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Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance

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Running-head

Steering CSR Through Home State Regulation

Abstract

The home states of multinational enterprises have in recent years sought to use public regulation to fill the gaps left by the absence of a binding labor standards framework in international law. This article examines recent home state initiatives to address forced labor, human trafficking, and slavery in global supply chains, and their interactions with private governance initiatives. Focusing on a case study of the 2015 UK Modern Slavery Act and 2010 UK Bribery Act, we analyse two distinct legislative approaches that policymakers have used to promote corporate accountability within global supply chains and explore the varied impacts that these approaches have on corporate behaviour. Empirically, we analyse codes of conduct, annual CSR reports, and supplier terms and conditions for 25 FTSE 100 companies to shed light into the impact of the legislation on corporate behaviour. We find that legislation that creates criminal corporate liability appears to spur deeper changes to corporate strategy, and argue that in the case of the Modern Slavery Act, the triumph of voluntary reporting over more stringent public labor standards seems to have undermined the effectiveness of recent governance initiatives to address forced labor in global supply chains.

Keywords

Labor standards; corporate social responsibility; government; social movements; firms; law.

1. Introduction

After more than two decades of private governance initiatives to promote Corporate Social Responsibility (CSR), reports of gross human rights violations within global supply chains remain in the public spotlight. Recent examples include the Rana Plaza building collapse in Bangladesh, the Tazreen factory fire in Pakistan, oil spills on Ogoniland in Nigeria, and forced labor in several countries and industries ranging from Thailand's fishing boats to West African cocoa farms. In light of recurrent reports of labor exploitation and workers' premature death within supply chains, consumers, non-governmental organizations (NGOs) and others have raised concerns about the effectiveness of the industry-led private governance regimes, through which companies purport to address and prevent these types of violations. Recently, societal coalitions in countries like the United States (US), United Kingdom (UK), France, and India have succeeded in sparking a wave of new public governance designed to strengthen corporate accountability. This has included legislation passed by the home states of multinational enterprises— in other words, the countries in which the large retail and brand manufacturing companies that lead global supply chains are incorporated— which is primarily geared towards changing corporate practices in host states, the countries in which multinational enterprises operate, either directly or through subsidiaries. Examples of recent 'home state regulation' to spur multinational accountability for their global supply chains include the California Transparency in Supply Chains Act, the US Dodd-Frank Act (which regulates conflict minerals), the UK Bribery Act (which establishes extraterritorial corporate criminal liability for bribery in global supply chains), and the UK Modern Slavery Act (which includes a transparency in supply chains clause). To date, the effectiveness of this wave of legislation and the questions of how, whether, and when it impacts corporate behaviour has been under investigated.

In this paper, we explore the accelerating legislative trend of home state legislation's use to mandate CSR and stimulate changes in corporate behaviour and its consequences for the governance of labor standards in global supply chains. In particular, we investigate how the stringency and institutional design of national legislation shapes private governance responses and evaluate the effectiveness of different models of home state regulation. Conceptually, we seek to build on and deepen recent scholarship on CSR policy (Steurer, 2010; Gond, Kang and Moon, 2011) and the governance of labor standards in global supply chains (Phillips and Mieres 2014; Appelbaum and Lichtenstein, 2016; Phillips, LeBaron and Wallin, 2016) by exploring public-private interactions in recent CSR-labor standard government instruments and their implications for corporate strategy. Our conceptual

contribution is two-fold. First, we argue that there is a need for more nuanced understanding of variation amongst CSR-focused government interventions and that existing typologies and frameworks need to be adjusted to reflect this variation. We introduce a continuum to capture the different forms of public and private governance interactions at play in recent home state regulations, which may be helpful in guiding future research on the impact and effectiveness of home state legislation. Second, we challenge prevailing assumptions about the complementarity of public and private governance. We argue that because hybrid forms of global supply chain governance vary significantly in their quality and stringency to the extent that some home state legislation merely endorses existing voluntary CSR reporting without strengthening legally binding standards, they may not be as effective as is anticipated by the literature.

Empirically, our analysis focuses on an in-depth comparison of two CSR-focused government interventions in the UK—the Bribery Act 2010 and the UK Modern Slavery Act 2015— centred on the legislation's institutional design, stringency, and legal implications for companies. While both pieces of legislation seek to use national regulation to deepen corporate accountability within global supply chains, they do so in two different ways. The Bribery Act is a stringent form of home state regulation that establishes extraterritorial corporate criminal liability and includes binding public standards and sanctions for non-compliance. The Modern Slavery Act is a less stringent form of regulation that increases companies' obligations with regards to disclosure and reporting on voluntary efforts to address and prevent forced labor in global supply chains; it does not establish extraterritorial liability, and includes no binding public standards or sanctions for non-compliance. Motivated by questions about whether and how variations in home state regulation give rise to differentiated outcomes in corporate strategy, we explore the impacts of these two pieces of legislation on twenty-five FTSE 100 companies. We analyse how company purchasing practices, supplier policies, and reporting relating to bribery and forced labor evolved in the wake of the Acts. We then zoom in on a case study of Vodafone's bribery and forced labor policies to explore the impact of these interventions at the level of a single company.

We find that the Bribery Act appears to have resulted in significant changes to corporate policy and practices regarding bribery, and that companies have communicated these higher standards to their suppliers. However, we find that the Modern Slavery Act does not appear to have yielded substantive change in multinational enterprises' policy and practices regarding labor standards in their global supply chains. This pattern is important because it suggests that the public and private interactions at play in home state legislation

matter and vary, and that some forms of legislation are more likely to be effective than others. Furthermore, our findings raise a concern that the integration and legitimation of private governance initiatives within legislation may not always produce positive synergies and optimized form of hybrid governance as anticipated by strands of the literature. In the case of the Modern Slavery Act, the substitution of a private governance mechanism for public regulations that would have established corporate liability for forced labor in global supply chains appears to have weakened the quality and effectiveness of this legislation.

Our research is desk-based and focused on the institutional design of governance initiatives and how these influence corporate policies. It should be understood as an initial 'plausibility probe' of our intuition that different models of home state legislation will achieve different levels of success in 'steering' corporate behaviour and raising standards in global supply chains. We are not endeavouring in this paper to 'prove' this intuition or to comprehensively document such trends. Given the relatively small number of companies included in our study, and given that corporate policies can differ from actual practices, much more in-depth, comparative, and field-based research will be required to explore and confirm our findings. In particular, as we describe in the Conclusion, future qualitative and quantitative research could usefully shed light into whether corporate policies have indeed evolved as we suggest, and whether these changes are attributable to these Acts or some other form of influence.[i] Our primary aim in this paper is to highlight the variation that exists in national policy enacted to 'steer' CSR and to provide an early exploration of one set of possible consequences of these variations.

The issue of whether and to what extent the institutional design and quality of home state regulation influences private regulatory behaviour is deserving of future research not only because it will deepen and advance scholarship on public and private governance interactions, but also because it carries important consequences for policymaking. As governments around the world increasingly seek to protect labor standards and address worker exploitation by mandating CSR, they are considering a range of legislative approaches, some of which are strictly public and others are hybrid (combining elements of public and private governance). As they seek to create new public regulation to mandate CSR and raise labor standards, government and civil society actors should consider whether the substitution of private governance alternatives over public standards weakens and reduces the impact of home state legislation.

The paper unfolds in five parts. Section 2 positions our study and research questions within the literature on CSR policy and the governance of labor standards. Section 3 examines

the legal gaps surrounding labor standards in global supply chains and the barriers they pose for their effective governance and it analyses two legislative approaches to promoting CSR in global supply chains, contrasting the UK government's approach to tackling illegal financial practices through the Bribery Act and illegal labor practices through the Modern Slavery Act. In Section 4, we explore the differential effects of these Acts on corporate policies. Section 5 concludes, arguing that the institutional design of the Modern Slavery Act is an example of the dangers and limited effectiveness of a new model of legislation that seeks to change corporate practice without raising public standards or strengthening compliance measures.

2. Variation in home state regulation to spur CSR for labor standards

Today, both public and 'private' regulations govern labor standards in global supply chains (Fransen and Burgoon, this volume; see also: Locke, 2013; Phillips and Mieres, 2014). Home state legislation seeks to harmonize and combine elements of both public and private governance and to use national legislation to strengthen and steer company 'self-regulation' (Vogel, 2010). In recent years, policymakers have used various models of home state regulation in an effort to stimulate higher labor standards within global supply chains.

Responding to pressure from advocacy groups, investors, and some factions of industry calling for greater corporate accountability— especially around the use of illegal labor practices like forced labor, human trafficking, and modern slavery within global supply chains (LeBaron 2014)— governments including the US, UK, France, and India have passed legislation with the stated purpose of spurring multinational enterprises to increase accountability for abusive labor practices used by their suppliers. As UK Prime Minister Theresa May described the rationale behind the country's 2015 Modern Slavery Act (which she helped to pass in her previous capacity as Home Secretary), "Rather than chasing individual criminals in Britain as they are reported, we need a radically new, comprehensive approach to defeating this vile and systematic international business model at its source and in transit" (May, 2016). In the UK and elsewhere, policymakers have described how home state regulation can help to raise the ethical standards associated with goods produced abroad but consumed within their borders.

Home state legislation is grounded in assumptions about the complementarity of public and private governance. Although the pressure on governments to pass these initiatives has largely stemmed from consumers and societal groups concerned that existing private governance schemes are ineffective, most home state legislation is designed to strengthen and

steer CSR rather than replace it. In particular, home state legislation is premised upon the notion that legislation can spur multinational enterprises to use their 'imbalance in commercial power' to pressure overseas suppliers to change their practices, and that such changes—including improvements to labor standards— can be achieved through private governance mechanisms (Barrientos, 2008). While all home state regulation seeks to use national law to steer CSR, home state regulations have been enacted through a range of different institutional designs that combine elements and instruments of public and private governance.

Home state regulation varies in terms of the size and type of companies it covers, the duties imposed on those companies, its reach of application within supply chains, enforcement mechanisms, and penalties for non-compliance. Variations in home state regulation means that legislative models differ in terms of their quality and stringency, particularly concerning whether or not the legislation imposes new standards, the comprehensiveness of those standards, and the ways in which the standards are enforced. It also differs in terms of the role allocated to the state and companies in determining, enacting, and enforcing those standards within global supply chains. In Table 1, we summarize the key differences between four recent models of home state regulation: transparency legislation, 'comply or explain' style reporting, due diligence reporting, and due diligence liabilities. These different models of home state regulation exist on a continuum, wherein the transparency model is the least stringent (the 'softest' form of law) and the due diligence liabilities model is the most stringent (the 'hardest' form of law).

Table 1 goes here

Perhaps because this body of legislation is so new, variations in home state regulation have not been fully explored within the literatures on the links between CSR and public policy (Steurer 2010) and transnational business governance interactions and orchestration (Eberlein et al, 2010; Abbott and Snidal, 2009, 2010). Of late, there has been increased attention to the use of national legislation to spur CSR (Gond, Kang, and Moon, 2011) and an emphasis on the positive potential for states to 'direct' private regulatory standards (Abbott and Snidal, 2010). However, much of the exploration of whether, how, and under what circumstances such efforts are successful has focused on differences in the quality of private governance instruments and regimes, ranging from the stringency of private standards to the distribution of power between companies and NGOs. Much less attention has been paid to the differences

in the quality of public governance instruments developed to strengthen and steer private regulation. Indeed, public legislation appears within the literature to be relatively homogenous, and is frequently assumed to be 'harder' and more binding than it is in practice. As our analysis of home state legislation makes clear, some recent public legislation (such as the UK Modern Slavery Act) is fully dependent on private governance tools, standards, and enforcement mechanisms to meet its aims, and in spite of the fact that it is 'public' regulation to strengthen corporate accountability, it does not actually impose or enforce new public standards. This body of legislation thus blurs the binary frequently posited between 'hard' and 'soft' law in the governance of labor standards.

For this reason, home state legislation does not sit easily within existing conceptualizations of the links between public policy and CSR. Steurer's 2010 typology of public policies on CSR in Europe, for instance, claims that governmental CSR initiatives can be characterized by three elements: first, 'the governance principles of voluntariness and collaboration'; second, that policy instruments are 'soft –law' in character; and third, that 'they all share the purpose of fostering CSR and sustainable development complementarily to traditional hard-law regulations' (Steurer 2010: 51; Steurer 2012: 734). However, within home state regulation, it is increasingly impossible to disentangle hard and soft law, and even more difficult to separate companies' 'voluntary' CSR from their legally mandated CSR. Because the conceptual distinctions that Steurer draws between 'hard' and 'soft' law and 'voluntary CSR' and 'corporate accountability' do not align with realities of home state legislation, this body of public policy instruments cannot be integrated into his typology.

As noted above, home state legislation varies, from softer forms of transparency regulation (e.g. in the UK's Modern Slavery Act) to more binding disclosure requirements (e.g. the US Dodd-Frank section on conflict minerals), to legal liability for violations of CSR principles if companies fail to have due diligence mechanisms in place (e.g. the French devoir de vigilance which requires companies to adopt and publish a due diligence plan). Through such legislation the legal dimension of CSR has gradually further developed. Partly in recognition of this growing legal dimension of CSR, the European Commission adopted a new definition of CSR in 2011 as 'the responsibility of enterprises for their impact on society' (European Commission, 2011) which—importantly— no longer states that CSR is 'voluntary'. Recent home state legislation thus provides important insights into the rapidly shifting reconfigurations between law and CSR, including that law can now require directors to take CSR issues into account (such as in section 172 of the UK Companies Act), it can require reporting, and it can give legal force to soft CSR standards through contract law or

competition law. To date, these reconfigurations, and their implications for company behaviour, have received too little attention within the literature.

Home state regulation also highlights the need for a more detailed analysis of public regulation amongst scholars of orchestration and transnational business government interactions. Within the orchestration literature (cf. Abbott and Snidal, 2009, 2010), scholars have tended to assume that the integration and legitimation of private governance initiatives within legislation produces positive synergies and optimized form of hybrid governance. However, our analysis of variation within home state regulation suggests that public-private interactions may be more or less productive, depending on interactions within the different categories outlined in Table 1. As we document, in models of home state regulation that codify and legitimize existing private governance standards and compliance mechanisms, new legislation does not produce strengthened public standards or compliance measures for labor governance. Nor does it necessarily strengthen private standards or compliance measures, since companies could be compliant with the new laws merely by reporting that they are doing nothing to address the problems of labor abuse, or continuing existing private initiatives in spite of their well-documented shortcomings. There is thus considerable cause for scepticism about the effectiveness of various models of regulation in spurring changes in corporate practice and behaviour.

The emergence and acceleration of home state legislation raises a flurry of questions for scholars interested in public and private labor governance interactions. Given that much of this legislation is 'hybridized' (for instance, incorporating private standards like codes of conduct, and private monitoring strategies like auditing) when, why, and how does the integration of private governance instruments and standards within national regulation lead to stronger and more effective legislation? Which models of home state regulation are most effective in strengthening corporate policies and practices? As mentioned in the Introduction, extensive empirical research will be required to answer these questions, both to evaluate the effectiveness of different models of home state legislation and to understand their role within the global governance of labor standards— tasks that exceed the scope and limitations of our paper. As an early exploration of such questions, in the remaining sections we describe the gaps in legal governance surrounding labor standards in global supply chains that home state legislation has been implemented to address, and we investigate the impact of two recent pieces of UK home state legislation on twenty-five multinational enterprises incorporated within the UK. As described in our research approach (Section 4.1), our focus is on evaluating

the institutional design and stringency of each initiative and its effectiveness in steering corporate behaviour across the two issue areas (illegal financial and labor practices).

3. Two legislative models to mandate CSR: corporate criminal liability and transparency regulation

3.1. Regulatory gaps surrounding labor standards in global supply chains

Recent efforts to use home state legislation to prompt corporate accountability are rooted in the recognition of the 'regulatory gap' surrounding global supply chains (Fransen and Burgoon, 2012, pp. 236-239; Fransen and Burgoon, this volume). To date, legal loopholes have enabled multinational enterprises to avoid liability for labor abuse and human rights violations enacted by the suppliers who make the goods they sell to consumers. Before examining in-depth two models of home state regulation enacted in response to these gaps, it is worth briefly outlining their key dimensions. Four elements are especially important.

First, there is no comprehensive binding international framework in place that addresses the conduct of companies in global supply chains, and companies are not considered to be duty bearers in public international law (de Jonge, 2011). Although in recent years, there has been a proliferation of CSR standards and international 'soft laws', such as through the UN Global Compact which has been widely adopted by multinational enterprises, these initiatives cannot substitute for a global 'regulatory instrument' because they are not enforceable.

Second, as has been widely documented in the literature, there are regulatory and enforcement gaps surrounding labor standards across many host states, creating regulatory contexts in which labor exploitation and abuses can occur (Baughen, 2015). This has given rise to widespread labor exploitation across several industries, as well as business models deliberately configured around forced labor and human trafficking (Allain et al, 2013; Phillips, 2013).

Third, the legal structure of global supply chains makes it difficult to hold multinational enterprises liable for violations that occur. Although sourcing strategies differ across multinational enterprises, most operate through foreign directly-owned subsidiary companies and suppliers as contractual partners (Mosley, 2011). In English law, parent companies are not vicariously liable for the conduct of their subsidiary companies (see Adams v Cape Industries plc [1990] BCLC 479, 513). It is therefore very difficult to hold multinational enterprises responsible for illegal acts (torts) committed by overseas subsidiaries apart from the rare situation where a parent company is held to owe a duty of care

to the employees of their subsidiary.[ii] The situation is even more problematic with suppliers. As completely independent companies they are legally liable for their own employees and standards (Andersen and Skjoett-Larsen, 2009).

Fourth, and relatedly, the territoriality principle within the rules of private international law means that it is often determined that host states' laws are applicable (not home states) and that host state courts are competent to hear victims' claims (McClean and Ruiz, 2012).

3.2. The model of the Bribery Act and the Modern Slavery Act

The UK has been at the forefront of introducing legislation designed to strengthen CSR, passing two major pieces of home state legislation since 2010: the Bribery Act and the Modern Slavery Act. As described in the Introduction, through this legislation, the UK government has sought to close regulatory gaps described above by mandating that companies of a certain size or operating within a certain sector take responsibility for standards in their global supply chains. In other words, through home state legislation, policymakers have challenged the notion that companies can outsource liability for illegal and widely condemned practices— such as bribery or the use of forced labor— to their suppliers. We have focused our case study around the UK's Modern Slavery Act 2015 and Bribery Act 2010 because, as described in Table 1, they represent examples of the least and most stringent models of home state legislation. This section of the paper describes the key differences between these models of home state regulation—transparency and due diligence liability—analysing variation in legislative design, stringency, and hybridity. Our analysis of the legislation was based on the scope of the Acts, the duties that they impose on companies, the sanctions that follow from noncompliance with these duties, and the jurisdictional scope. Comparing the Acts across these criteria sheds light into how they differ. These differences are summarized in Table 2.

Table 2 goes about here

While much of the Modern Slavery Act focuses on harmonizing existing domestic governance related to the use of forced labor within the UK, it contains a transparency clause that is designed to strengthen corporate governance for labor conditions overseas. Companies that are subject to the duty must make 'a statement of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in

any of its supply chains, and any part of its own business, or a statement that the organisation has taken no such steps' (Modern Slavery Act 2015, s 54(4)).

The Act therefore leaves companies discretion not to deal with forced labor or slavery in their supply chains at all, since companies can be compliant with the law without taking any steps to prevent or address forced labor, so long as they publish a statement. Moreover, whilst the section lists a number of issues that the statement 'may include information about', including its policies in relation to slavery and human trafficking, it is not compulsory for companies to report on these issues (Home Office, 2015). In legal terms, the Modern Slavery Act amounts to little more than an endorsement of existing voluntary CSR reporting without any legally binding standards, and there are no government sanctions for failure to combat modern slavery or failure to report about the company's policies.

Rather than imposing new standards onto companies, or requiring companies to report on a standardized set of indicators, transparency legislation seeks to encourage companies to strengthen the private governance mechanisms such as codes of conduct and auditing and their commercial power to transform supplier behaviour. It has a high degree of hybridity, insofar as it reinforces private governance tools rather than creating new public standards or enforcement mechanisms. It has a low level of stringency, insofar as it doesn't require companies to improve standards, nor impose penalties for noncompliance. Rather, the theory behind transparency legislation is that UK companies can use their economic leverage to positively affect working conditions throughout global supply chains, and requiring them to disclose their effort to tackle forced labor will spur them on to do so because consumers and investors can use the information disclosed to guide their purchasing decisions, and thus punish laggards. In short, this model of home state regulation seeks to use public regulation to 'leverage' private governance for public purposes (Mayer 2014).

The Bribery Act takes a different approach, establishing extraterritorial corporate criminal liability for bribery that occurs within a company's global supply chain. A commercial organisation is guilty of an offence if a person associated with it bribes another person with the intention of benefitting the commercial organisation (Bribery Act 2010, s7 (1)). The Act also contains a defence to this offence for companies if they can prove that they had in place 'adequate procedures' which are designed to prevent anyone associated with it from committing bribery (Bribery Act, s7 (2)).

The government's guidance on the Act contains two points that are particularly important for our analysis (Ministry of Justice, 2011). First, it defines that contractors could be 'associated' persons to the extent that they are performing services for or on behalf of a

commercial organisation. The guidance then refers to the example of a supply chain with subcontractors. It recommends to companies that the principal way to address bribery in such a chain would be to employ anti-bribery procedures with their direct suppliers and to require these suppliers to request the same from their sub suppliers. Secondly, among the principles that the government outlines in its guidance as 'adequate procedures' which would constitute a defence against criminal liability are 'due diligence' mechanisms.

In comparison to transparency legislation, the Bribery Act constitutes a more stringent form of public governance. Whereas the transparency legislation is intended to create a minimum level playing field in the sense that at least all companies are expected to address the issue in one way or another and then let the market decide about how 'good' those policies are, the Bribery Act places a compulsory demand on companies to address bribery in their supply chains. Companies must have adequate procedures (particularly due diligence mechanisms) in place if they want to avoid the danger of being criminally liable. That way, the Act indirectly imposes on companies due diligence on the CSR issue of bribery. Whereas, on the basis of the government's guidance on the Bribery Act, it is to be expected that UK multinational enterprises will be unlikely to be liable for bribery committed by the subcontractors of their direct suppliers, i.e. tier 2 or tier 3 suppliers, the expectation is that companies introduce due diligence mechanisms into their supply chain and that those policies would then be passed on further down the chain in order to avoid any danger of liability.

In short, although both pieces of legislation are examples of home state regulation to strengthen CSR in global supply chains, they vary in their design, stringency, and hybridity. In the Bribery Act model, criminal liability coupled with the defence of due diligence constitutes a much more stringent form of public governance than the transparency clause in the Modern Slavery Act.

4. Exploring the differential impact of UK legislation on bribery and modern slavery

4.1 Research approach

In the remainder of the paper, we analyse the impact of the Bribery Act and Modern Slavery Act on company strategy. Guided by Eberlein et al's (2014) insight that there is a need to use meso-level analysis of governance interactions to 'examine interactions among schemes that address different issues within a single sector' (8), we examine how financial and labor issues are dealt with in recent UK public legislation and how the two Acts have differentially 'steered' company policies. Rather than focusing on companies within a single sector, we have focused on 25 FTSE100 companies (that were FTSE100 constituents in May

2016) that operate internationally and have overseas suppliers (for a list, see Appendix A). We selected companies that: 1) had an international supplier base (creating a risk of forced labor and bribery within their global supply chain); 2) had a sufficient number of publicly available documents; 3) we determined to be covered under both Acts; 4) represented key industries, as detailed below. Because previous studies of CSR have established that larger companies are more likely to implement globally focused private governance solutions, and have greater resources to adapt practices and policies to new regulation, we also sought to select companies that were as close to the same size as possible. This purposive sampling approach was more appropriate than random selection given the substantive proportion of FTSE100 companies that did not meet these criteria.

We focused our study on twenty-five of the largest UK companies for two reasons. First, this allowed us to incorporate a range of firms across the three economic sectors (primary, secondary, and tertiary), and within those, to achieve coverage of the main industries represented by UK FTSE100 companies: mining, energy, agriculture, retail and consumer goods, defence and automobiles, pharmaceuticals, hotels and airlines, outsourcing, communications, and financial services (see Table 3). This allowed us to cut across sectorial patterns to focus on how different types of companies dealt with the issues of bribery and forced labor. Second, because (as described in the Introduction) our research was of a 'probability probe' nature, we considered this to be a reasonable sample to shed light into our research question about whether and how variation in home state design might differentially be 'steering' corporate behaviour, and to determine whether or not there are relevant, discernable patterns worthy of larger-scale research.

Table 3 goes about here

We explored our research questions through documentary analysis, which was advantageous because it allowed us to reliably assess similarities and differences across a larger set of companies than we would have been able to do through other qualitative methods. In particular, we analysed how the Acts have shaped the behaviour of UK-based companies, and especially their sourcing practices, policies, and contracts. For each company, we analysed the company's: 1) Own code of conduct; 2) Supplier code of conduct; 3) Terms and conditions of purchase for suppliers; 4) CSR/sustainability reports for 2015 and 2016; 5) Any other information on the website or further policies such as specific bribery/forced labor policies since 2010. [iii] We retrieved these company documents in May

2016 from each company's website, and where multiple versions were available, we used the most recent version. The dates of the documents we studied varied (as there is no standard timeline for companies to refresh codes of conduct), but crucially, because we gathered these documents one year after the enactment of the Modern Slavery Act, all companies analysed were aware of this legislation and their obligation to report under it, and had sufficient time to adjust their contracts and policies to new legislative expectations.

We supplemented our study of twenty-five companies by investigating a single company in greater depth. We selected Vodafone as a single company case study because of the availability of data on the evolution of their CSR policies across both issue areas over the time period we were interested in (2009-2016).[iv] Zooming in allowed us to gain insights into how a company's practices evolved over time. For this component of the study, we examined additional supplementary documentation, including recent interviews about CSR policy with company executives and lawyers. Evaluating these documents allowed us to gain a broader and clearer sense of how company policy evolved over time, and to pinpoint the influence of the Acts in shaping changes in corporate policy.

Our approach has disadvantages, which primarily relate to the challenge of documenting changes in company practice over time. Since most companies only make the most recent copy of their Code of Conduct and Supplier Code of Conduct available, it is difficult to conclusively establish the impact of each piece of legislation on company practices; a challenge we sought to circumvent by analysing what companies said about the legislation in their CSR and annual reports. Guided by the recognition that companies do adapt their policies and practices in response to legislation, and assuming that one year after the passing of the Modern Slavery Act is an adequate period of time within which to do so, our analysis of company documentation provides a snapshot of the weight and seriousness that companies afford to the issues of bribery and forced labor within their global supply chains at the time of our study. We initially had hoped to include a comparative component within our study, contrasting UK companies against similar companies from outside the UK not covered by the Acts, to isolate the influence of the UK legislation. However, as both the Bribery Act and the Modern Slavery Act cover foreign companies that 'carry on a business, or a part of a business, in any part of the UK' the biggest companies in most other major jurisdictions such as Germany and the US have adopted policies in response to the UK's laws as these companies usually also operate in the UK.

Because of these challenges in obtaining comparative and baseline data, our analysis was guided by a theoretically predicted outcome, namely, what we thought policy-makers

sought to achieve through each of the two Acts. The aims of each Act have been clearly articulated by policy-makers. We assume that through the Modern Slavery Act, policy-makers sought to spur companies to address and prevent modern slavery within their operations and supply chains. This assumption is confirmed by the Government's statutory guidance on the Act, which states, 'The Transparency in Supply Chains provision in the Modern Slavery Act seeks to address the role of businesses in preventing modern slavery from occurring in their supply chains and organizations' (UK Home Office, 2015: 3). We assume that through the Bribery Act, policy-makers sought to spur companies to address and prevent bribery within their operations and supply chains. This assumption is confirmed by the foreword to the Government's statutory guidance which states, 'Bribery blights lives. Its immediate victims include firms that lose out unfairly... At stake is the principle of free and fair competition, which stands diminished by each bribe offered or accepted' (UK Ministry of Justice, 2011: 2).

4.2 The *'bribery effect'*

Table 4 summarizes our key findings. As it describes, we found major differences between company strategies on bribery and forced labor, including differences in how each issue was framed and dealt with in policy and codes of conduct, and in relation to the quality and quantity of company reporting on their strategy in relation to each issue. All of the companies included in our study: a) proactively engaged with the issue of bribery in their policies and private contracts with suppliers or published a bribery policy or mentioned bribery due diligence on their websites; and b) used stricter language in relation to bribery compared to forced labor. In addition, most companies (92%) had stricter requirements on bribery than forced labor in their code of conduct or other supplier-related documents, and a high proportion (80%) had more frequent and higher quality reporting about bribery than forced labor within their company CSR/sustainability report.

Table 4 goes about here

Overall, it appears that the Bribery Act has achieved traction towards its aim of 'steering' company behaviour. As we detail below, companies had clear and strict policies on bribery, which they communicated to suppliers. The Modern Slavery Act, by contrast, appears to have done little to achieve its intended impact on corporate behaviour. Company policies rarely gave a prominent role to forced labor, and where it was mentioned, companies

made vague and aspirational claims about their commitments to addressing it within global supply chains. Three key trends are especially important. First, bribery appears to have become a genuine compliance issue, as evidenced by the central role it is given within legal buyer-supplier documents such as in the Terms and Conditions of Purchase for Suppliers and the supplier codes of conduct. Secondly, companies use much more stringent language when they refer to the use of bribery (e.g. 'zero tolerance') than forced labor (e.g. 'we seek to improve'). Thirdly, bribery is given a much more prominent role within company reporting, compared to the issue of modern slavery or human trafficking, both in term of the quantity and the quality of reporting. In summary, our documentary analysis suggests a 'bribery effect' in global supply chain governance, wherein home state legislation that establishes criminal corporate liability and imposes due diligence requirements on companies has spurred deeper changes to corporate practices than transparency legislation.

4.3 Bribery as a compliance issue

As described in Table 4, we found that in contractual documents (i.e. the Terms and Conditions of Purchase and the Supplier Codes of Conduct), bribery was afforded much higher standing than forced labor. These documents evidence that bribery has become a genuine compliance issue that companies are addressing through due diligence mechanisms.

A good example is GlaxoSmithKline's (GSK) Terms and Conditions of Purchase (T&Cs). Under the heading 'Ethical Standards and Human Rights', Article 21 of GSK's T&Cs refer to a range of issues that a supplier must comply with, and includes a strict clause prohibiting forced labor, stating a supplier must warrant that 'it does not use forced labor in any form'. Whilst the wording of this clause is clear, it is meager in comparison to how GSK's T&Cs deal with the issue of bribery. The T&Cs contain a clause that refers to Annex A (suppliers are required to comply 'with the GSK Anti-Bribery and Corruption Requirements set out in Annex A') (GSK Terms and Conditions of Purchase, s21.1.9). Annex A, entitled 'GSK ANTI BRIBERY AND CORRUPTION REQUIREMENTS', contains a detailed outline of what GSK expects from its suppliers in terms of compliance with anti-corruption laws through three specific clauses. The Annex also contains a glossary of words related to bribery. Although GSK has a stricter prohibition of forced labor as compared to many other companies, there is an important difference in legal status between the clauses on forced labor and bribery. The principles about bribery are more detailed, refer to compliance with laws and, above all, also refer to the ways that third parties such as suppliers who act for

GSK must ensure that there is no bribery in their dealings with other third parties. The level of detail that GSK applies to the requirements clearly constitute due diligence mechanisms.

A further interesting comparison suggesting that bribery has become a genuine compliance issue, while forced labor has not, regards the respective significance attached to these issues within their codes of conduct. Codes of conduct are usually incorporated into the supply contracts between buyers and suppliers through a reference in the buyer's terms and conditions which gives them contractual quality (Rühmkorf, 2015). For example, Imperial Brands distinguishes between the two issues in in its code of conduct in the following way: the code stipulates that 'compliance with bribery and corruption laws is compulsory. We must not offer…' whereas it includes forced labor in a much more vague and aspirational way: 'We must promote and protect human rights and ensure we do not directly or indirectly contribute to any human rights abuses…We must work with our suppliers,…to encourage and support their implementation of minimum age/forced labor standards' (Imperial Tobacco ((now Imperial Brands)) Code of Conduct). Significantly, Imperial Brands has been extensively criticised for the existence of forced labor in its supply chain (Rodionova, 2016). The relative weight given to bribery over forced labor within contractual documents is thus especially surprising.

4.4 *The language of 'anti-bribery' and 'zero tolerance' vs 'we seek to improve'*

Relatedly, we found that the language that companies use to communicate governance standards and practices related to bribery and forced labor also differs significantly. Whilst there is a strict wording in relation to bribery, and frequent references are made to legal and commercial consequences for non-compliance, only aspirational language was typically used for forced labor.

Within company documents, bribery is usually referred to as part of 'anti-bribery policies'. Companies outlined their 'zero tolerance' for bribery and hasten to mention that they 'comply with bribery laws' and that 'compliance with bribery and corruption laws is compulsory'. Some documents even mention the danger that the multinational enterprises that we looked at in our study will be 'criminally liable' if linked to bribery. The language communicating forced labor policies within codes of conduct is much more aspirational. Rather than 'zero tolerance', companies use vague language to describe their stance on forced labor, using language such as 'we seek to…'. For instance, the BP Code of Conduct states: 'We seek to conduct our business in a manner that respects the human rights and dignity of people. Each of us can play a role in the elimination of human rights abuses such as child

labor, human trafficking and forced labor.' The same BP code addresses bribery in the following way: 'We do not tolerate… We comply with…'. Assessment of statements issued under the Modern Slavery Act reveal that these documents, too, seldom go beyond aspirations. For example, labor law consulting firm Ergon concludes that 'most statements do not go further than general commitments and broad indications of processes' (Ergon, 2016).

The differences in company language surrounding bribery and forced labor send a clear message that while companies will not tolerate bribery in any form at any time within their global supply chains, they merely hope to eliminate forced labor.

4.5 Higher quantity and better quality of reporting

Finally, we found that bribery is afforded a much more prominent role in company CSR and sustainability reporting. It is also more frequently specifically referenced in the other documents that we looked at (eg. codes of conduct). For instance, Imperial Brands' code of conduct mentions bribery 12 times (starting as early as in Section 1, 'Business Integrity', and Section 4, 'Anti-Bribery and Corruption'). Forced labor is only addressed once, on page 57 out of 65. Similarly, Vodafone's Sustainability report mentions the word 'bribery' 34 times excluding its use in titles (there are 40 usages of bribery including titles), whereas it only refers to 'forced labor' three times, including one mention within a chart.

In addition to receiving frequent mention, company reporting on bribery was also of a higher quality. While most company CSR and sustainability reports included dedicated sections to bribery commonly entitled 'Anti-Bribery / Corruption', forced labor was almost always collapsed alongside several other social and labor issues under the heading of 'human rights.' This was true even of companies in sectors documented to have high risks of forced labor, such as tobacco.

The strong priority given to bribery within private governance instruments communicates to suppliers that companies are serious about this issue. Contrarily, the low priority given to forced labor signals to suppliers that companies are not serious about this issue. We observed a clear hierarchy between the bribery and forced labor in terms of contractual stringency, the language that is being used and the quantity and quality of reporting. Bribery clearly is a compliance issue for companies which they address through due diligence mechanisms whereas forced labor is— despite also being illegal in most countries, and despite being a gross human rights violation— dealt with in a more aspirational, less stringent way.

4.6 *Vodafone's approach* to bribery and forced labor since 2009

Our closer look at Vodafone provides interesting additional insight into the differences in corporate strategy in relation to bribery and forced labor and how their strategy has evolved and been influenced by the Acts over time. Whereas prior to the introduction of the Bribery Act, Vodafone's CSR reports in 2009 and 2010 did not mention bribery at all, the situation changed when the Bribery Act came into force in July 2011. The report in that year was published before the Act came into force, but it already stated that 'In anticipation of the UK Bribery Act, due to come into force in July 2011, we have also reviewed and reinforced our anti-bribery programme with training to be rolled out across the Group'. The 2011 report refers to bribery 3 times. In Vodafone's subsequent CSR/sustainability reports, bribery became an increasingly prominent topic. Whilst the 2012 was not available, the 2013 report mentions bribery 19 times excluding titles (and 20 times including titles) and, in 2014, this figure rose further, as bribery was mentioned 28 times (29 times including titles). The 2015 report refers to bribery 34 times (40 times including titles) and the latest report in 2016 mentions it 41 times (43 with titles).

Moreover, it is important to note that the 2013 report outlines Vodafone's 'global anti-bribery programme' in a separate section which, in the company's words, 'is aligned with the six principles of the UK Bribery Act guidance'. Importantly for the analysis here, this programme includes due diligence mechanisms. It therefore appears that the introduction of the Bribery Act prompted significant changes in Vodafone's CSR efforts to prevent bribery in its supply chain. This argument is further supported by the statement of Rosemary Martin, the company's general legal counsel, that she established a formal compliance team after she took over her role in April 2010. Martin says: 'We'd already done quite a lot in the compliance area, but it was all kickstarted after the introduction of the Bribery Act in the UK in 2010' (The Lawyer, 2012). Her comments further support the view that the design of the Bribery Act steered corporate behaviour in a way that companies developed compliance mechanisms for the prevention of bribery.

In the meantime, the approach to forced labor in Vodafone's reports between 2009 and 2016 was relatively steady. From 2009 to 2011, forced labor was only mentioned once in a chart that contained information about performance issues that Vodafone had identified at supplier factories. Whilst the CSR/sustainability reports after the introduction of the Bribery Act saw a sharp increase in the quantity and quality of disclosure about bribery, the way that forced labor was addressed remained low-key with only 5 references (three of them in the chart mentioned above) in 2013, 4 references (including one in a chart) in 2014 and in 2015,

the year the Modern Slavery Act was passed, that number went down to 3 references (including one in a chart). Following the coming into force of the Act, the number of references increased to 10 in the 2016 report; however, in reality, there were again only 3 references in the text of the sustainability report and 1 in a chart and the other 6 were part of the statutory slavery and human trafficking statement which Vodafone added to its annual sustainability report. Therefore, the reporting has not been significantly altered in the wake of the new legislative environment.

Moreover, the policies that the company applies to the two issues according to its 2016 report continue to differ in their stringency. Whilst Vodafone prohibits suppliers to 'use any form of forced, bonded, compulsory labor, slavery or human trafficking' in its Code of Ethical Purchasing, this requirement does not constitute much more than what was already found in similar codes prior to the Modern Slavery Act. However, in relation to bribery, the company applies a 'global anti-bribery programme'. In its 2016 sustainability report, Vodafone outlines on two pages its 'Governance and risk assessment' related to bribery (Vodafone 2016, pp. 47-48). In contrast, the description of the risks of forced labor and Vodafone's responses to those risks amount to less than half a page (Vodafone 2016, p. 43).

In summary, the analysis of the documents of Vodafone as a case study of one company adds further support to the view taken here that the way that companies are dealing with the issues of bribery and forced labor differs markedly and that the regulation of bribery has spurred more substantive changes in corporate behaviour.

5. Conclusion

We have argued in this paper that home state regulations varies in terms of its stringency and the form and degree of public-private interactions, and that variation in the quality of home state regulation carries important consequences in terms of effectiveness at steering company policies and practices within global supply chains. While public labor standards regulation is often assumed to be a coherent body of 'hard law,' an accelerating wave of recent public regulation to spur CSR for labor standards merely codifies and legitimates existing private governance mechanisms. This raises critical questions about the significant differences occur in the quality of national legislation, and especially, the politics of bargaining processes that underpin their formation.

As mentioned, the UK government initially considered modelling the Modern Slavery Act after the Bribery Act, however the policymaking process changed course following the emergence of private regulatory options and activities, and as societal and

industry forces coalesced to endorse transparency legislation (LeBaron and Rühmkorf, unpublished). The Modern Slavery Act's low stringency and high hybridity therefore resulted— at least in part— from industry and some politicians' opposition to proposals to create extraterritorial criminal liability (with indirectly imposed due diligence requirements) for forced labor within global supply chains.

That the Modern Slavery Act fails to establish new public labor standards or enforcement mechanisms is significant, given the differences we observe between company policies and practices on bribery and forced labor. While stringent legislation appears to strengthen private governance, such as by spurring lead firms to use their contractual bargaining power and implementation of due-diligence based procedures, less stringent legislation does not appear to spur change in company practices. This variation is understandable, given that the Bribery Act model provides an incentive for companies to avoid sanctions by implementing adequate due diligence procedures, while the Modern Slavery Act does not impose additional requirements (except in regards to reporting) and carries no sanction for non-compliance. Within the Modern Slavery Act, the substitution of a vague reporting requirement over a more stringent model of public governance appears to have undermined its effectiveness in 'steering' corporate behavior. Although it is possible that company strategy could still evolve, we are skeptical that this legislation will result in meaningful changes to company and supplier policies on forced labor, given the shortcomings we have documented in its institutional design.

While it has become commonplace to argue that public and private labor governance mechanisms can be complimentary, and that 'public and private regulatory efforts need to work with and build off on one another' (Locke, 2013: 177), our study highlights the possibility that the integration of private governance into public legislation can undermine and weaken effectiveness. There is a need for further study of this phenomenon, not only in home state legislation, but in relation to public governance of labor standards more generally.

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Notes

[i] We thank the Editors of this special issue for this phrasing.

[ii] A tort is a civil wrong that is committed against an individual and which unfairly causes someone else to suffer loss or harm, for example, an injury due to negligence. The person who commits the tortious act is liable to the tort victim, who can recover damages for the loss or harm. For a general introduction to the law of tort, see Cooke (2013).

[iii] Occasionally, one or more of these documents was unavailable online, so we sought to obtain them through emails and phone calls to companies. Where these efforts did not yield additional documentation, we were forced to omit the missing document for that company.

[iv] Consistent year-on-year reporting across a consistent set of issue areas was not commonplace for the companies included in our study. Vodafone's website provides detail on their ethical policies and actions across a range of issue areas for a multi-year period. For instance, they provide consistent data on different types of fraud that resulted in dismissal for each year since 2011 and due diligence in relation to conflicts minerals since 2013.