

Bad for business: the construction of modern slavery and the reconfiguration of sovereignty

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Abstract

Although the UN calls on governments to end modern slavery, Walk Free, a private foundation connected to the faith-based abolitionist movement, leads the private-public network to eliminate slavery from transnational supply chains. Examining the network's governance techniques reveals how scale and governance are reconfiguring sovereignty beyond the territory of the nation state and aligning it with neoliberal governmentality.

From the experience of all ages and nations, I believe, that the work done by free men comes cheaper in the end than the work performed by slaves.

—Adam Smith¹

The realities of global trade and commerce make it inevitable that products generated by modern slavery will travel across borders and into higher income countries where the prevalence of modern slavery is low.

—Walk Free²

Created in 2012 by Australian mining magnate Andrew ‘Twiggy’ Forrest and his wife, Nicola, Walk Free, an initiative of his Minderoo Foundation, has quickly become the key player in the new abolitionist network formed to combat modern slavery and a pivotal actor in the global governance apparatus for modern slavery. Walk Free exemplifies the role and significance of philanthrocapitalists, who use their money, business savvy and elite contacts to shape global policy in general and modern slavery in particular.³ Philanthrocapitalists purport to inject philanthropy with the dynamism of capitalist enterprise by mobilising market forces, imposing business-management

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¹ A Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Methuen 1776) bk I, ch VIII.

² Walk Free, *Global Slavery Index 2018* (Minderoo Foundation 2018) 102 <<https://www.globalslaveryindex.org/resources/downloads/#gsi-2018>> (*GSI 2018*).

³ J Chuang, ‘Exploitation Creep and the Unmaking of Human Trafficking Law’ (2014) 108 *American Journal of International Law* 609.

models and supporting projects with outcomes that can be quantified and measured.⁴ They claim to reinvest the rewards of the rich for the benefit of the poor using business strategies to create resources for, and solutions to, problems that governments have been unable to solve.

‘Harnessing the power of businesses and faiths’, Walk Free seeks to drive legislative change in key countries to end modern slavery.⁵ Its strategy has three interwoven strands: (1) defining, depicting and measuring the problem; (2) establishing an elite network to influence policy and legislation; and (3) financing anti-slavery initiatives. These strategies, which combine disciplinary mechanisms with biopolitical technologies, have had a profound influence on the shape and orientation of recent attempts to govern the global problem of slavery. Either directly or through the charitable foundations they control, philanthropists who head transnational corporations have taken the lead in defining the problem of modern slavery, identifying the appropriate solutions, and steering the direction of development funds towards eradicating it. They portray slavery in supply chains as a result of market failure, caused, in part, by the mismatch between the territorial limits of state sovereignty and the transnational nature of global production network. Nation states in the Global North depict the control large transnational corporations have over their supply chains as an antidote to the limits of state sovereignty in the context of global capitalism. Thus, they advocate for market-based solutions to the problem of modern slavery—such as supply-chain transparency and due diligence legislation—that enlist transnational corporations located in the Global North to enforce international legal standards against contractors located primarily in the Global South. Laws that target modern slavery in supply chains partially detach sovereign authority from the territory by delegating authority to corporations to enforce the standards extraterritorially. Circulated through an elite network, this solution is widely accepted by key states, international organisations, religious institutions and civil society organisations.

In contrast to the philanthrocapitalist’s account of modern slavery, those who adopt a critical political-economy perspective argue that international and transnational trade and financial agreements have created conditions for multinational corporations to lower labour costs by outsourcing production and increase their control over the labour supply.⁶ Instead of depicting the governance problem as a gap in the authority of states in the Global North to control bad actors in the Global South, critical political economists view the current multi-scalar economic governance regime as creating a set of rules that enable transnational corporations in the Global North to shift competitive pressures down the chain, thereby cultivating conditions that produce modern slavery in the Global South. Seen from this angle, modern slavery laws shore up the legitimacy of the global economic order by aligning transnational corporations with individual morality and by celebrating individual freedom, which is equated with free contracting.

⁴ J Mediavilla & J Garcia-Arias, ‘Philanthrocapitalism as a Neoliberal (Development Agenda) Artefact: Philanthropic Discourse and Hegemony in (Financing for) International Development’ (2019) 16 *Globalizations* 857; L McGoey, ‘Philanthrocapitalism and Its Critics’ (2012) 42 *Poetics* 185; M Bishop & M Green, *Philanthro-Capitalism: How the Rich Can Save the World* (Bloomsbury 2008).

⁵ *GSI 2018* (n 2) 6.

⁶ G LeBaron, ‘Introduction’ in G LeBaron (ed) *Researching Forced Labour in the Global Economy: Methodological Challenges and Advances* (Oxford University Press 2020).

This essay seeks to understand how Walk Free and the global anti-slavery governance network it assembled have used the problem of modern slavery to reconfigure sovereignty to the benefit of transnational corporations and the Global North. In doing so, it contributes to the growing critical literature on corporate social responsibility initiatives and modern slavery laws by advancing governmentality literature that identifies ‘responsibilisation’—‘expecting and assuming the reflexive moral capacities of various social actors’—through corporate social responsibility initiatives as a technique of governance that moralises ‘markets in general and corporate actors in particular’ in two ways.⁷ First, it focuses on the scalar dimension of the problem of modern slavery, treating scale as a technique of governance rather than a level at which social problems play out. It examines initiatives that are intended to tackle slave-made goods that are transmitted across national borders through supply chains by providing incentives for businesses to ensure that their supply chains are free of modern slavery. These governance mechanisms instigate bordering practices that enable states in the Global North to impose standards on activities taking place in the Global South. By focusing on the scalar dimension of legal jurisdiction, this essay illustrates how sovereignty is configured through techniques of power deployed by the global anti-slavery governance network. Second, by deploying Foucauldian concepts of governmentality, assemblage and *dispositif*, it more clearly specifies the mechanisms by which the process of moralisation is operationalised through the assemblage of an ethical business apparatus dedicated to eradicating modern slavery in supply chains. Thus, the essay’s contribution is both theoretical and empirical.

The next section sets out the essay’s conceptual tools, which is followed by a description of new abolitionists’ campaign to establish modern slavery as a global policy domain in section 3. Section 4 explores the role of philanthrocapitalists and public/private partnerships in developing a global strategy to combat modern slavery, while section 5 concentrates on Walk Free Foundation’s part in promoting an ethical-business *dispositif* to ending slavery in global supply chains. The conclusion argues that Walk Free’s attempt to shape the global consensus on how best to rid supply chains of modern slavery illuminates how processes of globalisation reconfigure rather than simply weaken state sovereignty, reinforcing both the neoliberal logic of the market as the best form of governance and the image of the Global North as the impetus for freedom in the Global South.

Scale, Sovereignty, and Governmentality: Bordering Practices

Problems that cross national borders, such as products consumed in the Global North that are made by forced labour in the Global South, are particularly troublesome for states because they do not fit within the ‘default’ spatial organisation or format of legal jurisdiction, which is national and territorial. They require a different scale of governance. International lawyers and international relations practitioners tend to see this jurisdiction as operating at a higher level or plane where processes play out. The metaphor of levels suggests a hierarchical structure, when, instead, social geographers claim that what makes an issue an international one is the relationships—the network

⁷ R Shamir, ‘The Age of Responsibilization: On Market-Embedded Morality’ (2008) 37 *Economy and Society* 1, 7.

of actors, institutions, practices and discourses—within which the issue is enmeshed.⁸ From a relational perspective, scale can be considered in several ways, as a narrative device or a measure of distance, for example.⁹ Here, it is a technique of governance. Understood in this way, scale draws attention to the networked nature of global governance.

Approaching scale as a technique of governance helps to illuminate how processes of globalisation reconfigure rather than simply weaken state sovereignty. Increasingly, states must negotiate with various other agents (such as local governments, international institutions and transnational corporations that wield power) and other sources of law to retain or exercise sovereignty. This partial detachment of authority from territory—or deterritorialisation—requires that bordering capabilities be cultivated in other actors. Saskia Sassen points to trade and investment treaties as a ‘new type of bordering’ that allow ‘firms and markets to move across conventional borders with the guarantee of multiple protections as they enter national territories’.¹⁰ What international trade and investment law does is allow firms to rescale, to shift from national to international law, to enforce contracts. But countries have no similar recourse should contractual terms end up harming workers or being unfavourable to the socio-economic interests of their population.¹¹

This rescaling is part of the game of jurisdiction by which social actors seek to use the scalar differentiation amongst legal authorities and technologies to their advantage.¹² Jurisdiction operates as a spatial, territorial or scalar format, and problems such as modern slavery that cross territorial borders instigate a search for transnational and international solutions. But *jurisdiction* also has another important meaning: it refers to the power of the law to act and the scope of a legal institution’s authority in relation to other institutions. By combining the scalar and governance dimensions of jurisdiction, Marianna Valverde treats jurisdiction as a complex legal assemblage that operates as a kind of sorting mechanism that allocates a problem to a legal authority for resolution.¹³ Jurisdiction is the legal technique that makes ‘sense’ of this complexity and prevents legal domains from clashing.

This complex, overlapping, multi-scalar understanding of legality also requires a revision to traditional understandings of sovereignty, which locate it in the authority of nation states to rule over their territories.¹⁴ Sandro Mezzadra and Brett Neilson have proposed the idea of the sovereign regime of governmentalities to capture the changing configurations of sovereignty and governance in an era of globalised and financialised

⁸ D Massey, *For Space* (Sage 2005) 184.

⁹ S Legg, ‘Of Scales, Networks and Assemblages: The League of Nations Apparatus and the Scalar Sovereignty of the Government of India’ (2009) 32 *Transactions of the Institute of British Geographers* 234.

¹⁰ S Sassen, ‘When Territory Deborders Territoriality: Territory, Politics, Governance’ (2013) 1 *Governance* 21, 39.

¹¹ D Alessandrino, ‘Global Value Chains, Development and the Long Durée of Trade and Investment’, (unpublished manuscript, 2020, on file with author).

¹² See M Valverde, ‘Jurisdiction and Scale: Legal “Technicalities” as Resources for Theory’ (2009) 18 *Social and Legal Studies* 140, 145.

¹³ *Ibid.*

¹⁴ B de Sousa Santos, ‘Law: A Map of Misreading—Toward a Post-Modern Conception of Law’ (1987) 14 *Journal of Law and Society* 279. De Sousa Santos describes this overlapping of jurisdictions as interlegality.

capitalism.¹⁵ It is a hybrid form of sovereignty that detaches authority from territoriality by activating bordering technologies, including biopolitical and disciplinary techniques, deployed by an assemblage of actors, including nation states. This idea recognises the continued significance of sovereignty in the current global era without reducing it to the territorial scope of the nation state.¹⁶

This understanding of sovereignty draws on Michel Foucault's conception of governmentality, which he developed to understand the shift in the logic and techniques of rule in the second half of the eighteenth century from the hierarchical and coercive juridical power of the sovereign to 'liberal governmentality'. Liberal constitutionalism, free markets and civil society are the key features of liberal governmentality, and they need freedom from the sovereign to operate. Governance at a distance through the use of biopower is what is required. Biopower, unlike disciplinary power that targets the individual, is about managing the population—establishing the 'rules of the game' (the conduct of conduct) in which the individual operates.¹⁷ Biopower does not displace disciplinary technologies; instead, it infiltrates and embeds itself in existing disciplinary techniques, operating on a different scale and making use of different instruments.¹⁸

Governmentality is the multi-scalar ensemble of governing rationalities and technologies that facilitate the governance of social relations at a distance.¹⁹ It encompasses 'the rationalities that blend sovereign powers, with newer disciplinary powers over individual bodies and biopolitical regulations over a population'.²⁰ What distinguishes neoliberal governmentality from its liberal counterpart is the attempt to institute the market as the general principle of political rationality that extends to all scalar domains; it deploys technologies of biopower that leave the subject free to choose within an economic calculus.²¹

The overlap and interaction of these different forms of power are critical to understanding how a global governance network was assembled to combat modern slavery. The idea of assemblage captures dynamic, contingent, multi-scalar institutional arrangements of disparate elements, including variously situated social actors, institutions, relations of power, discourses, technologies, regulations, and policies that come together in patterned but changing ways in particular social formations.²² These contingent and fluid assemblages can be stabilised by what Foucault calls a *dispositif*, which Ngai-Ling Sum and Bob Jessop define as (1) a strategic and purposeful apparatus

¹⁵ S Mezzadra & B Neilson, *Border as Method, or, the Multiplication of Labor* (Duke University Press 2013) 188.

¹⁶ This approach to sovereignty is similar to Sassen's (n 10) conception of territory and a legal geographic sense of jurisdiction.

¹⁷ M Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975–76* (D Macey tr, Penguin 2003) 259–60.

¹⁸ Ibid 242.

¹⁹ N-L Sum & B Jessop, *Towards a Cultural Political Economy: Putting Culture in Its Place in Political Economy* (Edward Elgar 2013) 210.

²⁰ S Legg, 'The Life of Individuals as Well as of Nations: International Law and the League of Nations' Anti-Trafficking Governmentalities' (2012) 25 *Leiden Journal of International Law* 647, 650; Mezzadra & Neilson (n 15) 190.

²¹ M Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979* (G Burhell tr, Palgrave Macmillan 2008) 259–60.

²² S Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton University Press 2008).

that comprises institutions, organisations and networks; (2) a discourse with themes and objectives; (3) devices and technologies involved in producing power/knowledge; and (4) subject positions.²³ A *dispositif* is a form of knowledge technology that shapes how we form and accumulate knowledge and then puts that knowledge into circulation.²⁴

How market-based solutions to the problem of modern slavery in supply chains became widely accepted is the subject of the next section. As we will see, it hinged on the integration of business into the global anti-slavery governance network.

The new abolitionists and slavery as a global problem: faith and markets

The anti-slavery governance network emerged in the late 1990s out of a struggle over how to frame the problem of human trafficking. Before that decade, human trafficking was approached as a problem of organised crime and unlawful migration rather than a human or labour rights issue. Human rights institutions and activists tried to expand human trafficking's discursive framing and advocated for a broader range of solutions.²⁵ Their explicit goal was to rethink 'trafficking as one form of contemporary slavery', and their emphasis was on exploitation, not movement or migration.²⁶

They linked up with new abolitionists to focus initiatives less on sex and individual perpetrators and more on labour exploitation and its structural causes.²⁷ They took up the phrase *new abolition* because they found in the history of the legal abolition of slavery (with its emphasis on the role of nineteenth-century British and American evangelicals in ending the trade in African slaves) a strategic framework, a prototype for tactics and a source of ethical and political inspiration.²⁸ Located primarily in Australia, the United Kingdom and the United States, new abolitionists mobilise the iconography and narratives of historical forms of slavery to highlight its new forms and emphasise slavery's continued moral repugnance.²⁹ Modern slavery is portrayed as a

²³ Sum & Jessop (n 19) 208.

²⁴ Foucault (n 17) 33-34.

²⁵ A Brysk & A Choi-Fitzpatrick (eds), *From Human Trafficking to Human Rights: Reframing Contemporary Slavery* (University of Pennsylvania Press 2012). Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking, UNGA Res 55/25 (15 November 2000), defines the crime of 'trafficking in persons' as

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

²⁶ Brysk & Choi-Fitzpatrick (n 25) 3.

²⁷ A Choi-Fitzpatrick, 'Rethinking Trafficking: Contemporary Slavery' in Brysk & Choi-Fitzpatrick (n 25); Chuang (n 3).

²⁸ J Quirk, *The Anti-Slavery Project: From the Slave Trade to Human Trafficking* (University of Pennsylvania Press 2011); A Choi-Fitzpatrick, 'From Rescue to Representation: A Human Rights Approach to the Contemporary Antislavery Movement' (2015) 14 *Journal of Human Rights* 486.

²⁹ K Bales, *Disposable People: New Slavery in the Global Economy* (University of California Press 1999) 258; K Bales, 'Slavery and the Human Right to Evil' (2004) 3 *Journal of Human Rights* 53; S Kara, *Sex Trafficking: Inside the Business of Modern Slavery* (Columbia University Press 2009); Quirk (n 28); A

form of evil,³⁰ and the early crusades against the slave trade are characterised as ‘the world’s first and oldest social movement for human rights’.³¹

Celebrated as the ‘world’s leading expert on contemporary forms of slavery’, new abolitionist Kevin Bales is regarded as being responsible for the modern slavery frame.³² An influential norm entrepreneur, he insists on using the word *slavery* instead of *human trafficking*.³³ Through a series of influential books that began with *Disposable People: New Slavery in the Global Economy* (1999), he defined modern slavery as ‘the total control of one person by another for the purpose of economic exploitation’.³⁴ In 2000, he founded the US-based Free the Slaves, one of the most prominent anti-slavery organisations, and he continues to be a key player in the global anti-slavery assemblage. He sits on the boards of influential private funders, consults for private foundations, and directs the research of a key university human rights centre devoted to ending modern slavery. Bales emphasises how modern slavery is embedded in the global economy and connected across the world via supply chains, and he estimates that there are 27 million slaves worldwide.³⁵

Faith-based groups are prominent actors in the global anti-slavery network. Evangelical Christians were influential in shaping anti-trafficking policy under the Bush administration, and they, along with other faith groups, were drawn to the broader fight against modern slavery.³⁶ The Catholic Church was involved in propagating modern slavery discourse,³⁷ and the emphasis on rescue and salvation was particularly appealing to the new abolitionists’ Christian evangelical wing.³⁸ The International Justice Mission, which describes itself as the largest anti-slavery organisation in the

Gross & C Thomas, ‘The New Abolitionism, International Law, and the Memory of Slavery’ (2017) 35 *Law and History Review* 99.

³⁰ Bales (n 29).

³¹ Choi-Fitzpatrick (n 28) 487.

³² Ibid 499; M Dottridge, ‘Global Trafficking Prevalence Data Distorts Efforts to Stop Patterns of Human Trafficking’ (2017) 8 *Anti-Trafficking Review* 161; Gross & Thomas (n 29).

³³ L Murphy, ‘The New Slave Narrative and the Illegibility of Modern Slavery’ (2015) 32 *Slavery and Abolition* 382, 388.

³⁴ Bales (n 29) 6.

³⁵ Bales was a co-founder of Free the Slaves in Washington, DC, and he was the lead author of the Global Slavery Index (GSI) in 2013, 2014 and 2016. He now serves on the GSI Expert Working Group. He is a professor of contemporary slavery and research director of the Rights Lab at the University of Nottingham. He served as a consultant to the UN’s Global Programme Against Trafficking in Human Beings, and he edited an anti-human trafficking toolkit for the UN. In addition to *Disposable People* (n 29) his books include *Ending Slavery: How We Free Today’s Slaves* (University of California Press 2007) and *Blood and Earth: Modern Slavery, Ecocide, and the Secret to Saving the World* (Spiegel & Grau 2016). He currently sits on the Freedom Fund and is director of research at the Nottingham Human Rights Lab.

³⁶ A Choi-Fitzpatrick, ‘To Seek and Save the Lost: Human Trafficking and Salvation Schemas among American Evangelicals’ (2014) 2 *European Journal of Cultural and Political Sociology* 119; M Leary, ‘Religious Organizations as Partners in the Global and Local Fight against Human Trafficking’ (2018) 16 *Review of Faith and International Affairs* 51.

³⁷ R Broad & N Turnbull, ‘From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK’ (2017) 25 *European Journal on Criminal Policy and Research* 119, 127.

³⁸ Choi-Fitzpatrick (n 36); F Kurasawa, ‘Show and Tell: Contemporary Anti-Slavery Advocacy as Symbolic Work’ in A Bunting & J Quirk (eds), *Contemporary Slavery: Popular Rhetoric and Political Practice* (Cornell University Press 2017) 170.

world, is a US-based Christian evangelical organisation that mobilises churches and their members to support its model for ending slavery, which is to ‘rescue and restore victims, bring criminals to justice, and strengthen justice systems’.³⁹ Developed by the Catholic Bishops’ Conference of England and Wales in 2014, the Santa Marta Group is an alliance of international police chiefs and Catholic bishops who work with civil society to eradicate human trafficking and modern-day slavery.⁴⁰ Faith functions as a motivating force in the new abolitionists’ network; it provides a framework for understanding the problem of modern slavery and imagining its solution.

The bicentenaries of the abolition of the slave trade by Britain in 1807 and by the United States in 1808 fuelled campaigns to expand *human trafficking* to include all forms of modern slavery. A flurry of anti-slavery organisations, many of which had strong ties to religious organisations, were established, including Stop the Traffik in 2006, Not for Sale and Alliance to End Slavery and Trafficking in 2007 and End Slavery Now in 2008.⁴¹ On their bicentenaries, the British and US governments linked the fight against human trafficking to the abolitionist movement to end the slave trade. The United Kingdom published an Action Plan on Trafficking, invoking as a historical precedent the Slave Trade Act 1807, which abolished the slave trade in the British Empire.⁴² The United States introduced the Wilberforce Trafficking Victims Protection Reauthorization Act of 2008,⁴³ which was named after the evangelical British politician and philanthropist who championed the end of the British slave trade.⁴⁴

The broad rubric of modern slavery enabled new abolitionists to advocate for a multifaceted approach to modern slavery. They saw it not simply as a problem in need of a legal solution but also as ‘a problem of economic development, migration, gender, prejudice, corruption, and political priorities and will’.⁴⁵ They emphasised the role of social movements, religious organisations, governments and intergovernmental actors (from the UN to the World Bank) in the fight to end different forms of modern slavery, such as forced labour, sex trafficking, forced marriage or child soldiers.

But what was distinctive about the new abolitionists’ approach is that they regarded business and consumers as key actors in the fight against modern slavery.⁴⁶ They proposed laws to confiscate goods or services made or provided by exploited labour and urged the adoption of naming and shaming campaigns to unleash consumer power to end modern slavery in supply chains. Their emphasis on the role of Christian

³⁹ International Justice Mission, ‘Slavery Today’, <<https://www.ijm.org/>> accessed 26 August 2020.

⁴⁰ Santa Marta Group: Church and Enforcement Combatting Modern Slavery, ‘About’, <<https://web.archive.org/web/20210420161917/https://santamartagroup.com/>> .

⁴¹ Chuang (n 3) 627; J O’Connell Davidson, *Modern Slavery: The Margins of Freedom* (Palgrave Macmillan 2015) 7; G LeBaron & A Rümkorf, ‘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’ (2017) 8 *Global Policy* 12, 15.

⁴² J Fudge & K Strauss, ‘Migrants, Unfree Labour, and the Legal Construction of Domestic Servitude’ in C Costello & M Freedland (eds), *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford University Press 2014) 160.

⁴³ Pub L No 110-457.

⁴⁴ Chuang (n 3) 624.

⁴⁵ K Bales & A Choi-Fitzpatrick, ‘The Anti-Slavery Movement: Making Rights Reality’ in Brysk & Choi-Fitzpatrick (eds) (n 25) 201.

⁴⁶ *Ibid* 210–14.

abolitionists and liberal nations in abolishing the Atlantic slave trade provided a historical prototype of benevolent paternalism that was irresistible to key actors in the emerging global governance network.⁴⁷ They cast modern slavery as a moral imperative that transcended political or economic interests.⁴⁸ By defining slavery as a ‘unique moral aberration’, the new abolitionist discourse, like that of their nineteenth-century forbearers, gave ‘sanction to the prevailing economic order’.⁴⁹ In this discourse, the focus is on the actions of individual evildoers rather than on the broader social relations and institutional configurations that create the conditions in which unfree labour is propagated.

The broad range of practices caught under the umbrella of *modern slavery* also provided room for a diverse group of organisations and actors to take different approaches to the same problem and to focus on different types of modern slavery. The multifaceted approach favoured by international organisations accommodates a hard-line criminal approach to prosecuting and incarcerating sex traffickers with a focus on the human rights of victims and the labour rights of migrant workers. The legal assemblage of jurisdiction sorts different governance projects such as transnational sex trafficking and forced labour in supply chains into different institutions and, in doing so, keeps them from clashing.⁵⁰ It also reinforces gendered borders between different forms of unfree labour. Sexual exploitation and prostitution, which predominantly involve women and girls as victims, are treated differently from labour exploitation, where most of the victims are men.

In 2012, US president Barack Obama declared that *modern slavery* was the ‘true name’ of human trafficking. He claimed that it ‘ought to concern every business, because it distorts markets’ and ‘every nation, because it endangers public health and fuels violence and organized crime’.⁵¹ Under the Obama administration, the government’s approach to human trafficking shifted course away from prostitution and sexual exploitation and towards labour exploitation as the focus moved away from transportation across international borders to exploitation at home. Workers’ rights groups and unions were thus drawn into the anti-trafficking advocacy network.⁵²

In the United Kingdom, the modern slavery frame was promoted by the Centre for Social Justice, a think tank established by a prominent Conservative politician, Iain Duncan-Smith, and influenced by the Catholic Church.⁵³ In 2013, it released *It Happens Here: The Shocking Reality of Modern Slavery in the UK*, which put pressure on the Conservative-Liberal Democrat coalition government to enact legislation.⁵⁴ Theresa May, who at that time was home secretary, sponsored the Modern Slavery Act

⁴⁷ O’Connell Davidson (n 41) 11–12; Quirk (n 28) 248.

⁴⁸ Walk Free, *Measurement, Action, Freedom 2019* (Minderoo Foundation 2019) 10 <<https://www.globalslaveryindex.org/resources/downloads/>> .

⁴⁹ D Brion Davis, ‘The Problem of Slavery in the Age of Revolution, 1770–1823’ in T Bender (ed) *The Antislavery Debate* (University of California Press 1992).

⁵⁰ Valverde (n 12) 145.

⁵¹ B Obama, ‘Remarks by the President to the Clinton Global Initiative’ (25 September 2012) <<https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>> accessed 27 April 2021.

⁵² Chuang (n 3) 622.

⁵³ Broad & Turnbull (n 37) 127.

⁵⁴ The report was funded by Manpower Group and the Qatar Foundation.

2015, which consolidated the discrete crimes included under the umbrella of modern slavery and required large corporations to disclose the efforts they had made to detect and eliminate modern slavery in their businesses and supply chains.

Modern slavery had become part of a broader governance project to reinforce the country's national identity. Celebrating the Modern Slavery Act's first anniversary in 2016, Prime Minister May declared: 'Just as it was Britain that took an historic stand to ban slavery two centuries ago, so Britain will once again lead the way in defeating modern slavery and preserving the freedoms and values that have defined our country for generations'.⁵⁵ The legislation was also connected to the United Kingdom's 'hostile environment' for 'illegal' migration.⁵⁶

Whilst key states and activist networks were adopting the modern slavery frame, an epistemic community of experts on modern slavery was being established. Jean Allain, a professor of international law, set up the Research Network on the Legal Parameters of Slavery. Consisting of academic researchers, including Kevin Bales, and representatives of Free the Slaves and Anti-Slavery International, its goal was to develop an understanding of the definition of slavery provided in the 1926 Convention for the Abolition of Slavery,⁵⁷ a definition suitable for the contemporary context that could be used by courts, states, civil society organisations and international institutions.⁵⁸

The challenge was to provide a meaningful definition of slavery in a context where abolition has already taken place and legal slavery no longer exists. Taking the convention's definition of slavery as 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised' as its starting point, the research network emphasised control tantamount to slavery as the critical element.⁵⁹ In 2012, it launched the Bellagio-Harvard Guidelines on the Legal Parameters of Slavery, which explained that the exercise of control is typically 'supported by and obtained through means such as violent force, deception and/or coercion' and that, to constitute slavery, the control must 'significantly deprive that person of his or her individual liberty, with the intent of exploitation through the use, management, profit transfer or disposal of that person'.⁶⁰ The goal of the guidelines is to 'unpack the 1926 definition of modern slavery' to give it heft both as a legal and advocacy tool.⁶¹

⁵⁵ T May, 'My Government Will Lead the Way to End Modern Slavery' *The Telegraph* (30 July 2016) <<https://www.telegraph.co.uk/news/2016/07/30/we-will-lead-the-way-in-defeating-modern-slavery/>> .

⁵⁶ J Fudge, 'Illegal Working, Migrants and Labour Exploitation in the UK' (2018) 38 *Oxford Journal of Legal Studies* 557.

⁵⁷ Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926, (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253.

⁵⁸ J Allain, 'Contemporary Slavery and Its Definition in Law' in Bunting & Quirk (eds) (n 38).

⁵⁹ Ibid.

⁶⁰ '2012 Bellagio-Harvard Guidelines on the Legal Parameters of Slavery', in J Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press 2012) 375, Guideline 2.

⁶¹ Allain (n 58) 37. Focusing on Sedex, a platform for the sharing of social audit data, Galit Sarfaty examines the 'chain of translation' by which vague legal definitions are put into practice by corporations governed by modern slavery laws that require disclosure of risks of modern slavery in their supply chains.

New abolitionists and the international human-rights advocacy network recast human trafficking as a specific form of modern slavery. Key states such as the United Kingdom and the United States, along with international organisations such as United Nations Office on Drugs and Crime, adopted this broader framing of the problem,⁶² and a community of scholars and prominent abolitionists provided legal and normative support. Modern slavery was portrayed as a form of evil and a human rights violation that deprived individuals of their freedom. But it was the entry of philanthrocapitalists and the transnational corporations they represent that catalysed the assemblage of a global governance apparatus committed to eliminating slavery in supply chains.

Metrics, networks and money: Walk Free's governance strategy

Since its inception, Walk Free has developed metrics, established an elite epistemic network and used money to shape the global anti-slavery agenda. Andrew Forrest has demonstrated a keen understanding of the importance of counting, measuring and valuing as techniques for identifying a social problem and for taking ownership of it.⁶³ In this case, the challenge was how to make slavery—a 'hidden' crime—legible and measurable. Measurement has long been the core focus of Walk Free's work; Forrest subscribes 'to the belief that if you can't measure something, you can't fix it'.⁶⁴ As one of its first steps, Walk Free hired Kevin Bales to develop and produce a Global Slavery Index (GSI), which ranks countries based on the prevalence of modern slavery in their territories, their citizens' vulnerability to it and their response.

The first GSI, produced and published by Walk Free in 2013, explained that modern slavery encompasses human trafficking, forced labour, slavery and slavery-like practices (a category that includes debt bondage, forced or servile marriage and sale or exploitation of children, including in armed conflict).⁶⁵ According to Walk Free, what is common to these different practices is that 'victims of modern slavery have their freedom denied, and are used and controlled and exploited by another person for profit, sex, or the thrill of domination'.⁶⁶ The 2016 index also emphasised the element of control, noting that *modern slavery* refers to situations 'with treatment akin to a farm

G Sarfaty, 'Translating Modern Slavery into Management Practice' (2020) 45 *Law and Social Inquiry* 1027.

⁶² Gross & Thomas (n 29) 111.

⁶³ S Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking* (University of Chicago Press 2016); K Rittich, 'Representing, Counting, Valuing: Managing Definitional Uncertainty in the Law of Trafficking' in P Kotiswaran (ed), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery* (Cambridge University Press 2017) 255.

⁶⁴ *Measurement, Action, Freedom 2019* (n 48) 5.

⁶⁵ Walk Free, *Global Slavery Index 2013* (Minderoo Foundation 2013) <https://resourcecentre-drupal.savethechildren.net/node/7905/pdf/1688_globalslaveryindex_2013_download_web1_original.pdf> (GSI 2013). The ILO's Convention concerning Forced or Compulsory Labour (adopted 28 June 1930, entered into force 1 May 1932) art. 2 defines forced labour as 'work or service which is exacted from any person under the menace of any penalty and for which said person has not offered himself voluntarily.' It identifies it as a serious crime.

⁶⁶ GSI 2013 (n 65) 10.

animal’.⁶⁷ This understanding of modern slavery is similar to the definition of slavery in the Bellagio-Harvard Guidelines.

Initially, the GSI Index competed against the measuring and ranking systems of the US government, the International Labour Organization (ILO) and the International Organization for Migration (IOM). Each adopted a different approach to measuring trafficking, forced labour and modern slavery, and each approach reflected different definitions that stemmed from political as much as conceptual and technical choices.⁶⁸ In 2013, the GSI’s estimate of the extent of modern slavery—29.8 million people globally—significantly exceeded the ILO’s estimate of forced labour and human trafficking, which it pegged at 18.7 million.⁶⁹ In each subsequent edition of the GSI, the number of slaves in the world increased—from 35.8 million in 2014 to 45.8 million in 2016. Despite attracting a great deal of criticism for its flimsy methodology and earning a ‘Pinocchio’ ranking by the *Washington Post*’s Fact Checker Column, the GSI was widely taken up by ‘the global elite of governments, international organisations, philanthropists and others’.⁷⁰ In the face of increasing criticism of its methodology, Walk Free joined forces with the ILO and IOM in 2017 to develop the joint Global Estimates of Modern Slavery. This partnership significantly boosted the index’s credibility and legitimacy. The ILO regards the 2017 Global Estimates as providing the ‘benchmark figures against which progress of global efforts to eradicate modern slavery can be measured’.⁷¹ The GSI is now a leading global policy tool, despite continued criticisms of its methods.⁷²

What is striking about the Global Estimates is the sheer enormity of the problem of modern slavery—an estimated 40 million people were victims of modern slavery in 2016. Putting the size of the problem into historical perspective, the chief of staff of the Organisation for Economic Co-operation and Development claimed that the number of modern slaves in the world was ‘nearly four times the total number of Africans sold in

⁶⁷ Walk Free, *Global Slavery Index 2016* (Minderoo Foundation 2016) 10 <<https://legacy.globalslaveryindex.org/download/>> .

⁶⁸ Merry (n 63) 299; R Weitzer, ‘New Directions in Research on Human Trafficking’ (2014) 653 *Annals of the American Academy of Political and Social Science* 6; Rittich (n 63); A Guth, R Anderson, K Kinnard & H Tran, ‘Proper Methodology and Methods of Collecting and Analyzing Slavery Data: An Examination of the Global Slavery Index’ (2014) 2 *Social Inclusion* 14; A Gallagher, ‘What’s Wrong with the Global Slavery Index?’ (2017) 8 *Anti-Trafficking Review* 90.

⁶⁹ Dottridge (n 32) 76; N Phillips, ‘The Politics of Numbers: Beyond Methodological Challenges in Research on Forced Labour—What Is Forced Labour? A Practical Guide for Humanities and Social Science Research’ in G LeBaron (ed), *Researching Forced Labour in the Global Economy: Methodological Challenges and Advances* (Oxford University Press 2018) 47.

⁷⁰ Phillips (n 69) 46; G LeBaron, ‘The Coming and Current Crisis of Indecent Work’ in C Hay & T Hunt (eds), *The Coming Crisis* (Palgrave Macmillan 2018); G Kessler, ‘The False Claim That Human Trafficking Is a “\$9.5 Billion Business” in the United States’ *Washington Post* (2 June 2015) <<https://www.washingtonpost.com/news/fact-checker/wp/2015/06/02/the-false-claim-that-child-sex-trafficking-is-a-9-5-billion-business-in-the-united-states/>> .

⁷¹ D Mücke, ‘40.3 Million Slaves? Four Reasons to Question the New Global Estimates of Modern Slavery’, OpenDemocracy.com (BTS Policy Brief No 1, 2018) 1 <https://cdn-prod.opendemocracy.net/media/documents/Mugge_4_reasons_to_question_GEMS.pdf> .

⁷² Ibid. For a discussion of the GSI methodology and estimates of modern slavery, see T Landman, ‘Measuring Modern Slavery: Law, Human Rights, and New Forms of Data’ (2020) 42 *Human Rights Quarterly* 303.

the Americas during the four centuries of the transatlantic slave trade'.⁷³ Of the total number of modern slaves, 25 million are in forced labour and 15 million are in forced marriage. Women and girls are estimated to account for 71 per cent of all victims of modern slavery, and debt bondage is estimated to have affected half of all victims of forced labour imposed by private actors. These estimates, which are treated as authoritative, help to construct the crime of modern slavery, its victims and the extent of the problem.

The Global Estimates were the basis of Walk Free's revamped 2017 GSI, which is broken into two components. Its Vulnerability Model is widely treated as the source of 'official' statistics on the extent, types and location of modern slavery.⁷⁴ It provides a risk score for 167 countries based on an analysis of data covering 23 risk variables across five major dimensions. These statistics are brought to life on Walk Free's website through vivid pictures of modern slaves in their work environment; information about the steps each government has taken to combat modern slavery; and maps of its distribution across the globe. Africa is covered in red, indicating the highest risk, and the Middle East and most of Asia are in shades of red and orange. Lighter shades in South America and white across western Europe, northern America, Australia and New Zealand conjure an image of 'the Global North metaphorically shedding light onto the dark parts of the world where slavery still flourishes'.⁷⁵

Walk Free also provides a Government Response Index that assesses the legal, policy and programmatic actions that 181 governments are taking to respond to modern slavery. The index is in keeping with its self-proclaimed goal to become 'the leading non-government, non-business organisation to independently assess each country's progress towards United Nation's Sustainable Development Goal 8.7', which is to eliminate modern slavery and child labour by 2030.⁷⁶ Condemning the lack of official indicators to determine progress, in 2019 Walk Free released *Measurement, Action, Freedom*, which assesses the responses of 183 governments to modern slavery. Adopting 'situational crime prevention theory' as its conceptual frame for tracking progress, Walk Free assesses data relating to 102 indicators to evaluate and rank each country's progress.⁷⁷ These indicators tend to reflect modern slavery's anti-trafficking heritage in criminal law. Most of the indicators refer to victim identification, criminal prosecution and governmental coordination, although some address broader institutional and social risk factors and policies to prevent sourcing slave-made goods and services. The rankings tend to reinforce the image of richer countries in the Global North bringing pressure to bear on less civilised countries in the Global South, reformatting the old trope that ending slavery is the 'white man's burden'.⁷⁸ The United Kingdom, the Netherlands and the United States lead the country rankings, and Australia is not far behind, whilst North Korea, Eritrea, Burundi, the Central African

⁷³ G Ramos, 'Abolish Modern Slavery!' *OECD Observer* (25 January 2018) <https://www.oecd-ilibrary.org/economics/abolish-modern-slavery_724a5be3-en>.

⁷⁴ LeBaron (n 70); Phillips (n 69).

⁷⁵ S McGrath and S Watson, 'Anti-Slavery as Development: A Global Politics of Rescue' (2018) 93 *Geoforum* 22, 26.

⁷⁶ *GSI 2018* (n 2).

⁷⁷ *Measurement, Action, Freedom 2019* (n 48) 28. This approach focuses on the setting for the crime rather than the characteristic of offenders.

⁷⁸ K Kempadoo, 'The Modern-Day White (Wo)man's Burden: Trends in Anti-Trafficking and Anti-Slavery Campaigns (2015) 1 *Journal of Human Trafficking* 8.

Republic, Afghanistan, Mauritania, South Sudan, Pakistan, Cambodia and Iran hold the lowest ranks. By naming and shaming countries that tolerate slavery, the Government Response Index attributes moral blame and portrays slavery as a premodern problem that happens in evil or backward countries far away ‘over there’.

Walk Free has assembled a global anti-slavery network that comprises governments, international organisations, religious leaders, NGOs, businesses and academics. Its emphasis on recruiting both religious and business leaders is distinctive. Noting that over 80 per cent of the world’s population is religious, it seeks to engage and unite faith leaders around the world to take spiritual and practical action to eradicate modern slavery. In 2014, Forrest established the Global Freedom Network, a faith-based group led by Pope Francis, the Archbishop of Canterbury and the Grand Imam of al-Azhar in which religious leaders around the world unite to end modern slavery.⁷⁹ Walk Free is also the secretariat for the Bali Process Government and Business Forum, which brings together government ministers and senior business leaders to determine policies for addressing modern slavery and the worst forms of child labour in the Asia-Pacific region. This new abolitionist foundation has wide support, including from the US and Australian governments, the Association of Southeast Asian Nations and the United Nations Inter-Agency Project on Human Trafficking. The composition of the network suggests that eradicating modern slavery transcends partisan approaches and traditional conflicts of interest—it is a moral question.⁸⁰

Business is depicted as playing a leading role in the fight against modern slavery, not just in financing initiatives but also in developing and implementing strategies to combat it. Forrest and Walk Free are strong proponents of private initiatives and public-private partnerships. In 2013, Forrest’s charitable foundation, Minderoo, together with two private foundations (Humanity International, which was set up by the founder of eBay, and Legatum, the offspring of a Dubai-based private investment firm) established a new private Freedom Fund to support efforts to eradicate modern slavery. Allocating US\$30 million to the fund, the three foundations set a goal of raising and spending US\$100 million to combat slavery by 2020.⁸¹ The fund’s mission is to attract funding and innovative investors to frontline efforts to eradicate modern slavery in countries and sectors where it is most prevalent.⁸² Bales, who is on the Freedom Fund’s board of directors, estimated in 2007 that the cost of extirpating slavery would amount to about US\$13.5 billion over a twenty-five-year period.⁸³ This figure has been cited by Walk Free researchers to castigate OECD member states for failing to provide sufficient funding.⁸⁴ As more money is distributed by this public-private partnership to frontline organisations, the call for metrics to determine the success of the initiatives escalates.

⁷⁹ Chuang (n 3).

⁸⁰ A Bunting and J Quirk, ‘Contemporary Slavery as More Than Rhetorical Strategy? The Politics and Ideology of a New Political Cause’ in Bunting & Quirk (eds) (n 38) 19.

⁸¹ M Dottridge, ‘Trafficked and Exploited: The Urgent Need for Coherence in International Law’ in Kotiswaran (ed) (n 63) 76; M Ucnikova, ‘OECD and Modern Slavery: How Much Aid Money is Spent to Tackle the Issue?’ (2014) 3 *Anti-Trafficking Review* 148.

⁸² Freedom Fund, ‘Our Vision Is a World Free of Slavery’ <https://freedomfund.org/wp-content/uploads/FF_2PAGE_2018_WEB1.pdf>.

⁸³ K Bales, ‘What Predicts Human Trafficking?’ (2007) 31 *International Journal of Comparative and Applied Criminal Justice* 269.

⁸⁴ Ucnikova (n 81) 146.

Walk Free created the Global Fund to End Modern Slavery (GFEMS) to ‘coordinate a coherent global strategy to address modern slavery’.⁸⁵ The GFEMS’s goal is to raise US\$1.5 billion (£1.1 billion) to eliminate modern slavery by making it economically unprofitable. According to its first CEO, a former vice-president of global procurement for ExxonMobil, the organisation believes that ‘sustainably ending modern slavery will require market-based solutions and proactive business leadership’.⁸⁶ The GFEMS was endorsed early on by the ILO, and in 2017 it received substantial funding from the US Department of State and the UK Department for International Development. Organisations, known as partners, that receive financial assistance from the GFEMS must support the fund’s Theory of Change, which posits that ‘there is demonstrable, long term economic value to be unlocked by eliminating forced labor from supply chains’.⁸⁷ The idea is that once governments ‘raise the cost of slavery by ending impunity (via effective laws/policies, civil remedies and criminal proceedings) for all forms of trafficking’, the private sector will be free to create and capture ‘value by eliminating forced labour from supply chains’.⁸⁸ The dividends of freedom can then be used to provide alternative livelihoods for vulnerable individuals. This approach chimes with attempts to prove that ‘slavery is bad for business’. Since Adam Smith wrote about the economic costs of slavery in the late eighteenth century, the assumption has been that chattel slavery is not as profitable as free wage labour. Bales, amongst others, has embraced this position, arguing that forced labour not only involves firm- and market-level inefficiencies but also imposes enormous opportunity costs and negative externalities on the population.⁸⁹

This emphasis on the market as a solution is a theme in other public-private partnerships established to combat modern slavery. Launched at the UN in 2017, the Financial Sector Commission on Modern Slavery and Human Trafficking, known as the Liechtenstein Initiative, was formed as a public-private partnership between Liechtenstein, Australia and the Centre for Policy Research at the United Nations University. It has now established Finance Against Slavery and Trafficking (FAST) to develop initiatives to mobilise and promote responsible investment in the financial sector, such as tracking illicit financial flows to capture profits from modern slavery and making good-faith efforts to address forced labour risks in supply chains. The commission’s 2019 report, *A Blueprint for Mobilizing Finance against Slavery and Trafficking*, depicts modern slavery as ‘a tragic market failure’. Slavery, it argues, deprives those enslaved of an estimated US\$150 billion for their labour each year and

⁸⁵ C Mortimer, ‘US and UK Pledge Millions for Largest-Ever Fund to Fight Modern Day Slavery’, *The Independent* (25 January 2018) <<https://www.independent.co.uk/news/world/politics/modern-slavery-global-fund-davos-us-uk-government-a8176801.html>>.

⁸⁶ Ibid.

⁸⁷ Global Fund to End Modern Slavery, ‘Theory of Change’ <<https://web.archive.org/web/20200620070012/https://static1.squarespace.com/static/5a60c34a0abd04e55389efa6/t/5a95b4c7e2c4838425aa489b/1519760584412/GFEMS+ToC.pdf>> accessed 23 April 2021.

⁸⁸ Global Fund to End Modern Slavery, ‘Funding Principles’ <<https://www.gfems.org/funding-principles>>.

⁸⁹ MN Datta & K Bales, ‘Slavery Is Bad for Business: Analyzing the Impact of Slavery on National Economies’ (2013) 19 *Brown Journal of World Affairs* 205; D Raigrodski, ‘Creative Capitalism and Human Trafficking: A Business Approach to Eliminate Forced Labor and Human Trafficking from Global Supply Chains’ (2016) 8 *William and Mary Business Law Review* 71.

creates unfair competition by lowering labour costs.⁹⁰ It also represents a labour market failure by failing to provide decent work and employment opportunities for all.⁹¹ Emphasising the need for information about the risks of modern slavery to correct these market failures, the report recognised that additional regulatory interventions might be required to generate risk identification at the individual firm level, which could then be used to produce ‘comparable market information’ that would ‘eventually impact pricing signals and costs of capital at the individual enterprise level’.⁹²

Public-private partnerships, exemplified by the Freedom Fund, GFEMS and FAST, consist of interlinking and overlapping individuals and organisations, and philanthrocapitalists such as Forrest and their charitable foundations are at their centre.⁹³ Together, they have assembled a global anti-slavery governance apparatus built on the idea that slavery is a market failure. The Global Slavery Index both identifies the problem of modern slavery and ranks governments in terms of their progress in solving it. It collects data, develops indicators, depicts the problem and identifies best practices. This knowledge is circulated through an apparatus that also creates financial incentives for other actors in the broader assemblage to adopt its understanding of the problem and its preferred solutions. Modern slavery is depicted as a problem of market failure, the solution to which is corporate engagement and free markets. As we shall see in the discussion of supply chains that follows, this apparatus brings together disciplinary and biopolitical technologies that have the capacity to operate across national borders.

Neoliberal governmentality and hybrid sovereignty: governing supply chains

In his keynote address to the G20 labour and employment ministers meeting in 2017, John Ruggie, who drafted the UN’s Guiding Principles on Business and Human Rights, advised that the gap between the scale and impact of multinational corporations and the capacity of states to manage the adverse consequences of globalisation could be narrowed ‘either through more effective cooperation or through roll-back, otherwise known as protectionism’.⁹⁴ Multinational corporations that shift production across national borders to reduce labour costs whilst simultaneously increasing control over labour epitomise this governance gap. At the G20 meeting, the ministers agreed to work towards developing policy frameworks for fostering decent work and sustainable, slavery-free global supply chains.⁹⁵ To support this undertaking, the UK government

⁹⁰ Liechtenstein Initiative, ‘A Blueprint for Mobilizing Finance against Slavery and Trafficking’, (September 2019) 2 <<https://www.fastinitiative.org/the-blueprint/>>.

⁹¹ Ibid.

⁹² Ibid 81.

⁹³ Bales is on the board of the Freedom Fund, and Jean Baderschneider was a member of the Liechtenstein Initiative’s commission.

⁹⁴ Ruggie was the UN’s special representative for business and human rights from 2005 to 2011. J Ruggie, ‘Making Economic Globalization Work for All: Achieving Socially Sustainable Supply Chains’ (Keynote address, G20 Labour & Employment Meeting, Hamburg, Germany, 15 February 2017) <<https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crj/files/Hamburg%20BG20%202017.pdf>>.

⁹⁵ G20 Labour and Employment Ministers Meeting—Germany, ‘Ministerial Declaration: “Towards an Inclusive Future: Shaping the World of Work”’ (19 May 2017) <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/multilateral-system/g20/WCMS_554414/lang--en/index.htm>.

launched a Call to Action to End Forced Labour, Modern Slavery and Human Trafficking and urged governments to work ‘with business to eliminate such practices from global supply chains; whilst addressing government procurement practices, and building a culture of consumer awareness which supports such action and promotes decent work’.⁹⁶

Walk Free moved quickly to fill the knowledge gap about supply chains and to propose a solution to the governance gap.⁹⁷ Its 2018 Global Slavery Index examined ‘the issue of modern slavery from the perspective of where ... the products of the crime are sold and consumed’. Remarking that ‘too often, the onus of eliminating modern slavery is placed only on the countries where the crime is perpetrated’, Walk Free focused for the first time on key supply chains to G20 countries to understand ‘the transfer of risk from source countries to consumer countries’.⁹⁸ This knowledge helped foster an elite consensus that the best way to tackle modern slavery in supply chains is through mandatory disclosure and due diligence obligations. This solution rests on a specific understanding of the problem of modern slavery and of the role of supply chains in its production and circulation, one that characterises the cause of the problem as a combination of market failure and the territorial limits of the sovereign state.

Walk Free assembled an ‘ethical business’ *dispostif* that created and then distributed knowledge about modern slavery and how best to eradicate it from supply chains. It established an elite network, an apparatus, that is designed to influence public opinion, policy and legislation. In this *dispostif*, modern slavery results from a combination of market failure *and* the limited jurisdiction of nation states to deal with social problems that cross national borders. Through the GSI, which defines, depicts and measures the problem of modern slavery and the effects of state action, Walk Free has created a powerful technology that produces knowledge and shapes policy. This *dispostif* also positions large multinational firms and their financial backers as ethical actors since only they are free to exercise their power across national borders. The elements of this ethical-business *dispostif* are depicted below.

⁹⁶ United Kingdom, Department for International Development, ‘A Call to Action to End Forced Labour, Modern Slavery and Human Trafficking’ (20 September 2017) <<https://www.gov.uk/government/publications/a-call-to-action-to-end-forced-labour-modern-slavery-and-human-trafficking>>. On 19 September 2017, the call to action was launched during the 72nd meeting of the UN General Assembly.

⁹⁷ *GSI 2018* (n 2) 102.

⁹⁸ *Ibid* 102, 103.



Figure 1: Ethical-business dispositif

Harnessing the Power of Business, released by Walk Free in 2016, exemplifies this way of thinking. In the foreword to the report, Forrest portrays himself as an ethical business leader. He explains that after his daughter learned of the extent of modern slavery in the Asia-Pacific region he made a commitment as chairman of Fortescue Metals Group to deal with slavery in the mining conglomerate's global supply chain. He recounts how Fortescue's suppliers were asked to review their first- and second-order supply chains and to ensure there was no forced labour or slavery-type practices in them. Verité, a labour auditing expert, was hired to verify the suppliers' reports.⁹⁹

⁹⁹ A global leader in iron ore, Fortescue generated over US\$7.1 billion in revenue in 2016.

Forrest notes that not all business leaders voluntarily exercise due diligence to detect modern slavery and those who do can suffer a competitive disadvantage. According to him, ‘we punish those who put the time and effort into ensuring they have clean supply chains, whilst rewarding those who do nothing’.¹⁰⁰ Thus, he called on governments to introduce legislation requiring businesses to prepare a yearly slavery statement in which they disclosed the steps they have taken to ensure that their organisations and supply chains are slavery-free.

A guiding theme of Walk Free’s approach to modern slavery is the role it sees for government, which is to create a level playing field for ethical businesses. The beauty of mandatory disclosure, according to Walk Free, is that it enables ‘the court of public opinion’ to rank how organisations respond to the issues and permits investors and consumers to ‘lead with their wallets’.¹⁰¹ According to this view, once businesses disclose their and their suppliers’ practices, consumers and investors can exercise their individual moral choices with confidence. Over time, firms that do not take adequate steps to end slavery will lose both customers and capital. Business leaders, consumers and investors are cast as ethical subjects who want to follow their conscience and make ethical choices; the government’s role is to ensure that they have the information to do so.

Walk Free also underscores the comparative governance advantage businesses have over governments: ‘[B]usinesses are very used to operating across borders’, whereas ‘the government capacity tends to be confined with national borders’.¹⁰² Mandatory due diligence and disclosure laws can have an extraterritorial effect by creating incentives for business to eradicate slavery transmitted through transnational supply chains. In this way, state sovereignty can be extended beyond territorial borders by requiring multinational enterprises to take steps to ensure that slave-made goods do not infiltrate their supply chains, thereby preventing such goods from crossing national borders.

Advocates characterise modern slavery laws as a response to market failure, and they argue that eliminating slavery and thereby correcting market failure will be good for business.¹⁰³ The imposition of mandatory reporting or due diligence obligations on firms is supposed to narrow the governance gap. Mandatory-reporting requirements purport to discipline business through market pressure. Statutory due diligence obligations require companies to engage in some form of corporate social responsibility, such as certification schemes and private auditing, to verify the quality of the information provided. These obligations are part of a wider group of transnational governance tools, such as the 2011 United Nations Guiding Principles for Business and Human Rights and the revised OECD Guidelines for Multinational Enterprises, that have ‘emerged to spur corporate transparency and due diligence practices in global supply chains’.¹⁰⁴ These techniques seek to eliminate modern slavery from existing

¹⁰⁰ Walk Free, *Harnessing the Power of Business to End Modern Slavery* (Minderoo Foundation 2016) 1 <<https://cdn.walkfree.org/content/uploads/2020/10/06153843/Harnessing-the-power-of-business-to-end-modern-slavery-20161130-Final.pdf>>.

¹⁰¹ Ibid 2.

¹⁰² Ibid 16.

¹⁰³ Ethical Trading Initiative, ‘Modern Slavery Statement 2017/18’ <https://www.ethicaltrade.org/sites/default/files/shared_resources/ETI%20MS%20statement.pdf>.

¹⁰⁴ LeBaron & Rühmkorf (n 41) 172.

practices rather than changing those practices. It leaves the supporting multi-scalar legal framework—which consists of domestic contract and corporate law and international investment, trade and intellectual property laws—intact.¹⁰⁵ By making disclosure and due diligence mandatory, public authorities exercise their sovereignty over lead firms located in their territorial jurisdiction in the Global North to ‘leverage’ private governance for public purposes in the Global South.¹⁰⁶ At the same time, states also augment and validate corporate authority by outsourcing governance to multinational enterprises.

Big business in Australia, the United Kingdom and the United States has widely supported supply-chain disclosure legislation, and it has been enacted by governments in countries that are key sites for new abolitionists through the 2010 California Supply Chain Act,¹⁰⁷ the United Kingdom’s Modern Slavery Act 2015 and Australia’s Modern Slavery Act 2018 (Cth). Such legislation differs in terms of coverage; whether auditing is required; and the form, content and stringency of disclosure requirements.¹⁰⁸

Among the initiatives designed to place legal obligations on businesses to eliminate modern slavery, the reporting and transparency obligations are amongst the weakest. Although they are seen as providing hard sanctions in the form of state-enforced penalties for failing to report, they remain a form of reflexive regulation: the goal is to provide incentives for business to regulate itself.¹⁰⁹ The purpose of modern slavery laws is to enable individuals and investors in the Global North to align their ethical and economic choices.

Scaling up: reconfiguring sovereignty

Walk Free and its network have helped to shift global anti-slavery policy towards business and market-friendly forms of regulation to deal with slavery in global supply chains. This ethical-business apparatus—which comprises key states, big business, private-public partnerships, international institutions and philanthropocapitalists—deploys sovereign, disciplinary and biopolitical techniques to produce knowledge. It claims that slavery is bad for business and that business can help to eradicate modern slavery. Disclosure and due diligence requirements operate as ‘modes of biopolitical government aimed at limiting, channelling and directing life through corporate economic and political resources’.¹¹⁰ These laws are designed to enable individuals and investors to align their ethical beliefs with their economic choices without disrupting the existing structures of consumption and accumulation. Business leaders, consumers and investors are cast as ethical actors, and they are presented with an array of reports,

¹⁰⁵ Alessandrina (n 11).

¹⁰⁶ N Phillips, G LeBaron & S Wallin, ‘Mapping and Measuring the Effectiveness of Labour-Related Disclosure Requirements for Global Supply Chains’ (ILO Working Paper No 32, Geneva, 2018) 2 <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_632120.pdf>.

¹⁰⁷ Civil Code, Sec. 1714.43.

¹⁰⁸ Phillips et al (n 106).

¹⁰⁹ S Wen, ‘The Cogs and Wheels of Reflexive Law and Business Disclosure under the Modern Slavery Act’ (2016) 43 *Journal of Law and Society* 327.

¹¹⁰ J Barkan, ‘Law and the Geographic Analysis of Economic Globalization’ (2011) 35 *Progress in Human Geography* 589, 602.

indicators and rankings to assist them in making ethical choices that can simultaneously produce moral and economic value. Modern slavery supply-chain legislation is supposed to ensure that the market is an instrument of ethical consumption and accumulation. Public authority is best confined to levelling the playing field so that ethical subjects are not disadvantaged and to detecting and prosecuting the true villains, who actually exploit people. Sovereignty is rescaled and made transnational; governments delegate to multinational corporations the authority to enact borders to keep slave-made goods and services out of their transnational supply chains.

The ethical-business anti-slavery apparatus is an example of the emergence of a sovereign regime of governmentalities. The apparatus is a public-private partnership dominated by a few key actors, and faith and free markets provide the discursive frame for the problem of modern slavery. Devices such as the Global Slavery Index and technologies such as disclosure laws promote a neoliberal ethics of self and produce subject positions such as the ethical consumer and the unethical business. Imposing mandatory disclosure and due diligence requirements on lead businesses to enforce standards along the chain activates a type of extraterritorial sovereignty exercised by private for-profit corporate actors. Modern slavery laws instigate bordering practices by private for-profit actors, and they go hand in hand with the technique of naming and shaming countries that allow slavery to occur. These disciplinary and biopolitical mechanisms that operate across national borders call to mind the neocolonialism of the nineteenth century in which ‘evangelising missionaries from a handful of rich countries place[d] pressure on “uncivilised countries” to abandon unethical practices’.¹¹¹

The ethical-business *dispositif* recasts the neoliberal project ‘as an ethico-managerial strategy’ that connects corporate policies with moral norms and reconfigures them as managerial practices.¹¹² It emerged at a time when the legitimacy of global trade (best exemplified by supply chains) as the road to economic prosperity in the Global South came under stress. It is a strategic attempt to stabilise the existing neoliberal order.

This market failure approach to the problem of modern slavery is contested. From a critical political-economy perspective, supply chains are not conduits of unfree labour committed by bad actors located in the Global South; rather, lead firms located in the Global North and their associated management practices are the drivers of modern slavery. Nicola Phillips and Fabiola Mieres argue that lead firms, typically large multinational enterprises, generate intense competition along the supply chains they dominate, which results in labour cost-cutting pressures along the chain.¹¹³ The imperative within the supply chain is to assemble a particular kind of labour force and utilise it in a way that generates the maximum flexibility for the firm, limits the ability of workers to bargain in the labour process and maximises the return on capital. Research reveals that forced labour and slave-like conditions are not the outcomes of market failure but rather a predictable feature of many sectors and regions of the global

¹¹¹ M Dottridge (n 32).

¹¹² D Arnold & M Hess, ‘Governmentalizing Gramsci: Topologies of Power and Passive Revolution in Cambodia’s Garment Production Network’ (2017) 49 *Environment and Planning A: Economy and Space* 2183, 2189.

¹¹³ N Phillips & F Mieres, ‘The Governance of Forced Labour in the Global Economy’ (2015) 12 *Globalizations* 244.

political economy.¹¹⁴

Evidence supporting this critical perspective on global supply chains comes from an unlikely source—the World Bank. Its 2020 flagship report, *Trading for Development in the Age of Global Value Chains*, makes the astonishing admission that ‘the risk that firms from developing countries experience limited profits after becoming suppliers for global firms mirrors the rise in profits in the developed world’.¹¹⁵ Higher markups in firms located in developed countries and integrated into global supply chains have reduced labour’s share of income worldwide (as well as the share of capital amongst those firms integrated into global supply chains and located in developing countries).¹¹⁶ The gains are only partly passed on to consumers and suppliers; the real winners from global value chains are large international firms, primarily located in the Global North, which reduce their production costs.¹¹⁷ Despite evidence that gains are not ‘trickling down’ the supply chain, the World Bank advocates a ‘business as usual’ approach that promotes international trade agreements and flexible labour markets.

The problem with the ‘market failure’ story is that it ignores the possibility that profitable business and management practices for key firms in the Global North create the conditions that lead to modern slavery and forced labour lower down the chain in the Global South. Adding to scepticism that the market is the ‘solution’ to the problem of modern slavery is growing awareness that the use of disclosure legislation has not produced tangible results, despite the energy and money that has gone into promoting firm compliance and refining disclosure and reporting requirements.¹¹⁸ Indeed, research reveals that consumers did not do anything about the modern slavery in their consumption, even when identifying it as a significant moral issue.¹¹⁹

The shift towards robust reporting and due diligence requirements and imposing more stringent obligations on corporate officers reflects a growing scepticism, even among some members of the ethical-business anti-slavery apparatus, that corporate self-regulation is sufficient for addressing slavery in supply chains.¹²⁰ Binding due diligence, which imposes legal obligations on lead firms by making them responsible for standards across their supply chains, including subcontractors, is increasingly

¹¹⁴ A Mezzadri, ‘Class, Gender and the Sweatshop: On the Nexus between Labour Commodification and Exploitation’ (2016) 37 *Third World Quarterly* 1877; A Crane, G LeBaron, J Allen & L Behbahani, ‘Governance Gaps in Eradicating Forced Labor: From Global to Domestic Supply Chains’ (2019) 13 *Regulation and Governance* 86; LeBaron (n 70); B Anderson & B Rogaly, *Forced Labour and Migration to the UK* (Trades Union Congress Report, 2005) <http://sro.sussex.ac.uk/id/eprint/11418/1/Forced_Labour_TUC_Report.pdf>; S Barrientos, *Gender and Work in Global Value Chains: Capturing the Gains?* (Cambridge University Press 2019); N Phillips, ‘Unfree Labour and Adverse Incorporation in the Global Economy: Comparative Perspectives from Brazil and India’ (2013) 4 *Economy and Society* 171.

¹¹⁵ World Bank, *Trading for Development in the Age of Global Value Chains* (World Bank Group, 2020) 86.

¹¹⁶ Ibid 84–5.

¹¹⁷ Ibid 86.

¹¹⁸ Phillips et al (n 106) 28.

¹¹⁹ M Carrington, A Chatzidakis, & D Shaw, ‘Consuming Worker Exploitation? Accounts and Justifications for Consumer (In)action to Modern Slavery’ (2021) 35 *Work, Employment and Society* 432.

¹²⁰ Freedom Fund, ‘Freedom in the Supply Chain: Mobilising Solutions to Address Slavery throughout the Supply Chain Ecosystem’ <<https://freedomfund.org/wp-content/uploads/FF-supply-chains-strategic-plan-.pdf>>.

popular, especially after the enactment of the French Duty of Vigilance Law in 2017.¹²¹ The ILO chairs the working group on supply chains for Alliance 8.7 and together with the OECD has been producing knowledge about the extent of child labour and modern slavery in supply chains, and how best to combat it.¹²² Unlike other members of the ethical-business apparatus, the ILO is accountable to trade unions as well as business, and trade unions are suspicious of a purely business-friendly approach to combatting modern slavery.¹²³ In 2019, the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Maria Grazia Giammarinaro, released a report that called for the development and implementation of workers' grievance mechanisms that are legally enforceable to address abuse and exploitation in supply chains.¹²⁴ Dissatisfaction with the limited effectiveness of existing disclosure regulations has resulted in the consideration of a broader range of enforcement mechanisms, some of which are more interventionist in labour markets. As yet, however, it is not clear whether approaches such as the ILO's stronger emphasis on the role of labour standards and institutions such as trade unions and labour inspectorates will contribute to the unravelling of the ethical-business apparatus and its pursuit of market-based solutions to the problem of modern slavery.

Moreover, the bigger problem with these kinds of binding due-diligence initiatives, even those that incorporate worker grievance mechanisms, is that they tend to reinforce the prevailing, and narrow, understanding of the power dynamics in transnational value chains, which identify states and corporations in the Global North as the key change agents. In global value chain governance theory, power is seen as residing primarily in the lead firm and the focus is mainly on inter-firm interactions.¹²⁵ However, recent work explaining power and governance in global value chains identifies a broader range of actors, including those within and outside the chain (such as trade unions, social movements and governments) and a conception of power that extends beyond the coercive and material to normalising and discursive as critical for understanding the governance of transnational value chains.¹²⁶ This re-envisioning of the power dynamics of global value chains is critical as we are to consider other governance strategies, especially counter-hegemonic ones that simply do not reinforce

¹²¹ Law No. 2017-399 (27 March 2017), Duty of Vigilance of Parent and Instructing Companies; World Bank (n 115) 202; A Evans, 'Overcoming the Global Despondency Trap: Strengthening Corporate Accountability in Supply Chains' (2020) 27 *Review of International Political Economy* 658.

¹²² A Alsamawi, T Bule, G Saiovici, H Cook, C Galez-Davis & C Cappa, 'Measuring Child Labour, Forced Labour and Human Trafficking in Global Supply Chains: A Global Input-Output Approach' (Technical Paper, ILO, OECD, IOM, UNCF, 2019) <https://www.researchgate.net/publication/338502500_Measuring_child_labour_forced_labour_and_human_trafficking_in_global_supply_chains_A_global_Input-Output_approach_Technical_Paper2019>.

¹²³ Business and Human Rights Resource Centre, *Modern Slavery in Company Operations and Modern Supply Chains: Mandatory Transparency, Mandatory Due diligence and Public Procurement Due Diligence* (September 2017) <https://media.bhrrc.org/media/documents/Modern20slavery20in20company20operation20and20supply20chain_FINAL.pdf>.

¹²⁴ MG Giammarinaro, 'Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children' (18 July 2019) UN Doc A/74/189, 12.

¹²⁵ M Dallas, S Ponte & T Sturgeon, 'Power in Global Value Chains' (2020) 26 *Review of International Political Economy* 666.

¹²⁶ Ibid; S Ponte & T Sturgeon, 'Explaining Governance in Global Value Chains: A Modular Theory Building Effort' (2014) 21 *Review of International Political Economy* 195.

the prevailing ideas that the problem is one of market failure and the solution lies in the Global North. As an alternative to anti-slavery initiatives that operate as a form of ‘imperialistic humanitarianism’, Prabha Kotiswaran advocates a situated ‘development’ approach to modern slavery that begins by considering the configurations of the state, market and civil society in developing countries in order to develop strategies to address the economic, political and social structures that result in forced labour in specific locales.¹²⁷ Engaging and empowering subaltern actors in the Global South is absolutely critical to eradicating unfree forms of labour that support capital accumulation on a global basis and to questioning extra-territorial laws that treat ending slavery as a civilising project of the Global North.¹²⁸

¹²⁷ P Kotiswaran, ‘Trafficking: A Development Approach’ (2019) 72 *Current Legal Problems* 375.

¹²⁸ See the discussion of legalised corporate social responsibility as a form of ‘imperialistic international criminal law’ in G Baars, “‘It’s Not Me, It’s the Corporation’: The Value of Corporate Accountability in the Global Political Economy’ (2016) 4 *London Review of International Law* 127, 153.