

Modern slavery and the employment relationship: Exploring the continuum of exploitation

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Abstract

The term ‘modern slavery’ constitutes a broad non-legal umbrella term that refers to a range of abusive practices including, but not limited to, forced labour, bonded labour, human trafficking and child slavery. While the most severe forms of labour exploitation represent instances of modern slavery, focusing on labour abuses more broadly is also important as it is not always clear at what point non-compliance with labour standards seeps into cases of criminal exploitation. This Special Issue focuses on what the large- and small-scale risk factors are that can cause working conditions to deteriorate, on how people can become trapped in exploitative conditions and on what can be done to prevent and remedy labour abuses. It does this by exploring the macro-level, specifically by examining global value chains and the labour exploitation within the global production regime; by exploring the meso-level, by focusing on the market-based character of business and human rights regulation; and by looking at the micro-level by examining labour regimes on factory floors and in private residences.

Keywords

Business and human rights, employment relationship, global value chains, labour exploitation, modern slavery, supply chains

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The term ‘modern slavery’ refers to a range of abuses, such as forced labour (work performed under the threat of punishment); bonded labour (work to pay off debt without control over conditions); human trafficking (movement of people for exploitation); child slavery (exploitative work performed by children for the gains by a third party); and domestic servitude (exploitative work in private residences). Other abuses include deceptive recruitment for labour and forced marriage (Nolan and Boersma, 2019). It is estimated that more than 40 million people are a victim of modern slavery and that 16 million of these victims are exploited in activities connected in the private economy. The practice is found in emerging economies as well as in developed countries (International Labour Organization and Walk Free Foundation, 2017). Based on a 2012 estimate of 21 million people being trapped in modern slavery, the International Labour Organization approximated that US\$150 billion in illegal profits are generated each year (International Labour Organization, 2014). It has been calculated that the average profit per victim is US\$3978 annually (Kara, 2017). Given that the more recent estimation of people in modern slavery has nearly doubled, profits will have drastically risen as well.

It is questionable whether modern slavery is an appropriate term (Allain, 2009; Beutin, 2019). It is an expression that conjures up images of historical slavery, thereby making the practice seem unrelated to present times. The use of the term also invokes the most shocking kinds of exploitation, thereby possibly neglecting cases that are less likely to make headlines. Such flawed views may make it less likely that governments introduce appropriate legislation, while companies may not scrutinise their operations and supply chains, and consumers may not consider the social footprint of their purchases, as modern slavery remains beyond their comprehension. Modern slavery is increasingly regarded as being part of a continuum of exploitation, which recognises that people can be exposed to conditions that can gradually worsen, sometimes leading to slavery (Lewis et al., 2014). While the most extreme forms of exploitation represent instances of modern slavery, focusing on labour exploitation more broadly is also important as it is not always clear at what point non-compliance with labour standards seeps into cases of criminal exploitation. Labour exploitation is a problem occurring not only throughout global value chains (GVCs) and in developing regions (Clarke and Boersma, 2019), but also within local value chains and in industrialised countries (Rawling et al., 2021).

If we accept the premise that modern slavery is part of a continuum of exploitation, then there are several questions that warrant further investigation. For example, if people can be subject to working conditions that can gradually deteriorate over time and can sometimes result in modern slavery, how exactly does this happen? What are the large- and small-scale risk factors that can cause working conditions to deteriorate? How do people become trapped in exploitative conditions? What can be done to prevent and remedy exploitation? The articles in this Special Issue focus on these critical questions and aim to identify the key factors contributing to this process, to determine what approaches can reduce the risk of labour abuses occurring, and to discern novel ways to address exploitation once identified. They do so by exploring the macro-level, by examining GVCs and the labour exploitation within the global production regime;

by exploring the meso-level, focusing on the market-based character of business and human rights regulation; and by looking at the micro-level by examining workplace labour regimes on factory floors and in private residences.

Global value chains: increased complexity and heightened risks of labour exploitation

The rise of global sourcing and production has had considerable negative side effects (Clarke and Boersma, 2019). There is increased recognition from governments, businesses and civil society of the need to address risks and avoid exploitation in GVCs (Mares, 2018). The first article in this Special Issue examines when and how workers in GVCs can become vulnerable to labour exploitation. From a macro-level perspective, Caspersz et al. (2022) argue that combinations of three GVC characteristics contribute to an environment in which modern slavery can manifest: complexity, appropriation arrangements, and obligation cascade. Regarding complexity, the ability of GVC actors to monitor and enforce labour standards becomes increasingly difficult as the length of the value chain and the number of actors increases. Considering appropriation, pressures on workers and a gradual erosion of working conditions can occur if an increase in economic value (i.e. larger profit) is demanded by actors at the buyer-end of the value chain, which producers cannot achieve through technological or other ways of upgrading. Finally, obligation cascade refers to situations where lead firms pass on the responsibilities to respect labour rights to upstream actors in the value chain, which can result in minimal compliance with labour standards or even the deliberate decoupling of compliance mechanisms from actual workplace practices (Egels-Zandén, 2014).

The scrutinising of GVCs by Caspersz et al. is relevant considering that this mode of globalised production has had an enormous impact on the economy and on people's lives. Cross-border production and sourcing are not new phenomena, yet the increasing scale of these global activities as well as the intricacies of GVCs are unprecedented. The widespread disruption of GVCs due to the Covid-19 pandemic exemplifies exactly how intricate and fragile this global mode of production is, and tragically demonstrates how workers frequently pay the price for the shockwaves going through the system (Ford and Ward, 2021). An added complication is that GVCs are highly abstract: it is difficult if not impossible to truly grasp an entire value chain, and to fully comprehend the flows of information and capital, the transportation of goods and people, production and assembly, and the sourcing of raw materials, all of which occur in different spatial and chronological frames. GVCs can arguably be regarded as 'hyperobjects', a term used to describe objects that are so vast in space and time, such as global warming or global markets, that one is unable to capture them fully (Morton, 2010).

The influence of global production on working conditions is illustrated by research that estimates that 60% of global trade in the real economy depends on the supply chains of just 50 corporations, which employ only 6% of workers in a direct employment relationship and meanwhile rely on a hidden workforce of 116 million people (International Trade Union Confederation, 2016). These figures demonstrate the extraordinary power and influence of an increasingly select few large companies and illustrate

the fragmentation and changing nature of the employment relationship. It is crucial to note that the role of large companies is paradoxical (Berti and Simpson, 2021). Companies benefit from cheap labour in low-wage countries, often at the cost of questionable labour standards and the lack of enforcement of labour rights. Conversely, they are viewed as actors that can promote better labour practices in offshore operations and in their value chains. Indeed, while many large companies have seized the economic opportunities in burgeoning markets around the globe, they have also been confronted with several labour and human rights issues, many of which have been the subject of campaigns by civil society organisations (Nolan and Bott, 2018).

In the contemporary global production regime, many value chains are buyer-driven, meaning that retailers and big brands exert greater influence over the value adding stages in the creation of a good or delivery of a service compared to producers. This means that campaigns by civil society organisations such as non-governmental organisations and trade unions to improve working conditions have frequently targeted so-called lead firms at the buyer-end of the value chain, given the perception that these companies have the ability to influence suppliers of goods or services further upstream (Kaine and Rawling, 2019). The fashion and apparel industry provides a good illustration. In the 1990s, large brands such as Nike and Levi Strauss came under pressure to improve working conditions at suppliers that were operating 'sweatshops', even though Nike and Levi Strauss were not the direct employer of the factory workers (Doorey, 2011). Three decades later, responses by lead firms to upstream labour abuses have seen only limited progress beyond the creation of codes of conduct and the social auditing of suppliers (Ford and Nolan, 2020), activities that have failed to result in structural improvements to working conditions in the fashion industry (Clean Clothes Campaign, 2019).

The oversight of working conditions by companies at the buyer-end of value chains becomes increasingly limited as activities take place further upstream. This is the point of departure of the second Special Issue article, in which Boersma et al. (2022) argue that the dominant focus on the buyer-end of value chains and the responsibilities of companies for working conditions further upstream has negated a holistic approach that includes a downstream perspective from the producer-end of the value chain. They present a case study of the Australian cotton industry that explores how upstream value chain actors such as cotton producers can identify and engage with downstream labour risks. Australian commodity producers have become increasingly concerned about downstream malpractices in GVCs, specifically with Australia's live animal export facing scrutiny following continuing revelations of animal cruelty in export countries (Barrett, 2021). For Australian cotton producers, it is vital to examine labour risks occurring post-farm gate and the ways in which these risks can be identified and mitigated.

Major fashion brands generally have some – if often limited – oversight of where their goods come from and the production conditions, and as such are considered to be in a position to exert some influence to improve labour standards further upstream in the GVC. This stands in contrast to Australian cotton growers who (from a producer perspective), have limited to no insight into where cotton is exported to or what labour abuses might occur further downstream, nor have they made efforts to identify points of

intervention to prevent and remedy abuses. For example, there are widespread concerns about Uyghur Muslims being subjected to forced labour in the cotton processing region of Xinjiang in China (Xu et al., 2020). Such downstream practices represent a risk to the Australian cotton industry, which does not wish for its product to be associated with exploitation. However, this downstream view presents challenges, as the location of cotton growers to GVC activities and risks is different compared to fashion brands, as is the leverage that they have, and so are the points of intervention. Boersma et al. apply a 'sensemaking lens' to identify labour risk in GVCs, while providing insights into the capacity of producers to specifically address downstream labour abuses. The authors suggest the possibility of applying a 'book-end' approach that combines upstream and downstream actions by buyers and producers to address labour exploitation.

Regulating business and human rights: more market and less state, or vice versa?

Due to the increase in cross-border sourcing, the environment in which employment relations are governed and labour standards are enforced has become fragmented. According to Manuel Castells, a theorist of globalisation, nation-states are still at the centre of political power but decision making increasingly occurs within 'a state made of ad hoc networking in the practice of government between nation-states, European institutions, global institutions of governance, regional and local governments, and civil society organizations' (Castells, 2009a: xxx). In recent years, attempts to regulate the labour and human rights impact of companies have increasingly taken place within this institutional patchwork, as attempts to develop a binding international instrument continue to limp along (Ruggie, 2013). Castells furthermore argues that 'the institutions of the nation-state [have] gradually lost their capacity to control and regulate global flows of wealth and information' (2009b: xviii). The Modern Slavery Act introduced in Australia (2018) offers an interesting example. The Act applies to entities in the Australian market with annual revenue over AUD\$100 million (Home Affairs, 2019) and also applies to non-Australian entities. Yet, while the Act has been introduced by the Federal Government, it has a limited enforcement framework. As with other 'soft laws' (Lindsay et al., 2017), the Modern Slavery Act is largely enforced by the stakeholders of reporting entities and by market forces.

Government guidance provides insight into how Australia's Modern Slavery Act is expected to work. The Act requires 'large entities [to] publish annual Modern Slavery Statements describing their actions to assess and address modern slavery risks' (Home Affairs, 2019, 5). The Home Affairs Department states that '[b]y improving transparency about modern slavery, the reporting requirement will increase business awareness of modern slavery risks, reduce modern slavery risks in the production and supply chains of Australian goods and services, and drive a business "race to the top" to improve workplace practices. The reporting requirement will also increase information available to consumers, investors and business partners' (Home Affairs, 2019, 13). In instances of non-compliance, 'the Government will seek to engage with noncompliant entities to support them to comply. However, in cases of deliberate and/or severe noncompliance

the Government may choose to publicly identify the noncompliant entity'. The guidance goes on to say that '[f]ailure to comply can significantly damage your entity's reputation, undermine your ability to do business with other entities and damage investor confidence' (Home Affairs, 2019, 14).

The government guidance thus clearly demonstrates that soft enforcement is central to Australia's Modern Slavery Act. Rather than relying on hard sanctions such as financial penalties, soft enforcement strategies depend on stakeholder scrutiny and market forces, and the repercussions that non-compliant organisations may suffer in terms of reputational and financial damage (Klettner et al., 2013). Soft laws that mandate corporate reporting on gender equality provide a cautionary tale. While hard laws may involve 'more coercive means of achieving equality of outcomes such as legislation for affirmative action and quotas. Soft strategies involve persuasion of market actors to achieve equality of access' (Spender, 2012, 23). Gender equality soft laws require companies to disclose their actions to improve the position of women, leaving enforcement up to the scrutiny of investors and consumers. While such laws have long existed in many countries, at the current rate the global gender pay gap will not close for another 200 years (Neate, 2018). According to the former UN Special Rapporteur on Contemporary Forms of Slavery, "soft law" frameworks have provided clarity on how to operationalise the responsibility of corporations to respect human rights and the obligations of states in relation to slavery and forced labour. However, they have had a limited effect in ensuring corporate and state accountability' (Bhoola, 2016).

Indeed, research shows that '[t]here is growing unease about these "softer" mechanisms [as] it is increasingly uncertain to what extent (if at all) lead firms would be willing to adopt voluntary compliance mechanisms in the absence of consumer pressure, regulatory scrutiny, and/or the credible threat of liability' (Hardy and Howe, 2020). It therefore remains unclear to what extent companies are able (or willing) to address modern slavery. The findings in the third article of this Special Issue are in line with the doubts that have been expressed about soft laws and the reliance on market enforcement. Drawing on experimentalist governance and by comparing modern slavery, foreign bribery, as well as illegal logging regulation, which all utilise the market as an enforcement mechanism, Harris and Nolan (2022) conclude that market enforcement is sub-optimal and modern slavery regulation should include sanctions such as financial penalties as well as involvement of a public regulator. While there is no doubt that the state-based regulatory approach to labour governance has come under pressure as production has become fragmented across jurisdictions, state-based regulation continues to be utilised in efforts to safeguard working conditions in other jurisdictions and is a necessary element to reinforce and complement enforcement by other stakeholders.

The fourth article of the Special Issue asks if business and human rights regulation originating in the Global North can improve working conditions in the Global South. Marshall et al. (2022) focus on India's Rajasthan sandstone quarries where child labour and bonded labour are widespread, in particular in unregistered quarries. Sandstone produced in Rajasthan is found in landscaping and in buildings across the Global North, which prompts the question whether the building industry bears some responsibility for addressing these violations. Sandstone is but one example where an increased demand for a

commodity ostensibly leads to labour abuses. Another example is cobalt, which is used in lithium-ion batteries. The increased demand for cobalt has resulted in a host of unregulated and unsafe mining activities to obtain this mineral (Baumann-Pauly, 2020). This suggests that an increased demand for goods in the Global North can directly impact activity in the informal and sometimes in the dark economy in the Global South. The data presented by Marshall et al. shows that these dynamics are not always straightforward, as they argue that power is distributed across the value chain, which leads them to suggest that business and human rights regulation originating in the Global North will be more effective if it recruits actors such as exporters and processors of stone as allies. Like Harris and Nolan (2022), Marshall et al. caution that market-based regulation needs to be supplemented by government efforts to be effective, while they make the additional point that this is essential in overcoming the neo-colonial undercurrents associated with business and human regulation originating in the Global North.

Workplace labour regimes: labour exploitation in factories and in private residences

Well-documented efforts by actors in the Global North to regulate business and human rights in the Global South were also made following the Rana Plaza disaster in 2013. The collapse of the garment factory in Bangladesh ended the lives of 1134 people and underlined the regulatory shortcoming in the global garment value chain. Major fashion brands and other stakeholders in the value chain responded by attempting to reform the existing labour governance system, comprised of both public and private regulation. Safeguarding labour rights in export-dependent countries poses a significant challenge, as the institutional environment of export-oriented countries is not always conducive to improvements in labour standards. Many export-dependent countries, like Bangladesh, have established 'export processing zones' (EPZs), which countries use to market themselves as ideal candidates for offshoring of production. EPZs are specifically meant to attract foreign direct investment and are characterised by ready-to-operate manufacturing infrastructure and by regulatory exemptions concerning taxes and (labour) laws, thereby lowering entry requirements for new investors (International Labour Organization, 2015). While EPZs may provide a competitive advantage and increase foreign direct investment, this often comes at the price of lowering wages and undermining labour standards (Cirera and Lakshman, 2017).

The fifth article in this Special Issue examines the influence of the post-Rana Plaza labour governance system on worker outcomes, in terms of their process rights, wages, and conditions of employment. Frenkel et al. (2022) highlight the relationships between elements of the labour governance system, workplace regimes (structural and relational workplace characteristics), and worker outcomes. Specifically, they examine worker exploitation as expressed in hardship and sweatshop type workplace labour regimes. Both regimes feature exploitation, mostly expressed in the lack of freedom of association and collective bargaining. In the hardship type workplace, worker outcomes are selectively lacking, while in the sweatshop regime, outcomes are consistently below international standards. Frenkel et al. suggest that the changes made to the labour governance system post-Rana have re-enforced the hardship regime and prevented worker

outcomes from deteriorating to a sweatshop regime. They caution however that due to the Covid-19 Pandemic, garment workers in Bangladesh may become more likely to be employed in sweatshop type factories, with the possibility that some domestic production units may be engaging in modern slavery. The classification of hardship and sweatshop types provides a good illustration of the continuum of exploitation evident in many workplaces, including in Bangladeshi garment factories.

While there is increased awareness of labour exploitation that can occur in factories, exploitation of domestic workers remains largely hidden. Paid domestic work is a highly feminised sector, with women making up 76.2% of the global household employees. Eleven million of these women are migrants, many of which, driven by poverty, have no choice but to accept conditions that violate their human rights (International Labour Office, 2021). The International Organization for Migration notes that ‘migrant workers around the world generally lack the legal protection available to the domestic workforce’, and that ‘irregular migrant workers are particularly vulnerable to exploitation and abuses in the workplace, including slavery-like practices’ (International Organisation for Migration, 2017). The final Special Issue article makes an important contribution in this area by documenting the work experiences of Romanian transnational live-in care workers in Austria. Hopfgartner et al. (2022) find that while interviewees are reasonably satisfied with their jobs, many gave accounts of having been treated unfairly due to their dependence on placement agencies and employers. Exploitation manifested itself in low wages, excessive hours and precarious employment, being deceived to perform work without pay, being urged to perform tasks beyond care work, being denied food and access sanitation, receiving inadequate training and limited recognition, and fulfilling excessive demands due to a strong sense of commitment.

Conclusion

While modern slavery has become a prominent term in public debate, and a growing number of companies profess to focus on modern slavery in their operations and supply chains, the examples reported in the media predominantly focus on exploitation at the severe end of the spectrum. The articles in this Special Issue provide valuable insights into the diverse ways in which exploitation can manifest itself within the employment relationship and the diverse range of mechanisms that are being utilised to address it. Examining labour exploitation from multiple viewpoints reveals the true complexity of designing regulatory systems and improved business practices to address entrenched labour exploitation. The research of both Caspersz et al. (2022) and Frenkel et al. (2022) reveals the utility of examining the causes of labour exploitation through an industry specific lens that ties factory practices with broader macro-economic trends evident in GVC production. Modern slavery and labour exploitation more generally impact a diverse range of workplaces and manifest in many different forms so there continues to be value in further exploring these issues sector by sector. This is reinforced by the findings of Hopfgartner et al. (2022), who bring to light an under-examined area of worker exploitation by documenting the experiences of live-in care workers in Austria. The articles by Caspersz et al., Frenkel et al., and Hopfgartner et al., ensure that academic

debate is well informed on this continuum of exploitation. An area for further research arising from these articles concerns the connection between worker education and awareness of exploitation – whether it be on the factory floor or in private residences – with the attention and potential redress provided to workers by both business and government.

Another interesting area of future research concerns the dynamics behind the emergence of modern slavery legislation and organisational responses to it. This is a question that follows the findings of Marshall et al. (2022) and Harris and Nolan (2022). Legal scholars tend to examine regulatory aspects of modern slavery at a macrolevel, while scholars from business and management fields have often focused on regulation at a microlevel from the inside out (i.e. from the perspective of business' implementation of the law) (Caruana et al., 2021). Closer attention by researchers to issues that combine these two perspectives, including how law can positively impact business models to support improved labour conditions in GVCs, would be a valuable addition to this field. Finally, the article by Boersma et al. (2022), which argues for an increased focus on the potential downstream leverage of producers to influence business practices, is another intriguing area worthy of further research. There are numerous 'tipping points' in GVCs and a more holistic approach that considers both the upstream and downstream leverage of all entities in GVCs could be valuable in developing regulatory responses to prevent and reduce labour exploitation.

Following the findings in this Special Issue we make three observations. First, while it is important to build on the attention that has been granted to modern slavery, focusing on labour abuses more broadly is important if academics and policy makers are to understand how labour exploitation may escalate (and may be prevented from escalating) into modern slavery. Overlooking the significance of establishing workplace mechanisms that enable workers to express dissent and negotiate on issues such as work hours or wages, means that business and policy makers will be forever chasing their tails – focusing on redress rather than prevention. Second, we urge scholars to work in an interdisciplinary manner and break out of their academic siloes to develop research that integrates perspectives and analysis from a broad array of academic fields, to better examine the regulatory 'solutions' for addressing modern slavery. Third, to enable the development of effective interventions, it is necessary to continue to examine how exploitative labour practices develop over time and adapt to new social and economic circumstances.

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Biographical notes

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Justine Nolan is a Professor of Law at UNSW and the Director of the Australian Human Rights Institute, UNSW. She has published widely on business and human rights and her latest book, *Addressing Modern Slavery* (2019) (with Martijn Boersma) examines how consumers, business and government are part of the problem and the solution in curbing modern slavery. She advises companies, NGOs and governments on these issues. She is a member of the Australian Government's Modern Slavery Expert Advisory Group. Justine has practiced as a private sector and international human rights lawyer. She is a member of the Editorial Board of the *Business and Human Rights Journal*, the *Australian Journal of Human Rights* and is a Visiting Scholar at NYU Stern Center for Business and Human Rights.