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The Push For Corporate Human Trafficking Compliance Under The Trends of Global Legislation

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**THE PUSH FOR CORPORATE HUMAN
TRAFFICKING COMPLIANCE UNDER
THE TRENDS OF GLOBAL LEGISLATION**

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I. INTRODUCTION

In 2011, the United States House of Representatives described human trafficking, forced labor, and child labor as being “among the most egregious forms of abuse in the name of commercial profit. . . .”¹ Human trafficking and forced labor have been alive throughout the history of the world, but in the modern era, globalization and the ensuing growth of international corporations have brought the issue to the forefront of international corporate legislation.² Corporations view the fiscal benefits of forced and free labor as outweighing the social negatives.³ This has allowed for the process of human trafficking to remain a vital and pivotal source of cheap labor for international corporations.⁴ Forced labor, also known as “modern slavery,” may appeal to corporations because it can boost profit margins through untold returns from unpaid work.⁵ Yet, this is not solely at the fault of the corporations as modernization has enabled it, although possibly unintentionally.

Globalization has created supply chains around the world and has offered big businesses the opportunity to purchase goods, produce items, and sell them at increasingly cheaper rates.⁶ For private corporations that are not under the scrutiny of constant surveillance in the manner that states are, the use of forced labor allows for goods to be produced and sold at much lower costs. When forced labor is utilized, the added cost of wages for employees becomes irrelevant as they work under methods of indebted servitude or slavery. In 2005,

¹ Summary, H.R. 2759, 112th Cong. (2011), CRS, <https://www.congress.gov/bill/112th-congress/house-bill/2759> (last visited Feb. 19, 2019).

² See Dana Raigrodski, *Creative Capitalism and Human Trafficking: A Business Approach to Eliminate Forced Labor and Human Trafficking from Global Supply Chains*, 8 WM. & MARY BUS. L. REV. 71, 71-74 (2016).

³ See *id.*

⁴ See *id.*

⁵ See Sidharth Kara, *Supply and Demand: Human Trafficking in the Global Economy*, 33 HARVARD INTERNAT'L REV. 66, 67 (2011) at 67.

⁶ See Raigrodski, *supra* note 2 at 83.

the International Labour Organization found that as many as 12.3 million people were working under conditions of forced labor across the world.⁷ Of this 12.3 million, 9.8 million forced labor workers were held under private agents while the remaining 2.5 million were controlled by states.⁸ The issue within the private sectors in developed nations is not that they seek to act unethically in using forced labor produced products, but rather that by passing up this cheap labor “they might have to forgo a trade pact that could help their own producers and consumers. . . .”⁹ With the opportunity to produce goods at much lower costs, corporations are then passing on the principles of agency theory and maximizing profits as a duty to shareholders.¹⁰ However, the premises of the agency model are becoming outdated and should not represent the actions of modern private corporations,¹¹ as will be discussed later in this comment.

Courts have served as one of the only available outlets for people to fight against corporations that knowingly utilize human trafficking and forced labor to create products. However, little progress has been made. In *Dana v. Hershey Co.*, the plaintiff, Laura Dana, attempted to sue the Hershey Corporation to hold it responsible for selling products that were knowingly produced with the use of labor violations inside Hershey.¹² The case was dismissed as the court determined that Hershey did not engage in false advertising by failing to state that the product was produced with forced labor.¹³ The court ultimately ruled that omissions cannot be argued to be false advertising.¹⁴ *Dana v. Hershey* exemplifies that efforts to force responsibility onto corporations may fail when there are no sufficient policies in place to hold corporations accountable. *Dana v. Hershey Co.*

⁷ JEAN ALLAIN, *SLAVERY IN INTERNATIONAL LAW: OF HUMAN EXPLOITATION AND TRAFFICKING* 203 (2012).

⁸ *Id.* at 204.

⁹ Gary Burtless, *Workers' Rights: Labor Standards and Global Trade*, BROOKINGS (2001), <https://www.brookings.edu/articles/workers-rights-labor-standards-and-global-trade/>.

¹⁰ See Joseph L. Bower & Lynn S. Paine, *The Error at the Heart of Corporate Leadership*, HARVARD BUS. REV., May-June 2017, at 50, 52.

¹¹ *See id.*

¹² *Dana v. Hershey Co.*, 180 F. Supp. 3d 652, 654–58 (N.D. Cal. 2016).

¹³ *Id.* at 664–68.

¹⁴ *See generally id.*

demonstrates that state-based policy, policies made by corporations, and international norms that hold the authority to back up a threat of punishment are not always followed in all aspects, and can lead to what feels like consumer betrayal through what may seem to be misrepresentation towards consumers.

California has undertaken the task of combatting human trafficking in supply chains globally in order to overcome the negatives of human rights violations in business. In 2010, California publicly recognized that human trafficking is happening globally every day and, as a response, introduced a bill for compliance and reporting for California businesses to prevent the use of human trafficking.¹⁵ No other U.S. state has followed California's actions and implemented legislation addressing human trafficking concerns in this manner. Recently, France has put in place its own policy, with characteristics that go beyond regulations from the policies in California, in order to do much of the same for accountability in French business.¹⁶

This comment seeks to analyze the past, present, and possible future of human trafficking law in relation to supply chain management and corporate social responsibility. Part II will define human trafficking, supply chains, and corporate social responsibility and explain how these definitions may differ between corporations, legislative bodies, and international organizations that set the policies in motion. Part III will analyze and discuss the human trafficking policies created in California, the United Kingdom, France, and a political push in Australia that seeks to create a similar set of regulations in the near future. Part IV will approach the topic from the viewpoint of future policy goals and potentials based on growing norms within corporate social responsibility. Part V will elaborate on

¹⁵ See California State Senate, *California Transparency in Supply Chains Act*, S.B. 657 (2010), https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersafety/sb_657_bill_ch556.pdf. This senate bill became an effective law in 2012. See CAL. CIVIL CODE § 1714.43 (West 2012).

¹⁶ See Sarah A. Altschuller & Amy K. Lehr, *The French Duty of Vigilance Law: What You Need to Know*, FOLEY HOAG LLP (Aug. 2017), <http://www.csrandthelaw.com/2017/08/03/the-french-duty-of-vigilance-law-what-you-need-to-know/>.

how corporations can get ahead by complying with growing regulations before they are officially enacted. Finally, this comment concludes that while minimizing labor costs seems more economically feasible, human trafficking and forced labor will only harm a large corporation as norms arise and force regulations and compliance that can be crippling to corporations.

II. NECESSARY DEFINITIONS

In the 2011 United States Department of State “Trafficking in Persons Report”¹⁷ human trafficking is defined as a situation in which “one person obtains or holds another person in compelled service.”¹⁸ This definition includes factors that will be explored throughout this comment, such as involuntary servitude, slavery, debt bondage, and forced labor.¹⁹ The term “human trafficking” in the legislative sense referenced above will be used throughout this comment in order to address all of these aspects as a whole.

A. Forced Labor

Forced labor occurs when those in charge of hiring take advantage of those in need of financial help by using their weak position to coerce them into working for an indefinite amount of time.²⁰ Often times, those in need of financial help come from areas of poverty with very low employment rates.²¹ Another form of human trafficking, bonded labor, occurs when workers are indebted to the employers they work for as a means to raise money and pay back what they owe in order to be released from their work.²² However, bonded laborers are unable to pay back their employers with their low wages.²³ The use of forced labor also includes actions by the state in which debt bondage for coming to, or leaving, a state make it impossible for

¹⁷ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 2011 (2011)

¹⁸ *Id.* at 7.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *See id.*

people to avoid labor.²⁴ Other examples that pertain to possible trafficking in business and supply chains include involuntary domestic servitude and forced child labor.²⁵

B. Corporate Social Responsibility

Corporate social responsibility (“CSR”) is difficult to define because its uses are very malleable in the eyes of corporations. The lack of structure when defining corporate social responsibility can create large miscommunications between companies, governments, and national/international organizations. This comment will refer to social responsibility as “the general belief held by many that modern businesses have a responsibility to society that extends beyond the stockholders or investors in the firm.”²⁶ This definition of social responsibility focuses on large corporations and organizations acting in the domestic and international spectrums because they are “more visible and have more power.”²⁷ Also, this definition offers an outline for the structure of CSR and the very general facilities to which it is applied, and will be utilized more narrowly within this Comment in order to outline both the problem and solution.

While CSR has been a topic of discussion in business for decades, coming into the modern era it has again begun to change shape. CSR now includes not just a corporation’s duty to society as a whole, but more specifically its duty to protect the environment, protect society from its negative impacts, and a new sense that success for the company must be shared among all stakeholders and not just the shareholders.²⁸ The last of these evolving factors is the most important, as it demonstrates a modern-day global expectation and responsibility of businesses to address the concerns of all stakeholders, which rings through all workers and even the consumers.²⁹ This produces an environment in which it is beneficial for corporations that

²⁴ *Id.*, at 8.

²⁵ *Id.*

²⁶ SAGE, SAGE BRIEF GUIDE TO CORPORATE SOCIAL RESPONSIBILITY 2 (2012).

²⁷ *Id.*

²⁸ *Id.* at 10.

²⁹ *Id.* at 10.

avoid addressing corporate social responsibility to rethink the future of these actions, as it has increasingly become good business to do right in the world.

III. HUMAN TRAFFICKING IN SUPPLY CHAINS

Human trafficking is viewed as one of the most prevalent global criminal activities, ranking third behind drugs and weapons trafficking.³⁰ The environment created through globalization has allowed for increased access to goods and services.³¹ However, some drawbacks to this phenomenon include the ever-growing ease for global criminal activity, including human trafficking, to occur.³² From this, the “global conditions create a supply and demand chain conducive to human trafficking and comprised of several push and pull factors.”³³ It is easier than ever to move victims of human trafficking across borders at more affordable rates, and has continued to make the process of human trafficking more and more profitable.³⁴

A. The Global Process of Human Trafficking

The process of human trafficking involves three general steps that must take place in order for the activity to be successful: (1) acquisition, (2) movement, and (3) exploitation.³⁵ These three steps “often result[] in one or more counts of re-trafficking.”³⁶ The first step of acquisition typically results from “deceit, sale by family, abduction, seduction or romance (with sex trafficking), or recruitment by former slaves.”³⁷ Since these methods cost little to no money, human traffickers obtain what could be considered a free good that can be sold for pure profit. From here, the victims are then moved from country to country and frequently sold and resold, creating a method

³⁰ See Luz Estella Nagle, *Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude*, 26 WISCONSIN INT'L L.J. 131, 131 (2008).

³¹ *Id.* at 137.

³² *Id.*

³³ *Id.*

³⁴ See Kara, *supra* note 5, at 70.

³⁵ *Id.* at 67.

³⁶ *Id.*

³⁷ *Id.*

of exploitation that could possibly be endless for the slave.³⁸ Exploitation of the victims can then take on multiple forms depending on location and market in which the slave is sold. This, in turn, fosters the growth of the economic market that is human trafficking, as supply and demand requirements are met by the sellers and buyers of slaves.³⁹

Exploitation of slaves can take many different shapes and forms. Generally, exploitation of slaves includes commercial sex exploitation, in which victims are forced to engage in multiple counts of coerced sexual acts on a daily basis.⁴⁰ Other forms include more labor-oriented human trafficking in which slave labor is used for methods of construction or agriculture.⁴¹

B. The Market for Human Trafficking and Modern Slavery

There are clear factors that signify what is necessary for the process of human trafficking to continue to be a viable source of income for criminal use and corporate profit, including:

- (a) a growing demand for cheap or free labor as a result of rapid regional integration and globalization of markets;
- (b) the fundamental desire of people to achieve a better life;

³⁸ *Id.* at 68.

³⁹ See Elizabeth M. Wheaton et al., *Economics of Human Trafficking*, 48 INT'L MIGRATION 114, 116 (2010).

⁴⁰ Kara, *supra* note 5, at 69. In this section, Kara also elaborates further on the actions of sex slave human trafficking by stating that “[t]he brutality of this form of human trafficking cannot be overstated. It involves rape, torture, forced drug use, and the wholesale destruction of a human body, mind, and spirit.” *Id.*

⁴¹ *Id.* Kara again goes on to further describe the lengths at which the types of human trafficking can be identified and researched. *Id.* From this perspective, Kara notes that it is possible to follow supply chains from production to retailer and find the points at which slave labor created through human trafficking have occurred. *Id.* The possibility of this has then led to what Kara refers to as consumer awareness campaigns that have effects on the corporations by rallying against “trafficked, slave, or child labor in products consumed in Western markets.” *Id.*

(c) an efficient and ruthless supply and transportation structure for the business of trafficking; and

(d) a high number of facilitators and consumers benefiting from the exploitation of trafficking victims.⁴²

As corporations continue to search for the most profitable business methods, their ability to compete depends greatly upon finding the cheapest labor.⁴³ Cutting labor costs gives the corporation a stable cushion to account for other business cost fluctuations such as price of raw materials and cost of transportation.⁴⁴ While the cost of producing a product domestically makes finding a significantly cheaper source of labor more difficult, globalization has opened the door for the needy in poorer countries to be exploited with the hope of a better tomorrow.⁴⁵

The market for human trafficking has shown that, through changes in prices, trafficking and forced labor have actually become much cheaper in recent decades compared to the past. The cost for a slave in 1850, adjusted for inflation, ranged from \$9,500 to \$11,000 and allowed for a return on investment of 15–20% per year.⁴⁶ In the modern era, however, the cost of a slave globally is only \$420 and can earn as much as 300–500% on returns annually.⁴⁷ Beyond the increase in profit and much lower costs for purchasing slave labor, the risk for utilizing this type of labor is relatively low. This is largely due to the fact that many countries have low fines, if any, and very short prison sentences for those convicted.

A separate study done by the SumAll Foundation showed that there are around 2 million more slaves worldwide today than there

⁴² Nagle, *supra* note 30, at 138–39.

⁴³ *Id.* at 139.

⁴⁴ *Id.*

⁴⁵ *See id.*

⁴⁶ Kara, *supra* note 5, at 69.

⁴⁷ *Id.*

were in 1860.⁴⁸ Sex trafficked victims are the most well-known type of modern slaves, yet this same study showed that they are more expensive and a debt slave could cost as little as \$60.⁴⁹ “On average today, a person is a slave for six years, after which the person usually escapes, repays the debts holding them, or dies. Most of the world’s slaves are in South Asia.”⁵⁰ In this context, the study noted that in some instances life is less valuable than commodities and something as simple as a bottle of wine can be more expensive than the cost to purchase a slave.⁵¹

Human trafficking is an increasingly profitable market, making it more appealing for larger industries to employ workers through these methods.⁵² Essentially, human trafficking makes people solely a commodity within a marketplace.⁵³ As such, when prices and the demand for labor are low, those who deal in human trafficking are less likely to continue to do it as the price for obtaining trafficked victims is higher than what they will receive in payment for them.⁵⁴ The opposite is also true in that when there is a larger need for low cost labor, trafficking will increase in supply to meet the demands and make a profit.⁵⁵ Thus, lowering the profitability of trafficking victims through CSR or relevant policies might make corporations shy away from obtaining labor through these methods.

C. Corporate Social Responsibility Responses to Human Trafficking

Corporations have profited and continue to profit from the use of human trafficking and forced labor within their supply chains,⁵⁶ and there is no one set of international rules that obligate corporations to

⁴⁸ Quentin Hardy, *Global Slavery, by the Numbers*, NY. TIMES (Mar. 6, 2013), <https://bits.blogs.nytimes.com/2013/03/06/global-slavery-by-the-numbers/>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Wheaton et al., *supra* note 39, at 119.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Nicola Jägers & Conny Rijken, *Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations*, 12 NORTHWESTERN J. INT’L HUM. RTS. 47, 48 (2014).

protect the human rights of their workers.⁵⁷ As basic standards begin to grow regarding management of human trafficking in corporations, however, an expectation has grown as well for these international corporations to actively work to mitigate the risks.⁵⁸ Corporations hold the power to “affect the whole spectrum” in preventing modern slavery within their own supply chains.⁵⁹ One general trend is the process of due diligence in the actions of corporations to prevent and monitor human trafficking.⁶⁰ This frequently refers back to human rights in corporations and “consists of assessing actual and potential impacts, integrating and acting upon the findings and tracking and reporting performance.”⁶¹

The new push towards furthering corporate social responsibility has coincided with increases in corporate liability.⁶² In this sense, it has become common for corporate consideration to be “held liable for committing, or for complicity in, the most heinous human rights violations amounting to international crimes, including genocide, slavery, human trafficking, forced labor, torture and some crimes against humanity.”⁶³ This exemplifies the liabilities that can be imposed on corporations now and in the future. If corporations allow human trafficking and forced labor within their own supply chains, the same corporation can then open itself up to criminal liability it either knowingly or unknowingly allowed to occur.

In addition to these liabilities, if corporations are found to have been complacent with criminal activity, the ability for others to discover and make public these instances becomes a serious threat.⁶⁴ When these corporations see the backlash from both governmental actors and consumers that affect other corporations that utilize human trafficking, they begin to take the potential liabilities very seriously.⁶⁵

⁵⁷ *Id.* at 53.

⁵⁸ *Id.* at 54.

⁵⁹ *Id.* at 55.

⁶⁰ *See id.* at 55–57.

⁶¹ *Id.* at 59.

⁶² Anna Williams Shavers, *Human Trafficking, The Rule of Law, and Corporate Social Responsibility*, 9 S. CAROLINA J. INT’L L. & BUS. 39, 66 (2012).

⁶³ *Id.* at 73.

⁶⁴ *Id.* at 81.

⁶⁵ *Id.*

Allegations of wrongdoing also might stretch farther than one company and could impact an entire industry if this is a trend in production.⁶⁶ Again, these could be considered factors that play into fairer competition through human trafficking prevention. If fewer corporations use forced labor in supply chains, then the demand will decrease to a point that can stabilize and offer corporations acting ethically the same benefits as those that abuse forced labor.

III. FIRST GENERATION RESPONSE TO HUMAN TRAFFICKING IN CORPORATIONS

A. Introduction to First Generation Responses

In the past decade or so, there has been a much larger push from governments, international organizations, and corporations to curb the issue of human trafficking in supply chains. In 2006, a meeting was held in Athens, Greece, that included private sector CEOs, NGO members, government figures and other participants from international organizations.⁶⁷ The outcome of the meeting included the adoption of the Athens Ethical Principles, which outlined principles against human trafficking.⁶⁸ Following adoption by the members that attended, another 12,000 companies agreed to abide by the principles that included policies such as zero-tolerance for any human trafficking within business.⁶⁹ This paved the way for legislation to be created globally by countries and their states. Following implementation and action based on these very specific policies, regulations have been set in place that make businesses and countries accountable for how production occurs.

B. California Transparency in Supply Chains Act

In 2010, the California Transparency in Supply Chains Act was enacted to directly regulate and enforce policies preventing human

⁶⁶ *Id.* at 82.

⁶⁷ U.S. DEP'T OF STATE, *supra* note 17, at 23.

⁶⁸ *Id.*

⁶⁹ *Id.*

trafficking from occurring within supply chains.⁷⁰ The Act recognizes that human trafficking and slavery are illegal and prosecutable crimes under state, federal, and international law and explains that California recognizes that human trafficking exists in every country around the world, including the United States and even in California itself.⁷¹

Under the Transparency in Supply Chains Act, businesses must submit an annual report to the California government that includes an assessment of the company's actions in manufacturing and an explanation of any potential for the use of labor by force or human trafficking.⁷² Any company that sells or manufactures in the state of California and makes a minimum of \$100 million in annual worldwide gross receipts is required to submit to the policies set forth in the Transparency in Supply Chains Act.⁷³ The overall structure of this requirement forces these corporations to submit reports annually regarding updates of their efforts to eradicate human trafficking within their company and the country in which it functions.⁷⁴ These functions listed within the act broadly include: manufacturers completing audits to ensure they are following human trafficking policies of the corporation, attending and adhering to the human trafficking laws in which the manufacturing is taking place, and maintaining internal accountability for those who infringe on company human trafficking policies.⁷⁵ The final requirement within the legislation states that "the Franchise Tax Board shall make available to the Attorney General a

⁷⁰ See California State Senate, *California Transparency in Supply Chains Act*, S.B. 657, at 1 (2010), https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersafety/sb_657_bill_ch556.pdf.

⁷¹ See *id.* at 2.

⁷² See Attorney General Xavier Becerra, *The California Transparency in Supply Chains Act*, STATE OF CALIFORNIA DEP'T OF JUSTICE, <https://oag.ca.gov/SB657> (last visited Feb. 21, 2019).

⁷³ California State Senate, *California Transparency in Supply Chains Act*, S.B. 657, at 1 (2010), https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersafety/sb_657_bill_ch556.pdf.

⁷⁴ *Id.* at 3.

⁷⁵ See *id.* at 3, The full listing of adherence under the California Transparency in Supply Chains Act of 2010 is listed under Section 3, subdivision c. *Id.*

list of retail sellers and manufacturers required to disclose efforts to eradicate slavery and human trafficking. . . .”⁷⁶

The California Transparency in Supply Chains Act of 2010 provides a basis for anti-human trafficking policy that has essentially begun to spread globally. California’s initiation of accountability policies set a precedent that will be followed and built upon within the next few years as the United Kingdom and France have continued to follow suit and create their own human trafficking policies.

C. Modern Slavery Act of 2015

In 2015, the United Kingdom passed its own human trafficking Act. The Modern Slavery Act of 2015 contains a much more detailed outline of the criminal act that constitutes forced labor or slavery, the process for corporations to comply fully with the law, consequences for non-compliance and defines slavery or servitude for forced labor as:

- (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or
- (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.⁷⁷

The Modern Slavery Act goes on to state that the act of misleading another person for gain becomes human trafficking once a person “arranges or facilitates” the travel of another human being for the purpose of being exploited and taken advantage of.⁷⁸ This definition applies to any person that commits the offense, regardless

⁷⁶ *Id.* at 4.

⁷⁷ Modern Slavery Act 2015, c. 30, part 1, § 1.

⁷⁸ *Id.* at § 2(1).

of whether the person being trafficked consented to the travel or not.⁷⁹ The penalty for conviction upon indictment for the act of human trafficking or forced labor and slavery includes a potential for a life sentence.⁸⁰ Additionally, the punishment could include a summary conviction in which there will be a fine imposed along with a potential incarceration for up to one year in prison.⁸¹ For those convicted of planning to commit this crime, the penalty for conviction upon indictment is up to ten years' incarceration and a summary conviction with a penalty that is equal to the summary conviction listed above.⁸²

Beyond rulings for those who are convicted of committing the crime of human trafficking, the United Kingdom legislation also singles out a section to clarify regulations and transparency within corporations acting within the United Kingdom.⁸³ All commercial organizations with functions inside the United Kingdom are required to prepare a "slavery and human trafficking statement for each financial year of the organisation."⁸⁴ Very similar to the legislation passed in California in 2010, the United Kingdom requires confirmation from a company or organization that no human trafficking is taking place within any of the corporation's supply chains or within the corporation itself.⁸⁵ This information must be made readily available to the public if the corporation owns and runs its own website.⁸⁶ Guidance for such reports is potentially provided by the Secretary of State.⁸⁷

The timeline of these pieces of legislation shows a growing level of concern regarding human trafficking beginning at the state level in the United States and rising to a global level through other nations passing legislation. In the United Kingdom, the requirements grew past those in the California Transparency Act to push reports to

⁷⁹ *Id.* at § 2(2).

⁸⁰ *Id.* at § 5(1)(a).

⁸¹ *Id.* at § 5(1)(b).

⁸² *Id.* at § 5(2).

⁸³ *See id.* at part 6, § 54 (outlining the features of the required disclosure by the corporation of human trafficking for each financial/fiscal year).

⁸⁴ *Id.* at § 54(1)..

⁸⁵ *Id.* at § 54(4)(a).

⁸⁶ *Id.* at § 54(7).

⁸⁷ Modern Slavery Act 2015, c. 30, part 6, § 54(9)–(10).

be submitted not just to the government, but to the public through a corporation's website. This offers the corporation a chance to appear outwardly conscientious in its actions and business dealings, and thus appear more attractive to states and consumers. The Modern Slavery Act shows that, starting officially in 2010 with the California Transparency in Supply Chains Act, and arguably years before that through the Athens Ethical Principles, there has been a continued push towards ending human trafficking in supply chains. The regulations set forth by the United Kingdom reaffirm the premise that good practices create good business. State-based regulations then suggest that corporations may be acting logically by making changes prior to future international legislation if a trend persists.

D. French Corporate Duty of Vigilance Law

In 2017, France implemented its own legislation regarding human trafficking in supply chains within corporations doing business both in and out of the country.⁸⁸ This policy is known as the French Corporate Duty of Vigilance Law and further is referred to as the Duty of Vigilance Law. The law focuses specifically on any corporation headquartered in France that employs at least 5,000 employees globally after conducting business for two fiscal years.⁸⁹ For corporations headquartered outside France, compliance is based on the corporation having 10,000 employees worldwide while also operating subsidiaries in France.⁹⁰ Under the Duty of Vigilance Law, corporations that fit this description are required to create and implement a vigilance plan for business operations to ensure that human trafficking is not an element of the corporation's production process.⁹¹

The Duty of Vigilance Law also outlines which parts of a corporation and its supply chain are considered in the determination

⁸⁸ See Const. Art. Loi n° 924. 21 février 2017.

⁸⁹ See FRENCH CORPORATE DUTY OF VIGILANCE LAWS: -FREQUENTLY ASKED QUESTIONS, EUROPEAN COALITION FOR CORPORATE JUSTICE 3-4 (2017), <https://business-humanrights.org/sites/default/files/documents/French%20Corporate%20Duty%20of%20Vigilance%20Law%20FAQ.pdf>.

⁹⁰ *Id.* at 3.

⁹¹ *Id.*

of the parent company as a whole.⁹² This includes companies that the parent corporation holds control directly (holding majority voting rights, majority members of “administration, management or supervisory bodies”) or through indirect methods (utilizing influential pressure through contract stipulations or statutory clauses).⁹³

The second part of the Duty of Vigilance Law approaches the parent corporation’s responsibility in terms of the business relations with subcontractors and suppliers with which it has a stable and sustained relationship.⁹⁴ The United Nations Guiding Principles on Business and Human Rights (“UNGPs”) defines business relationships as “relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.”⁹⁵

The Duty of Vigilance Law differs largely from those implemented in California and the United Kingdom due to the fact that France requires qualifying companies to implement a plan of vigilance for their operations.⁹⁶ This goes beyond public reporting requirements in California and the United Kingdom.⁹⁷

One striking difference in the French Corporate Duty of Vigilance Law is the established possibility for its progressive movement towards defending workers. This legislation now allows workers and outside actors to:

require judicial authorities to order a company to establish, publish and implement a vigilance plan, or

⁹² *Id.*

⁹³ *Id.* at 3.

⁹⁴ *Id.*

⁹⁵ UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS 15 (2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

⁹⁶ See Sarah A. Altschuller & Amy K. Lehr, *The French Duty of Vigilance Law: What You Need to Know*, FOLEY HOAG LLP (Aug. 2017), <http://www.csrandthelaw.com/2017/08/03/the-french-duty-of-vigilance-law-what-you-need-to-know/>.

⁹⁷ *Id.*

account for its absence. In addition to this order, the judge can impose a fine up to 10 million euros. Interested parties may also engage the company's liability through civil action and ask for compensation if the violation of the legal obligation has caused damages. In addition to the compensation, the judge can impose a fine of up to 30 million euros.⁹⁸

The stipulation of civil penalties on corporations for a lack of a vigilance plan being devised and implemented was later rejected by the French Constitutional Council.⁹⁹ The direct rejection of this piece of the law states that:

The legislator could not stipulate that any company that has committed a breach defined with such inadequate clarity and precision may be required to pay a fine of up to ten million euros without violating the requirements resulting from Article 8 of the 1789 Declaration.¹⁰⁰

The Court's ruling states that this portion of the Corporate Duty of Vigilance Law would infringe upon Article 8 of the 1789 Declaration of the Rights of Man, in which: "[t]he law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law passed and promulgated before the commission of the offense."¹⁰¹

While the Duty of Vigilance Law has had a portion of its authority struck down within the Constitutional Council, the requirements put in place to force corporations to comply in the

⁹⁸ EUROPEAN COALITION FOR CORPORATE JUSTICE, *supra* note 89, at 2.

⁹⁹ See Decision no. 2017-750 DC, Law on the duty of oversight of parent companies and commissioning enterprises, French Constitutional Council (2017), <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2017-750-dc/version-en-anglais.149069.html>.

¹⁰⁰ *Id.*

¹⁰¹ See *id.* (citing *Declaration of the Rights of Man*, art. 8, National Assembly of France (1789), http://avalon.law.yale.edu/18th_century/rightsof.asp).

completion and implementation of a plan are still forward-thinking. These plans would require French corporations meeting the standards, as defined by the Duty of Vigilance Law above, to hold these corporations to enforcing a plan with: procedures to identify and assess potential human rights infringements, procedures to assess risk with supplier and subsidiaries, methods for alerting the company to risks, plans for mitigating risks, and methods for assessment of the effectiveness of the plan in place.¹⁰²

E. A Push for Legislation in Australia

In 2013, the Australian government added two amendments to its Commonwealth Criminal Code Act of 1995, known in short as the “Criminal Code.”¹⁰³ The first amendment to the code was the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013.¹⁰⁴ The new amendments to Division 270 of the Criminal Code defines forced labor as:

[T]he condition of a person (the *victim*) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free:

- (a) to cease providing the labour or services; or
- (b) to leave the place or area where the victim provides the labour or services.¹⁰⁵

This gives Australia an updated model and definition for prosecuting those who are moving laborers in and out of the country. While amendments to Divisions 270 and 271 of the Criminal Code

¹⁰² Altschuller & Lehr, *supra* note 96.

¹⁰³ Commonwealth Director of Public Prosecutions (CDPP), Human Trafficking and Slavery, <https://www.cdpp.gov.au/crimes-we-prosecute/human-trafficking-and-slavery>, This page offers a brief overview of the Australian amendments, along with direct links to original Criminal Code and amendments to Divisions 270 and 271 of the Criminal Code. *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* sch 1 div 270 sub-div C s 270.6.

now hold a wider authority to prosecute those involved in human trafficking in order to facilitate forced labor, the status of this legislation can only control what occurs in and out of Australia's own borders. This does not offer a method for monitoring the global supply chains of multinational corporations that produce goods outside of Australia but are sold within Australia or by Australian corporations.

Over the past year, Australia has shifted towards adding monitoring for human trafficking and forced labor within corporations into its own legislation.¹⁰⁶ Australia has begun a new inquiry into the extent of modern slavery taking place within its borders and in the world, the prevalence of slavery in domestic and international supply chains for corporations acting in Australia, and a wide spectrum of best practices to prevent slavery.¹⁰⁷ Many of the efforts by Australia have occurred through comparisons to the United Kingdom Modern Slavery Act, which has been a basis for discussion and evaluation of Australian practices and potential in global supply chains.¹⁰⁸

As Australia has attempted to investigate the necessity of legislation similar to that of the Modern Slavery Act, the Australian Labor Party has begun to utilize harsher global supply chain policies as part of a platform.¹⁰⁹ Bill Shorten, the leader of the Australian Labor Party has promised legislation that would prevent slavery within international supply chains for Australian businesses.¹¹⁰ Shorten has stated that “[a]n estimated 4,300 people are currently trapped in slavery right here in Australia in exploitative criminal syndicates involved in forced labour, sex trafficking, and debt bondage.”¹¹¹ The multitude of inquiries regarding modern slavery and human trafficking

¹⁰⁶ Anne Petterd et al., *Supply Chain Transparency and Australia's Closer Look at Modern Slavery Laws*, BAKER MCKENZIE: GLOBAL COMPLIANCE NEWS (Aug. 2017), <https://globalcompliancenes.com/supply-chain-transparency-modern-slavery-australia-20170822/>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See Gareth Hutchens, *Labor Vows to Stamp Out Slavery in Australia's Supply Chains*, THE GUARDIAN (June 5, 2017), <https://www.theguardian.com/world/2017/jun/05/labor-vows-to-stamp-out-slavery-in-australias-supply-chains>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

in the Australian government shows that the nation recognizes that human trafficking is a global problem. The growing conversation within the nation regarding the potential for new legislation would include adding monetary penalties to corporations that break the law, a step that is even more aggressive than those taken by the United Kingdom in the Modern Slavery Act.¹¹²

F. Concluding Trends on Current and Upcoming Legislation

The first generation responses to human trafficking show that there are clear efforts being made by different political bodies in order to combat human trafficking and forced labor in international supply chains. California's Transparency Act began the trend by requiring corporations to disclose the potential of human trafficking occurring within the corporation's supply chain in order to continue doing business with the state's large economy. The United Kingdom's Modern Slavery Act then built up the Transparency Act foundation by imposing additional requirements such as outward reporting to make anti-human trafficking efforts and analyses known to the public. France's Corporate Duty of Vigilance Law is the most forceful piece of legislation to be passed so far. This piece again added to already established policies regarding human trafficking in supply chains by requiring implementation of a plan within corporations to combat these issues. Australia's efforts seem to be attempting to follow the same trend.

Overall, the efforts by California, the United Kingdom, France, and potentially Australia not only follow suit one after another, but have also added to established principles. Although France's efforts to add reparations for those damaged by corporate neglect in supply chain were struck down, the country has still led the way to a new path for corporate accountability beyond the Transparency Act and Modern Slavery Act. Due to the efforts of the Labor Party, Australia may be the next country to set legislation in motion.

¹¹² *Id.*

IV. SECOND GENERATION RESPONSE TO HUMAN TRAFFICKING IN CORPORATIONS

A. Introduction to Second Generation Responses

When shown the opportunity to take advantage of cheap labor that in turn lowers production costs for products, a corporation may choose to act in a manner that best suits its interests and maximizes profits. However, with the addition of basic operational guidelines put in place through corporate social responsibility, a corporation can come in conflict with profit maximization actions as social impacts of such actions may create more obstacles than benefits. However, evidence suggests that corporations can increase profits and long-term sustainability by utilizing business plans “clean of forced and trafficked labor as a core business strategy which is consistent with—and even advances—their profit seeking goals.”¹¹³ The remaining argument of this comment will juxtapose current business practices with methods of best practice, illustrating that acting in the framework of corporate social responsibility offers corporations an opportunity to help, rather than hurt their bottom line. The argument will focus around the three current policies existing California, the United Kingdom, and France—along with future potential in Australia—to assess the methods in which these best business practices molded around trends in policy can benefit corporations greatly down the road, compared to short-term profit margins.

“Companies should view clean and sustainable supply chains as a core business strategy, which could lead to short- and long-term shareholder wealth maximization and value creation for both the corporation and society as a whole.”¹¹⁴ Effective use of methods to mitigate human trafficking in supply chains could create an environment in which human trafficking is no longer profitable in the long run, and thus takes away any incentive to utilize it.¹¹⁵ Management of human trafficking in supply chains with corporate planning then becomes less of an obligation for corporations to do what is socially

¹¹³ Raigrodski, *supra* note 2, at 71–72.

¹¹⁴ *Id.* at 134.

¹¹⁵ *Id.*

responsible solely for the purpose of doing what is good, and rather mitigates the risk in order to make it the best method of practice for a company and potentially most profitable.

B. The Need for Public-Private Partnerships to Combat Supply Chain Human Trafficking

In a world in which information is more easily accessible and shared, it may potentially become more difficult for poor practices to avoid having a spotlight shined on them in public. “Human trafficking is often a hidden crime; effective private-public partnerships can shed much needed light on the phenomenon and can bring a powerful momentum to the anti-trafficking fight.”¹¹⁶ The World Bank Group Public-Private-Partnership In Infrastructure Resource Center defines these public-private-partnerships (“PPPs”).¹¹⁷ The offered definition describes PPPs as “a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance.”¹¹⁸ The World Bank Group does note, however, that there is no single definition of PPPs generally accepted across the board.¹¹⁹

In April 2013, under the leadership of former President Barack Obama, the executive branch was given a report from the President’s Advisory Council on Faith-based and Neighborhood Partnerships regarding the benefits of partnerships, both domestic and abroad, in managing the spread and current level of global human trafficking.¹²⁰

¹¹⁶ Maudisa McSween, *Investing in the Business against Human Trafficking: Embracing the Fourth “P” -- Partnerships*, 6 INTERCULTURAL HUM. RTS. L. REV. 283, 323 (2011).

¹¹⁷ See What are Public Private Partnerships?, PUBLIC-PRIVATE-PARTNERSHIP IN INFRASTRUCTURE RESOURCE CENTER, WORLD BANK GROUP, <http://ppp.worldbank.org/public-private-partnership/overview/what-are-public-private-partnerships> (last updated Feb. 6, 2018). The definition is offered based on the PPP Knowledge Lab in this source. *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See generally Building Partnerships to Eradicate Modern-Day Slavery, REPORT OF RECOMMENDATIONS TO THE PRESIDENT, PRESIDENT’S ADVISORY COUNCIL ON FAITH-BASED AND NEIGHBORHOOD PARTNERSHIPS (2013),

In this report, the Obama Administration’s Advisory Council emphasized the fact that human trafficking is one of the largest and most profitable criminal activities occurring worldwide at an annual profit of \$32 billion for traffickers.¹²¹ The report focuses largely on the overwhelming amount of global trafficking happening every day and states that “it is not equal to the power of our collective action and resolve.”¹²² The Obama Administration report also outlines ten separate steps for the administration to take in order to proactively work to foster partnerships in order to curb the rise of human trafficking globally.¹²³ The outcomes of the policy advice did not lead to any significant national legislation, but they do show that the trend is growing towards accountability across the board for corporations. The Advisory Council’s suggestions largely place the burden on the federal government to act, but they also call on the “civil society” to both lead the charge while also pulling necessary actors in to help make the change.¹²⁴

While a response to pull other actors in towards the creation of partnerships does not directly implement any specific legislation to combat human trafficking, it may still be very effective in battling the issue. To fight the issue effectively, “advocates, governments, and other parties involved need to aggressively invest in the business of anti-trafficking.”¹²⁵ In order for there to be a sufficient level of

https://permanent.access.gpo.gov/gpo41162/advisory_council_humantrafficking_report.pdf

¹²¹ *Id.* at 9.

¹²² *Id.* at 12.

¹²³ *Id.* at 16–17. The outlined steps include plans for the Obama Administration to take charge and lead the proposed and suggested efforts recommended by the advisory council. *Id.* These steps include leading efforts on factors such as eliminating the purchase of goods and services created through slave labor and the production of toolkit recommendations for religious and community-based group to implement. *Id.* While the listed steps seem to offer an effective method for spreading awareness and fighting human trafficking, the plan still does not call for a solidified national policy as France and the United Kingdom have done. Instead, California acts alone in its significant requirements of accountability from corporations.

¹²⁴ *Id.*

¹²⁵ McSween, *supra* note 116, at 285–86.

investment to combat the issue, partnerships need to be fostered to create an ever growing insurmountable counterforce.¹²⁶

These partnerships can be broken down and analyzed under three characteristics that work to define the success of the partnership: (1) the PPP's mission, (2) its method, and (3) the money involved therein.¹²⁷ The mission of the PPP includes an overarching goal that the PPP can motivate all actors involved to achieve.¹²⁸ The second factor, methodology, expands the role for all actors to reach out and be a part of the issue. Corporations and states with their respective governments have very different roles when it comes to tackling the issue of human trafficking.¹²⁹ This then allows for each arm of the partnership to reach out and influence its own specialty to effectively break down the issue of human trafficking. The third factor, money, acts in a way that forces both the state and corporation to act together, as acting separately would not be successful.¹³⁰ States often lack the funds, or ability to utilize the necessary funds, to achieve a goal; corporations have the ability to make up the shortfall caused by the state and still provide for the matter at hand, thus making the partnership more stable.¹³¹

Crime prevention in supply chains has not been very prevalent within corporations and their actions.¹³² The countries most at risk for global crime are the same developing nations in which corporations

¹²⁶ *Id.* at 286.

¹²⁷ *Id.* at 290.

¹²⁸ *Id.* at 291 The larger overarching goal that these partnerships work towards are considered more based on a case by case scenario. McSween uses examples such as trying to end the crime in one region that is fostering an environment in which human trafficking can occur without being watched carefully. *See id.* at 292. For one actor, or the partnership as a whole, to take down all human trafficking is a very large and unrealistic expectation. It is much more effective for a specialized actor to focus on something such as crime control, and only crime control, rather than stretching too thin to manage an extremely broad and overwhelming issue. *See id.*

¹²⁹ *See id.* at 292.

¹³⁰ *See id.* at 296.

¹³¹ *See id.* at 292.

¹³² *See generally* Jeffrey Avina, *Public-Private Partnerships in the Fight Against Crime*, 18 J. FIN. & CRIME 282 (2011).

are most actively using cheap productions for products; as such, corporations have tended to lean more towards catering to the interests of government clients that suit their business and offer a potential for better profits.¹³³ In fact, corporations have typically avoided monitoring and preventing global crime because doing so can open the corporation up to risk and “negative reputational association.”¹³⁴ Corporations may be misguided in avoiding partnerships with the public sector attempting to end crimes such as human trafficking, as the corporations have not assessed themselves the potential for the illegal activities to be occurring within their own supply chains and industries.¹³⁵ This could put corporations in an interesting position to get ahead of the curve of growing global legislation by entering into mutually beneficial PPPs that would allow them to prevent the negative potentials for consequences of human trafficking in their own supply chains.

The overall effectiveness of preventing global criminal activities increases when supported by the private sector.¹³⁶ In order to foster the necessary relationships between the public and private sectors, public actors must “tailor requests for private sector support to reflect industry core competencies include clear, shared measurable results and address private sector perceptions, both positive and negative related to being associated with crime prevention.”¹³⁷ Without help from the private sector, any piece of legislation installed loses its authority of pressuring corporations to comply.¹³⁸ The issue in swaying corporations to comply willingly occurs because, in the eyes of the corporation or private sector actor, “complying with public regulations generates costs and distorts competition.”¹³⁹ Therefore, a combination of mutual action between private and public sectors may be most

¹³³ *See id.* at 284.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *See id.* at 282–83.

¹³⁷ *Id.* at 283.

¹³⁸ *See* Patrick Hardouin, *Banks Governance and Public-Private Partnership in Preventing and Confronting Organized Crime, Corruption and Terrorism Financing*, 16 J. FIN. & CRIME 199, 203 (2009).

¹³⁹ *Id.*

effective in combatting a global issue rather than creating international policies that fall short in practice.

Thus, the overarching issue for the private sector is this: it seeks reasonable legislation to which it can react.¹⁴⁰ The public sector, on the other hand, seeks effective policies that can create its sought-after outcomes.¹⁴¹ These goals and the tension between them exemplify the strengths of PPPs: such partnerships offer both sectors a sorely needed method to work together to create effective policies.

Shifting towards PPPs can greatly benefit corporations. According to Avina, “industry leaders recognize that a proven record as a good corporate citizen is a valuable positioning and reputational strategy that enhances consumer trust in both good times and in bad.”¹⁴² Corporations that support the prevention of criminal activities, such as human trafficking, are then placed in a position similar to the nations that are adding legislation to curb the crime. By allocating resources for crime prevention in supply chains and good CSR, corporations have the opportunity to build stronger bonds between themselves and the community.¹⁴³ These bonds, even in times of economic instability, can pay off for the corporation in the future as their actions can help create internal economic stability within the corporation.¹⁴⁴ Corporations have tended to shy away from intervening in the prevention of criminal activity in order to show support to the interests of the government in which their industry is active and benefitting a developing state or government’s economy.¹⁴⁵ These corporations could, however, have the potential to create new governmental bonds in which they support harsher restrictions and monitoring of human trafficking in their supply chains.¹⁴⁶

¹⁴⁰ *See id.*

¹⁴¹ *See id.*

¹⁴² Avina, *supra* note 132, at 283.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *See id.* at 284.

¹⁴⁶ *See id.*

C. Benefits of Public-Private Partnerships to Combat Modern Slavery

The private sector plays a unique role in attempting to combat human trafficking, as its capabilities are unique in attempting to solve the dilemma.¹⁴⁷ These factors that strengthen the private sector include: “(1) position in relation to streams of commerce, (2) focus on innovation, and (3) access to resources, position it as a potentially valuable partner in combating the trafficking and enslavement of human beings.”¹⁴⁸ Corporations are in a unique position in having the ability to monitor their own supply chains, and as such should take advantage of these overviews to extinguish any human trafficking within their supply chains.¹⁴⁹ In many situations, the corporations benefitting from cheaper labor in underdeveloped countries have a fiscal worth that can be significantly higher than the gross domestic product (“GDP”) of the countries in which they operate.¹⁵⁰ However, while these corporations have the capabilities to work towards preventing crimes such as human trafficking,¹⁵¹ they do not necessarily have an obligation to do so.¹⁵² Partnerships, however, can offer a safe and effective way to move forward.

V. WHY CORPORATIONS SHOULD SEEK TO COMPLY NOW AND AVOID THE PRICE LATER

As stated previously, corporations face added costs when they seek to pursue methods of business in which they act and operate

¹⁴⁷ See generally Jonathan Todres, *The Private Sector's Pivotal Role in Combating Human Trafficking*, CALIFORNIA L. REV. CIRCUIT 80, 86 (2012).

¹⁴⁸ *Id.*

¹⁴⁹ *See id.*

¹⁵⁰ *Id.* at 89.

¹⁵¹ *See id.* at 87–88. Todres notes that in many instances corporations can prove to be much more capable than governments or law enforcement in combatting human trafficking. *See id.* Governments and non-profits typically face very large budget constraints that prevent them from investing in anti-human trafficking initiatives that could prove effective. *Id.* at 88. Also, Todres states that while these actors have the ability to discover human trafficking issues globally, corporations have the ability to stop human trafficking before it starts by closely monitoring their supply chains. *Id.* at 86–87.

¹⁵² *Id.* at 89.

ethically rather than attempting to utilize unethical practices and create a larger profit. While corporations are created with the intention of making money, the social responsibility aspects of good business have created trends that are hard for corporations to ignore. The rest of this comment shall seek to show the benefits that CSR policies offer large corporations both in short term gains and long term reputation. Beyond this, the argument will be made that corporations seeking to monitor, prevent, and report human trafficking in their supply chains now will benefit them down the road. This has been shown through the potential trend for anti-human trafficking growth to continue across the globe, and addresses the advantages that corporations can have for complying now versus when it is too late.

A. Fallacy of Agency Theory in Corporate Social Responsibility

Current corporate attitudes regarding decision-making and the effective utilization of resources is based on a corporate responsibility to do what is best for shareholders, in this case meaning maximizing profits.¹⁵³ Shareholders are directly affected by the level of profit that the corporation is producing, so the shareholders' best interest is in the corporation's best interest.¹⁵⁴ The fallacy of this premise, known here as agency theory, is this: while the corporation may feel an obligation to its owners and seeks to profit, the shareholders have no responsibilities or obligations to the corporation.¹⁵⁵ This model for business values shareholders within the corporation and leaves out the opinions of stakeholders, an action that could be detrimental to the health of the corporation as a whole.¹⁵⁶

The issue with committing solely to a shareholder's interest function rather than a stakeholder's interest is that it can then leave out some for those who "are most vocal at a given moment."¹⁵⁷ As a whole, corporations operate in many different functions of society including to "produce goods and services, provide employment, develop technologies, pay taxes, and make other contributions to the

¹⁵³ Bower & Paine, *supra* note 10, at 52.

¹⁵⁴ *See id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 57.

¹⁵⁷ *Id.* at 57.

communities in which they operate.”¹⁵⁸ This then directly takes away from established CSR policies, specifically the value of the opinions and safety of the employees all the way through to the bottom of the corporation’s supply chains. The corporation must maintain solid relationships with the societies in which it operates in order to function properly.¹⁵⁹

The largest issue, and reason for corporations to address societal factors such as criminal activity in their supply chains, is the “damaging and often self-destructive consequences of companies’ indifference to negative externalities produced by their activities.”¹⁶⁰ If a corporation is to do nothing to prevent modern slavery within its existing business plans in order to maximize profits, it is thus creating a vulnerability for the corporation to open itself to these self-destructive habits. Also, allowing for business to continue when this is accepted practice in the society in which the industry operates then opens the corporation up to unnecessary risk and vulnerabilities that ethical and responsible monitoring and prevention would not.¹⁶¹

B. Ethical Actions are Good For Business

In the past few decades, CSR has become a forefront issue for many of the largest corporations in the world and has become, in many ways, an industry term.¹⁶² As early as the late 1990’s over 80% of Fortune-500 companies had mentioned CSR efforts publicly on their websites.¹⁶³ When implemented, these types of programs tend to benefit the corporations greatly by helping to better their reputations in the eyes of consumers.¹⁶⁴

¹⁵⁸ *Id.* at 58.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *See id.* at 58–59.

¹⁶² *See* Sankar Sen & C. B. Bhattacharya, *Does Doing Good Always Lead to Doing Better? Consumer Reactions to Corporate Social Responsibility*, 38 J. MKTG. RESEARCH 225, 225 (2001).

¹⁶³ *Id.*

¹⁶⁴ *See* Alexander Chernev & Sean Blair, *Doing Well by Doing Good: The Benevolent Halo of Corporate Social Responsibility*, 41 J. CONSUMER RESEARCH 1412, 1412 (2015)..

Beyond corporations having a better reputation in terms of actions in the communities, research has also shown that corporations acting in good faith and CSR have had reports of consumers viewing their products as better.¹⁶⁵ For example, corporations that practice sustainability-oriented CSR are perceived to operate in a gentler and kinder manner, and therefore their products also receive this association in the public eye.¹⁶⁶ As such, it has become evident that when consumers possess certain types of moral values and beliefs as to how a corporation should act, the corporations that exemplify these types of characteristics publicly perform better than corporations that consumers believe are only acting ethically out of self-interest.¹⁶⁷ Products from corporations that have established the goodwill and CSR practices in their business receive better performance reviews than their non-CSR counterparts, even if their products do not exceed the quality of their non-CSR counterparts due to the established goodwill of the corporation.¹⁶⁸ This essentially means that CSR practices have shown there is an opportunity for corporations to make the same products of the same quality as their competitors, yet receive better feedback on the products from consumers due to the established goodwill of the corporation. This exemplifies that by acting in a beneficial or pro-social way outwardly in the public and through corporate policies, the perceived quality of a corporation and its products can rise and give it an edge over competitors.¹⁶⁹

As globalization continues to settle in and grow across the world, changing markets have shown evidence that corporations creating institutions for CSR practices have continued to outperform others that have not.¹⁷⁰ CSR practices serve to benefit overall economic performance.¹⁷¹ Corporations that have treated their employees with better social and wage relations have witnessed further growth and

¹⁶⁵ *Id.* at 1414.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 1422.

¹⁶⁸ *See id.* at 1422–23.

¹⁶⁹ *See id.* at 1414–1415.

¹⁷⁰ *See* John L. Campbell, *Why Would Corporations Behave in Socially Responsible Ways? An Institutional Theory of Corporate Social Responsibility*, 32 *ACAD. MGMT. REV.* 946, 963 (2007).

¹⁷¹ *Id.*

development in the markets.¹⁷² The best method for creating these goals and policies within corporations begins at the level of the institutions in which the industry functions.¹⁷³ When institutions require monitoring and regulate these actions, corporations are no longer able to simply say that they are going to follow through with CSR actions and implementations; rather, they must show proof.¹⁷⁴

In the past decade, global policies have forced corporations to ante up when it comes to reporting human trafficking. Policies—such as those created in California, the United Kingdom, France, and potentially Australia—all require qualifying corporations to audit themselves and report their actions regarding the prevention of human trafficking. In doing so, the corporations then are not able to simply say that they are advocates of anti-trafficking in their own supply chains, but must be able to have some form of proof to back up the claim that is being made. For multinational corporations to continue to act in some of the largest Western markets in the world, they must assure the public that their products are free from the touch of forced labor and human trafficking.

VI. CONCLUSION

The process of human trafficking is an atrocious crime. However, cheaper production costs and lower wages create tension between ethics and profits. Now, corporations exist in a world increasingly concerned with corporate social responsibility and are thus increasingly being held more and more accountable for their actions and negligence.

For multinational corporations, global influence is the keystone to their business platform. That is why these same corporations should consider international policy regarding human trafficking within supply chains. In less than a decade, three of the world's largest economies—California, the United Kingdom, and France—have implemented policies in order to prevent human

¹⁷² *Id.*

¹⁷³ *See id.*

¹⁷⁴ *See id.* at 962–63.

trafficking and enforce reporting. With each new policy, the requirements have continued to become stricter. If they fail to comply, such corporations will not be able to participate within these economies at all.

Gone are the days in which the corporation's sole purpose is to make a profit for its shareholders at any cost to society. By investing in ethical business practices, a corporation can open its doors to an entirely new market of conscious consumers who want to know how the products they are purchasing were made. When a corporation can assure the consumer of its workers' wellbeing, it assuages consumers' fear that their money may contribute to unethical acts within a corporate supply chain. Moving in this direction can also improve the consumers' views of the product, convincing them that the product is of a higher quality than the exact same product made by another corporation that does not offer these assurances.

Doing good helps businesses do well. Anticipating the direction that CSR is taking in global legislation will allow corporations to move ahead of the curve. In doing so, the corporation can take up the opportunity to act ethically, protect human rights, and avoid the costly adjustments down the road that will have to be made if further policies are set in place to require human trafficking auditing.