Selective Patronage

*Omari Scott Simmons**

"The philosophy behind the Sullivan Principles was no different from the approach I had developed in my boycott days during the height of the civil rights movement . . . [T]he fundamental premise behind them was that people—individually and collectively—can and should use their economic influence to make a moral statement or to take moral action."[1]

—Reverend Leon H. Sullivan

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1. LEON H. SULLIVAN, MOVING MOUNTAINS: THE PRINCIPLES AND PURPOSES OF LEON SULLIVAN 97 (1998).

INTRODUCTION

Contemporary academic corporate governance narratives have a blind spot. They focus on institutions, rules, regulations, processes, procedures, intermediaries, and market forces. Yet, missing in this narrative, is the impact of corporate leadership. Ignoring the "black box" of corporate leadership, particularly individual actors, renders an incomplete descriptive assessment as well as potential miscalculations. The examination of key historical figures and their corporate activism provides an important lens through which to identify potential challenges and opportunities related to the contemporary ESG movement.

Leon Howard Sullivan is an unsung civil rights pioneer and godfather of corporate social responsibility and the modern ESG movement.[2] He not only influenced the tactics deployed by Dr. Martin

2. *See* Zeb Larson, *The Sullivan Principles: South Africa, Apartheid, and Globalization*, 44 DIPLOMATIC HIST. 479, 482 (2020) (contending that the Sullivan Principles "augured the future of corporate responses to globalization concerns"); S. Prakash Sethi & Oliver F. Williams, *Creating and*

Luther King, Jr. and other civil rights leaders but also crafted an enduring blueprint for how companies, as non-state actors, can engage with human rights.[3] He was a catalyst whose impact—local, national, and global—is remarkable given his private-citizen status. As a leader, he embraced an inclusive form of stakeholder capitalism that leveraged economic power to instill systemic conscience.[4] Sullivan's absence from many contemporary discussions in academic literature is a significant oversight.[5] As a corporate outsider, based on his race and profession as a clergyman, he challenged companies to change their discriminatory employment practices. Later, as a corporate insider, based on his position as a General Motors board member, he would persuade corporations to advance the global human rights cause.[6] His efficacy as a leader in advancing human rights required a unique vision, skillset, and set of circumstances. Sullivan effectively used a range of tools contemporary activists deploy, including shareholder resolutions, impact investment, economic boycotts, corporate persuasion, and grassroots initiatives.[7] In hindsight, he achieved significant success while innovating these tools in a more fractured business landscape. His story should deeply interest contemporary scholars, policymakers, and business leaders.

Today's environmental, social, and governance (ESG) emphasis arguably presents more opportunities for corporate activism. Within this context, understanding Sullivan's philosophies and corporate activism is increasingly important. The new wave of stakeholder capitalism is

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Implementing Global Codes of Conduct: An Assessment of the Sullivan Principles as a Role Model for Developing International Codes of Conduct–Lessons Learned and Unlearned, 105 BUS. & SOC. REV. 169, 169–70 (2000) (stating that the Sullivan Principles became synonymous with "the ascendance of moral principles over purely economic interests" and "the capacity of multinational corporations . . . to bring about social and political changes").

3. *See* SULLIVAN, *supra* note 1, at 14.

4. *See* Paul Lewis, *Leon Sullivan, 78, Dies; Fought Apartheid*, N.Y. TIMES (Apr. 26, 2001), https://www.nytimes.com/2001/04/26/world/leon-sullivan-78-dies-fought-apartheid.html [https://perma.cc/25W9-ACQY].

5. *See* Henry J. Richardson III, *Reverend Leon Sullivan's Principles, Race, and International Law: A Comment*, 15 TEMP. INT'L & COMPAR. L.J. 55, 71 (2001) ("That his Principles focused on the *economic* rights of black folks in the international community puts his work on the most sensitive frontier of international—and American—human rights law, that of economic rights to dispossessed people. On this particular issue, even if we forget his other more direct links to Martin Luther King such as through Operation Breadbasket, his work makes him one of King's successors in taking steps to give content and community authority to the protection—nationally and internationally—of black economic rights.").

6. Lewis, *supra* note 4.

7. *See* Lisa M. Fairfax, *Social Activism Through Shareholder Activism*, 76 WASH. & LEE L. REV. 1129, 1161 (2019) ("If you look at the history of shareholder proposals, you will see that many of the most prominent social issues were the subject of a shareholder proposal—busing and discrimination, apartheid, gender equity, board diversity, and environmental concerns.").

influenced by the convergence of the public-private spheres;[8] evolution of corporate social responsibility efforts; expansion of corporate political rights;[9] information technology and social media amplification of activist demands;[10] shareholder empowerment[11] and related legal innovations;[12] and shifts in the equity-ownership landscape toward institutional investors.[13] Despite these favorable conditions, challenges to corporate activism persist: the absence of democratic legitimacy; accountability gaps;[14] a lack of representativeness and diversity among corporate leadership and ownership;[15] political backlash from stakeholders;[16] and a

8. Calvin Thrall, *Public-Private Governance Initiatives and Corporate Responses to Stakeholder Complaints*, 75 INT'L ORG. 803, 804 (2021) ("Public-private governance initiatives—collaborative efforts in which private actors opt into additional self-regulatory measures while receiving support and guidance from public bodies such as international organizations or national regulatory agencies—have arisen as a new organizational form for the governance of global business.").

9. Elizabeth Pollman, *The History and Revival of the Corporate Purpose Clause*, 99 TEX. L. REV. 1423, 1446–47 (2021) ("Pressed by powerful business interests and driven by desires to combat political corruption, promote economic growth, and reduce administrative burdens, states adopted waves of legislation shifting the system from special chartering to general incorporation. With these changes emerged new practices as corporations found novel ways of communicating with stakeholders and shareholders about their values, purposes, and missions.").

10. Alexis Cairo & Randy L. Dryer, *Emerging Ethical and Legal Issues in the Brave New World of Social Media and Corporate Transparency*, 56 ROCKY MT. MIN. L. INST. 3-1 (2010) ("Social media has democratized information, thus empowering stakeholders. According to a 2007 Arthur W–Page Society report . . . the emergence of social media [is one] of the key drivers behind the public's demand for more transparency.").

11. Lisa M. Fairfax, *From Apathy to Activism: The Emergence, Impact, and Future of Shareholder Activism as the New Corporate Governance Norm*, 99 B.U. L. REV. 1301, 1305 (2019) ("[I]ncreased shareholder activism reflects a considerable descriptive shift in the manner in which shareholders use their voting power to engage with the corporation.").

12. *See, e.g.*, Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563, 2566 (2021) ("As the corporate governance machine transformed corporate social responsibility into value-enhancing ESG, it has also pushed social purpose beyond this framing into an entirely different form of corporation—the benefit corporation—which we show is also driven by shareholders and their values.").

13. *See, e.g.*, Robbin Wigglesworth, *Larry Fink Knows Passive Investing Can't Outsource Engagement*, FIN. TIMES (Jan. 19, 2018), https://www.ft.com/content/2d1a4b70-fcd5-11e7-9b32-d7d59aace167 [https://perma.cc/PHH2-UHFA] (discussing the potential power of the "Big Three" asset managers Blackrock, Vanguard, and Fidelity Investments).

14. Michael C. Jensen, *Value Maximization, Stakeholder Theory, and the Corporate Objective Function*, 22 J. APPLIED CORP. FIN. 32, 36 (2010) ("By failing to provide a definition of better, stakeholder theory effectively leaves managers and directors unaccountable for their stewardship of the firm's resources. Without criteria for performance, managers cannot be evaluated in any principled way. Therefore, stakeholder theory plays into the hands of managers by allowing them to pursue their own interests at the expense of the firm's financial claimants and society at large.").

15. ALLIANCE FOR BOARD DIVERSITY, MISSING PIECES: WOMEN AND MINORITIES ON FORTUNE 500 BOARDS 2 (2013), http://theabd.org/ABD_Fact_Sheet_Final.pdf [http://perma.cc/M786-RDX9] (reporting that white males account for 73.3% of Fortune 500 company board seats).

16. Yashoda Bhagwat, Nooshin L. Warren, Joshua T. Beck & George F. Watson IV, *Corporate Sociopolitical Activism and Firm Value*, 84 J. MKTG. 1, 2 (2020) ("Given its partisan quality, however, activism raises the level of risk and uncertainty beyond that of traditional CSR activities.").

lack of common definitions and standards.[17] Nonetheless, corporate activism carries key advantages. As a gap filler, it can sidestep legislative and regulatory gridlock and other types of government failure. Global operations extend its reach and potential. Its appeal to mixed motives—economic, political, and moral—lend it flexibility and potentially broad buy-in. Understanding the potential benefits and drawbacks associated with corporate activism renders a more useful guide for academics, corporate executives, policymakers, investors, and other stakeholders.

Sullivan left us a pragmatic roadmap for the prudent use of corporate power to influence society. However, corporate activism is not enough. It is complementary. Broad systemic change will require sustained pressure from corporations in collaboration with other institutional, social, public, and civil society actors.[18] His legacy raises important questions about the nature and efficacy of contemporary corporate social responsibility and modern ESG efforts: (i) How does historical civil rights activism inform today's ESG efforts?; (ii) How do these efforts differ?; (iii) To what extent are contemporary strategies and tactics novel?; and (iv) To what extent does leadership, both in form and individual characteristics matter?

Sullivan, particularly through the Sullivan Principles, demonstrated the power of private regulation.[19] Private regulation "employ[s] private, nonstate, or market-based regulatory frameworks to govern multinational firms and global supply networks."[20] The "legitimacy, governance and implementation [of private regulation] is not rooted in public authority."[21] It does not rely on legally enforceable standards. Instead, "[v]iolators

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17. Alice Martini, *Socially Responsible Investing: From the Ethical Origins to the Sustainable Development Framework of the European Union*, 23 ENV'T DEV. & SUSTAINABILITY 16874, 16883 (2021) ("The lack of harmonization and common definitions is one of the most relevant obstacles, because interpretations of ESG vary within the investment communities and across jurisdictions. Moreover, many asset owners argue that the narrow interpretation of fiduciary duty, which considers ESG factors to be nonfinancial and therefore in conflict with the duties of care and loyalty, is still influential, especially in common law countries and, hence, is a primary obstacle to ESG integration."); Swasti Gupta-Mukherjee, *Climate Action Is Too Big for ESG Mandates*, STAN. SOC. INNOVATION REV. (Sept. 29, 2020), https://ssir.org/articles/entry/climate_action_is_too_big_for_esg_mandates [https://perma.cc/FS8K-VZJ2]. *See generally* Elizabeth Pollman, *The Making and Meaning of ESG* (Univ. Pa. Inst. for L. & Econ., Working Paper No. 659, 2022), https://ssrn.com/abstract=4219857 [https://perma.cc/PR7F-BF44].

18. *See, e.g.*, Mzamo P. Mangaliso, *South Africa: Corporate Social Responsibility and the Sullivan Principles*, 28 J. BLACK STUD. 219, 236 (1997) ("In the case of [South Africa], it was the alignment of international condemnation, internal resistance, and corporate withdrawal—with all the hardships these entailed—that finally convinced the [South African] government that the human rights violations that apartheid embodied were not acceptable to the world community.").

19. *See* Leon Sullivan, *Agents for Change: The Mobilization of Multinational Companies in South Africa*, 15 L. & POL'Y INT'L BUS. 427, 440 (1983).

20. David Vogel, *The Private Regulation of Global Corporate Conduct: Achievements and Limitations*, 49 BUS. & SOC'Y 68, 69 (2010).

21. *Id.*

typically face social or market penalties rather than legal sanctions."[22] Unlike traditional modes of self-regulation and governance, "[private] regulations require firms to make expenditures and undertake commitments associated with changing and broadening public expectations of corporate conduct associated with corporate social responsibility (CSR) [and its modern analog—environmental, social, and governance (ESG) factors]."[23]

Sullivan's legacy also reflects the crucial role of leadership in advancing corporate citizenship and human rights. For him, the modern corporation, with an expanded sense of purpose, could deliver on its triple bottom line—people, planet, and profit—performing well financially while also promoting social good.[24] For decades, his words and actions spurred companies to leverage their economic power toward human rights causes.[25] His impressive legacy raises compelling questions: Do any contemporary business leaders show the panoramic vision, influence, and skills to galvanize key actors across the corporate, government, non-governmental organization (NGO), multilateral, investor, and grassroots terrains? Or was Sullivan an aberration? A once-in-a-generation unicorn?

Generally, this essay examines corporate leadership's potential to address socio-political issues through the prism of Civil Rights Movement

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22. *Id.*

23. *Id.* at 70; *see also* Archie B. Carroll, *A History of Corporate Social Responsibility: Concepts and Practices*, *in* THE OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY 19, 25 (Andrew Crane, Dirk Matten, Abagail McWilliams, Jeremy Moon & Donald S. Siegel eds., 2008); HOWARD R. BOWEN, SOCIAL RESPONSIBILITIES OF THE BUSINESSMAN 6 (1953) (defining the term social responsibility). *See generally* Mauricio Andrés Latapí Agudelo, Lára Jóhannsdóttir & Brynhildur Davídstóttir, *A Literature Review of the History and Evolution of Corporate Social Responsibility*, 4 INT'L J. CORP. SOC. RESP. 1 (2019).

24. For examples of the historical corporate purpose debate compare, A. A. Berle, Jr., *Corporate Powers as Powers in Trust*, 44 HARV. L. REV. 1049 (1931) (arguing that corporate managers should be legally compelled to make decisions benefiting all stakeholders), with E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145 (1932) (arguing that corporate managers only owe a duty to their shareholders to maximize stock price), and A. A. Berle, Jr., *For Whom Corporate Managers Are Trustees: A Note*, 45 HARV. L. REV. 1365 (1932) (arguing that corporate managers affect more than just their stockholders and should be under legal control). For a summary of the contemporary corporate purpose debate, see generally Jill E. Fisch & Steven Davidoff Solomon, *Should Corporations Have a Purpose?*, 99 TEX. L. REV. 1309, 1309 (2021) (arguing that corporate purpose serves an "instrumental function" to "facilitate the goals of corporate participants"); Edward B. Rock, *For Whom Is the Corporation Managed in 2020?: The Debate over Corporate Purpose*, 76 BUS. LAW. 363, 364–67 (2021) (summarizing the contemporary corporate purpose debate including statements and proposals from academics, business leaders, and politicians); Leo E. Strine, Jr., *Restoration: The Role Stakeholder Governance Must Play in Recreating a Fair and Sustainable American Economy, A Reply to Professor Rock*, 76 BUS. LAW. 397, 400 (2021).

25. Sullivan, *supra* note 19, at 443–44. As of 1983, 146 US companies were signatories to the Sullivan Principles. *Id.* at 429.

activism.[26] Specifically, it reflects on the far-reaching legacy of Reverend Leon H. Sullivan: his Selective Patronage Movement; Opportunities Industrialization Centers; International Foundation for Education and Self Help (IFESH); cooperative investment strategies; entrepreneurialism; longstanding service on the General Motors board of directors; development of the Sullivan Principles to combat apartheid in South Africa; and the contribution of the Global Sullivan Principles in promoting human rights everywhere.[27] Sullivan's use of various modes of economic power and coercion illustrate how corporate leadership can promote change both intramurally and in society at large. The analysis also reveals some challenges and limitations that remain relevant today. Part I of this Article reintroduces contemporary scholars to Reverend Leon H. Sullivan: his early origins, influences, and the philosophy informing his activism. Part II describes his broad legacy of economic activism. Part III examines how Sullivan's civil and human rights activism inform modern corporate activism. Finally, Part IV draws conclusions and suggests directions for future research.

I. WHO WAS REVEREND LEON HOWARD SULLIVAN?

Most contemporary commentators have an incomplete picture of Reverend Leon Sullivan beyond his General Motors board service and his association with the Sullivan Principles. Even less is known about Sullivan as an individual, such as his origins, leadership style, and most importantly, the philosophy guiding his actions. These elements figure prominently into Sullivan's ascent as a leader, focus on economic activism, and impact.

A. Origins

Leon Howard Sullivan was born on October 16, 1922, in segregated Charleston, West Virginia.[28] He grew up in poverty. Sullivan attended West Virginia State College. During college, he pastored multiple

26. Corporate law scholars have recently discussed human and civil rights activism within the corporate context. *See generally* Harwell Wells, *Shareholder Meetings and Freedom Rides: The Story of* Peck v. Greyhound, 45 SEATTLE U. L. REV. 1 (2021) (symposium); Sarah C. Haan, *Civil Rights and Shareholder Activism:* SEC v. Medical Committee for Human Rights, 76 WASH. & LEE L. REV. 1167 (2019); Omari Scott Simmons, *Chancery's Greatest Decision: Historical Insights on Civil Rights and the Future of Shareholder Activism*, 76 WASH. & LEE L. REV. 1259 (2019).

27. Sullivan was also a strong advocate for Sub-Saharan African development and debt relief. *See* Lewis, *supra* note 4.

28. LEON H. SULLIVAN, BUILD, BROTHER, BUILD 31 (1969); *see also* SULLIVAN, *supra* note 1, at 6–10; Lewis, *supra* note 4; *Leon Sullivan—The Sullivan Principles*, W. VA. STATE UNIV., https://www.wvstateu.edu/about/history-and-traditions/leon-sullivan.aspx [https://perma.cc/BR6S-942J].

churches after a friend introduced him to the religious pulpit.[29] Upon graduating college, Sullivan moved to New York City where he lived in Harlem, attended Union Theological Seminary, worked as a coinbox collector for the Bell Telephone Company, and continued to pastor churches.[30] After two years in Harlem, Sullivan and his newlywed wife Grace left New York for South Orange, New Jersey, where for five years he pastored the First Baptist Church.[31] In New Jersey, he continued his education at Union Theological Seminary and completed his master's degree in religion at Columbia University.[32] Additionally, Sullivan completed coursework in social psychology, education, community organization, philosophy of religion, and religious education.[33] In 1950, Sullivan would leave New Jersey for Philadelphia, Pennsylvania, where, for nearly forty years, he would pastor Zion Baptist Church.[34] In Philadelphia, Sullivan's activism, profile, economic strategies, and creativity would reach new heights.

B. Leadership

Reverend Leon H. Sullivan deserves a place in the pantheon of civil rights and business leaders yet receives only brief or no mention in the civil rights, human rights, corporate responsibility, and contemporary ESG literature.[35] Evidencing his many accomplishments, Sullivan was awarded fifty honorary degrees, the Presidential Medal of a Freedom Award, and nominated for the Nobel Peace Prize.[36] His positive vision of economic empowerment and inclusion reflects an extraordinary versatility, persistence, brinkmanship, and strategic prowess. His deep local, national,

29. SULLIVAN, *supra* note 1, at 6–10.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. SULLIVAN, *supra* note 28, at 57.

35. *See generally* ALEX EDMANS, GROW THE PIE: HOW GREAT COMPANIES DELIVER BOTH PURPOSE AND PROFIT (2020); RESEARCH HANDBOOK ON CORPORATE PURPOSE AND PERSONHOOD (Elizabeth Pollman & Robert B. Thompson eds., 2021); THE CAMBRIDGE HANDBOOK OF CORPORATE LAW, CORPORATE GOVERNANCE AND SUSTAINABILITY (Beate Sjåfjell & Christopher M. Bruner eds., 2019); COLIN MAYER, PROSPERITY: BETTERS BUSINESS MAKES THE GREATER GOOD (2018); REBECCA HENDERSON, REIMAGINING CAPITALISM IN A WORLD ON FIRE (2020); GEORGE SERAFEIM, PURPOSE + PROFIT: HOW BUSINESS CAN LIFT UP THE WORLD (2022); Doug Sundheim & Kate Starr, *Making Stakeholder Capitalism a Reality*, HARV. BUS. REV. (Jan. 22, 2020), https://hbr.org/2020/01/making-stakeholder-capitalism-a-reality [https://perma.cc/E48L-FSLN]; Lucian A. Bebchuk, Kobi Kastiel & Roberto Tallarita, *Stakeholder Capitalism in the Time of COVID*, 40 YALE J. ON REGUL. (forthcoming 2023) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4026803 [https://perma.cc/TG3L-95DT]).

36. *Leon Howard Sullivan, Series 2: Personal Papers, 1968–2001*, EMORY LIBRS. & INFO. TECH., https://findingaids.library.emory.edu/documents/sullivan1086/series2/ [https://perma.cc/H9MA-GNEX].

and international footprint—based on an intimate knowledge of grassroots issues, powerful world politicians, and corporate leaders—is nothing short of remarkable.

Sullivan had a unique skillset. He was a flexible pragmatist. He successfully reached across political, racial, cultural, religious, geographic, and economic divides to engage groups with different points of view. Despite disagreements on methods, he often highlighted common ground to achieve consensus.[37] Even a cursory review of his correspondence reveals how he would artfully connect the importance of each participant's contribution to the cause at hand.[38] Although not a politician, his diplomacy was refined. Sullivan was comfortable making public statements regarding his positions, but also understood the importance of private off-the-record meetings with corporate executives and others to increase engagement and cultivate trust. Throughout his career, he cultivated and leveraged a powerful network of professional contacts.[39] His proximity to grassroots communities, business and political leaders, domestic and foreign, made him a valued contact and resource.

Further, Sullivan embraced respectful disagreement, understanding how it could strengthen and sharpen his own ideas and plans. He was adaptive, willing to change course as needed to achieve the goal, but he was also courageous, willing to risk support that conflicted with moral objectives. Sullivan's advocacy against South African apartheid reflects this pattern.[40] The Sullivan Principles, a corporate code of conduct targeting discriminatory labor practices, and their implementation, improved over time in response to critique.[41] Although an initial supporter of corporate exit and complete divestment, the Sullivan Principles shifted toward engagement and exercising voice.[42] Later, Sullivan would abandon active engagement in response to inadequate progress and advocate for divestment.[43]

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37. *See A Conversation with the Rev. Sullivan; Going All-Out Against Apartheid*, N.Y. TIMES, July 27, 1986, at A1.

38. *See Leon Howard Sullivan, Series 1: Personal Papers, 1942–1999*, EMORY LIBRS. & INFO. TECH., https://findingaids.library.emory.edu/documents/sullivan1086/series1/ [https://perma.cc/YDP6-F5B2].

39. Valerie Russ, *A City and Church Are Celebrating the Late Rev. Leon H. Sullivan, the "Lion of Zion," for His 100th Birthday*, PHILA. INQUIRER (Oct 14, 2022), https://www.inquirer.com/news/rev-leon-sullivan-zion-baptist-church-100-birthday-centennial-celebration-philadelphia-20221014.html [https://perma.cc/DL74-Z5LA].

40. *See A Conversation with the Rev. Sullivan; Going All-Out Against Apartheid*, *supra* note 37.

41. *See* discussion *infra* Section II.E.

42. *See* Sullivan, *supra* note 19, at 444.

43. Katherine Roberts, Milt Freudenheim & James F. Clarity, *New Sullivan Principles*, N.Y. TIMES, June 7, 1987, at A2; Barnaby J. Feder, *A Wary Reception for Sullivan Stand*, N.Y. TIMES, June 8, 1987, at D5; S. G. Marzullo, *South Africa: Sullivan Calls for a Pullout*, N.Y. TIMES, June 7, 1987,

C. Philosophy

Sullivan's philosophy defies the standard liberal-or-conservative labels and instead centers on the prudent use of economic power.[44] His activist vision was built on the nonviolent but direct confrontational tactics of his civil rights mentors and extended beyond political rights to economic enfranchisement.[45] Initially, as an outsider, he used economic coercion to influence corporate change.[46] Later, on the board of General Motors, he deployed corporate power to promote societal change on a national and international scale.[47] All of his activities—local, national, global—share a common thread: using economic power as a means to effect sociopolitical change and advance human rights.[48]

1. Activist and Anti-Poverty Influences

According to Sullivan, his passion for activism began with a pivotal incident: at the age of ten in West Virginia, he was turned away from buying a bottle of Coca-Cola in a drug store.[49] He remembered being told: "Black boy, stand on your feet. You can't sit down here."[50] This experience spurred Sullivan to fight against an unjust system. Thereafter, he would push back, entering local movie theaters and restaurants only to be turned away.[51] He remained true to his convictions as he experienced discrimination, living in and witnessing poverty in Appalachia and urban centers. He believed that, with support and advocacy, the impoverished could rise above their circumstances.[52] These early experiences with poverty and discrimination propelled his future activism and focus on economic self-determination.

Sullivan's philosophy and activism was also shaped by his association with astute civil rights and political leaders. In his final year of college at West Virginia State, he met Adam Clayton Powell, the U.S.

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at A2; John D. Battersby, *South Africa Reacts Angrily to Sullivan Call*, N.Y. TIMES, June 4, 1987, at D6.

44. Sullivan, *supra* note 19, at 431 ("In short, by focusing largely on discriminatory practices related to the workplace, the Principles aim to bring the tremendous economic influence of multinational companies to bear on the whole apartheid system of customs and laws.").

45. SULLIVAN, *supra* note 28, at 351.

46. Solomon Moore, *Rev. Leon Sullivan; His 'Principles' Stressed Corporate Fairness to Blacks*, L.A. TIMES (Apr. 26, 2001), https://www.latimes.com/archives/la-xpm-2001-apr-26-me-63402-story.html [https://perma.cc/KCL4-X6KZ] ("Sullivan pioneered mass boycotts and inspired later movements to do the same.").

47. *See* discussion *infra* at Section II.D.

48. Sullivan, *supra* note 19, at 431 (discussing the tremendous impact economic influence can have on entire systems of government).

49. SULLIVAN, *supra* note 28, at 34–35.

50. *Id.* at 34.

51. *Id.* at 34.

52. *See A Conversation with the Rev. Sullivan; Going All-Out Against Apartheid*, *supra* note 37.

Congressman representing Harlem from 1945 until 1971 and pastor of the Abyssinian Baptist Church.[53] Powell encouraged Sullivan to come to New York, provided sponsorship, and gave him access to the pulpit.[54] Sullivan learned the art of politics from Powell, a masterful leader, who, prior to his election to Congress, was already a prolific civil rights activist and tactician.[55]

Another mentor, civil rights leader A. Philip Randolph, introduced Sullivan to the "art of massive community organization and . . . nonviolent direct action."[56] Sullivan said, he "tutored me as a father would, in movement tactics and philosophy."[57] Randolph was president of the Brotherhood of Sleeping Car Porters, the first recognized Black-controlled union in the United States, as well as the originator of the March on Washington Movement in 1941 and 1963.[58] He had a profound impact on Sullivan's philosophy and activism strategy.[59] His connection to labor would prove valuable for Sullivan's future engagement and tactics. Sullivan saw him as the archetype of Black leadership and a predecessor of Martin Luther King, Jr. and Malcolm X.[60] At age twenty-one, Sullivan was elected president of the National March on Washington Movement.[61] During the early days of the Civil Rights Movement, Sullivan also worked closely with Bayard Rustin, co-planner of the March on Washington and organizer of the Freedom Rides.[62]

In addition to his early civil rights influences, Sullivan became a shadow advisor to New York City Mayor Fiorello LaGuardia, who sought his recommendations on Harlem.[63] Steeped in grassroots community issues, particularly related to youth, Sullivan recommended, among other things, hiring more Black police officers who understood "the problems

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53. *See generally* CHARLES V. HAMILTON, ADAM CLAYTON POWELL, JR.: THE POLITICAL BIOGRAPHY OF AN AMERICAN DILEMMA (1991).

54. SULLIVAN, *supra* note 28, at 44–46. Sullivan would eventually serve as Assistant Minister at Abyssinian Church in Harlem when Powell began his campaign for Congress. *Id.* at 49–51. This position was short-lived as Sullivan left New York to pursue his own direction. *Id.*

55. *See Powell, Adam Clayton, Jr.*, U.S. HOUSE OF REPRESENTATIVES: HIST., ART & ARCHIVES, https://history.house.gov/People/Listing/P/POWELL,-Adam-Clayton,-Jr--(P000477)/ [https://perma.cc/8WC7-R4C3].

56. SULLIVAN, *supra* note 28, at 46.

57. *Id.*

58. *Id.* at 45. *See generally* PAULA F. PFEFFER, A. PHILIP RANDOLPH, PIONEER OF THE CIVIL RIGHTS MOVEMENT (1990).

59. *See* SULLIVAN, *supra* note 28, at 46. The planned 1941 March on Washington targeted employment discrimination in the war industries, which pressured FDR to issue Executive Order 8802 to avert the display of protest. *Id.* at 45.

60. *See id.*

61. *Id.* at 46.

62. *Id. See generally* JOHN D'EMILIO, LOST PROPHET: THE LIFE AND TIMES OF BAYARD RUSTIN (2003).

63. SULLIVAN, *supra* note 28, at 48–49.

of the area" and who cared about the people they were policing.[64] He sparked efforts that recruited a hundred men "to New York's police force within a single month."[65] Sullivan's early influences encompass labor, politics, religion, establishment, and opposition. These broad and unique experiences inevitably helped shape his own approach to activism.

2. A Broader Empowerment Vision

For Sullivan, economic empowerment was the next vista in the civil rights struggle.[66] He did not subscribe to the simplistic narrative that corporations are inherently antithetical to the liberation or self-determination of vulnerable groups. Instead, he understood their potential power to promote the public good through ethical and moral business practices that would advance and empower society's forgotten and disenfranchised. As a globalist, he had to examine problems from divergent vantage points to become a more effective advocate for the self-determination of marginalized groups.

3. Self-Help Approach

Sullivan came from the self-help tradition of Black leadership,[67] yet his approach was bold, non-accommodationist, non-separatist, and did not eschew conflict. He asserted: "[m]y emphasis has been on creating and using black unity, black economic strength, and black skill for self help."[68] Sullivan reasoned that governments depend on companies to generate jobs as well as taxable revenue to support their functions. He did not believe that the government or the private sector would or could solve all the problems of marginalized people. He added: "Even a limitless supply of money will fall short if the will to help oneself is lacking."[69] Elsewhere, he opined: "Although I surely support affirmative action, I know that affirmative action will only go so far . . . ."[70] Self-help "must be supplemented with efforts to create opportunities for people to enhance their sense of confidence and self-respect."[71] He believed in a bottom-up, inclusive approach: ordinary people, irrespective of their circumstances,

64. *Id.* at 49.

65. *Id.*

66. *See* Leon H. Sullivan, Practical Solutions to Practical Problems: The Ways of Moses and the Ways of Martin Luther King 8–9 (Jan. 11, 1979) (transcript available in the Library of Congress).

67. Booker T. Washington and Marcus Garvey are often associated with this school of thought. *See generally* BOOKER T. WASHINGTON, UP FROM SLAVERY (1901); COLIN GRANT, NEGRO WITH A HAT: THE RISE AND FALL OF MARCUS GARVEY (2008).

68. SULLIVAN, *supra* note 28, at 30.

69. SULLIVAN, *supra* note 1, at 190.

70. *Id.*

71. *Id.*

using their "own hands" and "standing on their own feet" to advance themselves and others.[72] Sullivan's grassroots approach favored planning with, rather than for, underprivileged populations.

Sullivan's focus on economic empowerment came from his grassroots experience addressing social problems such as poverty, juvenile delinquency, and poor housing conditions.[73] He identified the need to root out their causes, rather than merely treat their symptoms.[74] He noted:

> I hoped later to develop a program of racial economic emancipation so that the colored man might not only fix up his concentrated communities with flower boxes and clean-street programs but also develop his earning power. Then, if he so desired, he might move out into the areas where whites did not want him to go.[75]

Stripped of bigotry, Sullivan believed the capitalistic system could help pave the way.

Contemporary scholarly and public policy discussions do not give adequate attention to self-help approaches. The self-help tradition is pro-business, pro-entrepreneurship, and pro-wealth-creation.[76] Its connection with free enterprise is born of pragmatism and necessity because, for most of U.S. history, the government—state, local, and federal—demonstrated hostility and indifference to the rights of Black citizens.[77] Centuries of discrimination have left Blacks in a precarious state, often locked out of many private sector jobs other than menial tasks.[78] Sullivan's expansive self-help platform remains highly relevant to modern activist strategy and public policy.[79]

4. The Pragmatic Embrace of Economic Power

Sullivan recognized that economic emancipation for Black Americans was more difficult to understand than civil and political rights.[80] With limited participation in the national and global economy, Black communities had few economic opportunities and extremely limited

72. *Id.* at 185–186.

73. *See* SULLIVAN, *supra* note 28, at 64.

74. *See id.*

75. *Id.* at 65.

76. Gayle McKeen, *Whose Rights? Whose Responsibility? Self-Help in African-American Thought*, 34 POLITY 409, 412 (2002).

77. *Id.*

78. Michael Gee, *Why Aren't Black Employees Getting More White-Collar Jobs?*, HARV. BUS. REV. (Feb. 28, 2018), https://hbr.org/2018/02/why-arent-black-employees-getting-more-white-collar-jobs [https://perma.cc/CR9D-ACZJ].

79. *See generally* Leon H. Sullivan, We Help Ourselves (July 11, 1995) (transcript available in the Library of Congress).

80. Leon H. Sullivan, Speech About New Civil Rights 4 (Apr. 25, 1994) (transcript available in the Library of Congress).

voice. Thus, Sullivan focused on ways to harness economic power *within the capitalist system* to advance the interests of Blacks and other groups.[81] His intention was not to destroy business or capitalism but to awaken and redirect it toward inclusion and morality. He envisioned capitalism with a conscience—the pursuit of profit with principles.[82] He clearly supported free enterprise, but instead of Black people struggling for crumbs, he saw them baking bread.[83] Sullivan was neither a Black separatist, socialist, or nationalist. He endorsed greater "[u]nity of action"; that is, a shared platform with any group who spoke for the advancement of Black people.[84] He understood earlier than most that integration without self-determination and economic empowerment was problematic and "could see that integration without preparation was frustration."[85] In response, he developed programs to push individuals, groups, private industry, and government toward a goal of collective activism.[86] His approach was creative, bold, and pragmatic.

Notably, Sullivan was a student of economic power. In his early years in Philadelphia, he studied how companies operated and the breadth and depth of their influence.[87] He joined groups such as Americans for the Competitive Enterprise System and the Junior Chamber of Commerce, whose members would eventually become the city's business leaders.[88] Sullivan gathered insights on the nature of business, profit margins, operations, organizational structure, investment, and other aspects. At the grassroots level, he recognized the societal benefits when youth were employed full-time or part-time rather than idle.[89] He was familiar with the legacy of boycotts—the bus boycott in Montgomery, Alabama, and boycotts of the five-and-dime stores where Black people shopped—as well as the legal battles that led to Supreme Court decisions against segregation.[90] Sullivan now asked the question, "Why not jobs?" and

81. *Id.* Although his initial focus was on Black Americans, his programs expanded to help immigrants and other marginalized groups. Sullivan's inclusive vision of America was ahead of its time.

82. *See generally* Lewis, *supra* note 4.

83. *See* SULLIVAN, *supra* note 28, at 77.

84. *Id.* at 46.

85. *Id.* at 86.

86. Examples include Zion Investment Associates and Opportunities Industrialization Center. *Progress Investment Associates, Inc.*, SULLIVAN PROGRESS PLAZA, https://progressplaza.com/about-us/pia-board/ [https://perma.cc/494M-TNPM]; PHILA. OIC, https://www.philaoic.org/ [https://perma.cc/3ED4-J8C4].

87. Moore, *supra* note 46.

88. SULLIVAN, *supra* note 28, at 161.

89. *Id.* at 65.

90. *See generally* Martin Luther King, *Montgomery, Alabama: Our Struggle*, LIBERATION, Apr. 1956; *Sitdown Hits Local Stores; One Food Counter Closed*, HIGH POINT ENTER., Feb. 12, 1960, at 1; Brown v. Bd. of Educ., 347 U.S. 483 (1954).

worked to diversify employment at all levels.[91] At that time, less than one percent of business and entrepreneurial wealth in the country belonged to Black Americans,[92] but Sullivan did not acquiesce to these discouraging statistics nor simply decry business as a force of oppression. He saw its potential to deliver economic emancipation and self-determination to effect a social transformation for masses of Black people.

5. Religious Convictions

Sullivan was certainly inspired by his religious faith and firsthand experiences with poverty. He described himself as unorthodox because his ministry went beyond church buildings "into the streets where the real problems and challenges were."[93] He did not shy away from secular engagement. He described his faith as an "active faith" that "takes action" and "does not wait around for others to do whatever they will."[94] Sullivan's vision reflected an urgency to address the plight of the impoverished and to bring society's forgotten people from the periphery into the mainstream. His independence was a major asset. As a clergyman of the Black church and not a politician, he was not economically beholden to the white power structure. He asserted that the church, especially in the Black community, was the most powerful and most free institution.[95] The economic independence of Black churches made them a mission-critical asset during the Civil Rights Movement.[96] In a sense, the Black church was a collective investment vehicle that deployed capital and provided a wide range of services to its members and community. Its intervention

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91. Leon H. Sullivan, *New Trends in the Development of Self-Help in the Inner City*, 112 PROC. AM. PHIL. SOC'Y 358, 359 (1968) ("It is for this reason that I am moving now in this direction of economic racial emancipation . . . . I have created a program called OIC, the Opportunities Industrialization Center, which has become the first building block in the development of an economic base for my people and for even the white poor to build upon."); *see* Leon H. Sullivan, *From Protest to Progress: The Lesson of the Opportunities Industrialization Centers*, 4 YALE L. & POL'Y REV. 364, 365 (1986) ("A group of 400 black ministers in Philadelphia, myself among them, finally found a way to pry open those doors. Beginning in 1958, during the era of civil rights protest and demonstrations, these ministers launched one of the most successful boycott campaigns of the period."); Letter from Leon Sullivan to Harry Pearce, Gen. Motors (Dec. 16, 1992) (on file with the Library of Congress).

92. SULLIVAN, *supra* note 28, at 161.

93. *Id.* at 59.

94. SULLIVAN, *supra* note 1, at 185.

95. *See* SULLIVAN, *supra* note 28, at 70–71.

96. Supad Kumar Ghose, *The Role of the Black Church in the American Civil Rights Movement*, 5 U. INFO. TECH. & SCIS. J. 58, 59–60 (2017) ("[T]he black church functioned as the institutional center of the modern civil rights movement. Churches provided the movement with organized mass base; a leadership of clergymen largely economically independent of the larger white society and skilled in the art of managing people and resources; an institutionalized financial base through which protest was financed; and meeting places where the masses planned tactics and strategies and collectively committed themselves to the struggle.").

often filled the glaring gaps created by government indifference and neglect.[97]

6. Strategic Appeals to Mixed-Motives

Although Sullivan recognized and expressed the religious, moral, and ethical justifications for his actions, he did not assume they would inspire others to act. He recognized the need for many levers and justifications, especially for corporate actors. For example, Sullivan recognized that corporate executives had different justifications for supporting the Sullivan Principles in apartheid South Africa. He noted that for some corporate executives, geopolitical concerns such as the spread of communism in Africa, proved more persuasive than exclusively relying on moral justifications.[98] This approach remains relevant to contemporary debates surrounding corporate social responsibility and ESG that may require a range of justifications—moral, financial, and political—to generate broader support and perhaps inspire collaboration from a diverse set of stakeholders.[99]

II. LEGACY OF ACTIVISM

This section captures Sullivan's extensive legacy of activism. His persistence and cautious optimism in the face of seemingly intractable problems are remarkable. Sullivan tirelessly advocated for causes locally, nationally, and globally until his death in 2001.[100]

A. Selective Patronage Movement, 1958–1963

Beginning in 1958, Sullivan led a group of 400 Black ministers in the Philadelphia region, who urged their congregations (approximately 300,000 people) to boycott Philadelphia companies that did not comply with demands for fair job opportunities for Black workers—"good"

97. One important historical Black church intervention, for example, was the creation of schools for Black Americans. Susan Chira, *Black Churches Renew a Mission: Education*, N.Y. TIMES, Aug. 7, 1991, at A1 ("From their inception in the early 1800's, the predominantly Protestant black congregations in America have seen education as part of their mission, said the Rev. Alicia Byrd of the Congress of National Black Churches. Many founded schools and colleges to educate black children barred from white schools.").

98. SULLIVAN, *supra* note 1, at 50.

99. *See* Betsy Atkins, *Strong ESG Practices Can Benefit Companies and Investors: Here's How*, NASDAQ (June 5, 2018), https://www.nasdaq.com/articles/strong-esg-practices-can-benefit-companies-and-investors-2019-03-13 [https://perma.cc/WJA3-4MG6].

100. *See* Letter from Leon H. Sullivan to Richard Brown, Chairman & CEO, Elec. Data Sys. Corp. (Sept. 13, 2000) (on file with the Library of Congress). Sullivan was still writing letters months before his death asking people and their organizations to embrace the Sullivan Principles. *Id.*

private industry jobs, not low-paying service occupations.[101] The Selective Patronage approach could be described simply as "Don't buy where you can't work." The group of ministers formed small visitation or engagement committees that directly asked top executives to open jobs in particular categories where Blacks were excluded.[102] If demands were not met, nearly 300,000 people did not buy from or stopped patronizing the targeted business establishments. In four years, between 1959–1963, the group successfully boycotted twenty-nine companies, and many more changed their practices to avoid a boycott.[103] In 1963, nearly 300 Philadelphia-Delaware Valley area businesses agreed to fair employment practices.[104] Remarkably, in the absence of extensive media coverage, Sullivan and others orchestrated a successful activist campaign; the national media did not cover it until 1962.[105] In 1962, Sullivan met with his friend and associate Dr. Martin Luther King, Jr. and other leaders from the Southern Christian Leadership Conference (SCLC), such as Ralph David Abernathy, to discuss economic boycott tactics given the recent success in Philadelphia.[106] These meetings influenced King and SCLC to create a similar initiative known as Operation Breadbasket, which was subsequently led by the young Jesse Jackson, Jr.[107] Approximately sixty-five years ago, Sullivan was alerting companies to the importance of stakeholder engagement.

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101. John D. Pomfret, *Negroes Building Boycott Network: 'Selective Patronage' Plan Is Led by Clergy—Aim Is to Cut Job Discrimination*, N.Y. TIMES, Nov. 25, 1962, at 1 ("What distinguishes the plan from earlier boycotts is that there is nothing hit-or-miss about it. It is a carefully conceived, permanent program to gain access for Negroes to jobs that have hitherto been closed to them. The Negro clergymen have even developed an entirely new concept of leadership—or, really, nonleadership—to fit the needs of the program."); Stacy Kinlock Sewell, *The "Not-Buying Power" of the Black Community: Urban Boycotts and Equal Employment Opportunity, 1960–1964*, 89 J. AFR. AM. HIST. 135, 140 (2004).

102. Justin Gammage, *Black Power in Philadelphia: Selective Patronage and the Effectiveness of Direct Action Protest*, 48 J. BLACK STUD. 373, 380–81 (2017) (discussing the successful Tasty Baking Company demonstration in which protestors made demands of the company targeting the hiring of Black men and women into roles they were excluded from).

103. *See* Sewell, *supra* note 101, at 140 ("For days, weeks, and even months, a quarter of Philadelphia's residents stopped purchasing Sunoco Gas, Pepsi-Cola, Breyer's Ice Cream, or Tastykakes, while the ministers persisted in negotiations with companies' management. The strategy worked one product, one company at a time. By the time of the great action against A & P food markets in January 1963, some twenty companies had been boycotted and agreements had been reached. On the surface, the agreements secured jobs. But under the surface, the reign of the free market was under attack, the employers' prerogative about whom and how to hire, challenged.").

104. SULLIVAN, *supra* note 28, at 76–77.

105. *Id.*; Pomfret, *supra* note 101.

106. SULLIVAN, *supra* note 28, at 77; SULLIVAN, *supra* note 1, at 14.

107. SULLIVAN, *supra* note 28, at 77.

B. Opportunities Industrialization Center (OIC)

Beyond simply compelling companies to hire more Black workers, Sullivan sought to eliminate barriers, including the absence of quality job training and preparation. In 1964, he created the Opportunities Industrialization Center (OIC), an innovative job-training initiative and feeder program that preceded many federally funded programs and initiatives.[108] It marked Sullivan's shift away from the adversarial posture of the Selective Patronage campaign toward a partnership with big business. The program was Black-created and implemented, and initial participants were primarily minority high school dropouts, whose plight was largely ignored at the national level.[109] Centers proliferated to include all Americans, especially in Latinx and other relatively recent immigrant communities.[110] Sullivan persuaded businesses in Philadelphia and other major cities to leverage skilled Black and Brown labor to compete and thrive.[111] OIC awakened them to the power of the Black community.[112] A 1967 Department of Labor report indicated a 300% return on investment in the Philadelphia OIC.[113] The centers expanded nationally, gaining the support of national politicians, such as Lyndon Johnson, Richard Nixon, and Sargent Shriver, as well as prominent business leaders, such as Thomas McCabe, chairman of the Scott Paper Company; Gerald Phillipe, chairman of General Electric; and George Champion, chairman of Chase Manhattan Bank.[114] OICs eventually extended internationally to the developing world. By 1999, there were "70 [OIC] branches nationwide and 46 in 18 other countries."[115] Through Sullivan's creation of OICs worldwide, he advanced the skills and economic resilience of many marginalized communities.

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108. Sullivan, *supra* note 91, at 359 ("It is for this reason that I am moving now in this direction of economic racial emancipation. . . . I have created a program called OIC, the Opportunities Industrialization Center, which has become the first building block in the development of an economic base for my people and for even the white poor to build upon.").

109. *See About Us*, OIC PHILA., https://www.philaoic.org/about [https://perma.cc/5EEP-E6YN].

110. SULLIVAN, *supra* note 28, at 92–93, 106–107.

111. Leon Sullivan, *From the Inner City to the Suburbs Comes a Call and a Warning*, PHILA. INQUIRER, Oct. 15, 1989, at C7.

112. *See* Sullivan, *supra* note 91, at 358–361; OPPORTUNITY INVESTMENT CENTER, AN AFFORDABLE HIGH-TECH SOLUTION FOR COMMUNITY EDUCATION AND TRAINING (on file with the Library of Congress) (undated OIC promotional material) [hereinafter *OIC Poster*]. *See generally* OPPORTUNITIES INDUSTRIALIZATION CENTERS OF AMERICA, INC., OICS OF AMERICA PROPOSAL FOR THE UNITED STATES OF AMERICA (1976) (on file with the Library of Congress) [hereinafter OIC PROPOSAL].

113. SULLIVAN, *supra* note 28, at 124.

114. *Id.* at 117–122.

115. Jan Hoffman, *A Civil Rights Crusader Takes on the World*, N.Y. TIMES, Nov. 3, 1999, at B2.

C. Entrepreneurial and Cooperative Investment Strategies

In 1962, touting the importance of stock ownership and entrepreneurship, Sullivan created an innovative cooperative investment program to give Blacks a stake in the free enterprise system, which included *impact investing*, a term that only emerged in 2007 to describe strategies to profit financially while realizing wider social benefits.[116] The 10-36 Plan was a deferred, or impact, investment plan.[117] It had two major components: a profit-seeking arm and charitable arm. The profit-seeking arm, called Progress Investment Associates, invested in manufacturing, retail, and real estate assets.[118] The charitable arm, Progress Nonprofit Charitable Trust, emphasized "education, housing and other services in contributing to the social uplift and development needs of urban communities."[119] Investors understood that their returns were distributed to serve a range of aims in the following order of priority: forty percent went to a charitable trust, twenty percent to workers, and forty percent to investors.[120] Initially envisioned as a church-specific program, the base of the program was expanded to include the broader community beyond the church in 1968. Through the program nearly four thousand African Americans in Philadelphia invested $10 a month for thirty-six months, enough to help build shopping centers, housing developments, and other enterprises.[121] The central goal was "to help build our underprivileged communities, and to provide the poor with a part in the free enterprise system."[122] Sullivan, however, noted the plan's additional benefits: "[b]y your participation you have set an example of how Black people, through their own resources, can develop housing projects, Human Service Centers, Shopping Centers, educational programs, and start manufacturing businesses for the future."[123]

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116. James Chen, *Impact Investing Explained: Definition, Types, and Examples*, INVESTOPEDIA (July 20, 2022), https://www.investopedia.com/terms/i/impact-investing.asp [https://perma.cc/YUA6-ENZM]

117. Lee Arnold, *Rev. Leon H. Sullivan*, PHILA. AWARD, https://www.philadelphiaaward.org/winners/rev-leon-h-sullivan/ [https://perma.cc/G7YG-UTNA] ("Sullivan devised the 10-36 Plan, where parishioners would donate $10 every month for 36 months (for 16 of those months the money would go to a community nonprofit, the last 20 months to start a black-owned business)."); LEON H. SULLIVAN, THE "10-36" PLAN (on file with the Library of Congress) (undated pamphlet describing the 10-36 Plan) [hereinafter *The 10-36 Plan Pamphlet*].

118. *The 10-36 Plan Pamphlet*, *supra* note 117. *See generally OIC Poster*, *supra* note 112; OIC PROPOSAL, *supra* note 112.

119. *The 10-36 Plan Pamphlet*, *supra* note 117.

120. SULLIVAN, *supra* note 28, at 176 ("I will not be satisfied until every black citizen owns a piece of America, if not individually at least mutually, if it is no more than a two-foot square of ground or a single share of stock. What a man owns a part of he values most.").

121. *See* Arnold, *supra* note 117.

122. *The 10-36 Plan Pamphlet*, *supra* note 117.

123. *Id.*

Additionally, Sullivan would initiate other cooperative investment programs called SHIPS (Self-Help Investment Programs) in cities across the country.[124] They were similarly designed to spur minority business, urban development, and job creation on a grander scale while giving Black communities a foothold in the free enterprise system and greater economic self-determination.[125]

D. General Motors Board of Directors Service[126]

In 1971, Sullivan became a member of the General Motors Corporation (GM) board of directors, a role he served in for over twenty years.[127] He was the first Black person to serve on the board of a major US public company.[128] A confluence of events led to his historic appointment: (i) timing—it was three years after the assassination of Dr. Martin Luther King Jr., during a period of massive social unrest;[129] (ii) business contacts built through the early boycotts and OIC job-training initiatives; and (iii) activism targeting GM, such as Ralph Nader's Campaign GM.[130] The decision to serve was not an easy one for Sullivan. Multiple constituencies questioned his decision to join the corporate board and become an insider. Grassroots activists wondered whether he was "selling out." And business leaders questioned his selection given his affiliation with corporate boycotts. The uneasiness was magnified in 1971, during his first year when he chose to take a moral stance that put him at odds with his fellow directors. The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States sponsored a shareholder resolution

124. SULLIVAN, *supra* note 1, at 23.

125. *See id.*

126. Sullivan also served on the board of Mellon Bank. *See* Jessica Ann Levy, *Black Power in the Boardroom: Corporate America, the Sullivan Principles, and the Anti-Apartheid Struggle*, 21 ENTER. & SOC'Y 170, 183 (2020).

127. *Id.* at 171 ("Joining GM's board in January 1971, amid a wave of shareholder and labor action calling for an end to racism within some of the largest U.S. corporations, Sullivan's tenure at GM was illustrative of a broader shift within the black freedom struggle, which increasingly included calls for Black Power in U.S. corporate and financial institutions alongside demands for greater access to local and national government.").

128. SULLIVAN, *supra* note 1, at 3.

129. Leon H. Sullivan, Speech About General Motors 1–2 (unpublished manuscript available in the Library of Congress).

130. SULLIVAN, *supra* note 1, at 25–31. The 1970 Project on Corporate Responsibility—a group of Washington lawyers sponsored by Ralph Nader—was an effort to obtain shareholder approval of several resolutions through the solicitation of proxies. Among the numerous resolutions submitted, one would have expanded the Board to include three directors nominated by constituent groups of employees and consumers; another would have required General Motors to publish information on its policies concerning auto safety, pollution control, and minority hiring. *See, e.g.*, Herbert Mitgang, *G.M. Challenged on "Responsibility"*, N.Y. TIMES, May 17, 1970, at 129.

to compel GM to leave South Africa.[131] The motion received only 1.29 percent of the votes cast.[132] Sullivan boldly deviated from management's position to express his support:

> To a great measure, the system of apartheid is being underwritten by American industry, interests, and investments, simply by virtue of our operations there. There are over three hundred American businesses and companies operating in the Union of South Africa today, including the General Motors Corporation.
>
> . . . .
>
> American industry cannot morally continue to do business in a country that so blatantly and ruthlessly and clearly maintains such dehumanizing practices against such large numbers of its people.
>
> . . . .
>
> I want to go on record for all to know that I will continue to pursue my desire to see that American enterprises, including General Motors, withdraw from the Union of South Africa until changes have been made in the practices and policies of that government as they pertain to the treatment of blacks and other nonwhites.[133]

This statement left many directors in a state of shock.[134] Nearly six years later, Sullivan would deliver on this promise.[135]

In his early years on the GM Board, Sullivan helped make progressive changes. With the support and sponsorship of GM Chair Jim Roche, who had recruited him, he worked to advance opportunities for women, African Americans, and other minorities[136] and to expand minority-owned dealerships and supplier networks.[137] He arranged site visits where he personally would engage with local leadership and personnel to gather an accurate assessment of diversity and other business practices.[138] These short notice visits became known as "Sullivan Visits" at GM.[139] Sullivan would also help organize "Sullivan Days"—daylong meetings at GM headquarters bringing executives from around the world

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131. Douglas Robinson, *Episcopal Church Urges G.M. to Close Plants in South Africa*, N.Y. TIMES, Feb. 2, 1971, at 1.

132. Morton Mintz, *Activist Minister Took Bold Step at GM Annual Meeting in 1971*, WASH. POST, June 3, 1987.

133. SULLIVAN, *supra* note 1, at 27.

134. *Id.* at 28.

135. *See* Levy, *supra* note 127, at 193.

136. Zurschmiede, Delle J. Delle Zurschmiede to Leon Sullivan, Apr. 13, 1989. Leon Howard Sullivan Collection, Library of Congress.

137. SULLIVAN, *supra* note 1, at 29.

138. *Id.*

139. *Id.*

to "[help] establish goals and landmarks for diversity of black, female, and minority employment throughout GM."[140] Notwithstanding these efforts, Sullivan did not want to be a single-issue director focused on diversity alone.[141] Instead, he wanted GM to be economically successful while improving life in marginalized communities.[142]

E. The Sullivan Principles to Combat Apartheid in South Africa

With the support of General Motors, Sullivan initiated the Sullivan Principles ("the Principles") for United States Firms Operating in South Africa on March 1, 1977.[143] The Principles provided for the following:

> 1. Non-Segregation of the races in all eating, comfort and work facilities
>
> 2. Equal and fair employment practices for all employees
>
> 3. Equal pay for all employees doing equal or comparable work for the same period of time
>
> 4. Initiation of and development of training programs that will prepare, in substantial numbers, Blacks and other nonwhites for supervisory, administrative clerical and technical jobs
>
> 5. Increasing the number of Blacks and other non-whites in management and supervisory positions
>
> 6. Improving the quality of employees' lives outside the work environment in such areas as housing, transportation, school, recreation and health facilities
>
> 7. Working to eliminate laws and customs that impede social, economic, and political justice *(added in 1984)*[144]

Aware of the potential reputational fallout and economic ramifications for General Motors, Sullivan threatened to resign if the

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140. *Id.* at 29–30.

141. Sullivan, *supra* note 129, at 20–21.

142. SULLIVAN, *supra* note 1, at 27.

143. Levy, *supra* note 127, at 192–93 ("The Sullivan Principles were announced publicly at a press conference in Washington, D.C., in March 1977. Whereas Sullivan had had to fight to be heard during the drafting process and was often outvoted by white members of the group, the signatory companies gave Sullivan a starring role as spokesperson for Principles."); Sethi & Williams, *supra* note 2, at 169–170 ("The six principles that came to be known as the Sullivan Principles, named after their originator Rev. Leon Sullivan, would become synonymous with (a) the ascendance of moral principles over purely economic interests; (b) the power and influence of religious groups and social activists to change corporate behavior; and (c) the capacity of multinational corporations, however reluctantly applied, to bring about social and political changes in the host countries of their overseas operations.").

144. Leon H. Sullivan, *Sullivan Principles for U.S. Corporations Operating in South Africa*, 24 INT'L LEGAL MATERIALS 1496, 1496–99 (1985).

company did not adopt them.[145] GM's size, scope, and iconic status were crucial to influencing other companies to adopt the Principles.

The Principles, a voluntary code of ethics applied to operations, were rooted in Sullivan's belief that "when it comes to issues of justice and human rights, the actions of companies can be more powerful than the actions of governments."[146] Key features to remediate racial inequity included: (i) periodic reporting, that is, disclosure; (ii) third-party auditing by a public accounting firm; and (iii) stakeholder engagement, that is, informing employees of the company's annual rating and allowing them to respond.[147] The Principles took a moderate and incremental approach to activism. Instead of complete divestment, companies would remain in South Africa and exercise their economic clout to promote change. Yet the threat of complete divestment remained an option lurking in the background.[148] The Principles were pro-capitalist and marketed as a counterforce to the expansion of communism in the developing world.[149] Although the Principles were a voluntary private mechanism, they were eventually reflected in the US Anti-Apartheid Act of 1986, necessitated by the South African government's intransigence.[150]

The Principles' impact was not immediate nor isolated. Apartheid ended nearly fifteen years after the principles were introduced as the result of multiple mechanisms and actors.[151] Sullivan "attempted to make it clear from the beginning in speeches and writings that the principles are not the total solution to the South African problem, and that even if they were implemented to the optimum, the Principles alone could not end apartheid."[152] The Principles had both supporters and critics,[153] but in

145. SULLIVAN, *supra* note 1, at 48–49.

146. *Id.* at 4.

147. *See id.* at 54–56.

148. Dennis Kneale, *Growing Dilemma: U.S. Firms Operating in South Africa Debate Whether to Stay or Go—Abandoning Workers, Assets Is So Painful Many Wish Reagan Would Issue Fiat—Sullivan's Tougher Principles*, WALL ST. J., July 11, 1986, at 1.

149. SULLIVAN, *supra* note 1, at 50.

150. Comprehensive Anti-Apartheid Act of 1986, H.R. 4868, 99th Cong. (1986). *See generally* Winston P. Nagan, *An Appraisal of the Comprehensive Anti-Apartheid Act of 1986*, 5 J. L. & RELIGION 327 (1987).

151. SULLIVAN, *supra* note 1, at 95, 97–99.

152. Leon H. Sullivan, *The Sullivan Principles and Change in South Africa*, AFR. REP., May–June 1984, at 48 (1984).

153. For positive assessments of the Sullivan Principles, see Malek K. Lashgari & David R. Gant, *Social Investing: The Sullivan Principles*, 47 REV. SOC. ECON. 74, 80 (1989) ("Thus, money managers who had concentrated on large, well established firms with international operations did not hamper their clients' wealth by concentrating on the Sullivan's top two categories instead of buying the Dow Jones Industrial Stock Index."); Erika George, *Racism as a Human Rights Risk: Reconsidering the Corporate 'Responsibility to Respect' Rights*, 6 BUS. & HUM. RTS. J. 576, 578 (2021) ("He advocated for corporate civil disobedience and introduced the Sullivan Principles, a code of conduct eventually adopted by most major multinational corporations operating in South Africa

hindsight, Sullivan was ahead of his time in providing a model for corporate engagement with human rights.

F. The Global Sullivan Principles

When Sullivan retired from the General Motors board in 1991,[154] he saw the potential for the expansion and application of his principles well beyond South Africa. The 1990s ushered in a new era where the United Nation's changed its approach toward the corporate sector shifting from a more hostile posture in the 1960s through the 1980s to one of engagement and collaboration.[155] In 1999, with then-United Nations Secretary General Kofi Annan, Sullivan unveiled the Global Sullivan Principles of Social Responsibility, an expanded formulation of the Principles initially developed for South Africa applied to a worldwide context.[156] Sullivan

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calling for equal pay, fairness in employment, and an end to workplace racial segregation."); James B. Stewart, *Amandla! The Sullivan Principles and the Battle to End Apartheid in South Africa, 1975–1987*, 96 J. AFR. AM. HIST. 62, 84 (2011) ("Along with the activities of long-time anti-apartheid activists, TransAfrica, the Free South Africa Movement, and the thousands who organized and participated in divestment campaigns and the demands for economic sanctions, Leon Sullivan and his supporters were instrumental in ending a system of government that denied people of African descent their political and economic rights and full participation in the governing of South African society."); Cedric E. Dawkins, *Elevating the Role of Divestment in Socially Responsible Investing*, 153 J. BUS. ETHICS 465, 471 (2018) ("Just as the possibility of a strike or lockout (i.e., exit) is an essential part of negotiation (i.e., voice), divestment and the specter of greater divestment reinforced other forms of engagement with the South African government. Hence, divestment is not to be understood solely as a last resort but part and parcel of the engagement process from the outset."). For negative assessments, see Mangaliso, *supra* note 18, at 230 ("The most critical inadequacy of the Sullivan Principles lay in the fact that even if they were fully enforced by every U.S. corporation in SA, apartheid would still be far from being threatened."); Gay W. Seidman, *Monitoring Multinationals: Lessons from Anti-Apartheid Era*, 31 POL. & SOC'Y 381 (2003) (criticizing code designed monitoring and advocates for a state-centered approach); Larson, *supra* note 2, at 502 ("The embrace of these codes reflects a degree of surrender to free-market capitalism, and the consequences of that surrender should trouble human rights activists.").

154. *See Leon Sullivan—The Sullivan Principles*, *supra* note 28.

155. Press Release, Secretary-General, Cooperation Between United Nations and Business, U.N. Press Release SG/2043 (Feb. 9, 1998); Pollman, *supra* note 17, at 7; Jean-Philippe Thérien & Vincent Pouliot, *The Global Compact: Shifting the Politics of International Development?*, 12 GLOB. GOVERNANCE 55, 57 (2006); Jennifer Bair, *Corporations at the United Nations: Echoes of the New International Economic Order?*, 6 HUMANITY 159, 160 (2015).

156. Hoffman, *supra* note 115. The text of Global Principles is captured below:

> **THE PRINCIPLES**
>
> As a company which endorses the Global Sullivan Principles we will respect the law, and as a responsible member of society we will apply these Principles with integrity consistent with the legitimate role of business. We will develop and implement company policies, procedures, training and internal reporting structures to ensure commitment to these principles throughout our organization. We believe the application of these Principles will achieve greater tolerance and better understanding among peoples, and advance the culture of peace.
>
> Accordingly, we will:

enjoined "companies large and small in every part of the world to support and follow the Global Sullivan Principles of corporate social responsibility wherever they had operations."[157] The Global Sullivan Principles' preamble captures its key objectives:

> The objectives of the Global Sullivan Principles are to support economic, social and political justice by companies where they do business; to support human rights and to encourage equal opportunity at all levels of employment, including racial and gender diversity on decision making committees and boards; to train and advance disadvantaged workers for technical, supervisory and management opportunities; and to assist with greater tolerance and understanding among peoples; thereby, helping to improve the quality of life for communities, workers and children with dignity and equality.[158]

Sullivan noted: "[t]he principles revolve around the basic realities of economics: the need for all to survive and the desire of companies to prosper."[159] Further, "the goal of the Global Sullivan Principles is to appeal to individuals in ways designed to get companies' houses in order and then to appeal to companies to get governments' houses in order."[160] UN-Secretary General Kofi Annan's remarks following the unveiling of the

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1. Express our support for universal human rights and, particularly, those of our employees, the communities within which we operate, and parties with whom we do business.
2. Promote equal opportunity for our employees at all levels of the company with respect to issues such as color, race, gender, age, ethnicity or religious beliefs, and operate without unacceptable worker treatment such as the exploitation of children, physical punishment, female abuse, involuntary servitude, or other forms of abuse.
3. Respect our employees' voluntary freedom of association.
4. Compensate our employees to enable them to meet at least their basic needs and provide the opportunity to improve their skill and capability in order to raise their social and economic opportunities.
5. Provide a safe and healthy workplace; protect human health and the environment; and promote sustainable development.
6. Promote fair competition including respect for intellectual and other property rights, and not offer, pay or accept bribes.
7. Work with government and communities in which we do business to improve the quality of life in those communities—their educational, cultural, economic and social well-being—and seek to provide training and opportunities for workers from disadvantaged backgrounds.
8. Promote the application of these principles by those with whom we do business.

We will be transparent in our implementation of these principles and provide information which demonstrates publicly our commitment to them.

The Global Sullivan Principles, UNIV. MINN. HUM. RTS. LIBR., http://hrlibrary.umn.edu/links/sullivanprinciples.html [https://perma.cc/U7NA-JGJA].

157. SULLIVAN, *supra* note 1, at 106–07.

158. *The Global Sullivan Principles*, *supra* note 156.

159. SULLIVAN, *supra* note 1, at 106.

160. *Id.*

Global Sullivan Principles capture the importance of the business community to the advancement of people, the planet, and profits:

> The question today is not whether corporations have social responsibilities; clearly they do. No, the crucial question now is how to create an environment in which business does what it does best—create jobs and wealth—while ensuring that people's basic needs are met.
>
> That is what brings us together today. And it is what I had in mind earlier this year when I proposed a Global Compact between the United Nations and business. The Compact calls for business to do more to protect human rights, the environment, and labour standards. The Global Sullivan Principles can help us implement the Compact and give global markets more of a human face.
>
> As we enter a new millennium, the United Nations needs the world's businesspeople to help it achieve its aims and, equally, world business needs a strong United Nations. Together, we can bring to life the values of the United Nations Charter. Putting the Global Sullivan Principles into practice will be a big step in that direction.[161]

The Global Sullivan Principles complemented the UN Global Compact with business and UN-Executive Director Kofi Annan's efforts to embrace non-state actors to advance the UN's mission. Annan, a Ghanaian citizen from the developing world, leading a Bretton Woods institution, which had been traditionally perceived and criticized as indifferent to the needs of developing countries, saw the potential opportunity to harness the economic power of global companies to advance human rights and development worldwide.[162] The UN Global Compact marked a new direction for the UN, that is, a relationship characterized by collaboration versus antagonism between the corporate community and the UN.[163] Under the auspices of the UN Global Compact, the ESG concept was also first articulated and conceived.[164]

Until his death in 2001, Sullivan actively promoted the Global Sullivan Principles and attempted to cultivate a layered coalition of actors to address human rights.[165] In navigating the boardroom to oppose South

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161. Press Release, Secretary-General, Good Corporate Citizenship, Business Reputations, Intimately Tied, Secretary-General Tells Corporation Leaders, U.N. Press Release SG/SM/7203 (Nov. 2, 1999).

162. Press Release, Secretary-General, Kofi Annan Outlines Priorities to Economic and Social Council to Eradicate Poverty, U.N. Press Release SG/SM/7058 (July 6, 1999).

163. KOFI ANNAN, WE THE PEOPLES: A UN FOR THE 21ST CENTURY 5, 53–55, 56–60 (2014).

164. Pollman, *supra* note 17, at 8–20.

165. *See, e.g.*, City Council of New York, Transcript of the Minutes of the Committee on Governmental Operations October 2, 2000 Leon Howard Sullivan Papers. Library of Congress.

African apartheid, he recognized the importance of "cooperation and active participation by institutional investor organizations, individual stockholders, churches, and consumers, as well as the cooperation and support of the United States government and other governments . . . though no one of these by itself is essential."[166] He was a catalyst, working with institutional and grassroots organizations to make progress.[167] Ultimately, Sullivan hoped the Global Sullivan Principles would promote peace and the use of nonviolent means to combat injustice.[168] In the contemporary context, one can readily see the relevance and potential application of the Global Sullivan Principles to geopolitical issues, such as minority rights in China, slave labor, and the Ukrainian-Russian conflict, as well as the overlap with debates concerning ESG and corporate purpose.[169]

G. International Foundation for Education and Self-Help (IFESH)

Sullivan's commitment to the African continent extended beyond South Africa and the Sullivan Principles. In 1988, at the height of the Sullivan Principles' implementation, he created the International Foundation for Education and Self-Help (IFESH) "to provide sub-Saharan Africa's poor developing countries with self-help methods relating to education, food, health, jobs, businesses, and other areas."[170] IFESH boasted an impressive board of leaders from the private, public, and philanthropy sectors.[171] It would expand to support programs in Africa, Latin America, and Asia. IFESH received congressional support and by the 1990s, had become a significant player in the development and human-capacity-building arena.[172] Sullivan was drawn to Africa and wanted to build a bridge between African Americans and Africans.[173] He saw mutual benefits from transnational collaboration among Black people. He would initiate a series of unprecedented African-African American Summits bringing leaders and people from the different continents together and seek

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Washington, D.C. (including remarks from Rev. Leon Sullivan made before New York City Council regarding the Global Sullivan Principles).

166. SULLIVAN, *supra* note 1, at 106–07; *see also* Statement by New York State Comptroller Edward v. Regan before the U.S. Senate Foreign Relations Committee July 24, 1986 (reflecting pension fund support of the Sullivan Principles and stance against South African Apartheid).

167. *See* SULLIVAN, *supra* note 1, at 95, 97–99.

168. *Id.* at 110.

169. *See generally* LEON SULLIVAN, SULLIVAN TYPE PRINCIPLES FOR CHINA (1995).

170. SULLIVAN, *supra* note 1, at 114.

171. *Id.* at 114–15.

172. *Id.*; *see also* Leon H. Sullivan, Remarks of Leon H. Sullivan at the Signing Ceremony of the Debt Conversion Agreement Between the United States Agency for International Development and the International Foundation for Education and Self-Help 2–4 (Mar. 7, 1990).

173. Sullivan, *supra* note 79.

debt relief for sub-Saharan African countries.[174] In the wake of Sullivan's death in 2001, UN-Secretary General Kofi Annan highlighted Sullivan's impact beyond his association with the Sullivan Principles noting his broader commitment to African development.[175]

III. HOW DOES SULLIVAN'S CIVIL AND HUMAN RIGHTS ACTIVISM INFORM MODERN CORPORATE ACTIVISM?

A. Lessons Learned from Sullivan's Legacy

1. A Moral Voice for Corporations

Although Sullivan's legacy is often attributed to the Sullivan Principles, it is much broader. His legacy reflects a positive vision that capitalism can have a conscience and promote human rights both domestically and abroad. The same leader, who introduced Dr. Martin Luther King, Jr. to private-sector economic engagement tactics, was also a godfather of modern corporate responsibility and a pioneer providing a model for corporate engagement with human rights. On the surface, these efforts may appear quite different, but a closer examination reveals a common thread: the prudent use of economic power to drive change.

Some commentators still argue that the corporation must maintain a laser focus on shareholder returns eschewing moral and social causes.[176] This argument is not new nor nuanced but simplistic and, when followed with conviction, has deleterious consequences for society and humanity.[177]

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174. For example, Sullivan chaired the sixth African-African American Summit, which was held in Ghana in 1999. *Annan Pays Tribute to Reverend Sullivan, Apartheid Foe and Africa Advocate*, UN NEWS (Apr. 25, 2001), https://news.un.org/story/2001/04/1042 [https://perma.cc/P7DT-M8VE]. *See generally* Leon H. Sullivan, Speech at the United Nations in New York (Oct. 28, 1991) (asserting the need for Sub-Saharan African debt relief).

175. *Annan Pays Tribute to Reverend Sullivan, Apartheid Foe and Africa Advocate*, *supra* note 174.

176. *Compare* Milton Friedman, *A Friedman Doctrine—The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES, Sept. 13, 1970, at SM17, *with* Aaron K. Chatterji & Michael W. Toffel, *The Power of C.E.O. Activism*, N.Y. TIMES, Apr. 3, 2016, at SR10 ("[I]n an era of political polarization, in which we are increasingly cloistered in neighborhoods, social networks and workplaces that serve as echo chambers for our ideological beliefs, corporate neutrality may be outdated.").

177. *See generally* BENJAMIN B. FERENCZ, LESS THAN SLAVES: JEWISH FORCED LABOR AND THE QUEST FOR COMPENSATION (2002) (illustrating the complicity of German corporations with slave labor during the Holocaust). *See also* Beth Stephens, *The Amorality of Profit: Transnational Corporations and Human Rights*, 20 BERKELEY J. INT'L L. 45, 46 (2002) ("Decisions as to whether to conduct business with the Nazi regime were often made in purely economic, amoral terms. Shareholders and managers were able to enjoy the profits generated from such business without directly confronting the human consequences of their business operations."); Michael J. Bazyler & Amber L. Fitzgerald, *Trading with the Enemy: Holocaust Restitution, the United States Government, and American Industry*, 28 BROOK. J. INT'L L. 683, 773 (2003) (discussing how during World War II,

Sullivan believed in the potential of reconciling shareholder and social aims. Yet he recognized that "an appeal to companies to do something [about human rights abuses] is complicated by the fact that the companies themselves are [sometimes] the perpetrators."[178] For most of U.S. history, companies that discriminated and exploited discrimination were given a pass.[179] These truths necessitated careful engagement. Accordingly, Sullivan first appealed to individuals who would inspire companies to change from within.[180] He recognized, in formulating the Sullivan Principles, the need for a voluntary code with corporate buy-in and input. Pragmatically, he was aware that progress did not require every company to adopt the principles. Targeting the most influential and economically salient companies in various industries made the most sense because they would have the broadest, strongest impact on human rights.[181]

2. A Diverse Activist Toolkit

For Sullivan, engaging with human rights was a dynamic process, relying on various modes of activism by diverse actors, such as divestment (or the threat thereof), corporate codes, investor pressure, grassroots boycotts, and foreign sanctions. He effectively engaged or deployed them all to raise the economic ante because he recognized that broad systemic change required sustained, combined pressure from an ecosystem including corporate, institutional, social, public, and civil society actors. He knew that moral stances without economic pressure would prove hollow. Respecting collective insights, he embraced criticism to improve

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Ford used the labor of enslaved Jews at Ford-Werke, A.G., Ford's German plant in Cologne, Germany); Alexandra Stevenson & Steven Lee Myers, *For Olympic Sponsors, 'China Is an Exception'*, N.Y. TIMES (Jan. 28, 2022), https://www.nytimes.com/2022/01/28/business/olympic-sponsors-china-beijing.html [https://perma.cc/8DMB-4PRE] ("President Biden and a handful of other Western leaders may have declared a 'diplomatic boycott' of the Winter Games, which begin next week, but some of the world's most famous brands will still be there. The prominence of these multinational companies, many of them American, has taken the political sting out of the efforts by Mr. Biden and other leaders to punish China for its human rights abuses, including a campaign of repression in the western region of Xinjiang that the State Department has declared a genocide.").

178. SULLIVAN, *supra* note 1, at 106.

179. David Gelles, *'Corporate America Has Failed Black America'*, N.Y. TIMES (June 6, 2020), https://www.nytimes.com/2020/06/06/business/corporate-america-has-failed-black-america.html [https://perma.cc/FJK3-YQ4V] ("[M]any of the same companies expressing solidarity have contributed to systemic inequality, targeted the black community with unhealthy products and services, and failed to hire, promote and fairly compensate black men and women.").

180. SULLIVAN, *supra* note 1, at 106.

181. As General Motors CEO Charlie Smith once observed: "As [General Motors] goes, so goes the nation." Tom Dispatch, *As GM Goes, So Goes . . .*, NATION (Feb. 23, 2009), http://www.thenation.com/blog/gm-goes-so-goes [https://perma.cc/G82R-NTSY]. Charles Wilson, during his 1953 confirmation hearings to become secretary of defense, reportedly said he believed "'what was good for the country was good for General Motors and vice versa.' (Soon that would be simplified to: 'What's good for General Motors is good for the country.')". *Id.*

an incumbent approach. Some scholars recognize Sullivan's impact on recasting the corporate purpose and accountability debate at the company level:

> The Sullivan Principles changed the context of the debate from *whether* or not corporations should be held socially responsible for (a) the community's well-being as an important social institution; and, (b) the negative externalities that they create as a consequence of their normal business operations. Instead, the locus of debate permanently shifted to *how and to what extent* corporations should be held accountable for the societal impact of their business activities and the benefits they generate and harms they cause to various elements of society.[182]

They also recognize his pragmatic contributions:

> [T]he Sullivan Principles have provided us with a plethora of experiences in terms of how to craft a good set of principles to guide business conduct that must be based on a combination of strong moral reasoning and economic feasibility. The Sullivan Principles also provide us with a rationale for how to create viable and defensible systems and procedures for monitoring and verifying corporate compliance with a given code of conduct, and the hazards and pitfalls that must be avoided for such a system to engender public trust.[183]

Although imperfect, corporate codes, like the Sullivan Principles, act as private ordering mechanisms, which may have advantages over other forms of regulation and activist tools.[184] They can function as dynamic gap-filling private regulation that is not subject to government failure and political gridlock at the local, national, and global levels.

B. New Corporate Activism and the ESG Movement

1. The Contemporary Moment

Modern corporate activist strategies are not necessarily novel but more refined. The current moment resembles the 1970s, although climate and environmental concerns may outweigh the earlier social focus.[185] Today's business environment is ripe for activism due to the convergence

182. Sethi & Williams, *supra* note 2, at 172 (emphasis added).

183. *Id.* at 197.

184. *See generally* Dorothy S. Lund, *Asset Managers as Regulators*, 171 U. PA. L. REV. 77 (2022).

185. Andrea Thompson, *How the Environment Has Changed Since the First Earth Day 50 Years Ago*, SCI. AM. (Apr. 22, 2020), https://www.scientificamerican.com/article/how-the-environment-has-changed-since-the-first-earth-day-50-years-ago/ [https://perma.cc/NC6C-9Y6D]. Between 1970 and 2019 global atmospheric carbon dioxide and changes in average global temperature has seen an upward trajectory of concentration. *Id.*

of the public and private spheres; the evolution of corporate social responsibility efforts; and the expansion of corporate political rights, reinforced by the U.S. Supreme Court's *Citizens United* and *Hobby Lobby* decisions.[186] Information technology and social media amplify activist demands. Shareholders wield more power through legal innovations, and the equity ownership landscape has shifted toward institutional investors who potentially can exert enhanced coordination and aggregation capabilities via the three largest asset managers—Vanguard, BlackRock, and Fidelity—as well as proxy advisory services like Institutional Shareholder Services (ISS) and Glass Lewis.[187] The prevalence of new governance approaches to regulation characterized by private ordering and private-public collaboration favors corporate, that is, non-state actor engagement with public issues.[188]

The contemporary ESG movement reflects an evolution, a shift in business and stakeholder sentiment. The ESG acronym pairs environmental and social concerns alongside traditional governance concerns. This pairing is not coincidental but strategic. One commentator captures this "big tent" approach to ESG:

> Just as the opaque features of legal standards can create a salutary "fog" that allows for moral deliberation, the flexibility and big tent approach of the term ESG, and its facilitation of claims of alignment between value and values, are at once part of the success story in diffusing ESG widely and forming a diverse movement of proponents [at the local, national, and multinational levels]. The ambiguity of ESG and varying usages that developed over time have facilitated buy-in from a great variety of market actors. However, these very features that have fostered a global dialogue, attracted trillions of investment dollars, and fueled regulatory reform, are also the source

186. Harwell Wells, *The Cycles of Corporate Social Responsibility: An Historical Retrospective for the Twenty-First Century*, 51 U. KAN. L. REV. 77, 78 (2002). *See generally* John C. Coates IV, *Corporate Governance and Corporate Political Activity: What Effect Will Citizens United Have on Shareholder Wealth?* (Harv. L. & Econ. Discussion Paper, Paper No. 684, 2010), https://ssrn.com/abstract=1680861 [https://perma.cc/UCH3-ZCBU]; Citizens United v. FEC, 558 U.S. 310 (2010); Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014).

187. *See generally* Lund, *supra* note 184.

188. *See, e.g.*, Edward Rubin, *The Regulatizing Process and the Boundaries of New Public Governance*, 2010 WIS. L. REV. 535, 545–47; Lisa Blomgren Bingham, *The Next Generation of Administrative Law: Building the Legal Infrastructure for Collaborative Governance*, 2010 WIS. L. REV. 297, 334; Gráinne de Búrca, *New Governance and Experimentalism: An Introduction*, 2010 WIS. L. REV. 227, 236; Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342, 444 (2004); Chris Goldspink & Robert Kay, *Organizations as Self-Organizing and Sustaining Systems: A Complex and Autopoietic Systems Perspective*, 32 INT'L. J. GEN. SYS. 459, 459–60 (2003); Cristie Ford, *New Governance in the Teeth of Human Frailty: Lessons from Financial Regulation*, 2010 WIS. L. REV. 441, 450.

> of challenges and critiques that have emerged and will continue into the foreseeable future.[189]

Although Sullivan did not benefit from some of the advantages of the contemporary ESG movement, he still managed to inspire companies with a pragmatic, instrumental, and flexible big tent approach, which embraced multiple constituencies on a local, national, and multinational level, to advance human rights. In this sense, scholars, policymakers, and companies in the contemporary ESG context can point to Sullivan as a forbearer.

2. Contemporary Parallels

The Sullivan Principles influenced a range of corporate codes of conduct on an international scale, including the MacBride Principles in Northern Ireland, the Valdez Principles, and the UN Global Compact principles.[190] Corporate codes of conduct and other voluntary private ordering measures, once heavily criticized, have become a favored solution.[191] Critics contend that corporate self-regulation via corporate codes is a political strategy that sidesteps additional or more onerous government regulation.[192] This critique may be overstated because it assumes that government regulation is attainable under the prevailing circumstances. In many instances, this may not be the case. Another more positive perspective envisions voluntary corporate codes as complementary gap fillers. They provide activist levers, outside of state-based regulation, which is often viewed as inadequate at both international and national levels of government, to impact corporate conduct.[193] On the global stage, they attempt to address the actions of nonstate actors, which remain an enduring challenge.

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189. Pollman, *supra* note 17, at 46.

190. *See, e.g.*, *The Ten Principles of the UN Global Compact*, UNITED NATIONS GLOB. COMPACT, https://www.unglobalcompact.org/what-is-gc/mission/principles [https://perma.cc/V8S5-WA65]; Comprehensive Anti-Apartheid Act of 1986, H.R. 4868, 99th Cong. (1986); OECD, OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (2011), https://www.oecd.org/daf/inv/mne/48004323.pdf [https://perma.cc/NZB5-JLW8]; Sean McManus, *The Macbride Principles*, UNIV. MINN. HUM. RTS. LIBR. (Dec. 1997), http://hrlibrary.umn.edu/links/macbride.html [https://perma.cc/WR3W-N2EK]; Mary Ellen West, *Why Corporations Should Adopt the Valdez Principles*, 16 WM. & MARY ENVTL. L. & POL'Y REV. 99 (1991–1992).

191. *See generally* Alice Martini, *Socially Responsible Investing: From the Ethical Origins to the Sustainable Development Framework of the European Union*, 23 ENV'T DEV. & SUSTAINABILITY 16874 (2021). It is worth noting that although a major critique against the above-mentioned initiatives is their voluntary nature and their lack of external monitoring and sanction mechanisms, some studies have shown that investors may be able to pressure signatories to increase their compliance with the disclosure requirements and to "walk the talk."

192. David Vogel, *Private Global Business Regulation*, 11 ANN. REV. POL. SCI. 261, 268 (2008).

193. *Id.* at 266.

The Sullivan Principles, in a sense, attempted to address corporate accountability gaps providing a rating system, disclosures, and mandating third-party auditing.[194] However, third-party auditing by nongovernmental bodies and its associated potential for "shaming" or a "looking glass effect" may change the focus from sanctions on social wrongs to reputational concerns for noncompliance.[195] While one cannot guarantee that the metrics or principles selected will maximize human rights, there is consensus for the need for metrics and standards to define the compliance of multinational corporations. This approach has a modern analog in the push to create more uniform climate and ESG standards, which are subject to similar critiques and definitional challenges.[196]

Sullivan's activism, including codes of conduct as well as engagement with investors, corporate executives, and other stakeholders, successfully brought social issues into business operations and governance. His activism emphasized the "S" in the ESG acronym, which remains the most controversial, difficult to quantify, and contested element.[197] The "S" may "invoke ethical issues that lie beyond the [perceived] scope of proper investment strategy or to require cultural judgments about potential consumer, reputational, or political risks that are particularly difficult to gauge."[198] Contemporary resistance likely pales in comparison to the resistance that Sullivan faced in the absence of an ESG movement. In approximately two decades, "ESG has gone from closed-door sessions of financial industry executives and other institutional leaders gathered by the United Nations to the everyday lingo of investors, asset managers, corporate officers and directors, employees, consumers, and regulators around the world."[199]

194. *See generally* Sullivan, *supra* note 144.

195. Sean D. Murphy, *Taking Multinational Corporate Codes of Conduct to the Next Level*, 43 COLUM. J. TRANSNAT'L L. 389, 421 (2005) ("At the same time, such codes have their critics, who have been articulate and aggressive in voicing their concerns. In particular, the voluntary nature of the codes leads many observers to see the codes as largely or potentially MNC public relations ploys. On this account, MNCs may purport to follow such codes, but do so only with varying degrees of seriousness.").

196. Lund & Pollman, *supra* note 12, at 2614 ("As investors started to accept the notion that integrating ESG measures could mitigate risk and create shareholder value, various institutions realized they could supply metrics and other services for a fee. As a result, ratings agencies began providing ESG metrics, institutional investors offered ESG funds, and thousands of investment professionals billed themselves as 'ESG analysts.'")

197. Pollman, *supra* note 17, at 43.

198. David Wood, *What Do We Mean by the S in ESG? Society As a Stakeholder in Responsible Investment*, *in* THE ROUTLEDGE HANDBOOK OF RESPONSIBLE INVESTMENT 555 (Tessa Hebb, James P. Hawley, Andreas G. F. Hoepner, Agnes L. Neher, & David Wood eds., 2015).

199. Pollman, *supra* note 17, at 45–46.

3. Contemporary Challenges

Parallels between the Sullivan Principles and contemporary ESG movement also expose the challenges of implementing corporate codes of conduct and other private ordering solutions.

a. Democratic Legitimacy and Leadership Gaps

Voluntary codes and standards created outside traditional public venues may reflect the absence of democratic legitimacy. Democratic legitimacy may be further undermined by the cultural uniformity and homogeneity of corporate leadership, ownership, and other decisionmakers. Sullivan's contributions influencing the Civil Rights Movement, helping to dismantle South African apartheid, and enjoining companies to advance human rights globally illustrate how progress may need diverse, intelligent, flexible, pragmatic leadership. In the contemporary context, it remains unclear who are the corporate leaders of the so-called ESG movement. To the extent leaders would help advance the ESG movement, financial industry executives or large asset managers alone are likely insufficient.[200] Sullivan's tireless engagement with skeptical executives and other stakeholders was extraordinary given the environment in which he operated. Aware of his own limitations, Sullivan understood the need for building allyship, persuading individual corporate actors, as well as cultivating and leveraging trusting long-term relationships. This was not achieved through grandiose statements and press releases, but through persistent engagement and diplomacy, which often took place outside of the public eye.

b. Expectations Gaps

In the contemporary environment, an overreliance on shareholder activism, voluntary codes of conduct, and similar private tactics to address human rights may lead to an expectations gap as such tactics are not effective surrogates for persistent, organized, mobilized social movements that employ diverse methods in traditional democratic venues. Instead, they are complementary to an overall engagement strategy. Sullivan, despite touting a voluntary code of conduct bearing his namesake, understood that government regulation or the threat thereof was a necessary lever to promote accountability among corporate actors.

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200. *See, e.g.*, Larry Fink, *Larry Fink's 2020 Letter to CEOs: A Fundamental Reshaping of Finance*, BLACKROCK (2020), https://www.blackrock.com/corporate/investor-relations/2020-larry-fink-ceo-letter [https://perma.cc/6QTP-JUGE].

c. Definitional

Whereas previous constructs of corporate social responsibility were perceived as ideological, the ESG movement, with its diffusion among a range of constituents and mainstreaming, has attempted to neuter potentially loaded terms. Despite these attempts, the lack of clear definitions and ambiguity in the ESG context, as well as its big tent approach, still provokes critique. The ESG acronym is deployed in multiple ways, including: (i) factors for investment analysis,[201] (ii) risk management, (iii) corporate social responsibility or sustainability, and (iv) ideological preference.[202] The Swiss-Army knife approach has instrumental value in cultivating buy-in from a diverse set of stakeholders who find their interests reflected in the concept. Yet its breadth inevitably opens it up to critique; its strength can also be a weakness.

IV. CONCLUSIONS AND DIRECTIONS FOR FUTURE RESEARCH

Leon Howard Sullivan was one of the most compelling leaders of the twentieth century. His legacy requires further examination from contemporary scholars. His positive inclusive "big tent" vision of corporate engagement with moral issues provides a roadmap upon which contemporary leaders continue to build. Writing in 1969, Sullivan boldly asserted: "Effective action is possible on an international scale, too. If banks, investment firms, and internationally developed industrial enterprises were to focus their powers of selective patronage, selective investments and selective exports on a specific objective anywhere in the world, changes would be immediate."[203] He was a visionary who understood how the convergence of these forces could change corporate behavior and societies.

The Sullivan Principles represented a "crucial turning point in the then-ongoing debate about social expectations for corporate conduct."[204] Sullivan's efforts helped answer, at a practical level, a longstanding question of whether companies as important social institutions, should bear responsibility for negative externalities resulting from business operations. The debate then permanently shifted to the question of to what

201. Pollman, *supra* note 17, at 44 ("A key potential area for greater clarity and precision could be distinguishing between ESG as 'inputs' into an investment process and ESG as 'outputs' or goals to be maximized, with the latter carrying an understanding that it may involve trade-offs with financial returns and the need for further specification of the type of goals being pursued.").

202. *Id.* at 25–29.

203. SULLIVAN, *supra* note 28, at 81.

204. S. PRAKASH SETHI & OLIVER F. WILLIAMS, ECONOMIC IMPERATIVES AND ETHICAL VALUES IN GLOBAL BUSINESS: THE SOUTH AFRICAN EXPERIENCE AND INTERNATIONAL CODES TODAY 380 (2000).

extent corporations should be liable.[205] Whereas earlier corporate social responsibility efforts suffered from a "perception" that they deployed shareholder money in service of non-financial outcomes, the contemporary ESG movement attempts to link such efforts to corporate bottom lines, albeit with still a significant degree of skepticism from commentators. In hindsight, Sullivan working with similar, but less advanced, tools was relatively successful.

Sullivan's legacy raises important questions for researchers: How effective is private regulation in achieving social aims in comparison to traditional modes of government regulation or as a complement to them? "What mix of domestic and international, private and public, and hard and soft law would enable global firms and markets to be better governed?"[206] And how important is the role of corporate leadership in promoting social change? Sullivan, an individual citizen, achieved what many heads of state, large NGOs, and other private and public actors could not: effectively serving as a catalyst, orchestrating and leveraging corporate economic power to impact social issues at local, national, and global levels for nearly half a century. He should not remain a "hidden figure" to contemporary researchers, but instead a pioneer in the evolution of the Civil Rights Movement and forbearer of corporate social responsibility and the modern ESG movement.[207]

205. *Id.*
206. Vogel, *supra* note 192, at 276–77.
207. *See* Lewis, *supra* note 4.