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Article

The domestic politics of corporate accountability legislation: struggles over the 2015 UK Modern Slavery Act

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Abstract

Over the last decade, the norm of corporate accountability for labour standards in global supply chains has become increasingly prominent within the transnational governance arena. As global governance initiatives to spur due diligence for labour standards and combat exploitation in global supply chains—especially its most severe forms frequently described as modern slavery—have proliferated, societal coalitions have pressured states to pass domestic legislation to the same effect. In this article, we examine the regulatory processes that spurred the passage of one piece of anti-slavery legislation, the UK's 2015 Modern Slavery Act. Our findings corroborate a number of established expectations regarding business opposition towards new legislation to raise public labour standards, but also provide a clearer picture of the mechanisms through which industry actors impact policymaking processes. Paradoxically, such mechanisms include business actors' championing of weak regulatory initiatives, CSR activity and partnering with civil society organizations. Understanding industry actors' use of these strategies improves our understanding of how transnational norms of corporate accountability and anti-slavery are being contested and shaped at domestic scales.

Key words: governance, corporate social responsibility, government, social movements, firms, law

JEL classification: K2 regulation and business law, D64 altruism, philanthropy, J8 labour standards: national and international

1. Introduction

Nearly 200 years after the UK abolished slavery, the practice continues to thrive both in the UK and around the world. Today, over 21 million people are subjected to forced labour, which the International Labour Organization (ILO) defines as 'all work or service which is

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exacted under the menace of any penalty for its non-performance and for which the worker does not offer himself voluntarily' ([International Labour Organization, 1930](#)). The ILO definition of forced labour encompasses practices frequently referred to as modern slavery, including slavery and human trafficking.¹ The ILO estimates that total illegal profits made annually from forced labour exceed US\$150 billion, with the majority of victims concentrated in agriculture, manufacturing, mining, construction and domestic work (2014, p. 17). The UK government estimates there are between 10 000 and 13 000 victims of modern slavery per year within its borders ([UK Home Office, 2014a](#)). Although scholars often write about slavery as a phenomenon successfully relegated to the past, in reality it is a stable and predictable feature of the global political economy, including the supply chains that create buildings, garments, palm oil, sugar, seafood, tea, footwear, electronics and metals ([Allain et al., 2013](#); [Crane, 2013](#); [Phillips, 2013](#); ILO, 2014; [Verité, 2015](#)).

As awareness and concern about these practices has grown among consumers, activists, investors and policymakers, calls for corporations to take on greater accountability for labour standards in their supply chains have intensified. Bolstered by shaken confidence in market self-regulation in the wake of multiple crises of corporate accountability ([Kinderman, 2015](#)), new transnational regulatory initiatives have emerged to spur corporate transparency and due diligence practices in global supply chains, including the 2011 United Nations (UN) Guiding Principles ([UN Human Rights Council, 2011](#)) for Business and Human Rights and revised OECD Guidelines for Multinational Enterprises. Dozens of states have recently passed legislation to stimulate corporate accountability for labour standards in global supply chains. One recent study found that 55 new pieces of national legislation imposing mandatory requirements onto companies to disclose information about labour issues in their supply chains have been passed since 2009 ([Phillips et al., 2016](#)). Examples include the UK's 2015 Modern Slavery Act, California's 2012 Transparency in Supply Chains Act and France's 2017 Corporate Duty of Vigilance Law.

Policymakers, industry actors and large swathes of anti-slavery activists have heralded this wave of legislation as a game-changer for the eradication of modern slavery and are optimistic that it will close regulatory gaps surrounding social practices in global supply chains. The sense among scholars seems to be that at best, corporate accountability legislation constitutes a paradigm shift in global corporate and supply chain governance ([Ruggie and Sherman, 2015](#); [Lake et al., 2016](#)) and, at worst, it may contain deficiencies but is still a very significant step forward for raising labour standards in global supply chains since it is 'hard law' with the positive potential to strengthen corporate social responsibility efforts ([Gond et al., 2011](#)).

In our view, these conceptions of corporate accountability legislation are overly optimistic and depend on the mostly inaccurate perception that this body of legislation has meaningfully bolstered public labour standards. In reality, corporate accountability laws vary hugely in their institutional design and levels of stringency, and many laws—in spite of their purported aim of strengthening corporate accountability—do little more than create statutory endorsements for existing private governance initiatives to address labour abuse, such as certification schemes and private auditing. Domestic corporate accountability laws exist on a spectrum. At one end are strong laws that mandate companies to develop a due diligence plan on human rights in their supply chain, to disclose this plan and to implement it.

1 See [Allain \(2008\)](#) for overview of legal definitions of these terms and how they relate to each other.

At the other end are weak laws that merely provide statutory endorsement to existing voluntary CSR initiatives and reporting, with no penalty for non-compliance. Most recent legislation falls towards the weaker end of the spectrum. Variation across corporate accountability legislation is important because differences in quality and stringency of labour standards governance initiatives strongly shapes their effectiveness (Fransen, 2012a; LeBaron and Rühmkorf, 2017). Two questions thus become urgent and important. The first is why some national legislation takes such a weak form. The second is how these weaknesses impact governance effectiveness. In other words, at stake in academic and policy discussions is whether or not this wave of legislation will succeed in closing the regulatory gaps surrounding forced labour in global supply chains, and if not, who or what is responsible for its deficiencies.

In this article, we investigate these questions by exploring variation in domestic corporate accountability legislation and the consequences posed for the governance of labour standards in global supply chains. Our focus is on why—given that the impetus behind these laws was to spur changes in business practices—some corporate accountability laws contain only vague and weak requirements and do little more than create statutory references to existing forms of industry-led private governance. To shed light into these dynamics, we investigate the influences on quality and stringency of corporate accountability legislation in domestic policymaking processes through an in depth qualitative case study of one prominent piece of legislation, the 2015 UK Modern Slavery Act.

Conceptually, our aim is to deepen understandings of the influences on national regulation, and especially, of the mechanisms through which industry actors impact public initiatives to address labour standards in global supply chains. In line with extant studies (Bartley, 2011; Taylor, 2011; Cutler, 2012), we find that private labour governance is being used as a substitute for state regulation as businesses oppose and weaken new public standards (Kinderman, 2016) and strategically use CSR to deflect regulation (Kaplan, 2015). In contrast to accounts that see CSR as a pragmatic and politically neutral strategy to fill governance gaps created by an inability or unwillingness on the part of states to regulate (Vogel, 2005), we stress the political agency of industry actors in mobilizing private initiatives as part of a broader political strategy to displace and weaken new public legislation.

We move the field forward by providing one of the first in-depth studies of the complex mechanisms through which private displacement of public regulation occurs. We note that business opposition to regulation does not simply take the form of corporate political action (CPA) *against* regulation. Paradoxically, in the case of the UK Modern Slavery Act, industry actors sought to derail efforts to raise public labour standards by lobbying *for* legislation—albeit a weak version of transparency legislation—and by positioning themselves as part of the societal coalition pushing for government action to combat slavery in global supply chains. Although the political dimensions of CSR and private regulatory initiatives have been acknowledged in the CPA literature (Scherer and Palazzo, 2011; Fryna and Stephens, 2015) and recent scholarship on CSR (Kaplan, 2015), we argue that there is a need for greater attention to the political agency of business in debates about public and private regulatory interactions. There is also a need for better recognition of the diverse mechanisms that industry actors use to weaken and oppose public regulation. To date, the vast majority of attention paid to industry efforts to influence policymaking has focused on their interactions

with government, with civil society frequently assumed to be on the opposite side of the bargaining table from industry in relation to labour governance. However, our analysis highlights the need for deeper investigation of the role of strategic partnership and collaboration between industry actors and NGOs in shaping policy responses. In short, we seek to advance the literature by providing a clearer picture of the mechanisms through which industry actors impact domestic policymaking processes, and by developing an analytic perspective that enables future research into variation across domestic legislation to strengthen corporate transparency and accountability.

In documenting the diverse strategies that powerful business actors use to influence public labour standards bargaining processes, we challenge prevailing assumptions about the transmission of transnational norms to the national sphere (Finnemore, 1996; Finnemore and Sikkink, 1998), arguing that the diffusion of evolving transnational anti-slavery and corporate accountability norms is not automatic but rather is contested and shaped at domestic scales and can be trumped by the power of economic interests. Although the transmission of anti-slavery norms is often thought to have occurred in the 19th century, we argue that norm diffusion is ongoing and in our case study was undercut and diluted by powerful industry interests. By unearthing key obstacles posed to corporate accountability norm diffusion, we help to explain the considerable variation that exists across national legislation with similar purposes, as well as the ongoing presence of forced labour in global supply chains.

Empirically, we investigate the recent wave of national legislation to bolster corporate accountability for labour standards, with a focus on anti-slavery legislation passed in advanced capitalist countries over the last decade. We present an in-depth case study of the making of the 2015 UK Modern Slavery Act, beginning in 2010. Our data encompasses multiple documentary sources, including 157 evidence statements submitted to Parliament by private actors during the policymaking phase, documentary evidence about lobbying activities and 20 in-depth interviews with experts on forced labour who had been involved in the UK policy process. We analyse how interactions between industry actors, NGOs and policymakers in the creation of the UK Modern Slavery Act impacted the stringency of this new legislation, and consequences for the Act's effectiveness. Our article proceeds in seven parts. Section 2 positions our study within debates about public and private labour governance interactions and relates our approach to existing perspectives in the literature. Section 3 provides an overview of new transnational and national governance initiatives to address forced labour in global supply chains, and describes the bifurcation between recent public and private initiatives. Turning to the UK case, Section 4 introduces our methodology. Section 5 describes the various regulatory initiatives that were initially proposed to eradicate forced labour from supply chains in the UK context and analyses the legal consequences that these initiatives would have had for UK companies and multinational enterprises. Section 6 analyses the role of business-led programs and industry actors in shaping the regulatory outcome, and the use of CSR as a strategy to deflect more stringent legislation, with particular attention to variation across industry responses. A final section of the article concludes there is a need to investigate further the role of private actors in reinforcing national and transnational governance gaps surrounding forced labour.

2. Theory: understanding industry influences on national anti-slavery policymaking

Over the last two decades, there has been a proliferation of private initiatives to promote labour standards in global supply chains, such as through corporate codes of conduct, certification schemes and ethical auditing programs (Cutler, 2012; Fransen, 2012a; Locke, 2013). These schemes, designed and implemented by firms often in collaboration with NGOs, have flourished alongside growing concern about the prevalence and endurance of labour exploitation—including forced labour and modern slavery—within global supply chains, and especially in relation to those chains feeding high-end consumer markets in advanced capitalist countries.

Alongside the proliferation of private initiatives, societal coalitions (Vogel, 1997) have put pressure on states to pass new legislation to strengthen corporate accountability and liability for labour standards, especially worker health and safety, wages, union rights and the use of child and forced labour. Such coalitions have targeted both transnational organizations such as the ILO, OECD and World Trade Organization, and national and sub-national governments, and have often coalesced around demands for stronger and more global regulation of corporate activities to protect the world's workers from a corporate 'race to the bottom' in labour standards. In advanced capitalist countries, societal coalitions have pressured governments to raise domestic labour standards and the enforcement of those standards in relation to wages, working conditions and collective bargaining rights, and have also put pressure on governments to pass legislation that would spur corporate responsibility for forced labour within global supply chains.

Recently, as scholars have debated the interactions between CSR and public regulation more broadly (Jackson and Apostolakou, 2010; Brammer *et al.*, 2012; Kinderman, 2012; Fransen and Burgoon, 2017), they have begun to explore how public and private initiatives to govern labour standards interact, and whether, when, and under what conditions private initiatives compliment or undermine traditional forms of state regulation. One vein of scholarship has argued that public and private initiatives are complimentary (Gjolberg, 2009). Studies have documented a 'California effect' wherein public regulation can help to 'ratchet up' private standards, and private standards can fill gaps where state capacity falls short (Vogel, 1997; Bernstein and Cashore, 2007; Cashore *et al.*, 2007; Cashore and Stone, 2014). Researchers within this perspective have concluded that public legislation to raise labour standards strengthen private initiatives, that private coalitions and initiatives can strengthen government enforcement of labour law (Posthuma and Bignami, 2014) and that a combination of public and private initiatives is required to govern labour standards in supply chains (Weil, 2005; Bartley, 2011).

Another vein of scholarship, however, has challenged the notion that businesses will harmoniously fill in gaps in public regulation, and have raised concerns that private labour initiatives are increasingly becoming a substitute for public labour standards regulation and enforcement (Cutler, 2012; Mayer and Phillips, 2017). Recent studies have drawn attention to the political value of private governance initiatives, and particularly their role in upholding the status quo of insufficient governance and supporting industry actors' claims that new forms of public labour standards and enforcement are unnecessary (O'Rourke, 2003; Esbenshade, 2004; Kaplan, 2015; LeBaron and Lister, 2015). Studies have also documented business opposition to new public legislation across several jurisdictions. Kinderman (2016),

for instance, has argued that the notion of a ‘smart mix’ of complimentary regulation is overly optimistic, demonstrating that industry actors tend to reject and oppose new state-based regulations, favouring instead voluntarism and soft law without hard sanctions.

Debates about private and public labour regulatory interactions are at an early stage and remain limited both empirically and theoretically (Fransen and Burgoon, 2017). Research confirming that private regulation is displacing public regulation has been especially modest.

To date, there have been few in-depth studies of the circumstances under which substitution or displacement of private regulation for public regulation occurs, the mechanisms through which industry actors impact and alter public governance initiatives, or the dynamics through which CSR emerges as a substitute for public regulation. Extensive comparative research will be required to achieve a better understanding of these dynamics, and such efforts are essential if we are to understand the obstacles to effective governance of global supply chains.

This article seeks to push forward the debate about the circumstances under which private labour regulation comes to substitute for public regulation by providing a clearer picture of the mechanisms through which industry actors impact policymaking processes, focusing on an in-depth case study of the bargaining processes that led to the UK Modern Slavery Act. We highlight the role of industry actors in influencing and derailing the societal coalition that sought to strengthen public regulation of labour standards, and document how public labour governance was displaced and weakened through the mobilization of private regulatory power and initiatives. While a comprehensive theorization of how, when and why private actors influence the design of public regulation lies beyond the scope of this article, in the remainder of this section, we seek to move debates forward by challenging prevailing assumptions about how private displacement of public regulation takes place, and by arguing that greater attention needs to be paid to the diverse strategies and mechanisms that industry actors use to influence and displace public regulation.

2.1 Industry influences on public labour standards

To date, discussions of industry actors’ influence over public labour standards have focused overwhelmingly on their opposition to it, such as through lobbying, legal action and financing of political rivals. Indeed, the tendency of industry actors to seek to influence public regulation by opposing and frustrating new regulation that would restrict or alter their business models has been well documented across several academic literatures, ranging from the critical political economy literatures on finance and outsourcing to organizational studies literature on CPA² (cf. Cutler *et al.*, 1999; Hillman and Hitt, 1999; Soederberg, 2007; Mattli and Woods, 2009; Scherer and Palazzo, 2011; Taylor, 2011). In the contemporary global economy, however, although businesses efforts to influence regulation often still takes the form of straightforward opposition, industry actors’ efforts to derail public regulation to raise labour standards are also carried out through more indirect and less confrontational mechanisms. Paradoxically, rather than *opposing* new legislation, industry efforts to influence legislation can take the form of strategic support and advocacy efforts *in favour* of weak and hybridized forms of state regulation. In addition, industry actors also use a variety of strategies to steer societal coalitions away from stringent public governance and towards private industry-led solutions. These efforts need to be considered and studied alongside and in

2 Thanks to Gregory Jackson for suggesting this connection to the CPA literature.

addition to industry actors' more traditional political strategies to influence and oppose new regulation.

As we document below, although industry actors might have been reasonably expected to oppose the UK Modern Slavery Act since its impetus was to increase industry responsibilities to prevent and address forced labour in global supply chains, in fact, several powerful business actors mobilized in *support* of the legislation and worked alongside civil society coalitions to champion it. At first glance, this is puzzling. Why would powerful business actors support and lobby *for* regulation that would impose new corporate responsibilities for the governance of labour standards in global supply chains? Shouldn't we expect them to favour voluntarism and resist any form of government intervention, as they have been well-documented to do within the literature? The seeming paradox of industry support for being regulated is resolved, however, when the stringency of the legislation is examined in greater detail. As we argue below, the version of the Modern Slavery Act that industry actors championed reinforced and heightened the legitimacy of existing private, voluntary 'anti-slavery' initiatives. At the beginning of the bargaining process, the government was considering an array of governance initiatives of varied levels of stringency, ranging from new criminal liabilities for companies found to have forced labour in their supply chains, to mandatory reporting on the effectiveness of corporate efforts to prevent and address forced labour, the least stringent initiative was ultimately adopted. As we argue below, for complex reasons including a desire to harmonize regulatory requirements across multiple jurisdictions, in the case of the Modern Slavery Act industry activity to displace and weaken stringent legislation took the form of lobbying *for* rather than *against* anti-slavery legislation. Industry actors also sought to influence legislation by pushing to create and legitimize business-driven programs during the early stages of the legislative bargaining process and by involving NGOs in business-led anti-slavery initiatives. Ultimately, we argue, although the impetus behind the Modern Slavery Act was to strengthen corporate accountability for labour standards in global supply chains, private actors influenced the bargaining process such that the Act merely incorporated—rather than strengthened or challenged—industry-led approaches to detecting and addressing severe labour exploitation. Thus, while ultimately industry actors sought to substitute private standards for stringent forms of public regulation, the mechanisms through which they accomplished this were far more subtle and complex than the adversarial strategies that have received the bulk of the attention within the labour governance literature to date.

Recent management studies literatures on the political nature of CSR help to shed light into industry strategies to creatively defend its power through 'softer' and more subtle efforts to deflect restrictions on their business practices (Kaplan, 2015). As Kaplan has argued, companies have long used indirect strategies to protect the status quo, including the strategic mobilization of CSR to offset mandatory regulation. Through such efforts, he demonstrates, corporate elites have achieved 'institutional maintenance' which allows them to defend their powerful market positions and stave off efforts to restrict and change the rules of global production (2015). Similarly, the CPA literature has emphasized the political value of CSR as a corporate political strategy to 'shape government policy in ways favourable to the firm' (Hillman and Hitt, 1999; see also Scherer and Palazzo, 2011; Lawton *et al.*, 2013; Fryna and Stephens, 2015). For instance, Hond *et al.* (2014) have recently documented industry's use of CSR as a political strategy to secure favourable political conditions for business.

Building on these literature's insights about the political role and value of CSR, and the need to pay attention to industry actors' variegated strategies to exert political influence—which include softer and more sophisticated strategies like CSR—we argue that industry efforts to negatively influence the stringency of public legislation are not limited to straightforward opposition and attempts to frustrate regulatory initiatives. Rather, they also include more subtle forms of influence, such as the championing of private initiatives as well as efforts to steer societal coalition to bolster labour standards away from stringent regulation. To use the CPA literature's terminology, in our case, the strategic use of CSR comprised both a form of political CSR and a form of CPA used by firms to shape government policy.

A crucial and often overlooked part of the story of how private governance comes to substitute for public governance lies in industry interactions with NGOs. To date, accounts of industry actors' political agency have focused overwhelmingly on business efforts to influence government. However, in addition to and as part of their efforts to influence policymakers, industry efforts to influence public legislation also encompass their interactions with NGOs. This has been well documented by [Dauvergne and LeBaron \(2014\)](#) who argue that partnerships between industry actors and civil society organizations are helping to fortify the power of corporations to influence their own governance and the rules of global production more broadly. Particularly in the area of transnational labour governance, alongside recent civil society calls for greater corporate accountability, industry actors have sought to strategically connect to civil society groups and to position themselves as the solution to problems like forced labour and human trafficking in supply chains, rather than the cause of such problems. The role of industry–NGO partnerships in displacing stringent global supply chain governance has been under investigated in the literature. Although NGOs have featured prominently within the regulatory governance literature as stakeholder groups and co-regulators ([Gereffi et al., 2001](#); [Bartley, 2007](#)), industry actors' efforts to steer societal coalitions away from public regulatory options and towards private regulation have received very little attention.

In this article, we document industry efforts to influence public regulation through strategic engagement with civil society coalition pushing for stronger public governance of labour standards, as well as a range of other sophisticated and complex strategies to influence policy. Such mechanisms of influence have received too little attention in the literature and do not fall neatly into existing taxonomies of industry actors' political strategies to influence policymaking are outdated and fail to capture the multiplicity and complexity of their current political strategies. For instance, Hillman and Hitt's influential typology encompasses information strategy, financial incentive strategy and constituency-building strategy (1999, pp. 834–835). While these remain important strategies for industry actors seeking to shape national legislation, and indeed, much of the activity we document within our case study falls within these strategies, as we document in Section 6, industry actors today also deploy more variegated strategies to influence policy.

2.2 The privatization of public labour standards

In addition to contributing to understandings of the mechanisms through which industry actors shape public legislation, we seek to contribute to the emerging literature on how and when displacement of public regulation is occurring. Much of the attention to date has focused on displacement during the policy implementation phase (e.g. use of private auditors over state labour inspectors), or straightforward trade-offs between distinct private and

public initiatives (e.g. enforcement of a company code of conduct versus national labour regulation). However, as we document below, displacement can also occur *during* the policy-making process, as industry actors seek to strategically mobilize private labour governance initiatives and influence policymakers to replace public standards, tools and enforcement mechanisms with private standards, tools and enforcement mechanisms within public legislation. In other words, private labour standards do not only displace public standards by substituting for or preventing new legislation, but also by diluting the quality of new legislation and effectively privatizing it—rendering it far less stringent and ‘hard’ in legal terms than is frequently assumed.

The literature on displacement has tended to focus on trade-offs that occur *after* regulation is passed, with recent studies, for instance, arguing that the growth of CSR has hollowed out public support for certain forms of legislation and state spending (Burgoon and Fransen, 2017), or that CSR forestalls binding regulation of multinational corporations (Taylor, 2011). However, although the agency of private actors within public labour governance creation has been widely overlooked, the importance of actors’ interests are often acknowledged in relation to the creation of private governance mechanisms. Guided by these insights, we seek to broaden the focus to show that public–private interactions also shape the content of regulation itself. Recognizing this requires us to move beyond the overly simplistic conception of public and private governance prominent within the literature. Indeed, there has been a tendency to assume *a priori* that private initiatives will create a lesser need for public regulation or enforcement and that by expanding corporate profits and power, private governance will inherently reduce the ability of states to regulate and of societal coalitions to create change. There has been a related tendency to see public and private labour governance as distinct and easily separable, and to assume that public regulation is ‘hard’, mandatory and stringent, while private is ‘soft’, voluntary and difficult to enforce.

In highlighting how private actors and initiatives influence the content and substance of public legislation, we challenge the tendency to conceptualize public legislation as homogeneous and uniformly stringent. Scholarship on private labour governance has explored differences across instrument quality, and has critically analysed and compared the stringency within and across instruments, including social audit methodologies, multi-stakeholder standards, certification schemes and corporate codes of conduct (Fransen and Kolk, 2007; Fransen, 2012b; Locke, 2013; LeBaron *et al.*, 2017). Yet, by contrast, public legislation is often assumed to be much more uniform than private governance mechanisms, and state-based regulation in particular is considered legally binding and effective. However, this conception glosses over the sizable variation that exists in the quality of recent public legislation to bolster labour standards, and the domestic-level politics and policy processes that help to explain this variation.

2.3 Centralizing domestic struggles

As mentioned, many studies of corporate governance have focused on macro and global levels and the evolution of transnational norms, leaving aside the questions of why, when and how national governments enact legislation to reflect shifting international norms on issues like corporate accountability and anti-slavery. In relation to anti-slavery norms in particular, scholars frequently assume that over two centuries ago, slavery was abolished once a new transnational norm of equality was diffused across states. Indeed, anti-slavery is often celebrated as a victory by scholars of contemporary global political economy. Researchers of

social movements write with admiration about the 19th century activists who banded together across national borders to successfully pressure national governments to abolish an institution on which powerful business interests and the expanding market economy depended (Keck and Sikkink, 1998; David, 2007; Davies, 2014). Similarly, scholars interested in the role of norms in international politics often cite the abolition of slavery as an example of the power of international norms to diffuse and change society by filtering through the domestic structures of states (Finnemore, 1996; Finnemore and Sikkink, 1998). This is particularly common in constructivist approaches. Martha Finnemore describes, for instance, ‘The triumph of core international norms may create gross secular changes in international politics by delegitimizing and effectively eliminating some forms of behavior (as, for example, the human equality norm has eliminated slavery)’ (1996, p. 139).

Such accounts, however, cannot explain why slavery persists in the global economy two centuries after the ‘norm’ of anti-slavery became prominent. Nor can they adequately explain why new international norms around corporate accountability are taking on such varied national institutional forms. Our approach to understanding interaction between the international and national spheres is guided by recent scholarship that demonstrates that norm diffusion is not passive or automatic, but rather is shaped by national politics and culture and is negotiated by domestic actors in the face of competing interests (Acharya, 2004; Bieler and Morton, 2008). We do not assume that the new global norm of corporate accountability will be transferred automatically to national governments, but rather, are interested in how it is being contested and shaped at domestic scales. Our case study of new anti-slavery legislation in the UK is therefore designed to shed light into the obstacles that continue to constrain the effective diffusion of anti-slavery norms, and in particular, how these can be trumped and diluted by the power of economic interests, and therefore to contribute to understandings of why forced labour continues to thrive in the contemporary global economy.

3. Governing forced labour in supply chains: societal pressure and government response

The UK’s 2015 Modern Slavery Act has been part of a wave of new governance initiatives to combat severe labour exploitation that has emerged over the last decade. As mentioned in Section 1, these initiatives have taken a variety of public, private and hybridized regulatory forms. Transnational labour governance has primarily taken the form of private regulation, as provisions around human rights and labour abuse have been incorporated into new due diligence and corporate accountability guidelines including the UN Guiding Principles for Business and Human Rights. Similarly, at the regional level, the European Union Directive 2014/95/EU, which aims to improve company transparency in regards to non-financial and diversity information, incorporates labour standards and human rights. In addition, although the abolition of slavery is already part of several global treaties, conventions and declarations in international law such as the United Nation’s Universal Declaration of Human Rights, in 2014, a new protocol was adopted to the ILO’s Forced Labour Convention of 1930, to intensify efforts to eliminate contemporary forms of slavery.

In the wake of these transnational developments, national and sub-national governments began to pass legislation with the aim of strengthening corporate accountability, and addressing forced labour in supply chains more specifically. As documented by Phillips *et al.*

(2016), this body of legislation takes three key forms: (a) legislation that is broadly CSR focused and requires companies to report on a host of issues including CSR activities and environmental and social performance, including labour standards (e.g. India 2013 Companies Act); (b) legislation that is focused exclusively on labour standards, and often on forced labour, human trafficking and modern slavery in particular (e.g. California 2012 Transparency in Supply Chains Act); and (c) sector-specific legislation that incorporates labour standards, often alongside other CSR concerns (e.g. Dodd–Frank Act, Section 1502). The theme of corporate responsibility for forced labour, human trafficking and slavery in supply chains is prominent across all three categories of legislation.

National and sub-national legislation differs in terms of stringency and level of hybridity. Key indicators of stringency include: overall legislative approach (e.g. extra-territorial criminal liability versus transparency); whether requirements for due diligence and disclosure are mandatory or optional; whether requirements are specific or vague; whether companies are required to report on their existing efforts, or the *effectiveness* of those efforts; and whether there is a penalty for non-compliance. Levels of hybridity refer to the extent to which the legislation incorporates private standards, tools and enforcement mechanisms, rather than traditional public ones.

While a comprehensive review of this legislation lies outside the scope of this article, it is important to note here that significant variation exists across national legislation passed to spur corporate accountability for labour practices between 2009 and 2017. While some legislation, such as Brazil's National Action plan, contains legally binding provisions around supply chains, other pieces of legislation such as the influential California Transparency in Supply Chains Act merely require companies to disclose any voluntary efforts they are making to eradicate slavery from their supply chains, with no penalty for reporting they are doing nothing, and no direct penalty for non-disclosure. Similarly, while a Sao Paolo law enacted in 2013 to counter forced and trafficked labour is enforced through a system of public inspection, a 2012 US Executive Order to Strengthen Protection against Trafficking in Persons in Federal Contracts relies on private social audits. At the high-stringency end of the spectrum are laws like the 2017 French Corporate Duty of Vigilance Law, which establishes new legally binding obligations for large companies to identify and prevent human rights and environmental abuse in their supply chains. Although the French constitutional court recently removed the initially included sanctions of up to €30 million for non-compliance, companies can still be ordered to comply with the duty to establish, publish and implement a plan (subject to a penalty). Moreover, companies are subject to a civil liability regime to injured parties that have suffered a harm. At the low-stringency end of the spectrum are laws like the 2015 UK Modern Slavery Act that create new obligations for companies to report on voluntary efforts to prevent and address slavery, but do not include binding public standards or sanctions for non-compliance.

Large-scale comparative research will be required to understand why national legislation has taken such diverse forms, particularly as many laws cover the same large multinational companies, and because some laws concretize commitments to the same regional initiatives, such as is the case among EU countries' implementation of European Union Directive 2014/95/EU. Our hunch is that one explanation for variation lies in the interactions between public and private governance mechanisms, and the political forces, forms of power and bargaining processes that have made them. In the remainder of this article, we seek to understand such dynamics in relation to the UK Modern Slavery Act. Beforehand, however,

a brief overview of the broader societal coalition that has pushed for and championed this legislation is useful in understanding the regulatory context in which pressure for a UK Modern Slavery Act emerged.

3.1 Societal coalition

This recent wave of governance initiatives to combat forced labour and strengthen labour standards more broadly has emerged in response to nearly two decades of media, consumer and advocacy pressure on governments to address the role of business and multinational supply chains in creating the conditions for forced labour, slavery and human trafficking and labour abuse more broadly.

The ‘modern day abolitionist’ movement is concentrated in the USA, Australia and UK, where it centres on large NGOs like Walk Free Foundation and Free the Slaves, and brings together an eclectic range of societal groups from Christian churches to migrant rights organizations to traditional labour rights groups like trade unions.³ Without disregarding the importance of hundreds of smaller groups and industry-specific initiatives, [Table 1](#) lists the dominant NGOs, foundations and agencies working to eradicate forced labour and overlapping practices including child labour and human trafficking. Although important ideological differences exist between these organizations, they have exerted pressure on governments around a relatively coherent set of demands, centred on the need to enact regulation to reduce the prevalence of and ultimately eradicate forced labour.

Significantly, as NGO critiques of the business of forced labour began to intensify in the early 2000s, an industry-led coalition emerged to showcase and promote CSR initiatives around forced labour. In 2006, the first major industry-led campaign against human trafficking—End Human Trafficking Now!—was founded, and leading figures within it later founded the industry-led network involved in shaping new regulation on forced labour and trafficking, the Global Business Coalition against Trafficking (GBCAT).⁴

Until very recently, the industry-led and societal coalitions around forced labour rarely intersected, due to scepticism on both sides. But in the past few years, as industry actors have intensified their efforts to shape national legislation and transnational protocols on forced labour, and as NGOs and industry have increasingly interacted through meetings convened by the ILO, Global Compact, and United Nations Office on Drugs and Crime, there have been deepening links and interactions between the activist and industry anti-slavery coalitions.⁵ This is consistent with the broader trend of NGOs embracing the world’s biggest corporations as allies rather than adversaries ([Dauvergne and LeBaron, 2014](#)).

Significantly, in a number of jurisdictions, corporate actors have argued that anti-slavery legislation would be redundant to their private initiatives to ‘slavery-proof’ their supply chains.⁶ The main strategy that companies use to detect and address labour exploitation in their supply chains is ethical auditing. However, most companies audit only their first-tier suppliers, and only a couple of times per year, in spite of mounting evidence that forced labour tends to occur in lower tiers of production and among agency workers who are not

3 Interviews with NGOs, industry representatives and government representatives, London, March 2012.

4 Interview with David Arkless, London, March 2012.

5 Interviews with NGO representatives and David Arkless, London, March 2012.

6 Interview with lobbyist, California, 10 May 2013.

Table 1. Institutionalized global activism to eradicate slavery

	All contemporary forms of slavery	Human trafficking and 'sexual slavery'	Migrant exploitation and forced labour	Child labour and slavery
NGOs, Trade Unions, Foundations & United Nations Agencies	<ul style="list-style-type: none"> • Amnesty International • Human Rights Watch • Anti-Slavery International • Anti-Slavery Society • American-Anti-Slavery Group • Free the Slaves • Save a Slave • Human Rights International • International Labor Rights Fund • Polaris Project • The Wyndham Charitable Trust • Not for Sale • Human Rights Internet • United Nations Office on Drugs and Crime • ILO, Special Action Programme to Combat Forced Labour (SAP-FL) • ILO, Better Work 	<ul style="list-style-type: none"> • Project to End Human Trafficking • The Emancipation Network • Coalition Against Trafficking in Women • People Against Trafficking Humans • Global Alliance Against Trafficking in Women • Global Rights Initiative Against Trafficking in Persons • Human Trafficking Search • La Strada International • Coalition to Abolish Slavery and Trafficking • Shared Hope International • Protection Project • ILO • United Nations Global Initiative to Fight Human Trafficking 	<ul style="list-style-type: none"> • Kalayaan • Matahari Eye of the Day • Global Workers Justice Alliance • Irish Congress of Trade Workers • International Confederation of Free Trade Unions • Trade Unions Congress (UK) • Istituto Sindicale per la Cooperazione et lo Sviluppo • Coalition of Labor Union Women • World Confederation of Labor • International Organization for Migration • ILO, Migrant 	<ul style="list-style-type: none"> • ECPAT • Save the Children • Child Labor Coalition • Child Rights Information Network • Action Against Trafficking and Sexual Exploitation of Children • Casa Alianza • Child Rights Information Network • Child Workers in Asia • Child Workers in Nepal • Child Watch • Concerned for Working Children • Global March Against Child Labour • Free the Children • The World Bank • ECLT Foundation

Source: adapted and expanded from the United Nations Officer of High Commissioner for Human Rights (2015).

employed as part of companies' core workforces and therefore, rarely included in audits (Barrientos, 2011; Crane *et al.*, 2017; Phillips, 2013). In addition, while policies against child and forced labour have long been included within labour codes of conduct, companies are also increasingly including explicit policies on forced labour directly within supplier agreements. The continued absence of public governance initiatives to combat the business of forced labour has served to reinforce the authority and legitimacy of private regulatory programmes, in spite of increasing evidence of their ineffectiveness in detecting and eradicating forced labour.⁷

4. Methodology

Our research has focused on the role of societal actors, businesses and industry associations in the making of the UK's Modern Slavery Act, beginning in 2010. We chose to focus on the UK as one of the most heavily regulated countries in terms of CSR due diligence and corporate accountability legislation. We selected the Modern Slavery Act because it is considered a landmark piece of legislation, and because the policymaking process that led to the Act was well documented in official, publicly available information.

Data collection involved two phases: (a) an extensive desk-based review and analysis of over 150 written and oral evidence statements given to the UK Parliament, with a particular focus on recommendations to address the role of business and supply chains; and (b) qualitative semi-structured interviews with participants which included key informants in the field. During the desk-based review, we read, coded and analysed a total of 157 evidence statements by representatives of industry associations, UK companies, multinational companies, NGOs, religious organizations, multi-stakeholder initiatives, government and other experts. We coded these evidence statements according to the stringency of their regulatory recommendations for firms, and according to their overall support for public and private governance initiatives. In our analysis of the evidence statements, we took into account that the company representatives knew that their answers were to be made public and could have reputational repercussions. We therefore compared their statements against the responses made by business organizations which represent the industry as a whole. Our desk-based review also included lobbying documents produced by UK-based firms, NGOs and the government between 2010 and 2014. Most of this documentation was obtained by attending events in London, which served as important strategy discussions for the NGO and expert coalition attempting to influence the Modern Slavery Bill.

In addition, a total of 20 in-depth interviews were conducted. Interviews were conducted with experts on forced labour who had been involved in the UK policy process, including trade unionists, NGO representatives, employer representatives, industry association representatives, company CEOs and ethical auditors. The interviews were then transcribed and analysed using NVivo 10 software. Finally, in March 2015, after the final contents of the Act were clear, a further round of 15 short conversations were held in London. These interviews were used to test our hypotheses and findings.

Our case study is exploratory and should be understood as an initial plausibility probe of our intuition that societal coalitions to bolster public labour protections are being weakened

7 For an overview of the ineffectiveness of audits in detecting, addressing and correcting forced labour, see Crane *et al.* (2017).

by industry actors, in part, through their strategic mobilization of private governance initiatives during domestic policymaking processes. We have focused on a single case study to gain a rich empirical understanding of the influence of private actors on national policy. This approach has several limits, one of which is that it is difficult to establish the conditions under which private labour governance initiatives displace or disrupt public initiatives, beyond the bounds of our single case. Much more extensive comparative research will be needed to specify these conditions, and we make suggestions in the Section 7 for directions that this could take. Our primary aim in this article is to highlight the impact of industry actors on the substance and content of the UK Modern Slavery Act and to provide an early exploration of one set of possible consequences in terms of its effectiveness.

5. Public regulatory options to strengthen governance systems to eradicate forced labour

As has been the case in many national jurisdictions, at the beginning of the legislative process in the UK there were a number of regulatory tools under consideration of varying levels of stringency. Although none of the proposed tools departed radically from the UK government's ongoing 'light-touch' approach to governing business, legislators made it clear that their goal was to create legislation that would be effective in eradicating slavery from supply chains. At the beginning of the process, there was relative consensus—which was well expressed by legislators in the Draft Modern Slavery Bill Report—that 'voluntary initiatives alone will not be enough to ensure that all companies take the necessary steps to eradicate slavery from their supply chains'.⁸ In the remainder of this section, we provide an overview of the varied legal consequences that these different regulatory tools would have had for companies, since this is necessary to contextualize our argument and findings about how and why the bargaining process evolved as it did.

5.1 Tackling forced labour through public initiatives: criminal law versus transparency reporting

In legal terms, governing labour standards in supply chains constitutes a significant challenge (Anner, 2012; Marx *et al.*, 2014). The difficulty for legal accountability is that the use of forced labour usually occurs at supplier or sub-supplier factories, and—in the case of multinational enterprises—very often occurs in the developing world. The legal liability for using forced labour in global supply chain lies, first and foremost, with the supplier in the developing world who commits the human rights violation and not with the multinational enterprise based in the global North and West that sells the end-product. In English law,⁹ because multinational companies are separate legal entities from their suppliers, there is no vicarious liability of the multinational enterprise for the crimes and/or torts committed by the supplier.¹⁰ Furthermore, if a supplier in the developing world uses forced labour, the

8 See Draft Modern Slavery Bill, accessed at <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtselect/modernslavery/166/16608.htm> on October 17, 2017.

9 Although the Modern Slavery Act is a 'UK Act', i.e. it applies to the whole of the UK, we refer to 'English law' here. The UK has three different legal systems. English law is the legal system governing England and Wales and thus the legal system that applies to the majority of the UK.

10 *Adams v Cape Industries plc* [1990] BCLC 479.

case would usually be heard in that country and decided upon the basis of the law of that jurisdiction due to the rules of private international law. The challenge is that this country's law may not cover forced labour, or, more likely, law enforcement mechanisms in that country could be weak due to limited access to justice or corruption (Kucera, 2008; Greenhill *et al.*, 2009).

Against this background, the idea to regulate global supply chains in English law through the Modern Slavery Act developed from the recognition that the home country of multinational enterprises should not turn a blind eye to recurrent reports about gross human rights violations at supplier factories. The UK government has faced pressure to enact anti-slavery legislation for over a decade, and this was further fuelled by developments within the global governance arena that called for heightened corporate accountability for labour practices and human rights in supply chains. Anti-Slavery International¹¹ has been at the forefront of these efforts, and has previously led successful coalitions to pressure the UK government to define and criminalize forced labour, introduce laws against trafficking and commit to ratifying the Council of Europe Convention against trafficking.¹² Other important activist players include Kalayaan, Stop the Traffik, Walk Free, Migrants' Rights Network, and FLEX. These organizations have exerted pressure around a coherent set of demands, focused on the need for government to bolster public standards and enforcement to eradicate forced labour. Significantly, these NGOs played an important role in identifying and garnishing support for the more stringent regulatory options discussed in the draft Modern Slavery Bill.

At the beginning of the legislative process, the government was considering three models through which the Modern Slavery Bill could address forced labour in supply chains (summarized in Table 2), and appeared open at the beginning of the consultation process towards adopting any of the three options. Although prevailing theories of neoliberalism suggest that 'hard law' approaches to governing business wouldn't be possible for ideological reasons and due to limited state budgets to enforce such regulations, we believe that it was a genuine possibility for the UK government to opt for one of two 'harder' proposals.¹³ This is evidenced by comments made in early hearings held by the Joint Committee on the Draft Modern Slavery Bill and in the substance of the Draft Bill itself. In addition, as we discuss in the following section, important and recent precedents for this exist in 'hard' corporate law on bribery within UK and in 'hard' due diligence law recently enacted by other countries in Europe.

The most stringent option, the Bribery model, was discussed in the hearings of the Joint Committee. Aidan McQuade, Director of Anti-Slavery International, argued on January 21, 2014 that the Bribery model was a 'better model' than the California transparency clause model. Like the other two legislative options, the Bribery model was then put to Karen Bradley, Minister for Modern Slavery and Organised Crime in the hearing on March 12, 2014. She was told by the committee that all three options are 'things which tend to change

11 Anti-Slavery International 'founded in 1839, is the world's oldest international human rights organization and works to eliminate all forms of slavery around the world'. See: http://www.antislavery.org/english/who_we_are/default.aspx (accessed March 1, 2015).

12 Interview with Anti-Slavery International, March 2012.

13 In his assessment of New Labour's approach to regulating the financial markets, Shaw more generally describes how the fact that the UK is a liberal-market economy has contributed to 'light-touch' approach towards business regulation, see Shaw (2012).

Table 2. Proposed legislative options to strengthen UK governance to eradicate forced labour

Legislative option	Company duties	Company liabilities
Bribery Act Model	Companies must not be associated with a person that uses forced labour	Liability exists for the use of forced labour by a person associated with the company which could be a supplier
	In order to have a defence against the offence of modern slavery, the company needs to be able to prove that it had 'adequate procedures' in place designed to prevent persons associated with it from using forced labour	An offence is committed irrespective of whether the acts or omissions which form part of the offence take place in the UK or elsewhere (extraterritorial liability)
	Due diligence is among the principles that constitute 'adequate procedures'	Liability does not only exist for companies that have been incorporated in the UK, but also to those companies which carry on a business, or are part of a business, in any part of the UK
	Due diligence procedures mean that the company has policies in place which prevent persons associated with it from using forced labour, e.g. codes of conduct imposed on business partners	The only available sentence for a commercial organization is a fine, the amount of which is unlimited
Companies Act Reporting	The reporting on modern slavery prevention in supply chains would be based on an amendment of section 414C(7) CA 2006—the strategic report	If the strategic report does not contain information regarding the issues mentioned in s414C(7) CA, it must only state which of these categories it does not contain (companies could just state that their strategic report does not contain information about modern slavery)
	In the strategic report a quoted company must, to the extent necessary for an understanding of the development, performance or position of the company's business include information about environmental matters, the company's employees and social, community and human rights issues. The prevention of modern slavery in its supply chain, including information about any policies of the company in relation to those matters and the	Pursuant to s463 CA, directors are only liable for false and misleading statements or the omission of anything required to be in the report under the condition that the director knew that the statement was untrue or misleading or if he was reckless as to whether it was untrue or misleading and he knew the omission to be dishonest concealment of a material fact.

continued

Table 2. *Continued*

Legislative option	Company duties	Company liabilities
California's Transparency in Supply Chains Model	<p>effectiveness of those policies would be added to this list</p> <p>The Secretary of State would specify by Order the requirements for the modern slavery section to include, among others, verification, auditing and certification</p>	<p>This section effectively restricts liability to cases of deceit. It cannot arise in negligence which is the reason why it has been called a 'safe harbour provision'</p>
	<p>Commercial organizations carrying on a business in the UK with an annual turnover of £36m or more are required to prepare a slavery and human trafficking statement for each financial year</p>	<p>If the company has not taken steps to ensure that slavery and human trafficking take place in its supply chain it must issue a statement that it has not taken such steps</p>
	<p>The statement must describe the steps which the organization has taken during the financial year to ensure that slavery and human trafficking does not take place in any of its supply chain and in any part of its own business</p>	<p>There is no liability if the company issues a statement that it has taken 'no such steps'—it has then complied with its statutory reporting duty</p>
	<p>The transparency clause contains a list of issues that a company 'may include information about' such as its policies in relation to slavery and human trafficking and its due diligence processes in relation to slavery and human trafficking in its business and supply chains</p>	<p>The duty to issue a statement is enforceable by the Secretary of State through an injunction</p>
	<p>If the company has a website it must publish the slavery and human trafficking statement on that website and include a link to the statement in a prominent place on that website's homepage</p>	<p>It is not compulsory to include the list of factors into the statement. The government's guidance refers to these as 'these points provide guidance and examples as to the type of information to include in a statement'</p>
	<p>In the case of a corporation, the statement must be approved by the board of directors and signed by a director</p>	

behaviour dramatically', Bradley responded that she was taking 'the point completely' and wanted to make sure that the government got this right so that the government would 'catch the bad guys'. We interviewed Lord Andrew Stunell who, in his capacity as an MP, was a Member of the Joint Committee. He stated that the process in the Committee started 'in an open-ended way' and that 'the methodology with which we could best deal with supply chains wasn't settled'. He confirmed to us that 'it was not a foregone conclusion in the Joint Committee that the transparency model would be favoured in the end over the other two models'.¹⁴ The combination of Stunell's and Bradley's comments shows that all three models were given full consideration in the legislative process and that all of them could have become the option of choice.

The Draft Modern Slavery Bill, published shortly after the hearings in April 2014, also presents and comments upon all three models, underscoring their viability. The Joint Committee on the Draft Bill notes, inter alia, that it 'considered legislation based on the Bribery Act 2010'. While they mention that not all of their witnesses 'were convinced that this was an effective option', they did not make any specific comments about why they did not choose this option in the end. Interestingly, an amendment of the Companies Act was the preferred option in the Draft Bill (referred to as 'a proportionate and industry-supported initial step'). Although this option is not as stringent as the Bribery Act model, it is still one of the two harder proposals. This further strengthens our view that 'harder' options were realistic and receiving full consideration within the Modern Slavery Act. The remainder of this section of the article will assess the legal effects of these three mechanisms.

5.2 Possible consequences of new public governance initiatives for firms

Table 2 outlines three public initiatives for regulating supply chains in the Modern Slavery Bill that were considered by the legislator.

The first option that was considered by the Draft Modern Slavery Bill Joint Committee was to create criminal liability for forced labour, by modelling legislation after the UK Bribery Act 2010, through which the government created an offence for corporations that can be liable for bribery committed by a person 'associated' with it. Criminal liability for forced labour in the supply chain would have been a strong regulatory instrument for the combatting of forced labour for several reasons. The combined effect of extraterritorial liability and being liable for the acts of an associated person means that there is potentially far-reaching liability. In practice, the most important aspect of this regulatory mechanism is that companies have a defence if they can prove that they had 'adequate procedures' such as due diligence in place which were designed to prevent persons associated with it from undertaking such conduct.¹⁵ A possible due diligence procedure for an English company would be to ensure that its overseas suppliers have policies that prevent bribery (or here forced labour). The fact that, at the moment, UK companies seem to have much more extensive procedures and guidelines for preventing bribery in their supply chain than for other CSR issues such as forced labour reflects

14 Interview with Lord Stunell, via telephone, September 2017.

15 S7 (2) UK Bribery Act 2010. See also Ministry of Justice, *The Bribery Act 2010: Guidance about Procedures which Relevant Commercial Organisations Can Put in Place to Prevent Persons Associated with Them from Bribing* (2011) 'Case study 6 – Principle 4 Due diligence of agents'.

the requirements established by the defence of ‘adequate procedures’.¹⁶ However, the option to introduce criminal liability was rejected by the government.

The second option was to impose reporting requirements on companies by amending existing non-financial reporting required by the Companies Act 2006.¹⁷ In its Draft Modern Slavery Bill, the Joint Committee favoured the option to create reporting on the supply chain through an amendment of the strategic report, by adding modern slavery to section 414C(7) CA.¹⁸ An amendment to the Companies Act would have been a less stringent regulatory option compared to the Bribery Act model, because it allows directors to make quite neutral statements and because liability cannot arise in negligence and is restricted to cases of deceit, so is considered a ‘safe harbor provision’.¹⁹ Ultimately, this legislative option was passed over in favour of an even less stringent model.

The third option—to create a separate reporting duty on modern slavery based on the example of the California Transparency in Supply Chains Act—became the legislative option of choice. The Modern Slavery Act establishes a reporting duty on some commercial organizations to prepare a slavery and human trafficking statement for each financial year (s54); however, its transparency clause is even weaker than that in the Californian Act. Whereas the Californian version explicitly requires disclosure about issues such as verification, audits and certification, the Modern Slavery Act is more generic, only referring to ‘steps the organisation has taken . . . to ensure that slavery and human trafficking is not taking place’.²⁰ However, both versions are similar in that companies that have not done anything to combat modern slavery in their supply chain only need to issue a statement that they had not taken such steps. The vagueness of the clause means that there is nothing specific that companies need to report on. As one senior government official explained, ‘We want business to disclose the steps they’ve taken, but we will not say what the steps will be. That’s for every business to decide.’²¹ The wording of the statutory transparency requirement leaves full discretion to companies, opening the danger that companies will just publish boilerplate statements.

In light of these weaknesses in legislative design, of the three regulatory options considered by the government the transparency approach is the least stringent, applying a ‘light-touch’ regulatory framework to governing businesses and validating existing private governance initiatives (which, given that there are at least 10 000–13 000 victims of forced labour in the UK workforce by government’s own estimate, are clearly insufficient).²²

6. Findings: the role of industry and NGOs in shaping regulatory outcomes

Rather than strengthening or challenging existing CSR-based anti-slavery initiatives, the UK’s Modern Slavery Act bolsters voluntary, industry-led approaches to detecting and

16 See the analysis of contractual CSR documents of 15 FTSE100 companies in Andreas Rühmkorf (2015).

17 S414A CA.

18 Joint Committee on the Draft Modern Slavery Bill, Draft Modern Slavery Bill: Report (Session 2013–14, HL Paper 166, HC 1019, April 2014) 85–90.

19 Hannigan (2012).

20 S52 (4) Modern Slavery Bill.

21 Interview with government representative, London, March 2015.

22 UK Home Office (2014b) .

addressing severe exploitation. Through what configuration of pressures and social forces did this new legislation come about, and did it come to prevail over more stringent policy initiatives in the UK context? And with what consequences for efforts to eradicate forced labour?

In studying these questions, we are not attempting to discount or ignore the broader, global political economic context in which bargaining over the UK legislation has taken place. We agree with those who have argued, as Nicola Phillips and Fabiola Mieres have put it, that ‘action designed to address the root causes of forced labour in the global economy is significantly constrained by a widespread political orthodoxy rooted in an unshaken “market fundamentalism” and a reluctance significantly to challenge the private sector and powerful corporations’ (Phillips and Mieres, 2015, p. 12; see also Bartley, 2003). Yet, it is nevertheless important to understand how specific regulatory outcomes are achieved, and the evolving role of private actors within these. Moreover, given the variation in national legislation to bolster corporate accountability, it is important to seek to understand the struggles through which new legislation is shaped and contested.

This section of the article presents our findings. We make three principal arguments. First, we argue that the coalition attempting to improve public regulation to address forced labour in supply chains was disrupted by the emergence of a private governance alternative. Second, our research suggests that CSR was used as a strategy to deflect more stringent legislation, albeit in different ways by different factions of industry. Multinational brand and retail companies, already covered under the California Act, lobbied the government to include transparency provisions in the Modern Slavery Bill. Manufacturers, and some UK companies—who would have faced the greatest liability and loss of business value from a stringent regulatory outcome—collaborated with industry associations to mobilize new business-led anti-slavery initiatives, and argued against the inclusion of supply chain provisions that would add an ‘additional level of burden’ to their existing voluntary initiatives.²³ Ultimately, policymakers responded to these competing demands by foregoing more stringent regulatory options modelled after the Bribery or Company Act, and by including a vague transparency in supply chains provision within the Act, which essentially gives statutory backing to multinational’s existing voluntary reporting. Finally, we argue that growing NGO involvement in industry-led ‘anti-slavery’ initiatives is expanding the political traction of private regulatory approaches to these problems.

6.1 Multinationals launch a ‘transparency coalition’

As discussed in Section 3, in the midst of this pressure on governments to address the role of supply chains in giving rise to forced labour, a global coalition of multinational enterprises emerged to champion business solutions to combatting slavery. This global business coalition played a key role in shaping the UK Modern Slavery Bill. Shortly after California’s Transparency in Supply Chains (TISC) legislation was passed, efforts ramped up across the UK to introduce similar initiatives. The push for transparency legislation came from the networks of the GBCAT and End Human Trafficking Now—developed and led by multinational enterprises. As David Arkless described, ‘We believe that the best way to get an act

23 Paul Lister (Primark), Giles Bolton (Tesco), Judith Batchelar (Sainsbury’s), Evidence to the UK Parliament Joint Committee on the Draft Modern Slavery Bill, available online: <http://www.parliamentlive.tv/Main/Player.aspx?meetingId=15063> (accessed August 10, 2014).

through is to write a cohesive bill, a draft bill, which takes into account all aspects of slavery in the UK. . . . So, we've taken the California act and we rewrote it in the United Kingdom.'²⁴ A 'transparency coalition' emerged in the UK, comprised of multinational enterprises including IKEA and Amazon, ethical investment and shareholder groups, and others involved in GBCAT and existing industry anti-slavery initiatives.²⁵ The goal of this coalition was to deflect more stringent public initiatives such as the imposition of criminal offenses, and to ensure that the Modern Slavery Bill did not expand existing statutory disclosure duties.

A crucial part of the strategy to pressure the UK government to enact transparency legislation was strategic partnership with NGOs. As David Arkless described their efforts, 'We've got a number of streams of work in here. Again, it's split into three bits: legislation and government, not-for-profit contribution, and corporate leverage or pressure.'²⁶ At the outset of the regulatory process, most UK-based NGOs were highly sceptical of business initiatives to promote transparency legislation. As one of our informants described, 'At the moment, what you've got is a few NGOs that want to work with those businesses but they're getting flack from the other NGOs 'cause they're working with business.'²⁷ But Arkless' coalition continued to push for 'a group of the top NGOs in this area, in the UK, to form a coalition to work together in a much more coherent way'.²⁸

Crucial here was the argument that NGOs working alongside companies would ultimately do more to address forced labour in supply chains than continuing to treat companies as adversaries. As one industry informant tasked with 'reaching out' to NGOs described, 'They have to change the narrative from big bad naughty business, when they find it, to: great you've found [forced labour]. Now tell us what you're doing to stop it. . . . If they can begin to engage, then you know, it's a much more effective thing.'²⁹ This argument was communicated at various consultations, as well as bilateral conversations, during the Parliamentary process. While some smaller, more radical NGOs continued to resist any type of collaboration with business, others came to see transparency legislation as a reasonable 'first step', and strategic collaboration with industry as a pre-requisite for getting the Modern Slavery Bill through Parliament.³⁰

An important turning point in the bargaining process came in the wake of the publication of a report, *It Happens Here: Equipping the United Kingdom to Fight Modern Slavery*, funded by Manpower Group and the Qatar Foundation, published by the Centre for Social Justice. Central among its recommendations was the enactment of the Transparency in UK Company Supply Chains Bill.³¹ The report argued that transparency legislation would send 'a positive message to the business world, not negatively forcing companies' hands but encouraging them to look into the problem' (*The Centre for Social Justice*, 2013, p. 13). The report was widely cited by the Government—who said it led to a 'step change in how the government was looking at the issue of modern slavery'—and was extensively profiled in

24 Interview with David Arkless, London, March 2012.

25 Interview with lobbyist, London, March 2012.

26 Interview with David Arkless, London, March 2012.

27 Personal communication with industry actor leading NGO outreach, London, March 2012.

28 Personal communication with David Arkless, London, March 2012.

29 Interview with industry actor leading NGO outreach, London, March 2012.

30 Interview with NGO representatives, London, March and April 2012.

31 See: <http://services.parliament.uk/bills/2012-13/transparencyinukcompanysupplychainseradicationofslavery.html> (accessed March 1, 2014).

the media. In its wake, an industry-led ‘Transparency in Supply Chains’ activist coalition emerged, which included some of the larger anti-slavery NGOs such as Anti-Slavery International, Amnesty International, Unseen, British Quakers, Evangelical Alliance and Traidcraft.³²

Significantly, between 2012 and 2014, major NGOs and religious groups—including Anti-Slavery International, the Church of England and the Walk Free Foundation—endorsed transparency legislation. One NGO leader described their decision as follows: ‘Businesses aren’t the only ones who need to demonstrate returns. We need to be seen as making an impact, and endorsing transparency seemed like the way to do it.’³³ Many of the NGOs who endorsed transparency legislation continued to push for it to contain more stringent measures along the lines of the Bribery Act or Companies Act. For instance, in a briefing dated November 13, 2014, an NGO coalition that included Amnesty International, Anti-Slavery International, Unseen and War on Want urged that ‘clearer and firmer terms must be defined on the face of the Bill for what a company must actually do to comply with the proposed measure’.³⁴ But ultimately, NGO endorsement of transparency legislation offered this industry-led initiative legitimacy and credibility in the eyes of the government and the wider public.³⁵ Parliamentary debates often highlighted that NGOs and corporations were already working together directly on this issue.

In addition to building an industry-led NGO coalition to exert pressure for TISC-style legislation, the transparency coalition mobilized a business lobby to pressure the government. Much to the dismay of the transparency coalition—but to the relief of manufacturing companies and industry associations, as will be discussed further in a moment—when the revised draft Bill was put before Parliament in summer 2014, the section pertaining to supply chains and transparency had been removed entirely. In response, prominent members of the transparency coalition published a statement in a right-wing English newspaper, *The Telegraph*, arguing that ‘Failure to manage human rights issues in complex supply chains could pose significant risks to investors’ (Howell *et al.*, 2014). The statement endorsed transparency legislation and was signed by executives from multinationals including Hermes, BNP Paribas and Henderson Global Investors. This lobby was publicly mobilized at various crucial points in the bargaining process to articulate clear support for transparency legislation by big business. As Arkless described this element of the strategy, ‘we’ve put in place a huge business lobby, which is positive for the new act that we’re going to draft, to say business wants this. They will go to the government and say, “Twenty of your biggest thirty companies want you to make this law.” So we’re doing the business lobby thing’.³⁶

32 See, for instance, [Transparency in Supply Chains Coalition \(2014\)](#).

33 Interview with NGO representative, London, March 2015.

34 Amnesty International, Dalit Freedom Network, Anti-Slavery International, CAFOD, CORE, EJF, Quakers, Tradecraft, Unseen and War on Want. ‘Briefing for the Second Reading of the Modern Slavery Bill Transparency in the Supply Chain, 13 November 2014.’ On file with the author.

35 See, for instance, oral evidence to Parliament on NGO–industry collaboration. See also, Prabha Kotiswaran’s oral history project which includes interviews with civil society actors engaged in efforts to shape the UK Modern Slavery Act, published on openDemocracy.net; <https://www.opendemocracy.net/beyondslavery/msaoh/prabha-kotiswaran/path-to-uks-modern-slavery-act-2015-oral-history-project> (accessed September 8, 2017).

36 Interview with David Arkless, London, March 2012.

The main resistance to transparency legislation ultimately came not from NGOs or activists—many of whom came to see it as a politically viable and achievable component of the legislation—but from manufacturing companies, as well as industry associations representing companies registered in the UK and that do business in the UK (and are thus liable for forced labour). This industry group maintained a more predictable line of argument that there was already enough ‘red tape’ on business. As Arkless described the opposing firms, ‘there is, of course, a big lobby against more governance. Big corporations and medium corporations are saying, “We’re over-governed anyway. The last thing we need is more restrictions and requirements to audit ourselves.” So we’re fighting a tough battle there.’³⁷ In teaming up with NGOs against other businesses, multinationals were able to position themselves as allies in the fight to enact legislation to eradicate slavery.

In describing complex policy processes in this way, we do not mean to suggest that the societal coalition pushing for tougher regulation was disrupted easily or in a uniform way. Indeed, even as some NGOs were working alongside business to push forward transparency legislation, others were working with lawyers to draft alternative bills, write reports, pressure government and mobilize the grassroots. Ultimately, however, the transparency coalition’s influence was more powerful.³⁸

6.2 UK industry fights regulation by launching a multi-stakeholder initiative

The opposing industry coalition—which combated any inclusion of supply chains or business in the Modern Slavery Bill, including transparency legislation—was led by industry associations representing UK companies.³⁹ As one government representative described, ‘The split was between retailers and manufacturers, and multinationals and UK companies – all of whom are facing different concerns about liability.’⁴⁰ Especially important here are key players in the UK food industry—which is sizable in the UK with a ‘turnover of £1.34 billion in the last full financial year’, and which experiences widespread reports of exploitation and forced labour, particularly in relation to agency workers provided to producers by intermediaries around or below the minimum wage.⁴¹ Although there was some variation in terms of how exact positions were expressed,⁴² overall, these actors were more resistant to public legislation regarding forced labour and supply chains claiming it would be ‘burdensome’ and ‘redundant’ to existing efforts. The Chartered Institute of Purchasing and Supply

37 Interview with David Arkless, London, March 2012.

38 Interview data.

39 The coalition is described as representing ‘UK companies’ as the members of the initiative are based in the UK. The transparency clause in the UK Modern Slavery Act applies to any company that carries on a business, or part of a business, in any part of the UK, wherever that organization was incorporated or formed, and which has an annual turnover of £36 million or above. This means that this reporting duty applies to both companies incorporated in the UK and foreign companies. In its guidance on the Act, the government states that a ‘common sense approach’ should be applied to decide whether or not a company formed outside the UK above the £36 million threshold can properly be regarded as carrying on a business or part of a business in any part of the UK.

40 Interview with UK government representative, London, March 2015.

41 See: Paul Broadbent’s oral evidence to Parliament. For a discussion of forced labour in the UK food industry, see Allain *et al.* (2013).

42 For instance, corporate actors who are both retailers and UK manufacturers expressed conflicting positions (often from different offices within the same firm).

(CIPS), for instance, stated: ‘CIPS does not believe that introducing punitive legislation would be effective at this stage but would rather encourage organisations to take a self-regulated approach with the backing and support of a voluntary code to aid them to – “do the right thing.”’

One key tactic to deflect new legislation was to launch business-driven ‘multi-stakeholder’ programme called the ‘Stronger Together Initiative’. This initiative was launched by the Association for Labour Providers on October 13, 2013, while the draft Modern Slavery Bill was making its way through Parliament. ‘Stronger Together’ is sponsored by major UK supermarkets, including Marks & Spencer, Tesco, Sainsbury’s and Waitrose, and includes the British Growers Association, British Retail Consortium, Food & Drink Federation, as partners.⁴³ It also includes a government agency, the Gangmasters Licensing Authority and four societal groups—Anti-Slavery International, the Salvation Army, Migrant Help and the International Organization for Migration—among its supporting partners. When asked about their reasons for endorsing the initiative, one societal group representative noted, ‘the days of government are over. It’s corporations who rule the world, however you slice it, and they’ve placed themselves right in the middle of efforts to eradicate slavery.’⁴⁴ A representative of an NGO that did not back the initiative claimed it was a ‘clear attempt to deflect legislation’.⁴⁵

The stated goal of the initiative is to ‘provide businesses with pragmatic good practice guidance . . . to help them prevent and tackle hidden forced labour and human trafficking in their supply chains’.⁴⁶ It does so through ‘awareness raising activities’, and providing a ‘network’ for businesses seeking to combat forced labour. Parliament questioned the coordinator of the initiative about how many of the businesses involved have actually found forced labour and taken action. He answered, ‘None have said that they found slaves, but 90-plus per cent who have come on the workshops have said, “Yes, we are going to implement the actions. We are going to put up the posters. We are going to put the stuff into inductions.”’⁴⁷ At best, there has yet to be evidence collected of the programmes’ effectiveness, and at worst, it is a clear attempt to deflect more stringent regulation by initiating a CSR programme. That the programme was mentioned 15 times throughout the Parliamentary hearings—often as part of an explanation as to why legislation would be redundant, given the ‘steps that have already been taken’—is worryingly suggestive of the latter.

6.3 Understanding variation in industry response

While the UK and manufacturing companies’ response to legislation was predictable, the question remains: why was a transnational business coalition dedicating such extensive effort and resources to drafting and passing public anti-slavery legislation, which would at the very least, draw attention to the widespread use of forced labour and slavery in their global supply chains? Why were they so keen to partner up with NGOs who had long

43 See ‘Project Sponsors’, StrongerTogether website: <http://stronger2gether.org/> (accessed March 1, 2015).

44 Interview with NGO representative, London, March 2015.

45 Interview with NGO representative, London, March 2015.

46 Chartered Institute of Purchasing and Supply, oral evidence to Parliament.

47 David Camp’s oral evidence to Parliament.

decried their poor records on forced labour and exploitation more broadly? Our research points to at least three reasons. First of all, key members of GBCAT were now already covered under the California legislation and saw the transparency legislation as a means of achieving convergence in regards to government requirements.⁴⁸ Secondly, given that forced labour was more likely to occur in these companies' overseas supply chains, more stringent governance initiatives (such as the Bribery Act or Companies Act) would have imposed serious new liability for these firms. Finally, many of these actors argued that government had a responsibility to 'level the playing field' by also requiring smaller businesses to take responsibility for the use of forced labour and slavery. In short, as Daniel Mügge has described it, 'Firms feeling disadvantaged will call on public actors to protect them' (2007, p. 31).

With regard to the first reason, for multinational enterprises, the Act's transparency clause adds little, if anything, to their existing statutory disclosure duties. The California Act already covers some companies that gave evidence such as IKEA while others operate CSR programs for reputational reasons. In essence, for both types of companies, the 'light touch' requirements of the Modern Slavery Act means that they can continue with 'business as usual'. The vagueness of the Act means that these companies can either use the reporting that they already do in accordance with the California Act or re-purpose boilerplate CSR statements. The problem with this minimalist and vague transparency clause is that it effectively gives a statutory backing to generic and promotional CSR reporting which, so far, has not achieved much in terms of eradicating forced labour by suppliers. Despite all the rhetoric about leading the fight against slavery, in legal terms, the actual outcome is purely a statutory reference to private governance reporting without any binding requirements or sanctions.

Secondly, it can be argued that the business support among multinational enterprises for transparency is based on the realization that more stringent public regulation such as a criminal offence would have resulted in an increased risk of liability. Now these companies hope to gain some positive publicity by collaborating and demonstrating commitment to 'transparent and sustainable supply chains' while they, in reality, have strategically deflected stronger binding legislative duties. The repeated warning of companies that regulation should not be too burdensome is a phrase that the government readily adopted.⁴⁹ Criminal liability would have not only been a liability risk, but also a reputational concern, which explains why the multinational enterprises were happy to support transparency reporting while they rejected liability modelled on the Bribery Act. Legally, there is a significant difference between the compliance required by reporting and the Bribery Act. Whereas the former is usually met by boilerplate statements and codes of conduct, the latter would have triggered a sophisticated due diligence programme in order to qualify for the defense of

48 Interview with David Arkless, London, March 2012. See also written evidence from IKEA (Q1155), which notes, 'The California Transparency in Supply Chains Act applies to IKEA as we have operations in California . . . We support efforts to raise the issues of slavery and human trafficking among companies. The California Transparency in Supply Chains Act has successfully raised the importance of tackling the issues.'

49 See written evidence from Amazon and IKEA and oral evidence from representative of Tesco, Sainsbury's and Primark (Q1155). For the government position see oral evidence by Karen Bradley, Minister for Modern Slavery and Organized Crime (Q1346) who said: 'What I want to get to, though, is something that does actually stop the bad businesses – not unnecessarily burden those that are already doing the right thing.'

'adequate procedures'. Given repeated reports about slavery in global supply chains, those internationally operating firms would have had much work to do in order to comply with due diligence requirements. It is therefore hardly a surprise that they supported reporting duties that effectively legally back their existing private governance regime on supply chains which is usually based on a supplier code of conduct with some monitoring and little enforcement and which usually only affects first-tier suppliers.

Thirdly, the private governance regime of CSR in supply chains is—though ineffective—still a cost factor for the companies concerned. A further reason for the support for supply chain transparency by multinational enterprises can therefore also be found in the fact that they wish to create a 'level playing field' with other business actors such as firms with a domestic supply chain that, so far, did not operate similar supply chain transparency reporting.

It seems as if the government sought to justify the light-touch approach of its regulation by putting it into the context of its implementation of the 2011 UN Guiding Principles on Business and Human Rights (UK Home Office 2015, Annex D). The UN Guiding Principles are a standard on business and human rights which was endorsed by the UN Human Rights Council in 2011.⁵⁰ The Principles do not impose any legal obligations onto companies, but elaborate the implications of existing standards and practices for states and businesses (Ruggie, 2011a, para 14). John Ruggie, who developed the Principles during his mandate as UN Special Representative, explains that he is a 'pragmatist' who wanted to 'achieve the maximum reduction in corporate-related human rights harm in the shortest possible period of time' (Ruggie 2011b, p. 1). While, at first sight, the transparency clause in the Modern Slavery Act could be regarded as being inspired by the Principles as a consensual, pragmatic piece of legislation, this view does not stand up to scrutiny for two main reasons. First, companies are currently not duty-bearers in international law, so an imposition of human rights obligations on companies in the Guiding Principles would have required a change of existing legal principles. In contrast, the more stringent legislative options for the Modern Slavery Act would have all been modelled on existing laws. Secondly, while it is true that the Guiding Principles, inter alia, emphasize the importance of business communication (UN Human Rights Council, 2011) Principle 3), i.e. information disclosure, the UK government expressly refers to the Bribery Act as an example of its 'existing legal and policy framework' in its National Action Plan on the implementation of the Guiding Principles. This again shows that a more stringent legislation in the Modern Slavery Act would have fit equally well into its existing framework of business regulation.

In short, the multinational-led coalition and the government coalesced around transparency legislation, as both sides could demonstrate some commitment to combatting slavery in supply chains while avoiding meaningful mandatory regulation and liability that would have forced companies to do more than they currently do. Other factors—such as ideology and limited enforcement budgets—no doubt also shaped the legislation; however, these fell outside of the limits of our research for this particular article and did not come up in our dataset. The repeated intention by both parties not to create an extra 'burden' was achieved by settling on a compromise that meant that the least stringent, privately led initiative was chosen. The compromise reached is more or less a continuation of the business-driven

50 The Guiding Principles are intended to be implemented by states and companies. The UK published its National Action Plan in 2013, see HM Government (September 2013).

voluntary status quo for multinational enterprises. It is a weak compromise that will often only require a copy and paste job regarding the statements about the supply chain in the companies' CSR/Sustainability reports. The risk of liability is almost non-existent and companies will find the compliance requirements easy to meet. Companies have therefore successfully avoided mandatory liability for forced labour in their supply chain through complex political strategies, which have included 'volunteering' to accept public regulation which is, in fact, private governance in disguise.

6.4 The failure of business to disrupt the legislative process in the Bribery Act

In this section of the article, we have argued that corporate actors and private initiatives disrupted the coalition to spread public anti-slavery legislation. This was not inevitable, and indeed, there are several examples of where governments have opted for stringent legislative approaches, even in the face of business pressure. In this section, we provide a brief comparison to the legislative process leading to the UK Bribery Act. In contrast to the Modern Slavery Act, in the case of the Bribery Act, the government eventually opted for a more stringent variant of its original proposal. Our analysis points to some notable differences between the policymaking processes that led to two Acts, which further underscore the significance of the strategic use of private governance by a business coalition to deflect more stringent legislation.

In the case of the Bribery Act, the background to the legislation was the need to reform the law in this area, combined with international initiatives and pressures. For example, the OECD had put pressure on the UK to update its law in this area (OECD Working Group on Bribery, United Kingdom, 2008, p. 25). In 2008, at the beginning of the legislative process, the Law Commission (a statutory independent body in the UK that reviews the law and makes recommendations for reform) published a report in which it recommended the introduction of statutory criminal liability for corporations in the Bribery Act (Law Commission, 2008, Part 6). The government followed the Law Commission's recommendation in its draft legislation (March 2009). It included a new corporate criminal offence for the failure of commercial organisations to prevent bribery. The reports of the Joint Committee on the Draft Bribery Bill show that no private alternatives were discussed in the legislative process, but that business representatives criticized the draft offence (Joint Committee, 2009a, p. 31–39). The discussion focussed on legal issues of the offence, in particular, whether or not it should include a requirement of 'negligence' or 'gross negligence'. For example, Andrew Berkeley from the International Chamber of Commerce called the proposal a 'draconian standard' and Gary Campkin from the Confederation of British Industry criticized that the offence was too strict as it was based on the failure of organisations to prevent bribery rather than a requirement 'to do your best to hinder it' (Joint Committee, 2009b: Q178). However, despite these criticisms from the business side, the Joint Committee finally decided to recommend a version of the offence that was more stringent than in the draft bill. The government adopted this recommendation (UK Government, 2009, p. 7–8). The offence that became law was strict liability coupled with a defence of adequate procedures without the need to prove negligence for a conviction as in the draft bill (Joint Committee, 2009a, p. 35). This outcome shows that the corporate actors failed to weaken the initial proposal with their concerns and even ended up facing a stricter law than was initially discussed. It is remarkable that, in the end, a more stringent offence became law and that the interventions of the business representatives were futile.

This brief and cursory account of the legislative processes that led to the Bribery Act highlights some important features of our case study of the Modern Slavery Act. First, during the Bribery Act process, there was no viable private governance alternative advocated by business representatives. It appears that they primarily focused on changing the proposed offence in the draft bill through their evidence to the Joint Committee, but they did not argue for a less stringent private alternative. Thus, the debate was about variations of the proposed offence for bribery rather than different legislative options as in the Modern Slavery Act. Secondly, there is no evidence of a strategic coalition in the Bribery case that would be comparable to what we find in the Modern Slavery Act. Thirdly, a final important difference is that, in the Bribery Act, the Joint Committee seems to have relied significantly on academic evidence for its recommended more stringent draft of the offence. It seems that particularly in the absence of a private alternative and the lack of a strategic coalition, the business influences did not gain the necessary traction to steer the regulatory process.

A final point to consider in our analysis of the comparative legislative processes leading to the Modern Slavery Act and Bribery Act is that different governments were in place at the time when the two acts were passed. Labour led the government when the Bribery Act received royal assent whereas the Conservative–Liberal Democrats coalition government was in power when the Modern Slavery Act received royal assent. One could see the centre-left Labour government as a possible explanation for the more stringent regulatory outcome in the case of the Bribery Act and, likewise, the Conservative-led government with its deregulatory, pro-business approach as the reason for the less stringent regulation in the Modern Slavery Act. However, in our view, the difference in government does not constitute a sufficient explanation, given the Labour government's well-documented wave of neo-liberal economic policies. It is beyond the scope of this article to fully engage with the ideology of New Labour and, in particular, its economic policies and its approach to business regulation, but these have been extensively documented elsewhere (see, for example, [Griffiths and Hickson, 2010](#)). However, for the purpose of this article, it is important to note that the Labour governments under both Tony Blair (1997–2007) and Brown (2007–2010) were 'pro-business, pro-enterprise and pro-market' ([Gamble, 2010](#), p. 648). Their laissez-faire approach to the regulation of financial markets was even called a 'Faustian Pact' ([Elliott, 2008](#)). Generally, the Labour government's forging of links with businesses represented 'a major shift of previous Labour governments' ([Shaw, 2012](#)). New Labour was 'influenced by Thatcherism, explicitly rejected the traditional ethos of British social democracy' ([Diamond, 2011](#)). In fact, some academic commentators view the policies adopted by the New Labour government as a continuation of those adopted by the previous Conservative governments ([Heffernan, 2001](#)). We therefore argue that, given the neo-liberal approach towards business and business regulation of the Labour governments, the fact that Labour was in power during the passing of the Bribery Act does not itself explain the more stringent regulatory outcome.

7. Conclusion

After nearly two decades of activist pressure on governments to strengthen systems and initiatives to detect and address forced labour and slavery, the business of forced labour continues to be insufficiently regulated. Our research has elucidated the role of industry actors in creating and maintaining the governance gaps that allow labour abuse to thrive, as they

have championed private, industry-led mechanisms and sought to deflect alternative regulatory tools with greater stringency. Conceptually, we have highlighted that the mechanisms through which private displacement of public regulation occurs are far more variegated than have been emphasized in the existing literature, and have argued that there is a need for greater attention to the political agency of business in debates about public and private regulatory interactions. In particular, we have argued that there is a need to be attentive to the role of industry–NGO partnerships and collaborations in influencing the stringency of public regulatory initiatives.

The result of these competing pressures is a highly uneven wave of national legislation. At worst, this legislation does little to raise public standards and reinforces the status quo by codifying existing private governance approaches. As one candid corporate representative described the situation, ‘There’s a lot of unwarranted excitement around transparency. Every company has slavery in their supply chain—anyone who says they don’t is lying or incompetent. But at the moment, suppliers are keeping the customer happy with low costs, auditors are making lots of money, and companies have plausible deniability. Transparency legislation won’t do anything to change that.’⁵¹

A great deal of further research will be required to understand precisely how far and in what ways the strategic mobilization of private governance might be impacting the stringency of reflexive regulation to bolster labour standards, and to understand the displacement effects that may be occurring as private actors seek to undercut efforts to strengthen public governance of labour in global supply chains. But our research suggests that—in the case of the Modern Slavery Bill—there was a coalition in place to ‘ratchet up’ public standards by strengthening governance mechanisms to detect and address forced labour, but this was ultimately disrupted by the emergence of a private alternative.

Significantly, the dynamics at play in the bargaining process leading up to new anti-slavery legislation cannot be reduced to simple ‘regulatory capture’ (Stigler, 1971), existing theories on lobbying and advocacy, or the default assumption that corporations will resist and seek to thwart all new regulation. Rather than merely capturing the state, corporate actors attempted also to sway NGOs and seize on the momentum that societal forces have generated over the last decade to pass legislation that does little more than bolster the status quo. While there is a longstanding assumption within the literature that corporations will resist government regulation, in this scenario, a coalition of multinational enterprises was actively pushing for government regulation, and their resistance took on a much more subtle and contradictory form than is anticipated by many strands of the literature. Furthermore, the coalition ultimately responsible for the Modern Slavery Bill blurs many of the lines that scholars have typically drawn between government, business and NGOs. Such dynamics, and their consequences for the persistence of forced labour in national economies, surely warrant further investigation.

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51 Interview with corporate executive, London, March 2015.

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