

# When Two 'Wrongs' Make a Right: An Essay on Business Ethics

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**ABSTRACT.** Sometimes two wrongs do make a right. That is, others' violations of moral rules may make it permissible for one to also violate these rules, to avoid being unfairly disadvantaged. This claim, originally advanced by Hobbes, is applied to three cases in business. It is suggested that the claim is one source of scepticism concerning business ethics. I argue, however, that the conditions under which business competitors' violations of moral rules would render one's own violations permissible are quite restricted. Hence, the observation that two wrongs may make a right does not give people a broad warrant for ignoring moral standards in their business activities.

As children we were all told that two wrongs do not make a right. By this it was meant that someone else's misconduct toward us did not legitimize or excuse our similar conduct toward them. But this is not always so. Sometimes two 'wrongs' do make a right, and this has some significant implications for business ethics.

It is, of course, contradictory to suppose that either of two acts, both of which are wrong all things considered, is right. But it is not contradictory, or mistaken, to assert the following: An act, *which otherwise would be wrong*, can be right (or permissible) when performed in the presence of, or in response to, one or more acts of the same kind.<sup>1</sup> (I call such acts 'wrong', with the scare-quotes signaling that the acts may not really be wrong.) Thus, for example, it is

generally wrong to forcibly deprive people of their liberty or property. Yet it is permissible for society to do so (if proper procedures are followed) by imprisoning or fining criminals who forcibly deprive others of their liberty or property. It may even be the case that two acts, each of which would be wrong in isolation, are both rendered permissible by the presence of the other. Consider the situation, described in a recent novel,<sup>2</sup> in which two distrustful rivals find themselves alone in a stalled elevator with guns drawn and pointed at one another. Now it would normally be wrong for either to point a loaded gun at the other. But each one's continuing to point his gun makes the other's similar action a reasonable means of self-defense, and hence renders it permissible. Here, surprisingly, two 'wrongs' make *two* rights.<sup>3</sup>

Why can two 'wrongs' make a right? To answer this question, it is necessary to notice that a substantial part of morality can profitably be viewed as a system of mutual constraints that operate for mutual benefit.<sup>4</sup> Moral rules prohibiting, for example, deceit, theft, and assault, may constrain and limit one when one wishes to lie, steal, or attack. But they generally provide one with more than sufficient compensation. For they restrain others from lying, robbing, or attacking one (or at least reduce the likelihood or frequency of one's falling victim to such acts).

Though everyone benefits from general adherence to a system of moral rules, each might benefit more from free-riding, i.e., violating the rules while benefiting from others' compliance. While such conduct is unfair to those who comply, it could pay dividends if undetected or unpunished. Because of the temptation to free-ride, society must generally rely on two devices

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to ensure satisfactory compliance with the system of mutually beneficial moral rules: threats of sanctions and the internalization of norms of fair play. Even with these protective devices, however, compliance is never perfect. And those who comply are disadvantaged relative to those who successfully free-ride. Suppose that they seek to recoup their losses by violating the same rules as the free-riders, to the free-riders' detriment. They are not acting unfairly toward the free-riders, and the latter have no right to complain. Further, if vital interests are at stake so that the former compliers can plausibly be claiming to be acting in self-defense (in a broad sense), the case for the legitimacy of their actions is greatly strengthened.

We may sum this all up by following Hobbes in drawing a distinction between what may be called 'offensive' and 'defensive' violations of moral rules. Offensive violations are motivated by a desire to gain a unilateral advantage over others who are complying with the relevant rule or rules. Such violations are unfair and immoral, and deserve to be punished. Defensive violations of moral rules are different. They are motivated by the desire to protect oneself against suffering the unilateral disadvantages that would result from your complying while others do not. Such violations are often morally permissible, especially when vital interests are at stake. For, in Hobbes's words, "no man is bound to... make himself a prey to others, and procure his own certain ruine".<sup>5</sup> Thus, society is permitted to deprive the criminal of his liberty, and each of our trapped gunmen may justifiably keep his gun pointed so long as his rival does the same.

These observations are of some relevance to the field of business ethics. It is often felt, by businessmen and others, that applying strict ethical standards to the field of business is unrealistic, unfair, and unreasonable. This is because business is highly competitive. Companies must be able to compete successfully with other producers of their products or services, or else be driven out of business. But, inevitably, one's competitors will be stretching, bending, and breaking moral (and legal) rules to gain an advantage. Hence, one is forced to do the same to stay competitive and remain in

business. The moral standards of ordinary life are not valid or binding then, in the business world.<sup>6</sup>

I suspect that something like the above line of reasoning underlies many people's scepticism about the relevance of ethical concerns to the domain of business. Ethicists interested in business may ignore such reasoning only at their peril. For it may be widespread among businessmen. And, more importantly, it contains a valid moral insight. As our earlier observations about defensive violations of moral rules indicate, the fact that one's competitors are violating moral rules can be relevant to the moral status of one's own contemplated violations. In fact, such violations may, under appropriate circumstances, render one's own responsive and defensive violations morally permissible.

Consider a hypothetical example. Suppose that a widget manufacturer has his life's work and that of many loyal subordinates tied up in a contracted sale of widgets (for non-military use) to an honest foreign government. However, a new election (or coup) puts a more corrupt group in power in the foreign country. The new officials let the widget manufacturer know that he must pay them bribes to make the deal go through. They point out what he knows to be the case — that there are numerous widget companies from other countries that regularly pay bribes and that would be glad to take over the deal if he declines. He has no legal or other means of restraining these foreign competitors. Nor, given their willingness to replace him, does he feel that by backing out he would be benefiting the foreign country's citizens by discouraging corruption in their government. Further, to avoid complications, let us assume the widget manufacturer's own country does not have laws prohibiting foreign bribery. Under these circumstances, his violation of the moral rule against bribery would be purely defensive and permissible. In the absence of an effective moral rule against bribery operating in the international marketplace, our widget manufacturer, with so much at stake, has no obligation to unilaterally restrain himself and suffer the substantial negative consequences.

Our hypothetical case parallels in many res-

pects one participant's description of a recent highly publicized real world situation: the bribery of high Japanese officials by the Lockheed Corporation to facilitate the sale of the company's TriStar passenger planes to a Japanese airline. A. Carl Kotchian was the Lockheed president who authorized the payments. He argues in justification that the payments were not then illegal under United States law,<sup>7</sup> and that "we had to follow the functioning system. If we wanted our product to have a chance, we understood that we would have to pay... substantial sums of money in addition to the contractual sales commissions".<sup>8</sup> Kotchian indicates that Lockheed's competitors accepted the system. He implies that these competitors would have stepped in and bribed the Japanese officials to sell their planes if Lockheed had refused to do so.<sup>9</sup> In that case, Lockheed — which had already suffered several significant setbacks in seeking foreign contracts — would have lost the TriStar deal and the much needed benefits it provided to Lockheed's workers and stockholders.<sup>10</sup>

As a final example, consider the Italian corporate tax system as portrayed in a recent article by Arthur L. Kelley, president of LaSalle Steel Company.<sup>11</sup> Italian corporations never report their true profits as is formally required by law. They underreport by thirty to seventy percent and the reported figure is only the opening move in a bargaining process between the corporation and the government tax authorities. Under these circumstances, any company that reported its true profits would not be believed and would end up having to pay more than its fair share of taxes. In fact, this unilateral disadvantage was suffered by an Italian subsidiary of an American bank whose general manager refused to understate the bank's profits on its tax return. Now we may admire this manager's honesty. But we must concede that given the prevailing system, his honest reporting was surely not morally required.

These three cases — the widget, Lockheed, and Italian Tax cases — illustrate the first main point I wish to make. The sceptic about business ethics is right about something. Defensive violations of moral rules are sometimes morally justi-

fied by competitors' violations. Thus, in business, two 'wrongs' can make a right. However, and this is my second main point, it by no means follows that there are no moral constraints on businessmen's actions. For offensive violations of moral rules in the sphere of business are still wrong. Further, defensive violations are permissible only under certain circumstances.

It is this last claim that I shall elaborate. Hobbes allows defensive violations of moral rules under two special conditions. First, there is no effective legal authority to punish violations of the rules. Second, the parties in question must be equal enough that each is vulnerable to destruction by the others. The rationale behind these restrictions (as applied to businesses) is obvious. If an effective authority exists to legally enforce moral rules, this means that free-riding is kept to a minimum. So those who comply with the rules need not fear suffering substantial disadvantages. (Compliers also have the recourse of taking legal action against competitors who attempt to free-ride.) Next, suppose a company is so large and powerful, or so dominant in its field, that it is not threatened by its competitor's bending or breaking moral rules. Then, it cannot plausibly contend that it must also violate the rules to survive and prosper.

Hobbes's two restrictions have some practical importance. For many firms are so large and diversified, or so dominant in their fields, that the actual amount of rule breaking by their competitors that goes on poses no realistic threat to their ability to survive and generate healthy profits. Also, in many countries, legal rules constitute fairly effective checks on the most blatant forms of misconduct and free-riding. Under such conditions, those who continue to free-ride are acting offensively and impermissibly rather than defensively. (It must be admitted, however, that it is not what is formally prohibited but what is *actually deterred* or *prevented* by the legal system that matters in the application of Hobbes's first condition. For a business may suffer grievously from a competitor's illegal but unpunished violations of moral norms.<sup>12</sup> This qualification is an important one. In both the Lockheed and Italian Tax cases, for example, the government condones or

encourages the immoral conduct in question, rather than preventing it.)

When Hobbes justifies defensive violations on grounds of self-protection, he is talking about *individuals* protecting themselves. Individuals are the primary possessors of rights of self-defense and protection. Organizations – nations or business enterprises – may possess analogous rights of self-defense. But it is plausible to suppose that these must derive from the corresponding rights of individual members of the organizations. Thus, a corporation has no significant moral right to survive, unless its bankruptcy and dissolution would seriously damage the vital interests of its owners or employees. So to apply Hobbes's analysis to a business, we must assume that the destruction of that business would seriously damage the life prospects of some of its owners and/or employees. In most cases, presumably, this assumption is satisfied.<sup>13</sup> We should note, however, that introducing the assumption amounts to recognizing a third restriction on the conditions in which defensive violations by a business firm can be justified. The employees' or owners' vital interests must be dependent on the firm's survival and profitability.

There is, in addition, a fourth restriction on permissible defensive violations of moral rules. It is overlooked by Hobbes, but is extremely important. Consider the examples of defensive violations discussed above. In these cases the burdens imposed by the violations have fallen primarily on others who have engaged in violations of similar moral rules. Thus, criminals are the main sufferers of society's punishments, your gun-pointing rival is the person endangered by your pointing a loaded gun at him in the elevator, and the widget manufacturer's bribe-offering competitors lose the most as the result of his bribe. So long as the ones harmed are equally or more guilty of similar violations, they are not treated unfairly by the violation, which therefore seems permissible. Frequently, though, innocent third parties would suffer significant harms or disadvantages as a result of defensive violations of moral rules. And this makes it considerably more difficult to justify the acts in question.

Suppose, for instance, that we revise two of our earlier examples. The rivals' elevator is now filled with children who could be killed in a shootout.<sup>14</sup> And the widget maker's refusal to bribe might cause an investigation and the ouster of corrupt economic officials, to the benefit of the country's citizens.<sup>15</sup> Then it becomes highly debatable whether the defensive acts of gun-pointing and bribery are warranted. Applying this observation to the Lockheed Case raises some doubts about Kotchian's justification of Lockheed's actions. For subsequent revelation of Lockheed's bribes did lead to the removal of some high Japanese officials. And early public disclosure by Lockheed of the solicitation of the bribes, coupled with a refusal to pay, might have had a similar effect. (It remains, however, an open question whether disclosure has eliminated or curtailed the system of bribery in Japan.)

To elaborate upon our fourth restriction, let us distinguish two classes of third parties that may be harmed by a defensive violation. There are the innocent bystanders, like the children and the foreign citizens in our revised examples. The moral principle that weighs against defensive violations that harm them is the familiar prohibition against harming the innocent. But a defensive violator also may harm those in similar circumstances who continue to comply with moral rules. Thus, a briber gains a competitive advantage over competitors who steadfastly refuse to give bribes, despite the fact that some others are doing so. These honorable competitors are not only harmed, they are treated *unfairly* by the defensive violator. For with respect to them, the defensive violator is a free-rider.

It is ironic, but true, that in attempting to avoid being the victims of free-riding, defensive violators themselves become free-riders. This is possible because a group may comply with a set of mutually beneficial rules to various degrees. The system may function best if all comply, but may continue to function (though less well) if some free-ride while most comply. Under these circumstances, those former compliers who respond to the free-riders by imitating their conduct, themselves become free-riders on the efforts of those who continue to comply. Further, this may lead to more parties leaving

the ranks of the compliers and joining the free-riders. Suppose this dynamic process continues unabated. It will eventually reach the point at which the practice of mutual constraint has effectively broken down and no longer provides significant benefits to anyone. One's possible contribution to this deterioration process must therefore be taken into account in evaluating a possible defensive violation. In particular, this constant danger of escalating noncompliance places special responsibilities on the shoulders of leaders and trend-setters in the business community to adhere strictly to ethical standards. For their violations, more than those of others, risk imitation and the subsequent collapse of general compliance with mutually beneficial constraints. Thus, for example, let us suppose that (i) most all American businesses fully report their profits and (ii) this practice is fairer and more efficient than the Italian system of substantially underreporting profits. Then prominent American business leaders have a special obligation to continue to accurately report their company's profits, so as to keep American practices from devolving toward the Italian system.

We might sum up our fourth restriction as follows.<sup>16</sup> Defensive violations of moral rules are permissible only if the interests at stake for the potential violator outweigh both of two factors. First, the harm that would be caused to innocent bystanders and compliers. And second, the unfair disadvantages inflicted upon compliers.<sup>17</sup> (The danger of the unravelling of the system of mutual restraint is meant to be included here under harm caused to bystanders and compliers.) In the absence of criteria for determining the weights of the various relevant considerations, this restriction cannot be directly applied to guide decisions in the real world. These criteria must be provided by one's theory of normative ethics. The restriction does, however, serve to direct attention to relevant moral considerations that might be overlooked. And, in particular cases, general agreement about the relative weights of the values at stake may exist. Or, there might be enough of a consensus to allow us to reach a fairly definitive conclusion about the moral status of a proposed defensive violation.

In particular, when combined with Hobbes's restrictions, our fourth restriction imposes conditions that appear to have considerable practical import. For if it is unclear whether the fourth restriction applies, then even partial applicability of the other restrictions would render the proposed violation impermissible. Thus, consider Company X, which has owners and employees who might be able to withstand the loss of their investments and their jobs. Company X is considering violating moral rules to protect itself against unscrupulous competitor Y. But this violation, e.g., deceptive advertising about a dangerous or harmful product, would significantly harm consumers. It would also place honest competitor Z at a serious disadvantage. Would the harms caused by X's possible demise outweigh the harms (and the unfairness) imposed on consumers and on Z by this violation? It is by no means clear that they would. Given this, if X is only somewhat vulnerable to unfair competition by Y, and can seek legal recourse (which might or might not be effective) to restrain Y, it appears that a defensive violation by X would be morally wrong. Here, none of the four restrictions clearly and completely applies. But they each apply with sufficient force and likelihood to *together* yield a judgment of impermissibility. Now a substantial number of real world situations are likely to resemble our example in the relevant respects. First, in involving only a *limited risk* of the enterprise's destruction as the result of constraint. Second, in concerning owners and employees that might *successfully weather* the enterprise's demise. Third, in allowing *legal recourse* that might work. Fourth and finally, in involving risks of *possibly equivalent harm to the innocent* flowing from a violation. Hence, our restrictions might be useful in distinguishing between justified and unjustified violations of moral rules by business.

To summarize then, I have argued that sceptics have a valid point when they contend that the competitive nature of the business world sometimes releases or excuses businessmen from strict adherence to moral rules. In particular, violations of conventional moral rules that are undertaken to defend a threatened business

against similar violations by competitors may be morally justified. (The Italian Tax Case and the original version of the widget case sketched above may serve as examples.) On the other hand, we have pointed out that not all violations of moral rules are defensive. Further, even defensive violations are justified only under certain quite restricted conditions. Hence, what is correct in the sceptic's argument does not give people any general or broad-ranging warrant to ignore moral standards in their business activities.

## Notes

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<sup>1</sup> As indicated in Note 17 below, another's misconduct may in some cases render your similar action excusable, though not permissible. I here assert the stronger claim that in certain situations the responsive act is permissible, i.e., morally justified. A familiar example is the use of violence to repel an unjust violent attack.

<sup>2</sup> James Mills, *Report to the Commissioner* (Pocket Books, New York, 1973), pp. 169–70.

<sup>3</sup> One might suspect that, in all such cases, at least one of the parties must first do something *genuinely wrong* to get them in the position where their reciprocal 'wrongs' justify one another. But imagine that each of our rivals has been told by a usually reliable (but in this case mistaken) source that the other is armed and out to kill him. So each legally gets a gun, subsequently finds himself in the elevator with the other, and draws his gun for protection. What wrong action has either performed?

<sup>4</sup> The classic text on this point is Thomas Hobbes, *Leviathan*, ed. by C. B. Macpherson (New York, Penguin, 1968; originally published 1651). A significant recent article is David Gauthier, 'Morality and Advantage', *Philosophical Review* 76 (1967), 460–75.

<sup>5</sup> *Leviathan*, pp. 190 and 215. (I combine wording from two similar passages.) For elaboration of Hobbes's view, see my 'Right Reason and Natural Law in Hobbes's Ethics', forthcoming in *The Monist* 66 (January 1983).

<sup>6</sup> See, e.g., for various aspects of this view: Theodore Levitt, 'The Dangers of Social Responsibility', in William

Greenwood (ed.), *Issues in Business and Society* (Houghton Mifflin, Boston, 1964); Raymond Baumhart, 'How Ethical are Businessmen?', in Greenwood, pp. 319–31; and Neil W. Chamberlin, *The Limits of Corporate Responsibility* (Basic Books, New York, 1973), p. 14.

<sup>7</sup> A. Carl Kotchian, 'Case Study – Lockheed Aircraft Corporation', in Thomas Donaldson and Patricia Werhane (eds.), *Ethical Issues in Business* (Prentice-Hall, Englewood Cliffs, N.J., 1979), p. 69.

<sup>8</sup> *Ibid.*, p. 75.

<sup>9</sup> *Ibid.*, pp. 71 and 75.

<sup>10</sup> *Ibid.*, pp. 69 and 74.

<sup>11</sup> Arthur L. Kelly, 'Case Study – Italian Tax Mores', in Donaldson and Werhane, pp. 37–39.

<sup>12</sup> If the violations are legally forbidden, then a defensive violation may itself be an illegal act. This would complicate the determination of its moral status.

<sup>13</sup> As indicated above, Kotchian hints that this was so in the Lockheed Case.

<sup>14</sup> The parallel between this example and the nuclear balance of terror should not be overlooked. Cf. my 'Some Paradoxes of Deterrence', *Journal of Philosophy* 75 (1978), 285–302, esp. 285–86 and 289.

<sup>15</sup> Cf. Richard DeGeorge, 'Moral Issues in Business', in Richard T. DeGeorge and Joseph A. Pichler (eds.), *Ethics, Free Enterprise, and Public Policy* (Oxford University Press, New York, 1978), pp. 16–17.

<sup>16</sup> To some extent, this restriction encompasses our previous one. It is worth expressing the third restriction separately, however. For it reminds us that a business' right of self-protection is parasitic upon the rights of its individual owners and employees.

<sup>17</sup> Suppose the violator has a great deal at stake, and his interests are barely outweighed (in an appropriate moral balancing) by harms to others. Then it may be appropriate to *excuse* him for the violation (or to mitigate his punishment), even though he acts impermissibly.