Government Obligation  
Opposition Brief by Taylor Belyeu



Government Obligation can be a tricky argument, especially on the affirmative. After all, all the negative has to do is turn ‘necessary regulations’ into ‘red tape’ and the judge is almost always immediately turned off. So, why is it the government’s obligation to put more regulations in place, rather than letting the market run its own course? That is the focus of this brief.

* What is government’s obligation(s)
* Government must prevent corporations from harming human rights
* Corporations fail to self-regulate to protect human rights
* Regulations are necessary to protect human rights
* The benefits far outweigh the costs

First off, when discussing government obligation, we need to actually cover what the obligation is. And why, in fact, government can have more than one “primary obligation”. This point discusses how government has a responsibility to protect its citizens but also to uphold human rights. There are also a few details on what can be included in those human rights, such as equal pay and non-discrimination (courtesy of the UN Declaration of Human Rights).

It makes sense that if government should protect human rights, it must stop other entities, such as corporations, from harming human rights. This takes governments obligation a step further, in that not only should a government refrain from harming human rights, it should also prevent other entities over which it has jurisdiction, such as companies residing in its borders, from harming human rights as well.

The next point is that corporations fail to uphold human rights by self-regulating. If they could, well, government regulation might not be necessary. But there’s plenty of evidence pointing to the contrary, as this point covers. Given their inherent interest to make more money, and their track record, no, companies don’t protect human rights on their own.

Leading from the last point, it makes since that if companies won’t protect human rights on their own, then regulations are necessary to protect human rights. Thus, government has an obligation to uphold fair trade.

The final point isn’t necessary to prove government obligation is on the affirmative, but more to circumvent potential negative arguments about the cost of regulations. First of all, monetary cost never outweighs the protection of human rights, and second, even on a monetary scale having good regulations can save money.

Good luck, and happy debating!

Government Obligation

**Governments obligation is to protect citizens and human rights**

**Government must protect citizens (Social Contract Theory)**

*Steven J. Heyman (Assistant Professor of Law, Chicago-Kent College of Law, Illinois Institute of Technology) “The First Duty of Government: Protection, Liberty and the Fourteenth Amendment”* [*https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3172&context=dlj*](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3172&context=dlj)

In a state of nature, however, an individual often lacks the power to defend himself against invasion by others, rendering the enjoyment of his rights "very unsecure.'' For this reason, individuals agree to form a community "for the mutual Preservation of their Lives, Liberties and Estates," which Locke comprehensively termed "Property. '' Under the terms of this compact, each individual gives up his natural power to act for his own preservation "to be regulated by the Laws made by the Society, so far forth as the preservation of himself, and the rest of that Society shall require." In addition, he "engages his natural force.., to assist the Executive Power of the Society, as the law thereof shall require." In return, the individual obtains not only benefits from "the labour, assistance, and society of others in the same Community," but also ''protection from its whole strength." In short, according to Locke, the end of government is to direct "the force of all the subjects of the commonwealth" for the purpose of "preserving the members of the commonwealth in peace from injury and violence." Locke emphasized that, because government is established for this purpose, it is "obliged" to secure every individual's life, liberty, and property. When it acts contrary to this trust, the government is dissolved and the community regains the right to establish a new form of government. Such dissolution occurs, in Locke's view, where the government invades the rights of subjects, or where it fails to use its power to secure those rights. Locke implied that the Glorious Revolution of 1688, in which King James II was dethroned and replaced by William and Mary, was justified on these grounds.

Analysis: Government has a responsibility and obligation, as seen through Locke’s social contract theory, to protect its citizens

Impact: Protecting citizens is one of the primary obligations of government.

**Government must protect human rights**

*UN Declaration of Human Rights* [*https://www.ohchr.org/EN/UDHR/Documents/UDHR\_Translations/eng.pd*](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pd)*f*

The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

…

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Analysis: Government has a responsibility to protect human rights, including those mentioned in the list above.

Impact: Government has an obligation to protect human rights

**Governments must prevent corporations from harming human rights**

*Olivier De Schutter (appointed the UN Special Rapporteur on the right to food in March 2008 by the United Nations Human Rights Council) “Regulating Transnational Corporations: A Duty under International Human Rights Law”; March 2014* [*https://www.ohchr.org/Documents/Issues/Food/EcuadorMtgBusinessAndHR.pdf*](https://www.ohchr.org/Documents/Issues/Food/EcuadorMtgBusinessAndHR.pdf)

The obligation of a State to control the conduct of non-State actors where such conduct might lead to human rights violations outside its territory has been explicitly affirmed by various United Nations human rights treaty bodies. The Committee on Economic, Social and Cultural Rights in particular affirms that States parties should “prevent third parties from violating the right [protected under the International Covenant on Economic, Social and Cultural Rights] in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law”. Specifically in regard to corporations, the Committee on Economic, Social and Cultural Rights has further stated that “States Parties should also take steps to prevent human rights contraventions abroad by corporations that have their main seat under their jurisdiction, without infringing the sovereignty or diminishing the obligations of host states under the Covenant”. Similarly, the Committee on the Elimination of Racial Discrimination has called upon States to regulate the extraterritorial actions of third parties registered in their territory. For example, in 2007, it called upon Canada to “…take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada”, recommending in particular that the State party “explore ways to hold transnational corporations registered in Canada accountable”. Under the International Covenant on Civil and Political Rights (CCPR), the Human Rights Committee noted in 2012 in a concluding observation relating to Germany: “The State party is encouraged to set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations. It is also encourages to take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad.”

Analysis: Government is responsible not only for protecting its own citizens, but also for protecting human rights outside of its own borders. It is responsible for ensuring groups such as businesses and corporations located in its territory don’t harm the human rights of others, regardless of whether they are citizens or not.

Impact: Government has an obligation to protect human rights beyond its own borders, and an obligation to stop corporations from harming human rights.

**Corporations have no right to harm human rights**

*Professor John Ruggie (UN Secretary-General’s Special Representative on Business and Human Rights) “Human Rights Translated: A Business Reference Guide”; February 2006* [*https://www2.ohchr.org/english/issues/globalization/business/docs/Human\_Rights\_Translated\_web.pdf*](https://www2.ohchr.org/english/issues/globalization/business/docs/Human_Rights_Translated_web.pdf)

Whatever other differences may exist in the world, starting with the 1948 Universal Declaration, human rights are the only internationally agreed expression of the entitlements that each and every one of us has simply because we are human beings. Thus, securing respect for human rights must be a central aim of governance at all levels, from the local to the global, and in the private sector no less than the public.

Analysis: There is absolutely no excuse for corporations harming human rights. Regardless of whether it is the ‘lesser of two evils’ or ‘better than the alternative’ it is still wrong. We would never let any government get away with such arguments, so why should corporations?

Impact: Corporations never have the right to harm human rights, regardless of circumstance or anything else.

**Regulations are necessary to protect human rights**

*John Irons and Isaac Shapiro (Isaac Shapiro joined EPI in 2011 to direct work examining the economic effects of government regulation. He previously worked for nearly two decades at the Center on Budget and Policy Priorities, where his national policy research concentrated on working poor, income distribution, and tax issues, and where he assisted in the coordination and development of the Center’s research agenda. Shapiro also founded the Center’s International Budget Project. Shapiro has worked as a senior adviser at the Save Darfur Coalition, as special assistant to U.S. Secretary of Labor Robert Reich, and for a Member of Congress. He is the author of numerous reports, articles, and op-ed pieces, and is the co-author of two books, Working But Poor: America’s Contradiction, and Protecting American Workers. He also edited A Guide to Budget Work for NGOs.) “Regulation, employment, and the economy”; April 12, 2011* [*https://www.epi.org/publication/regulation\_employment\_and\_the\_economy\_fears\_of\_job\_loss\_are\_overblown/*](https://www.epi.org/publication/regulation_employment_and_the_economy_fears_of_job_loss_are_overblown/)

Well-crafted regulations serve many purposes. They protect people from harmful products, ensure prudent use of natural resources, and safeguard the environment. They can prevent national and regional economic disasters, and can strengthen particular industries. They also play a critical role in structuring the economy and paving the way for innovation and competitive markets. This section of the report first examines the ways in which regulations can aid the economy and employment, and then investigates the general benefits and costs of regulations.

Analysis: Governments put regulations in place to uphold their obligations to protect citizens and human rights. They are the real-world application of the governments responsibilities.

Impact: Regulations are necessary to uphold governments obligation to protect human rights.

**Corporations cannot and will not self-regulate**

*Christopher Albin-Lackey (Senior Legal Advisor) “Corporate Self-Regulation Is a Global Crisis”; November 14, 2017*

[*https://www.hrw.org/news/2017/11/14/corporate-self-regulation-global-crisis*](https://www.hrw.org/news/2017/11/14/corporate-self-regulation-global-crisis%20)

The problem isn’t just that an approach without robust enforcement of the rules enables massive corporations to run roughshod over rights, but that it creates environments where it becomes impossible to hold the whole vast ocean of smaller companies that never make headlines to any coherent standard.

We live in a moment when many businesses claim to be responsible. But few acknowledge what might be their most important responsibility: to accept that they need to be bound by rules they don’t set themselves. Many leading corporations tout their adherence to meaningful voluntary standards, agreeing to be judged and sometimes audited against them—but not actually bound. Many of the same companies rabidly oppose any move to make those standards mandatory or to enforce relevant legal standards more vigorously.

Analysis: Corporations may pretend to self-regulate, but they are not bound to protect human rights unless the government puts necessary regulations in place. Without those regulations, corporations have a history of harming human rights to get what they want.

Impact: Corporations fail to self-regulate to protect human rights.

**Ex. India Mining Industry**

*Human Rights Watch “India: Mining Industry Out of Control”; June 14, 2012*

[*https://www.hrw.org/news/2012/06/14/india-mining-industry-out-control*](https://www.hrw.org/news/2012/06/14/india-mining-industry-out-control%20)

India’s government has failed to enforce key human rights and environmental safeguards in the country’s mining industry, Human Rights Watch said in a report released today.

The 70-page report, “[Out of Control: Mining, Regulatory Failure and Human Rights in India](https://www.hrw.org/reports/2012/06/14/out-control-0),” finds that deep-rooted shortcomings in the design and implementation of key policies have effectively left mine operators to supervise themselves. This has fueled pervasive lawlessness in India’s scandal-ridden mining industry and threatens serious harm to mining-affected communities. Human Rights Watch documented allegations that irresponsible mining operations have damaged the health, water, environment, and livelihoods of these communities.

Analysis: When India’s mining industry was left to regulate itself, it caused sever harm to many communities, and to human rights.

Impact: Without government regulations, corporations will harm human rights.

**Ex: Cambodia’s Garment Industry**

*Human Rights Watch “Work Faster or Get Out: Labor Rights Abuses in Cambodia’s Garment Industry”; March 11, 2015*

[*https://www.hrw.org/report/2015/03/11/work-faster-or-get-out/labor-rights-abuses-cambodias-garment-industry*](https://www.hrw.org/report/2015/03/11/work-faster-or-get-out/labor-rights-abuses-cambodias-garment-industry%20)

Ly Sim passed productivity tests and was promoted to team leader in the sewing division of her factory in Phnom Penh, Cambodia’s capital, in 2012. A few months later, Sim, in her late 20s, became visibly pregnant. Factory management demoted her and cut her pay. When she and other workers protested with the help of the factory union, they were summarily fired.

Devoum Chivon helped form a union in the factory where he worked and was elected president in late 2013. Within days of being notified about the new union leaders, the factory managers pressured Chivon to quit the union and offered him a bribe, which he refused. The management then criticized the newly elected union leaders’ job performance and fired them.

Leouk Thary, in her 20s, worked in a garment factory on four-month short-term contracts that her managers repeatedly renewed. One day in November 2013 she had a bad nosebleed and sought exemption from overtime work. Even though her managers told her to continue working, she went to see a doctor. She returned the next day with a medical certificate requesting sick leave for nose surgery. She was fired immediately.

Analysis: In Cambodia’s garment industry, without government restrictions, many workers’ human rights were severely harmed.

Impact: Without government regulations, corporations will harm human rights.

**Regulations on corporations are necessary to protect human rights**

*Christopher Albin-Lackey (Senior Legal Advisor) “Corporate Self-Regulation Is a Global Crisis”; November 14, 2017*

[*https://www.hrw.org/news/2017/11/14/corporate-self-regulation-global-crisis*](https://www.hrw.org/news/2017/11/14/corporate-self-regulation-global-crisis%20)

Business leaders need to acknowledge that being responsible means more than just a deliberately narrow focus on their own immediate behavior. It means accepting the need for tough enforcement of rules that bind themselves as well as others to respect rights they might otherwise threaten. And business leaders need to understand that anything less means helping to entrench an approach that inevitably leads to shattered lives.

Analysis: Self-regulation simply doesn’t work, as we have seen over and over again. In order for government to truly uphold its obligations to its citizens and human rights, it must be willing to put the necessary restrictions in place.

Impact: Government must put regulations on corporations in order to protect human rights.

**Benefits of regulations far outweigh the costs**

*John Irons and Isaac Shapiro (Isaac Shapiro joined EPI in 2011 to direct work examining the economic effects of government regulation. He previously worked for nearly two decades at the Center on Budget and Policy Priorities, where his national policy research concentrated on working poor, income distribution, and tax issues, and where he assisted in the coordination and development of the Center’s research agenda. Shapiro also founded the Center’s International Budget Project. Shapiro has worked as a senior adviser at the Save Darfur Coalition, as special assistant to U.S. Secretary of Labor Robert Reich, and for a Member of Congress. He is the author of numerous reports, articles, and op-ed pieces, and is the co-author of two books, Working But Poor: America’s Contradiction, and Protecting American Workers. He also edited A Guide to Budget Work for NGOs.) “Regulation, employment, and the economy”; April 12, 2011* [*https://www.epi.org/publication/regulation\_employment\_and\_the\_economy\_fears\_of\_job\_loss\_are\_overblown/*](https://www.epi.org/publication/regulation_employment_and_the_economy_fears_of_job_loss_are_overblown/)

Of course, regulations may have significant compliance costs, but costs may be warranted if the rules will produce even larger economic and social benefits. To assess this balance, the Office of Management and Budget each year prepares a cost-benefit report on regulation. In reviews of major regulations covering 2000 to 2010, the agency found that in every year the benefits substantially exceeded the costs. On average, the value of the benefits was about seven times the cost. An earlier OMB report examined all social regulations in effect as of 1999 and likewise found that the benefits far exceeded the costs.

In March 2011 the Environmental Protection Agency released a congressionally mandated report on the costs and benefits of the Clean Air Act Amendments of 1990. This peer-reviewed state-of-the-art study found the economic costs to be significant, amounting to $53 billion in 2010 (expressed in 2006 dollars), according to the central estimate. But the central estimate of the value of the benefits was $1.3 trillion, 25 times the cost. In 2010 alone, an estimated 160,000 lives were saved by the Clean Air Act Amendments of 1990.

Taken together, the OMB and EPA studies demonstrate an unmistakable pattern: Over the past several decades the benefits of regulations have consistently and significantly exceeded their costs.

Analysis: Even if there are some costs to having regulations in place, they are for outweighed by the benefits. Human rights have far more worth than any monetary scale, and even if we just looked monetarily, putting regulations in place is still a better choice.

Impact: Regulations both uphold government’s primary obligations, and far outweigh any costs.n free trade.