

Michael A. Santoro

A Fair Share Theory of Corporate Responsibility for Human Rights

An essential aspect of human rights is that they impose correlative duties. At a minimum, a human right imposes a primary duty on every actor, absent some overriding moral justification or excuse, not to violate that right or to assist someone else in doing so. In certain circumstances, the existence of a human right also imposes a secondary duty on actors to take action to remedy the violation, even in cases in which those actors are not themselves directly involved. The Sullivan Principles for multinational corporations doing business in South Africa in the apartheid era involved precisely this sort of promotion of human rights. Companies adhering to the Sullivan Principles were expected not only to fulfill their primary duty to reject the practice of apartheid in their own operations. They were also expected to fulfill a secondary duty to work “to eliminate laws and customs that impede social, economic, and political justice.”

The claim that corporations should not participate in or assist others in the violation of human rights is relatively uncontroversial, although there are many gray areas where it is not so clear whether or not corporations are being “complicit.” Moreover, such violations could potentially be justified or excused. Nevertheless, the very idea of a human right would be meaningless if it did not by definition imply that other actors, including corporations, had a correlative moral duty to avoid violating that right directly or indirectly. The moral concept and practical application of such correlative duties are separate and distinct from the concept of “complicity” and its application to human rights.

In considering whether corporations also have such a secondary duty to help ameliorate or remedy human rights violations perpetrated by others, three actor-specific fairness factors should be taken into account: (1) the relationship of the corporation to the human rights victims (the closer the relationship, the stronger the duty); (2) the potential effectiveness of the corporation in promoting human rights (the greater chance of being effective, the stronger the duty); and (3) the capacity of the corporation to withstand economic retaliation (the greater capacity to withstand retaliation, the stronger the duty).

In addition to these three criteria, another systemic fairness factor must be taken into account: The diversity of actors (all with their own actor-specific criteria) who might also owe human rights duties to the victims. Although moral responsibility for human rights belongs ultimately to individuals, it is most effectively discharged collectively.