie and the Global Compact appear to have a legal context in mind. Ruggie's above statement regarding complicity is tied to his discussion of

[126] UN Global Compact, https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-2 (accessed 15 July 2015), elaboration on Principle 2.

[127] Kobrin, note 9, 351.

[128] Ruggie, note 81, para 30.

[129] UN Global Compact, note 126, elaboration on Principle 2.

[130] Wettstein, note 82, 37.

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'the international legal standards of aiding and abetting'.[131] Kobrin draws on the same legal notions in his account of complicity.[132] However, Ruggie importantly notes that, in non-legal contexts that draw on social expectations, complicity standards 'may not require the same degree of knowledge and assistance as under the law'.[133] This appeal to 'social expectations' is not the same as an appeal to morality. Still, it makes clear that in non-legal contexts the knowledge requirement does not hold in the same way as it does in a legal context.

Second, most commentators recognize that complicity can be direct or indirect. Direct complicity occurs when a business '… provides goods or services that it knows will be used to carry out the abuse'.[134] In such cases, a business supports, aids, or abets another agent in the abuse of human rights. Think of Cisco selling its routers to China for use in censoring the Internet. Another form of direct complicity may occur not when a business provides goods or services to a government, but designs its own activities to follow government laws or regulations which result in the violation of people's human rights.[135] On this view of 'obedient complicity' a business need only 'engage in actions mandated by a state that significantly and knowingly violate human rights—even though similar actions … undertaken simply by the business itself would not violate human rights'.[136] In either of these cases, the business need not desire that the abuse of human rights occur, but merely know of the likely effects of its assistance.[137] How substantial such support or assistance must be is a crucial issue here.[138] Indirect complicity may be of different forms. For example, some identify 'beneficial complicity' as existing when 'a company benefits directly from human rights abuses committed by someone else'.[139] Thus if a government forcibly removes a group of people so that a company can build a plant, or if peaceful protestors against a business are suppressed by a government's security forces, a business may benefit and be said to be (beneficially) complicit in these violations. Few commentators have attempted to sort out the complexities of this notion regarding, for example, how direct these benefits must be, whether they must be uniquely directed towards a particular firm, and the extent to which a business must be able to reject or renounce such benefits.

Third, a different form of indirect complicity is silent complicity in which a firm fails 'to raise the question of systematic or continuous human rights violations in its interactions with …' a government or organizations engaged in human rights abuses.[140] Ruggie makes clear that the business must be implicated in the human rights violations due to its relation to the organization that is the source of the violations, e.g., a business

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131 Ruggie, note 81, para 28.

132 Kobrin, note 9, 351.

133 Ruggie, note 81, para 56.

134 UN Global Compact, note 126, Principle 2.

135 Brenkert, note 36.

136 Ibid, 459.

137 Andrew Clapham and Scott Jerbi, 'Categories of Corporate Complicity in Human Rights Abuses' (2001) 24 *Hastings International and Comparative Law Review* 342, 346.

138 Ruggie, note 81, paras 35–8.

139 Ibid, para 59.

140 Ibid, UN Global Compact, note 126.

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that passively engages in employment discrimination due to laws of a government.[141] Somewhat differently, Wettstein holds that silent complicity arises when a business has 'failed to speak out and help protect the victims' and when 'the omission of this positive duty … [has] a legitimizing or encouraging effect on the human rights violation and the perpetrator who is committing it'.[142] Again, this is not intended to apply to any victims, but only to those for whom there is 'a morally significant connection between the respective agent and the human rights violation'.[143] The upshot is that in his view silent complicity '… implies that corporations have a moral responsibility to help protect human rights by putting pressure on perpetrating host governments involved in human rights abuses'.[144] It is a form of complicity that involves 'positive moral obligations, rather than the merely negative duty to do no harm'.[145] When a business must speak out openly and how forcefully it must do so remain matters of considerable concern.

It is important to note that the degree of complicity may vary. At one extreme a business might enter into joint ventures with a regime that involve human rights violations, while at the other extreme might be the business that pays modest tax revenues to a human rights abusive government for operating in its country. In any case, Kolstad concludes that 'it is difficult to draw the line that delimits the degree of complicity that is unacceptable from an ethical point of view'.[146] However, whatever complicity one identifies, 'a corporation has the duty to avoid unacceptable complicity, no matter what others choose to do'.[147] The challenge here, of course, is to be able to specify 'acceptable' forms of complicity because they are (perhaps) so minimal or unavoidable. One way of drawing this line was offered by the UNHCHR (2004) that held that complicity requires that 'the company assistance or encouragement has to be to a degree that, without such participation, the abuses most probably would not have occurred to the same extent or in the same way'.[148] In short, the complicit actions must have some material impact on the occurrence of the abuse. It is not obvious, however, that this is required for all cases of complicity, such as beneficial complicity, or even silent complicity if this (merely) requires an encouraging effect on the violator's actions. A very different response is that of Rosemarie Monge who defends the idea of 'permissible managerial complicity'.[149] This may occur, she argues, when the business '… is not engaging in human rights violations or infringements, even though [its] … actions may further those violations or infringements'.[150] There are two conditions for this: a) the manager must 'intend and act in such a way as to minimize the firm's complicity in the other actor's wrongdoing' and b) the manager must

[141] Ruggie, note 81, para 58.
[142] Wettstein, note 82, 41.
[143] Ibid, 43.
[144] Ibid, 37.
[145] Ibid, 38.
[146] Kolstad, note 5, 577.
[147] Ibid.
[148] Brenkert, note 36, 458.
[149] Monge, note 112, 162.
[150] Ibid, 168.

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'communicate to the firm's constituents that she recognizes important interests are at stake and that she is committed to minimizing the firm's complicity'.[151] Whether such conditions might still allow ethically unacceptable compromises remains an ongoing issue.

In summary, there is widespread agreement that businesses should not be complicit in human right abuses. The significant point regarding corporate complicity is that it implies that corporate responsibilities extend beyond their direct and immediate acts to secondary and indirect actions of themselves and others.[152] This significantly extends the range of business human rights responsibilities. The implications may be dramatic for businesses. To avoid charges of complicity businesses must consider the particular as well as systematic human rights abuse by other businesses and governments with which they do business, their benefits from such relations, as well as whether they must speak out when others in their network of relations abuse human rights.

VIII. Conclusion and Looking Ahead

The moral, social and political movement that maintains that business has responsibilities for human rights is a complex, expanding, and diffuse movement. It has made significant progress and yet has far to go. It suffers from the different views people have of human rights, the reluctance of most businesses to engage human rights, and from the many challenges that businesses have to take up human rights responsibilities. Ruggie claims that a consensus is developing regarding human rights, but others argue that, at best, there is a fledgling consensus and that a weak consensus is all that can be hoped for at present.[153] One of the issues business ethics needs to address directly is the nature and extent of a consensus on human rights that is needed in order to make progress with regards to the general aims and purposes that lie behind the defence of human rights.

An important contributing cause here is the notable lack of definiteness in human rights accounts.[154] Though business ethicists (and others) have tried to find some formula, algorithm, or rule that will provide 'the' answer, they may also risk replacing uncertainty with definite, though mistaken, solutions. The search for definite and certain answers is a defining characteristic of much of human thought. So too the errors it may lead to. It seems clear, however, that regardless of what frameworks or formulas one comes up with there will inevitably remain an area of uncertainty regarding business's specific responsibilities for human rights. Thus, DeGeorge has commented that:

> there is no simple algorithm or formula to follow in making ethical judgments. They are just that: judgments. Judging with integrity often requires using careful analysis and reasoning, as well as relying on one's basic intuitions. A company that acts with integrity takes into account consequences, rights, and justice, weighs them in cases of conflict; and ultimately

[151] Ibid, 162.

[152] Seppala, note 2, 406.

[153] Whelan, Moon and Orlitzky, note 50, 375ff.

[154] Sen, note 9, 2925.

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> acts in accord with its best lights. It is always willing to admit that it may be mistaken, and it is open to improvement.[155]

This situation is not unique to human rights and ethics. Wood and others point out that businesses routinely work with open-textured standards involving matters of reasonableness rather than certainty in other areas, from financial disclosure to environmental impact assessment and risk management.[156] What is crucial is that businesses understand the different tools that are available to them as well as recognize the issues of spheres of influence and complicity that complicate the use of these tools. Uncertainties will remain but these do not undercut the importance of business and business ethicists addressing these issues. Sen concludes his views by maintaining that 'the admissibility of a domain of continued dispute is no embarrassment to a theory of human rights'.[157]

Viewed in a larger context, arriving at a judgment as to how one's business will respond in situations involving human rights responsibilities is, in part, how a business defines itself and its character. The decisions that businesses make will reflect and form the moral nature and culture of the business itself. In this way, the solution to the specific questions of human rights responsibilities businesses face requires also an answer to the more general question of what kind of business one seeks to create. Even more broadly, the business and human rights movement takes place at a time when the state-centric view of world politics and the governance of peoples is under challenge and when the power, leverage and influence of business has grown significantly. There is fertile ground here for anyone concerned about how we should view business and its ethics. Nevertheless, much of the present discussion focuses on individual responsibilities of businesses or other organizations. This makes considerable sense during a time in which individual rights, self-assertion and self-interest have come to play an increasingly important role in society. Some are inclined to claim a right to everything. This is, at the same time, one of the weaknesses of the human rights movement. There are important dangers to a boundless extension and misappropriation of the human rights movement. One role that business ethicists may play is in formulating better theories of (human) rights that are not open to the corruptive effects of self-aggrandizement. One aspect of this might be that future discussions explore the issues surrounding collective responsibilities for human rights.[158]

Often philosophers have seemed to be little concerned with the institutionalized stability that would be needed for an international regime of human rights.[159] It is important that business ethicists look more closely at the conception and material conditions for the realization of human rights. Finally, there has been little discussion by business ethicists of remediation. And yet this plays an important role in the UN Framework. Other aspects of dirty hands, moral compromise, and the like as they apply to human rights also need greater attention. It is too easy to bandy about the phrase that

[155] Richard T De George, *Competing with Integrity in International Business* (New York: Oxford University Press, 1993) 41.

[156] Wood, note 42, 90.

[157] Sen, note 9, 2923.

[158] Wood, note 42, 72f.

[159] Whelan, Moon and Orlitzky, note 50, 373.

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'all human rights are indivisible, interdependent, and interrelated' without looking to what the moral, political and practical relations among human rights actually are or ought to be. In short, there is much that remains to be accomplished, both practically and theoretically when it comes to business ethics and human rights.

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