

Modern Slavery as the New Moral Asset for the Production and Reproduction of State-Corporate Harm

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Abstract

The rise of the humanitarian narrative in relation to modern slavery has enabled corporations to profit from large-scale human exploitation with public consensus. Nation-states have legislated on modern slavery on the premise of protection, which has led to the entities involved evading or being exempt from responsibility for such practices by working with their suppliers to combat such practices despite evidence that their supply chains are linked to, or create further, vulnerability for workers. Other third parties praise such mechanism as transparent, reinforcing a moral consensus that is proving difficult to critique. By using the case study of the manufacture and import to Australia of medical gloves, this article unveils the perverseness of the moral, benevolent state-corporation narrative.

Keywords

modern slavery, state-corporate crime, neoliberal globalization, humanitarianism, medical gloves, Australian Modern Slavery Act

Introduction

The coronavirus (COVID-19) pandemic has proven highly profitable for companies involved in the manufacture and distribution of personal protective equipment (PPE), such as single-use medical gloves, face masks, and other protective clothing. Ansell Limited, Australia's largest manufacturer and distributor of PPE, recorded a 42% increase in net profit in the second quarter of the 2019–20 financial year, including a 34% increase in profit through sales and acquisitions in medical gloves (*The Australian*, 2020). Currently, Ansell is Australia's main distributor of medical gloves produced by the Malaysian company Top Glove Corporation Bhd. Top Glove, the world's largest manufacturer of medical gloves (with 26% of the total global market share), experienced a 366% increase in net profits in the first quarter of the 2020 financial year as a direct result of the pandemic (Bhutta & Santhakumar, 2016; Miller, 2020; Top Glove, 2020). And yet, amid racking up these record profits, Top Glove has been implicated in a range of slavery-like practices, including debt bondage and forced labor. Without explicitly naming Top Glove, Ansell has acknowledged prior awareness of these types of exploitative practices within its supply chains and declared its willingness to work with suppliers to improve their practices (Ansell, 2020a, 2020b).

This paper explores this case study to demonstrate how market-based solutions are forwarded as *the* solution to overcoming modern slavery within supply chains, which is an essentially market-generated problem. Modern slavery legislation is used to frame these practices as non-criminal, and, more

importantly, to frame states and corporations as moral, and leading the effort to combat modern slavery. Therefore, this article claims that the Australian *Modern Slavery Act 2018* (Cth)¹ has, on the one hand, formally legalized harm and, on the other, created a moral consensus that simultaneously builds consent and neutralizes dissent to these practices by framing states and corporations as benevolent actors.

The paper is organized in two parts. In the first part, we explore the case study of medical glove manufacture and import to Australia. We reflect on how Ansell has moved from declaring no knowledge, to conceding very little in terms of its own responsibility in “causing or contributing” to modern slavery (Ansell, 2020a, p. 10). The second part situates this case study within a wider theoretical discussion on state-corporate crime, neoliberal globalization, and humanitarian governance. Here, we discuss the various ways in which the power of states and corporations, under neoliberal globalization, has combined to produce the conditions that give rise to modern slavery within supply chains. Such harm is seldom framed in terms of the asymmetries between the elites of the Global North and South, at the receiving end of a good or service in a supply

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chain, and the Global South, at the other end of this continuum, where exploitation and slavery-like practices very often occur. Humanitarian governance (Fassin, 2012) is invoked as part of a larger hegemonic project aimed at strengthening the global capitalist status quo (Bartholomew & Breakspear, 2004), by reconfiguring and reproducing relations of power, and re-narrating the criminality and morality of state and corporate actors. The pervasiveness of this benevolent state-corporate narrative, in turn, has quelled dissent toward harmful market and supply chain practices, proving the extensive ways in which the Australian Modern Slavery Act, far from being a model to follow, has become an asset in furthering state-corporate power and capital accumulation. So, any market-based solution to modern slavery within supply chains reinforces the system of exploitation. Hence, some radical thinking about alternatives may be required as a way forward.

Part I: Case Study—Down the Rabbit Hole of Medical Gloves

Most medical gloves supplied for the Australian market are manufactured by Top Glove and distributed by Ansell.

Top Glove manufactures PPE across 40 factories—most of which (35) are based in Malaysia, with the remaining five located in Thailand and China—and exports 60.5 billion products to Australia, the United Kingdom (UK) and the United States (US), among 190 other countries (Khadem, 2018). During the COVID-19 pandemic in 2020, the company has been in over-production due to increased global demand for medical gloves, with a surge in orders coming from Europe and the US (Business and Human Rights Resource Centre [BHRRC], 2020). Top Glove has since declared a three-fold increase in its profits and share price under the banner of “Achieving New Highs in a New Normal with New Peaks Ahead” (Miller, 2020). More recently, the company drew international attention when it portrayed its workers as heroes for their service during the COVID-19 pandemic, since disposable gloves had been in high demand (Kumar, 2020; Razak, 2020).

Yet, this demand, which originates mostly in the Global North, has largely been met by the exploitation of Top Glove’s 19,000 workers located primarily in the Global South. Indeed, Top Glove has been the subject of numerous allegations regarding the manufacture of gloves, including severe underpayment of workers and slavery-like practices such as debt bondage, in the media and investigative journalism (Bhutta & Santhakumar, 2016; Boersma, 2017; Ellis-Petersen, 2018; Khadem, 2018, 2019; Mandow, 2020; Miller, 2020).

The most recent and visually compelling of these was the investigation into the supply of PPE on the UK’s National Health Service (NHS) conducted by the BBC’s Channel 4 (Miller, 2020), televised in July 2020, which exposed extreme forms of labor exploitation akin to slavery for the purpose of meeting higher PPE production targets during the pandemic. It is also alleged that both the UK Government and the European Union (EU) asked the Malaysian Government to increase glove

production in Malaysia, which put pressure on the production and supply chain (Miller, 2020).

The Channel 4 investigation claims that migrant workers in Malaysia were severely underpaid, with some of them earning the equivalent of US\$1.40 an hour (or US\$243 per month, which is Malaysia’s basic minimum wage) for six 12-hour-day shifts (Miller, 2020). Some workers worked so many hours (up to 111 hours per month in overtime) that the company was in breach of local employment laws (Miller, 2020). Other workers have had illegal deductions from their salary, such as for accommodation and arriving late to work. Both the workplace and accommodation for these workers are usually overcrowded (with the living quarters accommodating up to 24 people per room), so that COVID-19 social distancing measures could not be maintained. It is alleged that recruitment fees of up to US\$4,800 have been paid by workers to agents in their home countries. This amount, in conjunction with their monthly salary minus their accommodation fees and other deductions, is extortionate. There are also claims that identity papers such as passports have been confiscated. According to the International Labour Office (ILO) (2011), these practices—of severe underpayment, overcrowding of basic accommodation for which a portion of the worker’s salary is deducted, recruitment fees, and the withholding of wages and identity documents—are indicative of forced labor.

As of December 2020, over 5,000 Top Glove workers have tested positive for COVID-19, and one worker has died, rendering Top Glove facilities responsible for Malaysia’s largest cluster of COVID-19 cases (*Al Jazeera*, 2020). Almost all Top Glove factories in Malaysia were shut down or were operating at reduced capacity by order of the Malaysian Government. Workers were forced into lockdown in their basic and overcrowded dormitories (Kumar, 2020). Further, Top Glove’s “Heroes for COVID-19” scheme, where workers were asked to work up to 4 hours voluntarily on their day off to package gloves, has been accused of being a mechanism to bypass Malay labor regulations and to force workers to work 7 days a week (Kumar, 2020; Razak, 2020).

Malaysia does not have a Modern Slavery Act. On its website, Top Glove declares itself to be a slavery-free manufacturer and rejects any claims otherwise. This stance is identical to the stance taken by the company when allegations first arose by investigative journalists in 2018 (Ellis-Petersen, 2018; Khadem, 2018; among others). This strategy of denial has so far paid its dividends—literally, in terms of revenue.

After its program was televised, Channel 4 declared that the British Department of Health had communicated with them, claiming to take these allegations very seriously and that it intended to investigate further (Channel 4, 2020). However, so far there has been no further action by the British Government.² Following the Channel 4 investigation, US Customs and Border Protection (CBP) blocked imports of Top Glove medical gloves, claiming that the recruitment fees amounted to debt bondage and therefore forced labor, and that “the illicit, inhumane and exploitative practices of modern day slavery will not be tolerated in US supply chains” (Stodder et al., 2020). Such

decisions may place an economic toll on the manufacturer, as occurred previously in 2019 in the case of disposable glove manufacturer WRP Asia Pacific (Stodder et al., 2020; see also CBP, 2020). This US ban was lifted in early 2020 because WRP Asia Pacific was able to demonstrate remedial action. In September 2020, New Zealand imposed a ban on Top Glove gloves, which it had been importing via the Australian company Ansell (Mandow, 2020).

Despite evidence that Australia has been importing such items for its medical facilities and wider distribution, the Australian Government has not imposed any ban on these products. This decision is in line with the country's lack of action taken in response to the US ban on WRP medical gloves in 2019, despite mounting pressure to follow suit (Khadem, 2019). Not only has Australia not followed the US in its decision, but it has also issued no formal statement on the matter such as that issued by the UK Department of Health.

Ansell, as the importer of Top Glove products in Australia, is an intermediary between Top Glove and many Australian medical facilities and wider distribution chains, including the large chain supermarkets. Ansell, which also produces medical gloves, mainly in Thailand (Bhutta & Santhakumar, 2016), declares that the quantity of Top Glove medical gloves it imports worldwide "is a very small percentage of Ansell's sales" (Australian Broadcasting Corporation (ABC), 2020). However, the true extent to which gloves are sourced by Ansell from Top Glove is difficult to determine. Like most imported goods, Top Glove products are repackaged upon arrival in Australia to comply with Australian labeling and packaging requirements and are rebranded under the labels of their importers and distributors. Consequently, the Top Glove brand may not appear on the physical packaging and labeling of the product, which obstructs a transparent supply-chain process, as pointed out by Bhutta and Santhakumar (2016). For example, Ansell's Micro-Thin Nitrile glove is manufactured by Top Glove.

Like Top Glove, Ansell has also declared a profit increase as a direct effect of the pandemic. Despite accounts in several journalistic investigations from 2018 (Khadem, 2018, 2019; Walden, 2020) of the company's role in importing products allegedly sourced from labor exploitation, including child labor, Ansell is reported as saying in 2018:

Ansell will never *knowingly* tolerate child, forced or involuntary labour of any kind, under any circumstances. (Khadem, 2018; emphasis added)

In 2019, Ansell declared that it was "pleased that measurable progress is being made [by Top Glove]" (Khadem, 2019). Yet, similar issues of forced labor and slavery have been signaled again in 2020 (Walden, 2020).

In October 2020, Ansell released its annual report, *Protection in a Pandemic World*, in which the company declared increased profit to be a side effect of the pandemic (Ansell, 2020b, p. 4). Ansell has admitted that, despite "concerning allegations," it is not "walking away" from its manufacturers.

This position is in stark contrast to comments made by Chief Executive Officer Magnus Nicolin in August 2020 that the company will cut ties with suppliers located in Malaysia who, Nicolin alleged, are price gouging on materials used in the manufacture of medical gloves (Simon, 2020). Not only did Nicolin frame these price-related practices as "not ethical," but he also described these suppliers as "offenders" (Simon, 2020). These two contradictory commentaries suggest that human rights concerns may not be sufficient for Ansell to walk away, but sudden price increases may be enough reason for the company to break up its supply chains.

Though Top Glove is not named in any part of Ansell's annual report, in the report Ansell (2020b, p. 26) does acknowledge that:

There have been concerning allegations this year regarding the treatment of workers in our supply chain, in particular finished goods suppliers in Malaysia. In line with best practice guidance on remediation, we have not walked away from these suppliers, but choose to engage with them on how to improve their practices. We are monitoring their performance closely. We have seen improvements as a result; however, these are complex and systemic issues that will take time and multi-party collaboration to address adequately.

Among these concerns is the "historical issue" of "recruitment fees" (Ansell, 2020b, p. 26). Recruitment agencies are usually contracted by suppliers to find workers and when they charge exorbitant fees to potential workers, this constitutes a form of debt bondage under the ILO's slavery indicators. And debt bondage is listed as a slavery-like practice in the Australian *Criminal Code Act 1995* (Cth) (section 270). The Channel 4 program did reveal the existence of such recruitment fees; but within the official Ansell documentation, all references frame this issue as "historical." This suggests that these practices have been occurring for some time and with some knowledge on the part of Ansell. Therefore, the statement (reported by the ABC in 2018—Khadem, 2018) that Ansell would never knowingly tolerate modern slavery is in clear contradiction to what the company declares in its annual report, raising the question of when Ansell first had access to information that such practices were occurring. Yet rather than dwell on this point, Ansell (2020b, p. 26) has declared that it would be "wiping the board" and starting afresh:

These fees were solicited and received by third parties, but Ansell has this year decided to undertake repayment of the fees to our affected workers.

No further information has been provided by the company; and the method and timeline that will be adopted to track down those affected workers, or the amount to be repaid, remains unclear. It is also unclear whether Ansell intends to repay only for 2020 or whether it will use its knowledge of historical practices to free those workers from debt bondage as well.

The annual report, in contrast to the Channel 4 program, provides no clear reference to any other allegations, such as those related to the withholding of identity documents. There is only a generic statement in the section on “Assessment of Modern Slavery Risks,” where the company claims it has “found . . . a number of direct suppliers in high-risk geographies or industries” and that it is monitoring and evaluating improvements (Ansell, 2020b, p. 27).

In November 2020, Ansell issued its first Modern Slavery Statement in fulfilment of its requirements under the Australian Modern Slavery Act. The statement is subtitled “Respecting Human Rights,” suggesting that Ansell will uphold human rights for all by starting with its respect for human rights. It employs positive and future-looking statements which are largely uninformative as they are ill defined. For example, the statement below captures the essence of this positive yet vague commitment to ongoing efforts towards future improvements (2020a, p. 7):

As documented throughout this statement, we have undertaken an operational and supply chain risk assessment and have made commitments to formalise and standardise our controls and to take a risk-based approach to due diligence. We recognise that work to strengthen our due diligence system is an ongoing process, and we are dedicated to the task of continuing to make significant improvements in the coming years.

This reference to a “due diligence system” as “an ongoing process” is as problematic as the company’s declared “dedication” to “significant changes” within an unspecified timeframe. The statement gives the appearance that Ansell is being proactive without the company necessarily changing its existing practice.

We argue below that the Australian Modern Slavery Act is operating as it was designed to, under a broader regime of global neoliberal and humanitarian hegemony. Such slavery statements cement the positioning of corporations and states within a narrative of benevolence (such as shaping a better market and a fairer supply chain) that allows for the maintenance of the status quo.

Part 2: Building Moral Consensus Using Slavery Risks Declarations

The narratives generated in this case study can be conceived as part of a hegemonic project which legalizes market and supply chain practices that cause modern slavery and portrays states and reporting entities as benevolent actors. This is not a new phenomenon, as for the past 30 years, compliance or consensus approaches, which emphasize the use of soft law and the delegation of responsibility to corporations to regulate their own legal compliance (also known as self-regulation or corporate social responsibility), have been advanced as the best means of responding to corporate crime and harm (Bandiera, 2021; Khoury & Whyte, 2017; Kinley & Tadaki, 2004). Therefore, modern slavery has been legislated purposely to

accommodate—rather than resist—such status quo under the premise of humanitarianism and state and corporate benevolence.

Modern Slavery and the Internationalization of Neoliberalism

Neoliberal globalization, or the “internationalization of neoliberalism” (Tombs & Whyte, 2020, p. 20), is a distinct variant of capitalism which emphasizes the liberalization and integration of the global economy (Khoury & Whyte, 2017, 2019; Passas, 2000). Neoliberalism espouses limited intervention by the state and “the emancipation of individuals through the realisation of their freedoms” (Khoury & Whyte, 2017, p. 14). Its success (and pervasiveness) as a hegemonic project at the national and global level is due, in part, to its capacity to transcend markets, and embed neoliberal rationality in non-economic domains (Bandiera, 2021; Brown, 2005; Polanyi, 2001), including human rights. Indeed, neoliberalism is “equally compatible” with human rights (Khoury & Whyte, 2017, p. 13), as it “proposes that human wellbeing can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade” (Harvey, 2005, p. 2). It has been particularly “destructive” in terms of the division of labor (Harvey, 2005, p. 3). Under neoliberalism, labor has been commoditized (Polanyi, 2001, p. 76), and acquired an economic and market value. As a result, labor is produced and reproduced (and, therefore, purchased) at a cost. In this respect, capital production “produces not only commodities . . . but it also produces and reproduces the capital-relation,” reinforcing the exploitative relations between the purchasers and performers of labor, and laborers’ overall relation to capital (Marx, 1990, p. 724).

Over time, global neoliberal hegemonic ideas have come to be disseminated, and “legitimately sustained,” through consensus formation (Bandiera, 2021; Khoury & Whyte, 2017, p. 7 [emphasis removed]; Khoury & Whyte, 2019). According to Jessop (1990), states represent an ensemble of forces. The structuration of the relations between these forces inside the state, not only confers a level of authority which enables the powerful to assert their interests and maintain their hegemony over the less powerful, but it also renders the state more amenable to this hegemony (Bandiera, 2021; Jessop, 1990; Tombs & Whyte, 2015). Globally, class forces across states have combined by way of their shared neoliberal hegemonic ideas, forming a transnational capitalist class (Patten, 2020; Özekin, 2014) that seeks to shape the global economy in line with the interests of neoliberal globalization. Capitalist states (and laws they enact) mediate the relations between class forces in ways that have typically reinforced the global capitalist status quo. The globalization of markets and the development of transnational and international state structures that embody neoliberal rationality (such as the Organization for Economic Co-operation and Development (OECD) *Guidelines on Multinational Enterprises*, herein OECD Guidelines)

compel states to exercise agency in ways that are compatible with this structural arrangement (and, therefore, the neoliberal project more generally). They also play a part in shaping national state structures to align with neoliberal rationale, by “help[ing to] define policy . . . for states and to legitimate certain institutions and practices at a national level” (Cox, 1983, p. 172). Though this neoliberal global order is by no means solid, individual states risk alienation if they fail to conform (Khoury & Whyte, 2017, p. 11). Since neoliberal hegemony was established by the dominant classes within states located primarily in the Global North,³ neoliberal globalization has also reinforced imperial hegemony and therefore the power asymmetries between the Global North and South (Bartholomew & Breakspear 2004).

States have been key agents in the production of modern slavery. Not only is the regulation of slavery practices, and more specifically medical devices (which includes gloves), an official state responsibility,⁴ but as Tombs and Whyte (2020, p. 19) express:

corporate crime is normalized through state practices. State culpability extends through their formal legalization of much of this harm, their licensing of harm production, their failure to develop adequate law and regulation which might mitigate these harms, their failures to enforce adequately such laws as do exist, and/or their failures to impose effective sanctions where violations of law are proven.

Modern Slavery and the Failing of the International Legal Framework

States have been key agents in the production of modern slavery—first, through their active facilitation of neoliberal globalization, and second, through (re)framing themselves and corporations as benevolent actors. Nevertheless, slavery-related harms, especially in the Global South, are also due to an absence of meaningful international legal frameworks or their limited application to trans- and multi-national corporations, combined with the failure to criminalize, and act on at the international level, large-scale modern slavery practices.

At the international level, civil and criminal liability is only applicable to natural persons and states, not legal (corporate) persons. In fact, corporations are defined as “nationals of states” as opposed to “independent entities at the same level as states” (Wen, 2016, p. 336). The jurisdiction of the International Criminal Court is also limited to natural persons, at the exclusion of corporate persons (see Article 25(1) of the Rome Statute). As a result of this state work, corporations are not bound by international law and can operate, and therefore produce harm, on an international and global scale.

Attempts to increase corporate liability, or even to define the scope of corporate responsibility, including corporations’ human rights obligations, within the international space have had little success. Instruments that have been enacted by states, such as the OECD Guidelines, remain voluntary and are not legally binding (Khoury & Whyte, 2019). Stronger instruments

attempting to outline corporate human rights obligations, such as the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, have remained in draft form due, in part, to criticisms by both states and corporations that they are “too onerous” (Hess, 2019, p. 13). A formal UN treaty among states remains ongoing (BHRRC, 2021a). Historically, earlier recommendations and drafts have been subject to criticism and broad opposition, mostly by northern states (Chilton & Sarfaty, 2017, p. 11).

Modern Slavery, National Law, and Its Limitations

The absence of an international legal instrument has led to a proliferation of modern slavery laws at the national level. There is a vast literature critiquing the capacity of modern slavery legislation to reduce slavery and slavery-like practices within supply chains (for example, see Chilton & Sarfaty, 2017; Christ et al., 2019; Dean & Marshall, 2020; Landau & Marshall, 2018; New, 2015; Stevenson & Cole, 2018). Indeed, a recent report published by the BHRRC (2021b) demonstrates how modern slavery reporting under the UK’s *Modern Slavery Act 2015* over the past 5 years has fallen short of producing the projected corporate change. Scholars have also criticized the Australian Modern Slavery Act for lacking teeth (Landau & Marshall 2018; Vijayarasa 2019), advocating for enhancements to the legislation, such as stricter mandatory requirements and related sanctions (Sinclair & Nolan 2020). Part of the problem is that every discussion made under the Australian Modern Slavery Act prior, during, and after its enactment to resolve the problem of supply chain exploitation are market-based.

Four key limitations of such legislation are most relevant to this case study. First, modern slavery legislation does not apply to all public and private entities; typically, such legislation only applies to private and medium and large entities operating within the legal jurisdiction of the state in which the legislation is in place. The Australian legislation includes public entities, not just commercial ones (a key point of difference between the Australian and UK Acts); however, it does not apply to entities like Top Glove because Top Glove does not hold its operations in Australia. National modern slavery laws have therefore resulted in governance gaps where states are unable or unwilling to enact or enforce these laws, allowing corporations to operate with impunity within the “voids” (Tillman, 2002) and “spaces between laws” (Michalowski & Kramer, 1987).

Second, under such legislation, there is no civil and/or criminal liability for either direct engagement in or inaction on slavery and slavery-like practices, or for failing to supply a modern slavery statement or to comply with modern slavery reporting requirements. No civil and/or criminal penalties exist under the Australian Modern Slavery Act. In the event that a reporting entity fails to supply a slavery statement, the only recourse available to the Minister (under section 16A of the Act) is to request an explanation for the failure to comply, to extend the period for the submission of the statement, and/or to publish this failure on the Modern Slavery Statements Register.

Since markets are the “organizing and regulating principle of the state,” and of “society” more broadly (Foucault, 2008, pp. 116–117), activities that benefit or advance the production of capital are seldom defined as criminal, even when they may be harmful (Ezeonu, 2018, p. 68). In fact, they are conceived as socially productive since they produce an overall benefit to society through the provision of goods and services and creation of work (Tombs, 2016, p. 88). Conversely, activities which threaten capital production, and by extension the global capitalist economy, are often criminalized (Ezeonu, 2018). Legislation criminalizing aspects of modern slavery has therefore typically focused on small-scale exploitation (organized crime), or protection from otherness (Ezeonu, 2018; Gadd & Broad, 2018), while disregarding large-scale exploitation (corporate crime). The criminalization of small-scale episodes of modern slavery was set in motion with the co-opting of the United Nations (UN) Trafficking Protocol (2000) under the frames of a “parent” instrument, the UN Convention against Transnational Organized Crime (2000) (Goździak & Vogel 2020). This episode set the roots of a narrative centered in organized crime, rather than human rights, that evolved into domestic legislation about micro-level criminal responsibility. The Australian Government, like other national governments, has replicated this approach of criminalizing and is harshly punishing individual, small-scale slavery-like practices through various amendments to sections 270 and 271 of the *Criminal Code Act 1995* (Cth). This is in sharp contrast to the Australian Government’s response to slavery-like practices on the part of corporations. This soft law regime under the auspices of corporate social responsibility has been long entrenched in our best practice regulatory regime and has now found application into slavery matters (Nolan & Ford 2019). Here it is argued that the binary regime of responsibility adopted to address the macro and micro levels is part of an overarching project to advance the state interest (Garland, 2001), by exploiting the theme of vulnerability while at the same time neutralizing dissent. This consensus-building around “hostile solidarities” (Carvalho & Chamberlen, 2018) and the production of “dominant crime categories . . . that ultimately exempt global business from liability” (Gadd & Broad, 2018, p. 1445) add to the discourse around the crimes of globalization and their harmful consequences for the Global South (Friedrichs & Friedrichs, 2002; Rothe & Friedrichs, 2014). Harm occurs because the narrative underpinning modern slavery interventions, at best, frame the corporation as making a positive contribution to the local economy and, at worst, excuse the corporation from culpability. Modern slavery legislation is therefore a tool through which both states and corporations can frame themselves as benevolent—to be seen as if they are shaping a better world, free from extreme forms of exploitation akin to slavery. According to Fassin (2012), humanitarianism (or humanitarian hegemony) is regularly evoked by the elites of the Global North and South to re-narrate criminality and maneuver and exploit the Global South. Humanitarianism has become a powerful tool to frame certain actors and practices as morally good, and therefore to justify certain types of state

intervention under the pretext of humaneness. Through this, humanitarian governance becomes a means through which to control the nature and terms of state intervention, where certain actors and practices, we are told, do not require criminalization nor intervention by the state. This is demonstrated in the Ansell Modern Slavery Statement (2020a, p. 14), in which a “good faith” approach is cited and drastic consequences (“termination”) are exhibited as misleading evidence of the seriousness of Ansell’s commitments:

We know that systemic and industry-wide change takes time, and we are proactive participants in that change. In the most extreme circumstances, where a supplier is found to not complete its corrective actions and not work towards improvement in good faith, we will terminate the relationship.

Certainly, there are practical limitations to monitoring an entire supply chain due to the number of suppliers (and sub-suppliers) involved. There is also the “contentious” question of how far civil and/or criminal liability should extend when it comes to the management of supply chains by reporting entities (Christ et al., 2019, p. 841). However, lengthy and complex supply chains have arisen as a direct result of the nature of the capitalist system, and they have provided a means with which to diffuse criminal responsibility for knowing engagement in slavery and slavery-like practices on the part of reporting entities (more on this point in the next section).

Third, reporting entities like Ansell are not compelled to report on specific instances of slavery and slavery-like practices identified in their supply chains or on the explicit steps taken to rectify these practices. Under section 16(1) of the Australian Modern Slavery Act, reporting entities need only describe their operations and supply chains, the risks of modern slavery in their operations and supply chains, the level of due diligence they undertake to minimize these modern slavery risks, how the entity assesses the effectiveness of their due diligence, and how the entity consults with any entities it owns or controls within its supply chains. The absence of this detail makes such statements difficult to interpret, which has implications not only for the overall criminalization of modern slavery practices, but also for determining the liability of the reporting entities themselves, as in the case of Ansell. In their study of modern slavery statements by Australian banks in the first three years of reporting under the UK Modern Slavery Act, Dean and Marshall (2020, p. 18) found that both ANZ and NAB had disclosed instances of modern slavery in their 2018 statements; however, only ANZ’s disclosure was sufficiently detailed to allow for third-party monitoring. According to Dean and Marshall (2020, p. 16), “[a]ll lenders were silent on disclosing how many customer relationships, if any, were terminated through due diligence processes and how much finance, if any, was declined due to adverse assessments of customer conduct risk.” In fact, entities may be dissuaded from supplying these details in good faith simply because it is voluntary and such information may place them at a competitive disadvantage to those who choose not to disclose (Dean & Marshall,

2020), encouraging a race to the bottom. Because disclosures reveal little of the extent to which slavery-like practices are actually occurring within supply chains, they are less likely to be read and understood by their intended audience, the consumer (Chilton & Sarfaty, 2017).

Finally, reporting entities can also continue to maintain their relationship with suppliers found to be engaging in slavery and slavery-like practices without penalty. According to the OECD Guidelines, appropriate responses to modern slavery practices when they are identified can include:

continuation of the relationship with a supplier throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, as a last resort, disengagement with the supplier either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. (OECD, 2011, p. 25)

Reporting entities are also encouraged to “take into account potential social and economic adverse impacts related to the decision to disengage” (OECD, 2011, p. 25), effectively prioritizing economic considerations over human rights. Though it could be argued that it is more ethical to continue to engage with and gradually improve the practices of suppliers when slavery and slavery-like practices are found, rather than terminating the relationship and reporting the supplier (as the practices would only continue to occur otherwise), “any response to discovering modern slavery other than reporting it to authorities could be interpreted as complicity in criminal activity” (Stevenson & Cole, 2018, p. 82). Indeed, knowing and continued engagement with such suppliers while continuing to profit from slavery and slavery-like practices could constitute direct complicity on the part of the reporting entity (New, 2015, p. 699). As such, “terminating the supply contract and reporting the supplier to the authorities is arguably the only responsible form of action” (Stevenson & Cole, 2018, p. 84).

The governance gaps generated by national modern slavery laws, and the logistical and financial challenges for states in pursuing corporate human rights abuses occurring across borders, such as modern slavery, has meant that compliance approaches, which delegate responsibility to corporations to regulate their own legal compliance with human rights obligations, have become the default approach. Yet, this case study demonstrates how these approaches are unlikely to lead to altered business practices; corporations can claim that supply chains are being monitored and thus propagate the belief that they are acting in socially responsible ways (Coombs & Holladay, 2013).

Treating corporations as “part of the solution” to combating modern slavery, rather than a principal cause, is also problematic because it is reinforcing neoliberal rationality (that markets are self-organizing and regulating) and, as the next section demonstrates, it only “serves to maintain power relations” (Hillyard & Tombs, 2017, p. 288).

Modern Slavery and Power Relations at the Level of Corporations (Corporate Power)

As in the example of medical gloves, corporations, alongside states, are key agents in the production and maintenance of modern slavery. Top Glove has chosen the strategy of denial. Ansell, however, has recently chosen a different path, stating that it has encountered modern slavery practices. This may appear to be evidence of progress, and indeed we have been invited by multiple parties to admit so. Yet it is problematic since Ansell has the power to define the scope of its own responsibility. For example, the 2020 Ansell Modern Slavery Statement declares (2020a, p. 10, emphasis added):

Given the nature of the relationship with these [direct] suppliers, we acknowledge there may be a risk that we are directly linked to these risks through our business relationships, but *we do not believe that we are causing or contributing to these risks.*

In this statement, we see the company affirming its neutrality in a situation where it holds all the power to explain its involvement in slavery and slavery-like practices and to define the boundaries of the company’s responsibility and actions.

Modern slavery laws permit reporting entities a great deal of discretion in what they choose to disclose, and this power does not necessarily lead to improved performance and a “race to the top,” as research has shown (see Chauvey et al., 2015; Dean & Marshall, 2020; Landau & Marshall, 2018). Corporations can therefore openly acknowledge and continue to profit from modern slavery practices, all the while participating in a regulatory regime that reinforces this exploitation.

Corporations have taken advantage of their power over national and international law, a privilege that is underpinned by a great deal of state work, to move production offshore. This increased mobility has enabled corporations to avoid the jurisdictional reach of law and regulation in their home states, which is more stringent and generates higher compliance costs (financial and non-financial), and to exploit the laxity of market conditions in host states, where law and regulation are absent, limited or not enforced and where the costs of compliance are lower.

The asymmetric power relations generated between corporations and suppliers within their supply chain further contribute to the production and maintenance of modern slavery. Corporations exert pressure on suppliers to produce products according to exact product specifications and standards in order to meet the conditions of supply, within short production times, and at low cost. It is this “drive for surplus-value” (Banaji, 2003, p. 81) that forces suppliers to cut the time and cost of production through the engagement of low-cost contract labor obtained via unregulated third parties (outsourcing) or subcontractors (Stevenson & Cole, 2018, p. 84).

The length and complexity of these supply chains, along with worker mobility and invisibility (through socioeconomic, linguistic and other disadvantages), increase the physical and moral distance between the reporting organization and the workers performing the labor at the end of the chain, which

minimizes attachment and responsibility to these workers, rendering them more vulnerable to exploitation (Barrientos, 2008; Bauman, 1989). Such distance enables a diffusion of responsibility, allowing for the responsabilization of suppliers for the regulation of their own conduct and that of their subcontractors.⁵ Supply chain length and complexity and worker mobility also make it difficult to identify and trace victims for the purposes of measuring the extent of modern slavery (adding to the “hiddenness” of modern slavery).

This relationship between corporations, suppliers and workers at the end of the chain reinforces asymmetries of power in ways that ultimately benefit the corporation:

[suppliers] have to deliver on quality (and associated value) which is passed up the value chain, whilst cost and risk is being passed down the chain . . . to workers. (Barrientos, 2008, p. 982)

This is not to suggest that power relations between corporations and suppliers cannot have the opposite effect. Corporations can use their power to compel compliance from suppliers—by working directly with suppliers to improve their practice, by setting up clear timelines for change, and by threatening to terminate the relationship with suppliers to compel compliance. However, this requires a commitment on the part of the corporation to act in socially responsible ways, and corporate social responsibility, in both theory and practice, has been subject to much critique in the literature, particularly in the field of modern slavery (for example, see Landau & Marshall, 2018; New, 2015). Corporations are “quintessentially rational” entities in the sense that their purpose is to accumulate (and maximize) capital while at the same time minimizing the costs of this pursuit (Yeager, 2016, p. 439). Expectations that corporations will respect a commitment to act in socially responsible ways, even when this commitment conflicts with the interest of accumulating capital, is oxymoronic as this “would entail ignoring the very rationale of the corporation and . . . economic system” (Pearce & Tombs, 1990, p. 425). Even though corporations can be pressured to act responsibly (by their competitors, public interest groups, trade unions, political parties, and so on), these “counterpressures only constrain, and certainly do not remove, the pressure to maximize profits” (Pearce & Tombs, 1997, p. 83). Moreover, such actions may be taken by corporations simply to give the appearance of seeking to reduce modern slavery. If corporations report that they are working with suppliers to eradicate slavery and slavery-like practices when such practices are identified, even if they do not provide evidence of such in their modern slavery statements, this reduces the potential for government intervention (and a reversion to command-and-control regulation), reduces opposition by oppositional forces (such as public interest groups), and has both cost and reputational benefits for the corporation (Christ et al., 2019).

Modern Slavery and External Parties

External third parties, such as but not limited to academics and non-government organizations (NGOs), have received

voluntary declarations of slavery-like practices by corporate persons, involving small- or large-scale slavery-like exploitation, in “excessively positive terms” (Gadd & Broad, 2018, p. 1440), reinforcing a moral consensus. In this respect, neoliberal globalization and humanitarian hegemony are complementary: humanitarian rationales and techniques of governance function as a means through which to disseminate and reinforce neoliberal globalization, specifically by re-narrating the criminality of states and corporations and framing them as benevolent actors.

As states-corporations align themselves with the same narrative against modern slavery they are proving themselves capable of neutralizing opposition by claiming a higher moral ground of “doing the right thing.” So, selected actors in the modern slavery space are consulted by the state and corporations and framed as casting a degree of influence, through their expertise, in shaping the benevolent humanitarian approach to reinforce and justify the maintenance of supply chains, notwithstanding the level of risk declared. Such neoliberal subjectivity, which builds on external expertise to validate an advantageous course of action, emerges in the selected case study in Ansell’s Modern Slavery Statement, specifically, in a box vaguely titled “Comments on ongoing performance issues in the Malaysian glove industry” (2020a, p. 14), in which Top Glove is again not mentioned. In this box Ansell states:

In line with *recommendations of human rights and labour experts*, we prefer to work with suppliers to improve their practices to provide secure employment and improved conditions for the workers in our supply chain, rather than reactively cancelling supplier contracts in response to specific events or allegations. (Emphasis added)

Such framing aims to deflect attention away from the large-scale exploitative practices akin to slavery, even when these practices are acknowledged openly in the statement itself, by stating the compelling human rights imperatives that have been *imposed* on Ansell by external parties. This proves to be an effective way to gather further consent while simultaneously neutralizing any potential or real dissent.

Therefore, a criminal regime for public and private entities is neither invoked nor applied, disembedding penal power from state-corporate entities, because—we are told—it is not in the best interests of the Global South. So, a humanitarian mechanism is deployed to frame large-scale exploitative practices, such as those in our case study of debt bondage and forced labor, that would be criminalized if they were committed by an individual, yet which do not attract any penalty. And neoliberal subjectivity has helped shape this system of duality: in Australia we have observed the same NGOs arguing in favor of companies working with the supply chain, while at the same time arguing for the criminalization of small-scale slavery-like practices.

Thus, in our view, the true purpose of modern slavery legislation, in Australia and elsewhere, is to normalize certain practices that advance state-corporate interests. Modern

slavery legislation “gives the appearance of working to reduce the problem” while continuing to allow “the conditions in which forced labour emerges” (New, 2015, p. 703). As such, these laws are tools that “legitimize problematic practices and appease critique” (Aliverti, 2020, p. 1120). This is exemplified within our case study by the Ansell Modern Slavery Statement (2020a, p. 11), in which Ansell declares that no forced labor incident will be tolerated and that the company has a zero-tolerance policy for debt bondage, yet provides no precise indication of the prevalence of such incidents or any specific details about how these problems will be addressed or, above all, when they will be stopped:

Forced labour: we do not tolerate nor engage in or support the use of forced or compulsory labour. [...] Foreign worker recruitment: a “Zero Recruitment Fee Policy” [applies].

However, such statements are apparently enough to satisfy the critics, and thereby allay any damage to company profits, at least in the short to medium term. Within this narrative, public and private entities in Australia are now performing a benevolent and generic agenda of protectionism, enhancing rather than risking their reputation.

Conclusion

Modern slavery has become an asset to the state-corporate agenda of power and profit maximization. The rise of worker vulnerability and humanitarianism has been exploited to build and maintain a moral consensus that is already proving challenging to counteract. The intricate connections between the regulatory regime and the performance of state-corporate morality as an act of humanitarianism have become more evident in the way many stakeholders, including the governmental and non-governmental organizations are referring to the declarations of slavery risks by public and private entities in the Australian Modern Slavery Act. Within this, the corporation is framed in chivalric terms as a tool to fight modern slavery insofar as it is presented as advancing the state’s benevolent agenda of protectionism and humanitarianism, performing morality that complements well the rise of vulnerability (Aliverti, 2020). In this case, building compassion into the narrative of modern slavery has the direct consequence of building consent while neutralizing dissent. The case study of medical gloves demonstrates the many ways in which large-scale slavery-like harm, occurring especially in the Global South, is addressed via legislative design as a *modus operandi* that exempts corporations from responsibility, and deflects criticism of them.

This emphasizes how, under a regime of neoliberal globalization, modern slavery is a negative externality of the capitalist market and state-corporate relationship. Yet, rarely does the literature discuss the role of elite North and South states and corporations as key agents in the production and reproduction of modern slavery, where state-corporate harms, at once resulting from and advancing capitalist production, are far from being labeled as crimes.

Indeed, these harms have become a new resource for building and maintaining moral consensus. The regulatory regime in this area allows politicians and companies to perform morality in a way that has not been possible in other sectors. Indeed, over the past year, companies such as those considered in this article—manufacturers and distributors of medical disposable gloves—have had an opportunity greater than ever before to exploit a narrative of protection (against the pandemic) while achieving new levels of profit. In the face of the COVID-19 pandemic, corporations have been allowed to profess their moral and benevolent aims in seeking to protect the elites of the Global North and South against criminalization, and to bypass any real scrutiny in the Australian regulatory regime. Certainly, this is demonstrated by the Australian Government’s complete silence on the issue of slavery within the PPE industry, in contrast to the US and New Zealand and to some extent Britain. And as it is estimated that this market will grow further, from US\$2.6 billion in 2020 to US\$3.7 billion by 2025 (Market Report, 2020), there are clearly compelling reasons to maintain the status quo for as long as possible.

This regime is entrenched within a benevolent multi-actor environment of neoliberal subjectivity, where human rights and labor law experts are invoked to sustain the narrative of permissible harm. This is demonstrative of a neoliberal hegemonic approach that is embedded in our globalized society and contributes to the production and reproduction of modern slavery because elite Northern and Southern states and corporations are acting as “partners in crime” (Whyte, 2009). Indeed, modern slavery is providing new tools to reinforce the “imaginary social order,” where states are stratifying the ways to maintain and accelerate the status quo of power. By exploiting the rise of vulnerability and building consensus, many, corporations are investing in human rights-related promises that allow them to operate in the medium to long term with impunity, even when declaring the risks in their supply chains. Through the manipulation of consent, by invoking human rights and a vision of a better future for all, they perform morality while maintaining a rationale grounded in market-based solutions. In other sectors we observe the prioritization of profit accumulation over human rights, yet here we see emerging the combination of the two elements in one cohesive narrative.

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Notes

1. The Australian Government introduced the Australian Modern Slavery Act as a call to action for major public and private entities to declare slavery risks annually. The Act differs from the UK’s Modern Slavery Act 2015, even though they share the same name, in that it only contains administrative provisions regarding

transparency in entities' operations and supply chains, which require that all entities, including public, with a consolidated revenue of AU\$100 million or more provide an annual slavery and human trafficking statement.

2. Top Glove is not subject to the UK's Modern Slavery Act 2015 because it does not hold its operations in the UK, rendering it exempt from the UK legislation. The NHS, which, according to the Channel 4 investigation, was the ultimate recipient of Top Glove products, is also not required to report because it is a public entity and the UK legislation only applies to commercial entities. However, the intermediary company importing the Top Glove products into the UK is subject to the legislation. In the UK, the intermediary contractor is Polyco Healthline. Under the relevant legislation, Polyco Healthline has an obligation to declare the risks to its supply chain in relation to slavery-like practices. According to the Channel 4 investigation, Polyco Healthline released a temporary action plan involving Top Glove and has declared that good progress is being made (Miller, 2020).
3. The term neoliberalism was first employed by European, British and American scholars in the early to mid-20th century (e.g., in the work of Friedrich Hayek and Milton Friedman, among others), before entering common usage with the onset of the Pinochet dictatorship in Chile (1973–90), and the Thatcher (1979–90) and Reagan (1981–89) regimes in the UK and US, respectively.
4. The Australian Minister of Home Affairs is the authority responsible for the receipt of modern slavery statements, responding to entities that fail to comply with the reporting requirements under the Act, as well as the management of the Modern Slavery Statements Register. Medical gloves are classed as medical devices under the Australian Therapeutic Goods Act 1989 (Cth) and regulated by Australia's *Therapeutic Goods Administration* (TGA) (TGA, 2020).
5. Stevenson and Cole (2018, p. 90) found this to be the case in their examination of modern slavery statements by the clothing and textile industry submitted under the UK Modern Slavery Act; the primary response to reducing modern slavery risk among reporting organizations was to incentivize their tier one suppliers "to govern and support sub-suppliers." This mentality is also evident in the statement made by the UK Department of Health in response to the receipt of Top Glove products by the NHS (Channel 4, 2020).

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