Open Analysis Addressing Slavery in Supply Chains

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Tackling Modern Slavery: Current Legislative and Commercial Strategies

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Published by

The OAASIS Project
School of Physics
University of Sydney
Australia

Web: https://sydney.edu.au/science/our-research/research-areas/physics/big-data-combatting-modern-slavery.html

Physics and Society
This paper is published as a resource to support The OAASIS Project

The OAASIS Project – co-winner of the 2019 Faculty of Science, School of Physics Grand Challenge (https://sydney.edu.au/science/schools/school-of-physics/grand-challenges.html)

A collaboration between the Integrated Sustainability Analysis group and the Sydney Institute for Astronomy

An ISA SIfA Production

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I. Contextualising modern slavery

Todays world of overconsumption, fast fashion and quick turnover provides ripe conditions for supply chain instability as firms search for the lowest cost, creating the possibility of a range of corporate malpractice, from labour law violations to environmental impacts. Despite its illegality, slavery still exists today, with an estimated 40 million slaves worldwide (ILO, 2017), of which over 15,000 are in Australia (Global Slavery Index, 2018). The term “modern slavery” was coined in the 21st century, designating a group of individuals “coerced by physical, economic, or social means to engage in work-related activities” in poor conditions, often recruited through criminal or manipulative methods (Christ & Burritt 2017) Sustainable supply chain management aims to build and regulate the supply chain to remove the potential for these issues (Cole & Aitken 2019a)

i. Definition of slavery in Australian Law

“Slavery is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.” (Criminal Code s.270.1)

A “Slavery-like offence” (Criminal Code s. 270.1A) includes

- Servitude
- Forced labour
- Deceptive recruiting for labour or services.
- Forced marriage offences
- Debt bondage

ii. Broader working definition of modern slavery in literature

While modern slavery may be considered on a broader spectrum of labour exploitation (Chesney *et al* 2019), it may be differentiated from other lesser forms of labour abuse through four features from Anti-Slavery international: (Weissbrodt 2002)

Thus, slavery often cannot be defined by a single indicator, but rather by a plurality of indicators. (Fair Labor Association 2018)

Crane (2013) classifies modern slavery as a practice operating under illegal deception and power relations, as opposed to the formal legal title associated with traditional chattel slavery. Indeed, modern slavery has emerged in recent times as the foundation for new business models, seeking not only to reduce labour costs, but to achieve other ends. Crane outlines four further ends:

1. **Risk reduction:** Firms employ workers illegally to cover up either illegal labour practices or illegal business and industry practices (sometimes both). Restrictions on workers' freedoms therefore reduce the risk of malpractice detection.
2. **Asset leveraging:** Employers often use their existing assets or those of their workers to maximise returns on their resources to generate additional revenue. This may be through renting of accommodation they own at an inflated price, or through leveraging workers' rights or identities to claim fraudulent benefits.
3. **Evading legal minimums:** Like traditional slavery, a driver of modern slavery is labour cost-cutting. Firms often employ intermediary labour suppliers, who are paid by the firm and then redistribute their funds to their workers at their discretion. They often exploit regulatory loopholes through fraudulent employment schemes allowing them to bypass labour regulations
4. **Workers as consumers:** Employers no longer conceptualise slaves as labour, but as consumers to maximise returns to the employer. Slaves can generate additional revenue through services charged at an inflated rate, through accommodation and meals, generating sustained indebtedness, leading to the situation of debt bondage and criminal dependence.

Macro-level supply chain analysis is essential to the understanding and reduction of modern slavery, as one actor's actions negatively impact the performance and reputation of others within the supply chain (Cole & Aitken 2019b, Jacobs & Singhal 2017, Stevenson & Cole 2018). Supply chain transparency has been touted as a solution to modern slavery, as good practice from one node is likely to diffuse to other firms up the chain (Seuring & Müller 2008, Stevenson & Cole 2018). Similarly good practice by one firm can break the cycle of consistent bad practice in a geographical cluster of firms implying the potential for large flow on effects down the supply chain. (Chesney *et al* 2019) A targeted approach addressing the entire supply chain is thus essential to stamping out modern slavery.

II. Policy review

i. UK Modern Slavery Act 2015

The UK Modern Slavery Act is designed to improve the transparency and reporting mechanisms of large firms to prevent and combat modern slavery in their supply chains (May, 2016). The Act's most important aspect is the mandatory release of an annual Modern Slavery Statement by all companies operating in the UK with an annual turnover of over £36 million. The Act sets out loosely-defined requirements for the statement, with no mandatory inclusions or pecuniary penalties for non-compliance (Bloomfield & LeBaron 2018). These requirements include (UK Modern Slavery Act s 54(5)):

- Contextual aspects of the business, including structure, markets and supply chain description.
- Areas of the business or their supply chain at specific risk of slavery
- Policies managing and decreasing the risk of slavery in their supply chain
- An evaluation of the effectiveness of such policies.

However, this act's shortfalls may be summarised in two main points:

1. **Broadly defined recommendations and lack of strong oversight**: Only half of the firms required to submit a Modern Slavery Statement actually released one after the

Act had been in effect for two years (Bloomfield & LeBaron 2018). Of those that were submitted, 38% of statements were not signed by a director and 35% were classified as "compliance only", indicating satisfactory but limited reporting (Stevenson & Cole 2018). The Act carries no penalty for non-compliance. (Bloomfield & LeBaron 2018, Vaughn *et al* 2019)

2. **Lack of data-driven responses and limited transparency requirements**: Firms are required to report on the risk of modern slavery in their supply chains and evaluate their efforts to mitigate this. Substantive data are not required to support the claims made in firm statements, contributing to a lack of transparency on the firms' methodologies and limiting the possibility for observers to fact check their claims (Syal, 2018)

ii. Australian Modern Slavery Act 2018

The provisions of the Australian *Modern Slavery Act 2018 (Cth)* are largely based on the 2015 UK Act with some new distinguishing features (ACSI, 2019). Australia's act is regarded as stronger and more detailed, setting out seven mandatory reporting criteria to be included in firms' modern slavery statement. Thus, a firm's compliance with the UK's Act does not necessarily ensure compliance with Australia's Act (Dept Home Affairs, 2018) Under the Australian Act, the Modern Slavery Statement of every entity is published on a centralised publicly-available online register, for easier comparison and accountability. (Modern Slavery Act Australia s 18). Seven criteria must be addressed in the entity's Modern Slavery Statement, mandating a stronger and more rigid reporting structure for firms. These criteria are set out below (Dept Home Affairs, 2018)

Mandatory Criteria for the Australian Modern Slavery Act 2018 Statement

1 & 2. Identify the reporting entity and describe its structure, operations and supply chains	**3**. Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities the reporting entity owns or controls	**4**. Describe the actions taken by the reporting entity and any entities that the reporting entity owns or controls to assess and address these risks, including due diligence[1] and remediation processes
5. Describe how the reporting entity assesses the effectiveness of actions being taken to assess and address modern slavery risks	**6**. Describe the process of consultation with any entities the reporting entity owns or controls	**7**. Any other relevant information

While these criteria are generally addressed under UK legislation, they are not compulsory, and instead suggested in broad based terms (UK Modern Slavery Act s 54(5)). However, despite the mandatory criteria, no pecuniary punishments exist for failure to comply with the Australian Act requirements. Indeed the need for strong enforcement

[1] The Australian government defines "due diligence" as four consecutive steps:

1. Identifying and assessing actual and potential human rights impacts
2. Integrating findings across the organisation and taking action to address the impacts
3. Setting performance criteria and tracking the efficacy of actions to determine if the impacts are being addressed
4. Publicly disclosing impacts and actions

mechanisms was even called for by apparel brand ASOS, (ASOS, 2017) in its submission to the Inquiry into Establishing a Modern Slavery Act. ASOS has itself been plagued by reports of poor labour practices, implying the glaring need for stronger legislation than what already exists in the UK. Further, Australian legislation still does not require the disclosure of comprehensive data nor does it require the use of specific examples for risks or reporting by firms. Also, staff training of the risks of modern slavery is not mandatory (though mentioned as an effective mitigation strategy in s 16(1)), representing a significant knowledge gap for those who are likely to be responsible for detecting slavery in their supply chains.

iii. NSW Modern Slavery Act 2019

New South Wales also released its version of modern slavery legislation in 2018, structured in a similar way to its national counterpart. Its definition of “commercial organisation”, to which the legislation applies, is any firm “with employees in NSW that supplies goods and services for profit” with an annual turnover of over $50 million (NSW Modern Slavery Act s 24(1)). It also has special provisions targeting government agencies to ensure their suppliers are not involved in modern slavery (NSW Modern Slavery Act s 25). The act sets out a pecuniary penalty of $1.1 million for misleading or false reporting or failing to release a statement (Daly & Douvartzidis 2019). Finally, the act establishes the NSW Anti-Slavery Commissioner, to oversee the implementation of the NSW Modern Slavery Act. The interim Anti-Slavery Commissioner is Prof. Jennifer Burn, a professor of law at UTS and the former head of Anti-Slavery Australia (NSW Government, 2019). The act is currently on hold and it is unclear as to when it will be enacted.

iv. Other legislation

The ***California** Transparency in Supply Chains Act 2010*, the first legislation of its kind, states that large firms operating in California must disclose the strategies they employ to stamp out slavery in their supply chains for goods both for resale and not for resale (Tapestry 2019, State of California Department of Justice, 2019).

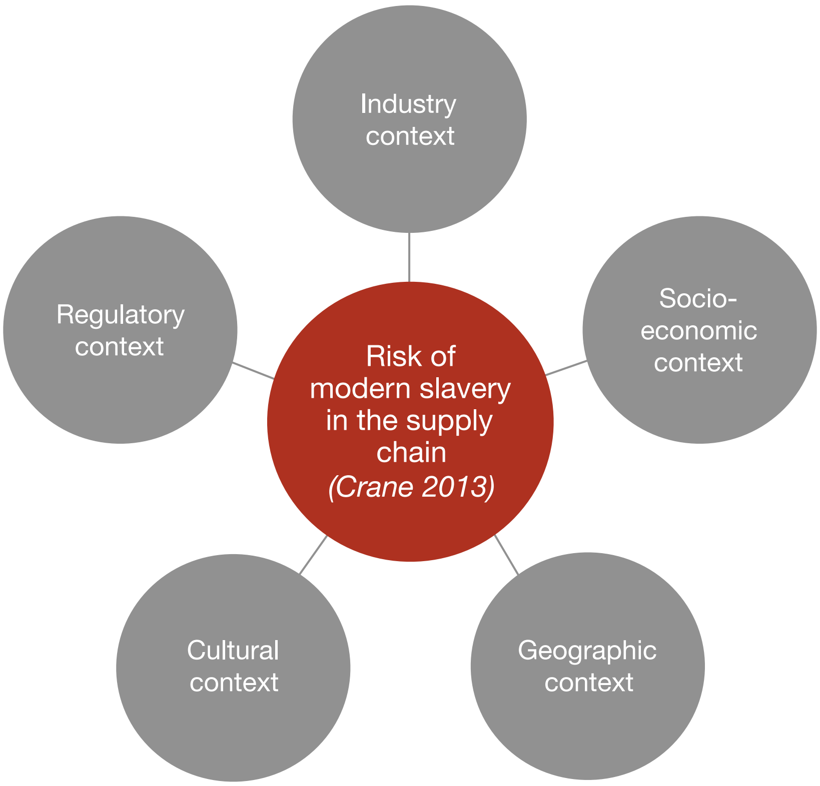
France passed a new law in 2017 requiring large firms to assess the risk of modern slavery to their supply chains and the actions they have taken to reduce those risks. These declarations are placed in a publicly-available annual risk report, closely resembling the requirements of the UK Act (Slater 2017, European Coalition for Corporate Justice 2017).

III. Literature review

i. Detection

Detection strategies must be complex and cannot rely on voluntary questionnaires and occasional scrutiny, as modern slavery is by definition undercover and intentionally criminal (Stevenson & Cole 2018, New 2015). The main strategies discussed in literature and employed by firms are auditing against codes of conduct (Huq *et al* 2014, Stevenson & Cole 2018, Gugler and Shi 2009, Cole & Aitken 2019a) and certification schemes that are either in-house or by private third parties (Tony’s Chocolonely 2018, Crane 2013, Marschke & Vandergeest 2016). Data driven approaches are also often employed by firms to target countries, regions or firms that are most at risk of modern slavery practices (Crane 2013, Stevenson & Cole 2018).

Auditing is the most popular method of modern slavery detection (Stevenson & Cole 2018, Mamic 2004, Marschke and Vandergees 2016). Firms often employ third party auditors to conduct reviews of the working conditions, pay and accommodation of workers, however, significant shortfalls of auditing exist. Auditing has the potential for corruption, falsified documents and mock compliance (Stevenson & Cole 2018, Huq *et al* 2014) where suppliers can feign compliance for the day of the audit only without systematic change to their labour practices (Mamic 2004). Further, since most firms develop codes of conduct individually, there is the potential for variation in standards, leading to complications and disorganisation (Gugler and Shi 2009, Stevenson & Cole 2018). Finally, auditing must be targeted in its approach and must address all critical modern slavery indicators. These indicators vary within the literature based on the methodology used (Crane 2013, Know the Chain 2018, New 2015, Gold et al 2015). Crane's methodology (2013) is perhaps the most comprehensive and can be generalised outside specific geographic regions. This ensures that broad-based audits can target at-risk firms and provide cross-country comparison on labour conditions (Crane 2013, Stevenson & Cole 2018). Crane (2013) constructs a model of modern slavery as a management practice, setting out five broad-based conditions that enable and perpetuate slavery in the business context. These are:



1. **Industry Context** – The characteristics of the firm and the product shape the potential for slavery operating within it.

   Indicators:
   a. High labour intensity (Crane 2013)
   b. High elasticity of demand creating larger bullwhip effect (Stevenson & Cole 2018)
   c. Low levels of technology (Crane 2013)
   d. Product legitimacy and legality (Crane 2013, Vaughn *et al* 2019)
   e. Highly unequal value distribution along the supply chain (e.g. one supply chain node captures very little value) (Stevenson & Cole 2018, crane 2013)
   f. High regional clustering of similar sized and typed firms (Chesney *et al* 2019, Crane 2013)

2. **Socioeconomic context** – socioeconomic factors, including unemployment, poverty and education contribute to the incidence and lack of awareness of slavery, increasing workers' vulnerability to predatory slavery practices, particularly in the perceived or real absence of alternative forms of work

   Indicators:
   a. High rates of poverty (Chesney *et al* 2019, Cole & Aitken 2019b, Crane 2013)
   b. Low educational attainment (Crane 2013)
   c. Lack of awareness of labour rights and regulations (Crane 2013)
   d. High unemployment (especially in situations of <u>perceived</u> lack of alternative work) (Crane 2013)

3. **Geographic context** – "physical, political or psychological" isolation further influence the incidence of slavery, contributing to the inability or unwillingness of workers to speak out. Geographic isolation increases the likelihood of low supply of workers pushes wages higher in the formal sector, pushing firms into the informal sector and potentially into slavery practices to cut labour costs. Geographic isolation also contributes to political and psychological isolation through the absence of communication pathways and expensive and long travel further establishing employer control over the employee.

   Indicators:
   a. Geographic isolation of the industry and firm (Chesney *et al* 2019, Crane 2013)
   b. Political/psychological isolation: (Crane 2013)
      i. lack of telecommunications
      ii. lack of road and rail infrastructure
      iii. lack of legal migrant status documentation (McKenzie & Baker 2016)
      iv. high overseas worker population (McKenzie & Baker 2016)

4. **Cultural context** – Slavery is perpetuated through the "minority disenfranchisement" (Kara 2009) of marginalised ethnic groups and norms and traditions that may more easily accept slavery or silence those who oppose it.

   Indicators:
   a. High instance of marginalised religious/ethnic groups (Kara 2009, Crane 2013)
   b. High instance of female workers (Fair Labor Association 2018, Vaughn *et al* 2019, Masika 2002, crane 2013, Boersma & Nolan 2019a)

5. **Regulatory context** – A lack of institutional oversight, through law enforcement and government policy gaps, contributes to the incidence of modern slavery in supply chains. Corruption also works synergistically with slavery, enabling labour trafficking and exploitation to persist.

   Indicators:
   a. Low government influence in the region and/or industry (Crane 2013)
   b. Ineffective law enforcement and police scarcity (Crane 2013, Crane 2018, Chesney *et al* 2019)
   c. High instances of corruption (Chesney *et al* 2019, Cole & Aitken 2019a, Cole & Aitken 2019b, Crane 2013)
   d. Low issue attention to slavery (Crane 2013) and lack of motivation to tackle it

Certification also offers an alternate method of modern slavery detection, through coalitions of firms, non-government third party regulators (Crane 2013). Contemporary examples of these are Fairtrade International, which ensures producers receive a fair price for their products, and Rainforest Alliance, which measures environmental sustainability and responsible agriculture, mainly targeting cocoa, coffee and tea. Certification is inadequate as a sustainable supply chain management tool on its own as it lacks broad coverage and often uses limited criteria; targeting environmental sustainability while not addressing social issues (Crane 2013, Marschke & Vandergeest 2016).

ii. Risk mitigation

Risk assessments conducted on a country, regional or industry basis can be effective as a means to target geographical areas and sectors at heightened risk of modern slavery, and hence require more regulatory oversight (Vaughn *et al* 2019, Stevenson & Cole 2018, Cole & Aitken 2019a). The most notable register is released by the United States Department of Labor each year, listing the countries and sectors at risk of forced labour and child labour (US Department of Labor 2018). While documents like this can improve the broad-based areas to target in the supply chain, it may put undue pressure on high-performing socially-minded firms in areas considered to be at risk (Stevenson & Cole 2018). These registers may incentivise upstanding firms to move operations out of problematic regions. This problem is enhanced given current research into the role of geographic clustering on modern slavery behaviour. Chesney *et al* (2019) analysed the Spanish agricultural sector, and found that clustered employers in geographic and industry proximity tended to reinforce each other's illegal labour practices, meaning that one non law-abiding firm tended to spread this phenomenon to others nearby. The researchers found that positive reinforcement worked in the same way, implying a positive role that social business and entrepreneurs and lawful state-owned companies can play in providing a form of *de facto* regulation for the firms around them (also in Cole and Aitken 2019a). Crane (2013) and Gold et al (2015) further tout the involvement of institutional entrepreneurs and broader community approaches as a potential way to discourage modern slavery practices. Thus, special attention should be paid to assisting and supporting law-abiding firms in areas with a high likelihood of poor labour practices.

Stevenson & Cole (2018) and Crane (2013) address the specific need to monitor contract labour organisations as they are often not under direct scrutiny by law enforcement, despite being directly implicated in the pay and conditions of their workers. Few firms are currently addressing this intermediary in their modern slavery policies, with the notable exception of Marks and Spencer (discussed below).

iii. Supply chain transparency

Supply chain transparency has been touted as the solution to supply chain sustainability problems, including forced labour and environmental sustainability issues (Nolan *et al* 2019, Stevenson & Cole 2018, Seuring and Müller 2008, Fair Labor Association 2012, Fair Labor Association 2018). Cole (2019) conceptualises supply chain transparency as the demonstration of trust between entities in the supply chain through information disclosure. Marshall *et al* (2016) categorised supply chain transparency into four broad types of information: membership (at all tiers), provenance, environmental information and social information (societal, cultural and labour factors). They also outline a matrix of transparency strategy, importantly noting the potential for "distracting disclosure", where large amounts of information flood the public domain to deliberately or inadvertently cover up other wrongdoings or construe the company's image in a falsely positive light. While this research is new and unique, further research in this area should explore the role of intermediary labour contractors who are often not involved directly in the supply chain, though may directly be responsible for the poor conditions and pay of the workers (Stevenson & Cole 2018)

Grimm *et al* (2016) discuss the need for transparent supply chain mapping at all tiers of the supply chain, particularly those in lower tiers dealing with low-technology primary resources or agricultural goods. Industry coalition the Clean Clothes Campaign (CCC) pushes firms to commit to a minimum standard of supply chain transparency to ensure that firms are reporting on the working conditions of their contractors (Clean Clothes Campaign 2016, Vaughn *et al* 2019), working to improve the profile and clout of labour unions and other advocacy bodies to be able to effectively report on labour practices, a crucial step in stamping out modern slavery. This is in line with the above findings of Chesney *et al* (2019) in the Spanish agricultural sector.

"The opposite of trafficking isn't no trafficking – it is the ability of migrants and workers to organise to demand their rights"

–Jennifer Rosenbaum, U.S. Director of Global Labor Justice (Boersma & Nolan 2019a)

IV. Current corporate action against slavery

Modern slavery may be differentiated from other sustainable supply chain management (SSCM) issues in that it is deliberately criminal and hidden (Stevenson 2018). For this reason, softer detection strategies are often ineffectual (Stevenson & Cole 2018, New 2015, Gold *et al* 2015) voluntary disclosure is rarely insightful (Stevenson & Cole 2018) and industry-led efforts are inadequate (Boersma & Nolan 2019a)

i. Examples of reported strategies

LaBaron & Gore (2018) note that companies mainly report on the activities of their Corporate Social Responsibility teams; philanthropic initiatives and NGO partnerships, as well as auditing practices and codes of conduct. However, they seem to lack the data concerning basic indicators of forced labour: payments made to workers and their levels of debt (this will be discussed in detail in *Section V*). Stevenson & Cole (2018) conducted a full summary of the detection, remediation, and risk avoidance practices reported by UK-based firms in the modern slavery statements providing a comprehensive overview of what is already being done.

Marks and Spencer

Marks and Spencer Group PLC topped the rankings of the UK's largest firms acting on modern slavery in 2018 (Guilbert 2018a) and has been heralded for its supply chain transparency and strong supplier guidelines. M&S's modern slavery statement gave specific examples of where misconduct was detected and how it was dealt with. An example of this was in Cambodia, an M&S supplier was paying a labour contractor a lump sum with no verification of how this would be redistributed to workers. With M&S intervention, a process was introduced allowing the supplier to be informed of worker pay, and forcing the labour contractor to sign a contract to respect the human rights of their employees. M&S have also implemented a complex selection process for new suppliers, including audits and risk assessments, and research into previous violations or misconduct (Marks and Spencer 2018)

Marks and Spencer released an interactive supply chain map that tracks its production factories and raw materials to suppliers across the world, giving locations, worker numbers and gender breakdown. This map indicates the origins of a product sold in a country's M&S stores the origins of raw materials, including milk, meat and wool, used in M&S Products. The map also indicates any benchmarks in auditing or approval that were met, including RSPCA approval. This is a comprehensive and transparent map of supplier audits conducted over time by M&S, setting a standard for other firms to follow.

Nike

In the 1990s, Nike was tainted by its poor track record on slavery and child labour practices, with claims of labour rights violations in Cambodia and Pakistan (Conway, 2019), which caused sales and profits to drop. To repair its image, Nike has since enhanced its supply chain transparency, reduced the size of its tier one supply base to longer-term trusted suppliers, and overhauled its auditing and monitoring practices to ensure its products meet safety and labour standards in the United States (Cushman, 1998)

Similar to M&S, Nike recently released an interactive global supply chain map, providing information on where its products are sourced and the details of their suppliers including size, and gender and migrant breakdown. However, unlike M&S, Nike's supply chain map encompasses only tier one suppliers, thus lacking crucial sourcing and raw material data.

Tony's Chocolonely

Tony's Chocolonely, founded in 2003, is a Dutch chocolate brand, and has developed an innovative approach to cocoa sourcing to eventually make its brand 100% slavery free. Tony's "towards slavery-free" business model has five pillars (Tony's Chocolonely 2018):

1. Traceable cocoa beans sourced directly from cocoa cooperatives and farmers, to ensure clear knowledge of the working practices of the supplier
2. Premium paid to cocoa farmers to ensure market price is a reasonable living income. This cost corresponded to 4.8% of Tony's total revenue in 2017/2018 reporting period.
3. Collaborating with cocoa suppliers to professionalise farming cooperatives and provide sustainable working structures to remove inequalities.
4. Long-term relationships with cocoa suppliers, guaranteeing farmers at least 5 years of sales for a fair higher price.
5. Investing in sustainable practices and training to boost the productivity of existing cocoa farms.

The nature of Tony's transparency allows consumers to trace the premium payments made to the cocoa farmers that supply cocoa for their products. Tony's also launched a tool, *Beantracker,* to improve their accountability to their cocoa suppliers, using software to live trace the path of cocoa beans, and to track the premium payments to suppliers once the beans arrive in their processing centre (Reinecke *et al* 2019).

Patagonia

Outdoor apparel and gear company, Patagonia, which had marketed itself as a sustainable and ethical brand, was not immune to labour exploitation in its contractor and subcontractor factories. In 2011, the company discovered instances of poor conditions, corrupt labour contractors and migrant labour exploitation (Hensel, 2015), and improved its detection and risk mitigation strategies. Patagonia now audits both its tier 1 suppliers *and* tier 2 sub suppliers *directly*, focusing particularly on the treatment of migrant workers. They cover all aspects of the life cycle of the migrant worker, dealing with recruitment practices, ongoing accommodation, wages, contracts and their repatriation (Patagonia 2017). Patagonia is one of only three UK companies reporting on the UK Modern Slavery

Act to directly audit their sub suppliers (Stevenson & Cole 2018), which, as previously noted, are most likely to be at risk of modern slavery or other labour malpractice. Patagonia has also facilitated inter-firm and NGO collaboration, partnering with Walmart to create the Sustainable Apparel Coalition, which developed an index to measure the impact of their products (Reinecke *et al* 2019). Patagonia also partnered with Verité, an NGO dealing with safe labour conditions, to develop the new Migrant Worker Employment Standards, that is now used to audit new and existing suppliers and sub suppliers (Patagonia 2017).

Nestle/DOL collaboration on Turkish hazelnut farms

Turkey accounts for 70% of global hazelnut production (Segal 2019), but was placed on the 2018 US Department of Labour watchlist for child labour (US Department of Labor 2018) due to numerous reports of labour malpractice. Seasonal hazelnut workers in Turkey, made up of Syrian refugees and poor Turkish families. These families often move around between different hazelnut farms, and further afield, to sugar beet and apple farms later in the season (Fair Labor Association 2018). Seasonal agricultural work in Turkey, similar to that in Australia (McKenzie & Baker 2016), is often controlled by middlemen, or labour contractors who operate between the farm ownership and the labourers, taking funds from the farm and distributing it (in a largely unregulated and unorthodox way) to their workers, often taking a cut of 10% or more (Segal 2019)

Nestle supplies its raw hazelnuts from two main Turkish Hazelnut producers Olam and Balsu, and partnered with these suppliers and the Fair Labour Association (funded by US DOL) to reduce the prevalence of slavery within its supply chain (Fair Labour Association 2018). Two main approaches were explored: creating conditions conducive to legal labour practices and facilitating intrafirm collaborations (Fair Labour Association 2018)

Their responses to these conditions can be summarised into three broad approaches:

1. **Intra-farm collaboration**: Since individual firms have limited resources for compliance and remediation strategies, partnerships between stakeholders can pool resources and improve outcomes (Fair Labour Association 2018). This is particularly important given that forced labour practices often spread between similar firms in close proximity to each other, allowing illegal behaviour to be reproduced and reinforced (Chesney *et al* 2019)
2. **New software**: Supplier Balsu developed GoBalsuFarm; a traceability software system that combines supply chain traceability and labour traceability, tracking agricultural activities and company staff. Workers' gender, age and GPS coordinates of their working areas are recorded. (Fair Labour Association 2018)
3. **Broader long-term strategies**: Nestle's response draws uniquely on broader strategies to address systematic problems that perpetuate conditions conducive to forced labour. Often child labour was out of a lack of affordable childcare, meaning that children were forced to travel and work with their parents in the farms (Fair Labour Association 2012). The Genç Hayat Foundation, an NGO, set up a safe space for children of seasonal workers during the summer, so their parents could travel to work. (Fair Labour Association 2018)

While Nestle still attracts significant criticism, their willingness to address more systematic issues and to work constructively with their subsidiaries is notable.

ii. Blockchain interventions

Firms are also turning to blockchain as a means to accurately track the movement of resources and products through the supply chain. As an online public ledger which can be accessed but not controlled by supply chain actors, blockchain offers a unique opportunity to store contracts, property rights and value (Foerstl *et al* 2017, Boersma & Nolan 2019b). Blockchains can offer verified transparency information on raw materials and primary components at the top of the supply chain, which can then be traced down to the final goods.

However, block chain solutions have a number of technical obstacles to be overcome. Firstly, consensus mechanisms, the rules determining who has the power to validate and approve a transaction, must be decided (Litke *et al* 2019). Ideally, the workers themselves should have the power to state the conditions in which they handled the product. However, this may not be practically feasible, particularly given the secrecy and isolation that allow modern slavery to exist in the first place (Boersma & Nolan 2019b). Since there currently exists no universal consensus, the potential for errors and fraud are higher, rendering blockchain a risky solution without a common tool in place (Litke *et al* 2019).

Other distributed ledger technologies, of which Blockchain is one example, are developing in this space. One such example, IOTA, claims to be a faster, more efficient and more open access mechanism than typical blockchains, and may be a future viable alternative for tracking and organising transactions within a supply chain (*The bIOTAsphere* 2018, Frankenfield 2018).

Using Blockchain to track BHP's copper supply chains

Since 2016, BHP has trialled blockchain solutions to improve transparency in its copper supply chain (Gray 2019). Blockchain has been touted as a potential solution to forced labour and unsustainable environmental practices in the mining of minerals, particularly conflict minerals. The tracking of these resources by conventional means is difficult particularly given that they are mined in several often isolated sites across the world, and are often mixed to create alloys (Hofmann *et al* 2015). BHP plans to use Blockchain to share geological data between vendors, including geologists and shipping companies (Rizzo 2016). It will eventually become mandatory for vendors to supply data through blockchain which will then be made available through a consumer-oriented app, though the timeline on this is unclear (RCS Global 2017). However, Resource consultancy firm RCS Global notes that this approach only encompasses BHP's direct operations and does not seem to be applied to firms further down the supply chain or other mining supply chains (RCS Global 2017).

V. Evaluating current strategies & policy implications

i. Defining a firm's modern slavery footprint

Given the complexity of supply chains, and the fact that firms are often legally and commercially distinct from their various suppliers, it becomes difficult to define a firm's modern slavery footprint (Stevenson & Cole 2018, Crane 2013). This is an especially important issue given that slavery is more common in sub-tiers, which often operate in labour-rich, technology-poor industry and regulatory contexts with little addition of value (Crane 2013, Vaughn et al 2019, Crane et al 2017, LeBaron & Gore 2018). Firms also tend to exclude goods and services purchased for use within the firm itself, and not for re-sale to consumers (Stevenson & Cole 2017). Services and products such as cleaning, office furniture, catering, storage and transport containers are as susceptible to illegal labour practices as goods for resale, and the firms are just as responsible for their purchasing decision.

Australian legislation specifies that the firm must report on all entities “owned or controlled” by the reporting firm (Modern Slavery Act Australia s 11) indicating a remarkably narrow mandatory level of reporting. The UK’s legislation doesn’t specify the range of influence of the firm, and the detail required for the report (Green 2019), indicating the presence of a significant potential loophole. Firm statements often acknowledge the risks of slavery in sub-tiers, though often follow up these revelations with claims that they are outside their influence and responsibility (Bloomfield & LeBaron 2018).

Cutri Fruit

A 2016 Fairfax media undercover investigation exposed the systematic exploitation of Malaysian illegal immigrants on Fruit Farms operated by Cutri Fruit which supplies produce to Woolworths, Coles and Costco (McKenzie 2016). Workers were employed by intermediaries, or “labour contractors” who were paid by the farm and then redistributed the wages to their workers, often taking a cut of 10% or more, similar to the middlemen in Turkish hazelnut farms. Workers were being paid as little as $4.50 per hour and most of their earnings contributed to their weekly rent on the rural properties. Malaysian Journalist Saiful Hasam posed as an illegal immigrant looking for work on the farm (McKenzie & Baker 2016). Hasan spoke to Marc Intervera, Cutri Fruit’s research, development and innovations manager, in a recorded conversation to uncover whether Cutri management was aware of the illegal labour practices of their contractors. Hasam asked to work in packing. This was his response:

“I can’t employ you direct. You don’t have the paper. You know what I mean? That is why we use the contractor because, I don’t know, they dodgy it up”

The firm appeared to be aware of illegal practices occurring in their supply chain, but this quote implies that they believed that the actions of their labour contractors were out of the direct jurisdiction and thus responsibility of Cutri Fruit. While Cutri Fruit’s revenue sits below the reporting threshold under Australian legislation, this nonetheless serves as an example of the problems associated with a narrow or unclear legislative focus concerning a firm’s slavery footprint.

While not contained in legislation, some cases have been prosecuted in which firms were held accountable for indirectly facilitating crime. US-based *Yahoo!* was prosecuted in 2007 for providing information to Chinese Authorities that led to the 10-year incarceration and torture of two anti-government Chinese Activists (Boersma & Nolan, 2019a). Thus, while it did not directly cause harm, its actions did lead to subsequent human rights violations that would not have happened had their email data remained private. A potential parallel could be made between this case and cases involving slavery indirectly facilitated by large corporations. Whilst these firms don’t directly participate in criminal activity, their actions may be seen to be contributing to potential human rights violations of their indirect employees.

LeBaron & Rühmkorf (2017) compared the efficacy of the UK Bribery Act to the Modern Slavery Act in their ability to regulate supply chains, concluding that legislation mandating criminal corporate liability, which is the case for bribery but not for modern slavery, is more effective at leading change in corporate strategy and reporting. LeBaron & Gore (2018) recommend the implementation of joint and shared liability into the modern slavery act, to make companies legally liable for the conditions faced by employees of their subcontractors, suppliers and labour agencies, incentivising them to take responsibility for the inputs used in their products both domestically and abroad. This is required particularly given the transnational nature of firms and supply chains (Vaughn *et al* 2019)

ii. Data reporting, transparency and data standardisation

Both UK and Australian legislation lack the strength of data to support their assertions, lacking key indicators that characterise forced labour (Bloomfield & LeBaron 2018). Firms should include some basic data on these primary indicators in their modern slavery statements:

1. Payments made to workers, and how these compare to the minimum wage in their country (LeBaron & Gore 2018, LeBaron & Rühmkorf 2017)
2. Levels of debt of workers, and the interest rates charged by their employer (LeBaron & Gore 2018, Stevenson & Cole 2018)
3. Availability of basic services for workers, such as electricity, water and adequate sanitation (Bloomfield & LeBaron 2018)
4. Payments made by firms for tea and cocoa supplies (LeBaron & Gore 2018, Tony's Chocolonely 2018)
5. Whether firms take into account the above factors in their purchasing and contractual decision-making (LeBaron & Gore 2018)

Generally, the veracity of firms' evaluations of their current practices is undermined by their lack of publicly available data supporting their claims (Bloomfield & LeBaron 2018)

Data standardisation and integration, as well as data reporting is fundamental to effective firm statements and practices. Several firms and coalitions have attempted to define standard guidelines and codes of conduct for suppliers for supply chain management, to mitigate both labour practice and environmental problems. However, no consensus has been reached on what data is necessary to collect (Cole & Aitken 2019a). Legislation must provide stricter information sharing and data provisions to ensure that firms are reporting on crucial metrics (Bloomfield & LeBaron 2018)

Data standardisation must be accompanied by broader collaboration between firms and countries (Stevenson & Cole 2018). Collaboration and trust allow firms to be transparent with their buyers about their social and labour issues (Stevenson & Cole 2018). A number of brand coalitions have been developed recently, including Action Collaboration, Transformation (ACT) initiative which is an alliance of global (mainly apparel) brands committing to improve supplier purchasing practices with strict labour regulations (ACT 2019) Whilst this is a positive first step, its success will only come about through large scale commitment to its provisions by influential firms, as without these brands, the alliance and the workers' unions that it supports will lack the clout to make a real difference (IndustriALL Global Union 2019).

iii. Transparency and privacy concerns

Many experts discuss complete slavery detection and remediation strategy transparency as the panacea to illegal labour practices (Nolan *et al* 2019, Stevenson & Cole 2018, Seuring and Müller 2008, Fair Labor Association 2012, Fair Labor Association 2018). Stevenson & Cole (2018) advocate for the mandatory disclosure of suppliers and the sharing of non-compliance between firms on the global level, to ensure concrete commercial consequences for poor labour practices. However, Vaughn *et al* (2019) note that general transparency without enforcement and due diligence often leads to vague statements of firm activities and mitigation strategies. For example, over one third of firms did not disclose details of their risk assessment processes in their modern slavery statements (ERGON Associates 2018) Instead, stronger information sharing policies are essential, with mandatory information on due diligence and the disclosure of substantive action (Vaughn *et al* 2019, House of Lords House of Commons Joint Committee on Human Rights 2017, Stevenson & Cole 2018)

However, transparency may be counterproductive, particularly given that these documents should be made public. The target audience of these documents is likely to be consumers and lawmakers, though the very people that initiate forced labour practices could also very easily access this information especially when these statements are publicly and permanently available (Stevenson & Cole 2018). Given that new detection strategies are difficult to develop, there may be incentives to withhold certain detection strategies to ensure that detection mechanisms are not discovered by slave operators (Stevenson & Cole 2018).

A further complication of transparency is firms' incentives to protect their sub-tier supplier information, which may harm either their reputation or potential competitive gains if disclosed to competitors (Stevenson & Cole 2018). Nolan *et al* (2019) conceptualise this issue as the debate between reputational risk and regulatory risk; representing a firm's decision of whether to disclose and follow regulatory requirements or not disclose and retain their reputation within their industry and supply chain. A balance must be found to recognise both the need for full supply chain transparency and the need to protect existing accurate detection strategies (Vaughn *et al* 2019), which has so far been left unaddressed in existing legislation. There is indeed a fine line between transparency and assisting in the perpetuation of criminal enterprises.

iv. Addressing consumer education

Remarkably little attention has been paid to the role of the consumer in modern slavery in the supply chain (Stevenson & Cole 2018). Even journal articles on the subject rarely mention the consumer. The reports submitted under the UK Modern Slavery Act are often difficult to access and read. The majority are plain text documents with only a small minority using graphics, data visualisation and colours to improve reading (Stevenson & Cole 2018). While this may seem like a token gesture that removes focus away from the report's contents, it does imply the target audience of the majority of these reports: a bureaucrat to be appeased rather than a consumer to be convinced to purchase their product.

While the consumer is not responsible for the actions of the brands that they choose to purchase, they nonetheless have significant power to be able to influence brands to change their activities. After all, given that firms conduct business based on economic incentives and goals, a potential boycott of products involved in forced labour, or of brands refusing to act on legislation in force, can be an effective protest mechanism.

We must first ask: are consumers unaware of the possibility of forced labour in the supply chain, or are they aware and simply morally unconcerned by it? A study in the UK asked members of the public about the knowledge of modern slavery. One in three were not aware that slaves were used in the UK to produce and process fresh produce, one in ten believed that slavery was a thing of the past and did not exist anymore (Boersma & Nolan 2019a) indicating a significant knowledge gap. Further, certification schemes, the main form of consumer awareness, are often "fairy tales" (Guilbert 2018b); lacking truth and causing no material gains in labour conditions for the workers they aim to benefit.

Christ and Burritt (2018) explore consumer ignorance by examining the submissions made to the Australian federal parliament prior to the enactment of the Australian Modern Slavery Act. Few submissions were made by consumers or consumer groups, implying a low engagement with the subject (Christ & Burritt 2018). However, the researchers examine the exception of consumer group Choice, which discussed the asymmetric information between consumers and businesses, suggesting amendments to consumer law to encourage information sharing and consumer education (Choice 2017). Given the prevalence of forced labour within the global supply chain, consumers wanting to buy ethically may simply not be able to purchase at all, shifting from "boycott to buycott" (O'Brien 2018)

It appears that consumers are willing to take action if they are aware of poor labour practices operating within the brands that they purchase. A survey of US and UK consumers found that two in three consumers would stop purchasing a product that was produced involving slavery or exploitation (QIMA 2015). This implies that effective education strategies have the potential to change both behaviour and actions.

vi. A strategy targeting causes?

Finally, we must also question the general efficacy of the legislation; whether it addresses both the symptoms *and* the more systemic causes of forced labour in the global supply chain. Indeed LeBaron and Gore (2018) state that modern slavery should not be seen through the restrictive "lens of crime and illegal activity", but instead as a societal issue that is driven by broader social, economic and political forces. Returning to Andrew Crane's modern slavery model, the industry context of the firm is only one factor at play: immigration, law enforcement, cultural practices and socioeconomic constraints are also important determinants of modern slavery and shape the business models in which it exists (Crane 2013, Boersma & Nolan 2019a). Legislation and firms' responses have largely left out this broad perspective on tackling modern slavery. Firms' buying practices and their codes of conduct for suppliers only scratch the surface, appeasing legislative requirements without addressing the root causes of the issue (Boersma & Nolan 2019a).

One notable exception is the work done by Nestle and its hazelnut suppliers in Turkey, which had faced instances of both forced labour and child labour (discussed in section iv.i in detail). Child labour was prevalent not out of a perverse moral belief in it, but out of practical constraints that forced children to work with their parents, as they had no other safe place to go when their parents were working. In partnership with local NGOs, the suppliers established safe spaces for children where they could learn and play. Ultimately child labour existed out of systemic issues of a lack of childcare (Fair Labor Association 2018) This emphasises that broader societal solutions, that may not directly relate to modern slavery, can effectively address its root causes. Encouraging and facilitating unionisation can also improve working conditions for employees, allowing them to gain information and education about their labour rights, as well as advocate as a powerful body for fairer wages (Boersma & Nolan 2019a)

Ultimately, to finally rid the world of modern slavery in the 21st century, radical economic and social change is required outside the narrow sphere of labour market regulation.

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