

**SUPPLY CHAIN SLAVERY:
THE CASE FOR CORPORATE RESPONSIBILITY
BEYOND DIRECT SUPPLIERS**

by
Cynthia Therese Schoeman

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Supervisor: Dr Schalk Engelbrecht

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ABSTRACT

Human rights abuse in employment practices is especially widespread in corporate supply chains. These abuses are increasingly recognised as modern slavery, which is defined as “forced labour, debt bondage, forced marriage, and human trafficking ... [that] refers to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power” (UN nd.).

Slavery is therefore not simply an historical atrocity – it is a current, global and pervasive problem. The corporate imperative to address modern slavery derives both from the gross abuse of human rights as well as the magnitude of the problem. As an illustration of the scale of the problem, the Atlantic slave trade, which lasted for almost four centuries, from the 16th to the 19th century, is put at 11.9 million people (Lovejoy 1989:368), while currently 40.3 million people are victims of contemporary forms of slavery (Global Slavery Index 2018).

This thesis sets out a case for corporate responsibility for modern slavery *beyond* direct suppliers and their employees since there is a greater risk of modern slavery in distant, indirect and sub-tier suppliers (LeBaron 2014:245). There are three overarching arguments in favour of such a broadened definition of corporate responsibility.

The first argument is that *all* suppliers’ employees can be categorised as stakeholders of the corporation. This means that the principles of stakeholder theory apply, which dictate that these employees’ interests and wellbeing fall within the scope of a corporation’s responsibility.

In terms of the nature and scope of such corporate responsibility, leverage-based as well as negative corporate responsibility is proposed. The former refers to responsibility beyond “direct and indirect contributions to social ... impacts” to include influencing “the actions of other actors through its relationships” (Wood 2012:64), which extends beyond direct suppliers. As regards the latter, negative responsibility is advocated, namely ‘to do no harm’ (with positive responsibility being ‘to do good’). This is proposed in light of the often onerous scope of positive responsibility. This dual stance on corporate responsibility is supported by three global frameworks that focus on corporate human rights responsibility: the United Nations Global Compact, the United Nations Guiding Principles on Business and

Human Rights, and the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises.

A further argument supporting corporate responsibility beyond direct suppliers stems from corporations' complicity in the formation of lengthy, fragmented and complex supply chains in pursuit of the goals of reduced cost and risk – where that structure often creates conditions that lead to human rights abuse. These business goals and their negative consequences have the added effect of undermining the CSR goal of eradicating modern slavery. The deliberate creation and pursuit of this business model augments the case for corporate responsibility for modern slavery beyond direct suppliers.

The thesis therefore concludes that corporate responsibility for modern slavery should extend beyond direct suppliers to apply throughout corporations' entire supply chain.

OPSOMMING

Die skending van menseregte onder indiensnemingspraktyke kom veral voor in korporatiewe voorsieningskettings. Hierdie misbruike word toenemend beskou as ‘n vorm van moderne slawerny, wat omskryf word as, “gedwonge arbeid, skuldgebondenheid, gedwonge huwelik, en mensehandel ... [wat] verwys na situasies waarin mense uitgebuit word en nie die vermoë het om die situasie te weier of te verlaat nie, weens dreigemente, geweld, dwang, misleiding, en/of die misbruik van mag” (UN nd.).

Slawerny kan dus nie net bloot as ‘n historiese gruweldaad beskou word nie – dit is ‘n aktuele, globale en omvattende probleem. Die noodsaaklikheid vir maatskappye om moderne slawerny aan te spreek, vind sy oorsprong beide in die ernstige skending van menseregte, sowel as die omvang van die probleem. Ter illustrasie van die probleem, word dit beraam dat 11.9 miljoen mense betrokke was by die Atlantiese slawehandel (Lovejoy 1989:368), wat bykans vier eeue, van die 16de tot die 19de eeu, geduur het, terwyl 40.3 miljoen mense vandag slagoffers is van moderne vorme van slawerny (Global Slavery Index 2018).

Hierdie tesis poog om ‘n saak te stel ter verdediging van korporatiewe verantwoordelikheid vir moderne slawerny, wat verder reik as net direkte verskaffers en hul werknemers, aangesien daar ‘n groter risiko bestaan vir moderne slawerny onder ver-verwyderde, indirekte en laer-vlak verskaffers. Daar kan drie oorkoepelende argumente gemaak word ten gunste van so ‘n breër definisie van korporatiewe verantwoordelikheid

Die eerste argument is dat *alle* werknemers van verskaffers as belanghebbendes van die onderneming beskou kan word. Dit beteken dat die teorie van belanghebbendes van toepassing is, wat dan bepaal dat hierdie werknemers se belange en welstand binne die bestek van ‘n maatskappy se verantwoordelikheid val.

Wat die aard en omvang van sodanige korporatiewe verantwoordelikheid betref, word ‘n hefboomstelsel, sowel as negatiewe korporatiewe verantwoordelikheid voorgestel. Eersgenoemde verwys na verantwoordelikhede bo en behalwe “direkte en indirekte bydraes tot sosiale ... impakte” om die invloed van “die optredes van ander akteurs deur hul verhoudings” in te sluit (Wood 2012:64), wat verder as direkte verskaffers strek. Wat laasgenoemde betref, word negatiewe verantwoordelikheid verdedig, dit wil sê, ‘om geen

kwaad te doen nie’ (waar positiewe verantwoordelikheid weer verstaan word as, ‘om goed te doen’). Dit word voorgestel as gevolg van die dikwels veeleisende omvang van positiewe verantwoordelikheid. Hierdie tweeledige posisie ten opsigte van korporatiewe verantwoordelikheid word ondersteun deur drie globale raamwerke wat spesifiek fokus op korporatiewe verantwoordelikheid ten opsigte van menseregte: die Verenigde Nasies se Globale Verdrag, die Verenigde Nasies se Riglyne vir Sake en Menseregte, en die Organisasie vir Ekonomiese Samewerking en Ontwikkeling se riglyne vir multinasionale ondernemings.

Nog ‘n argument ter verdediging van korporatiewe verantwoordelikheid wat verder as direkte verskaffers strek, ontstaan as gevolg van korporasies se medepligtigheid in die vorming van lang, gefragmenteerde en ingewikkelde voorsieningskettings. Die gejaag na die vermindering van koste en risiko's, lei tot strukture wat dikwels toestande skep wat lei tot die skending van menseregte. Hierdie besigheidsdoelwitte en hul negatiewe gevolge, het die addisionele negatiewe impak om die oorhoofse doelwitte van korporatiewe sosiale verantwoordelikheid, naamlik om moderne slawerny uit te roei, te ondermyn. Die doelbewuste skepping en najaag van so ‘n besigheidsmodel versterk die argument vir die noodsaaklikheid van korporatiewe verantwoordelikheid om verder te strek as bloot direkte verskaffers en vir maatskappy om verantwoordelikheid te neem vir hul rol in moderne slawerny.

Hierdie tesis kom dus tot die gevolgtrekking dat korporatiewe verantwoordelikheid vir moderne slawerny verder as net direkte verskaffers moet strek, om sodoende van toepassing te wees op die korporatiewe onderneming se algehele voorsieningsketting.

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TABLE OF CONTENTS**CHAPTER 1: INTRODUCTION**

1.1	Background to human rights abuse in employment practices and modern slavery	9
1.2	Problem statement	12
1.3	Theoretical focus	14
1.3.1	Stakeholder theory	14
1.3.2	Corporate responsibility	15
1.4.	Overview	17

CHAPTER 2: STAKEHOLDER THEORY

2.1	Introduction	19
2.2	Overview of stakeholder theory	19
2.3	Who constitutes the corporations' stakeholders?	23
2.4	Stakeholder theory: corporations' moral responsibilities towards stakeholders and the application of those responsibilities to suppliers' workers	34
2.5	Conclusion	37

CHAPTER 3: CORPORATE RESPONSIBILITY

3.1	Introduction	39
3.2	Overview of corporate responsibility / corporate social responsibility	40
3.3	In pursuit of clarifying corporate responsibility for human rights abuse	43
3.3.1	Impact-based, leverage-based, negative and positive corporate responsibility	45
3.3.2	The United Nations Global Compact	49
3.3.3	The United Nations Guiding Principles on Business and Human Rights	50
3.3.4	The OECD Guidelines for Multinational Enterprises	52
3.4	Corporate complicity in a business model that fuels modern slavery	54
3.5	The arguments against the assumption of corporate responsibility for supply chain slavery	57
3.6.	Conclusion	60

CONCLUSION		62
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REFERENCES		67
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CHAPTER 1: INTRODUCTION

1.1 BACKGROUND TO HUMAN RIGHTS ABUSE IN EMPLOYMENT PRACTICES AND MODERN SLAVERY

Human rights abuse in employment practices occurs in many parts of the world, mostly in industries that are labour intensive, low skilled and under-regulated (CFR nd). The Business and Human Rights Resource Centre (BHRRC) reports that abusive employment practices are “pervasive in corporate supply chains in all regions of the world” (2017), especially in upstream business supply chains (where upstream denotes corporations’ suppliers) (Mentzer, DeWitt, Keebler, Min, Nix, Smith and Zacharia 2001).

Collectively, human rights abuse in employment practices is increasingly recognised under the banner of modern slavery. The United Nations (UN) uses the phrase modern slavery “as an umbrella term covering practices such as forced labour, debt bondage, forced marriage, and human trafficking ... [that] refers to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power” (UN nd.). The term has also been adopted in legislation, such as the United Kingdom (UK) Modern Slavery Act 2015, which describes modern slavery as encompassing the offences of slavery, servitude and forced or compulsory labour, and human trafficking (2015 Part 1:1&2), and the Australian Modern Slavery Act 2018 (No. 153, 2018) which defines modern slavery as constituting “trafficking in persons ... or the worst forms of child labour”¹ (2018:Section 4(d)). In all cases, modern slavery encompasses and can be equated with labour-related human rights abuse.

This differs from historical slavery, as epitomised by the Atlantic slave trade, which included the legal ownership of people. Slavery was largely abolished during the 19th century – by Spain in 1811, Sweden in 1813, the Netherlands in 1814, Britain throughout its empire in 1833, France in 1848, Portugal in 1858, the United States of America (USA) in 1865 and Brazil in 1888 (Reuters 2007). In 1926 the abolition of slavery was ratified by the League of

¹ The worst forms of child labour are defined with reference to Article 3 of the International Labour Organization (ILO) Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38) (Australian Modern Slavery Act 2018: Section 4(d)).

Nations via the Slavery Convention and in 1948 by the UN General Assembly which adopted the Universal Declaration of Human Rights, which states that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” (Reuters 2007). Recognising the difference between past and current forms of slavery, Stringer and Michailova (2018) make the point that, unlike historical slavery, modern slavery is “usually contractual and ... in some cases, individuals will voluntarily enter into an employment agreement and from this point onwards they become a slave”.

There are countless examples of human rights abuse or modern slavery across many industries. In 2000 it emerged that clothes for Adidas were made in two factories in the Indonesian capital of Jakarta using child labour, forced overtime and sexual harassment (Burke 2000). Gross violations in working conditions have also cost many lives in the garment industry (ILO nd.), notably the 2013 collapse of the Rana Plaza building in Bangladesh, which resulted in over 1100 deaths (Thapa 2018). As a reflection of the abuse these garment workers faced, while other businesses in the building closed when major cracks were discovered, the Rana Plaza garment workers were ordered to return to work (Thapa 2018). A 2011 report commissioned by the US government found that more than 1.8 million children in West Africa were involved in growing cocoa. Child labour is especially critical in the Ivory Coast which exports nearly half the world's cocoa (Hawksley 2011). In Thailand, which is the third largest seafood exporter in the world, Human Rights Watch has worked extensively to address human trafficking and forced, bonded and slave labour in the Thai fishing industry (Human Rights Watch 2018a). A 2018 investigation by The Guardian revealed that child labour in the tobacco industry “is rampant and on the increase in poorer countries ... despite claims by multibillion-dollar [tobacco] companies that they are tackling the issue” (Boseley 2018). The investigation found child labour in Malawi, Mexico and Indonesia. Adding to this, child labour has been documented “in the tobacco fields in Bangladesh, Kazakhstan, Indonesia, Brazil and most recently Zimbabwe” (Boseley 2018).

Human rights abuse relative to employment is defined by various authorities, notably the International Labour Organization's (ILO) International Programme on the Elimination of Child Labour (IPEC). The ILO's IPEC, created in 1992 with the goal of the progressive elimination of child labour, provides details about what constitutes the worst forms of child labour:

- “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children;
- debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children” (ILO 1992).

The South African Bill of Rights, which constitutes Chapter 2 of the South African Constitution (1996), includes three sections that add clarity relative to human rights and labour practices. This includes that “[e]veryone has inherent dignity and the right to have their dignity respected and protected” (1996:6, section 10), “[n]o one may be subjected to slavery, servitude or forced labour” (1996:7, section 13), and every child has the right, among others, “to be protected from exploitative labour practices” and “not to be required or permitted to perform work or provide services that (i) are inappropriate for a person of that child’s age; or (ii) place at risk the child’s well-being, education, physical or mental health or spiritual, moral or social development” (1996:11, section 28), where a “child” means “a person under the age of 18 years” (1996:12).

As to the extent of this problem, the 2018 Global Slavery Index assessed modern slavery conditions in 167 countries and reported that in 2016 an “estimated 40.3 million men, women, and children were victims of modern slavery” and that “modern slavery is most prevalent in Africa, followed by the Asia and Pacific region” (Global Slavery Index 2018b). Confirming this latter conclusion, Ben Smith, the ILO’s senior specialist for child labour, stated that “in absolute numbers, child labour in sub-Saharan Africa had overtaken child labour rates in Asia and the Pacific combined” (Ahmed 2019). The ILO’s publication, “Global Estimates of Modern Slavery: Forced Labour and Forced Marriage”, adds further details: “There were 5.4 victims of modern slavery for every thousand people in the world in 2016 ... [w]omen and girls accounted for 71 per cent of modern slavery victims ... [and]

[o]ne in four victims of modern slavery were children” (2017:5). The relevance of these statistics for this study is illustrated by LeBaron’s claim that “[a]t least 80% of forced labour occurs in the private sector” (2014:237), and by the Human Rights First statement that “[n]early 70% of trafficking victims are exploited in the private economy” (Human Rights First nd.).

1.2 PROBLEM STATEMENT

The abhorrent nature of modern slavery and the scale of the abuse are reason enough to motivate that something should be done to eliminate such employment atrocities. Two key questions are *who* should do something and *what* should be done? While the descriptive nature of the latter question falls outside the normative scope of this work, the first question is central to the topic. This question – who should do something – is focused on the extent to which this constitutes an area of responsibility for corporations and multinational corporations (MNCs). In order to define the thesis problem more clearly, three factors need to be taken into account.

First is the recognition that, in theory, local governments should deal with human rights abuses by businesses in their area of jurisdiction via their labour legislation. However, Buhmann acknowledges that “societal problems caused by governance gaps” result from, among other factors, “national governments’ inadequate implementation of obligations under international and sometimes national law” (2016:701). The Global Slavery Index recognises both that the countries where the crime is perpetrated have a responsibility to act, and that it is not only these countries that carry the responsibility to eliminate modern slavery. Crucially, they advocate that “an atrocity as large and pervasive as modern slavery requires a united, global response” (Global Slavery Index nd.). Considering private sector versus public sector responsibility, the UN recognises that corporations are “not democratic public interest institutions” and, as such, “their responsibilities cannot and should not simply mirror the duties of States” (UN 2008:16). However, Foundational Principle 11 of the United Nations Guiding Principles on Business and Human Rights (UNGP) confirms that corporations’ “responsibility to respect human rights ... exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations” (UNGP 2011:13).

The argument presented therefore accepts that while governments and states have a responsibility to act against human rights abuse as it manifests in modern slavery, corporations are also expected to take on this responsibility.

The second pertinent issue centres on the nature of the corporation's relationship with their supplier: whether it is a direct or an indirect relationship. LeBaron articulates the distinction among suppliers, identifying tier 1 or first tier suppliers as those that "contract directly" with the corporation (2014:241). The tier 1 or direct suppliers, in turn, have sub-tier suppliers to whom they outsource work, and so too do they have further sub-tier suppliers, thus creating "multi-tiered subcontracting networks" where "the bottom tiers can be unregulated 'shadow factories'" (LeBaron 2014:243). The length and complexity of many large corporations' supply chains are further complicated by the vast number of suppliers. By way of example, a global company like Walmart has "over 100,000 suppliers located around the world" (Walmart 2019:13). Given this supply chain structure, what is pertinent is that the risk of modern slavery is higher among the bottom tiers that are distant from the buying corporation. Confirming this point, social audit firm, Sedex, acknowledges that "the greatest and most critical ... risks are found deeper down the supply chain" (LeBaron 2014:245).

Adding to this problem is the fact that most legislation is focused on direct or tier 1 suppliers. While major pieces of legislation – such as the California Transparency in Supply Chains Act of 2010, the South African Prevention and Combating of Trafficking in Persons Act 7 of 2013, the UK Modern Slavery Act 2015 and the Australian Modern Slavery Act 2018 – are clearly intended to curb or eradicate modern slavery, their effectiveness is compromised because they exclude the higher risk situations. Therefore, based not only on the gap in the application of most legislation relative to sub-tier suppliers, but particularly on the higher prevalence of labour abuse in sub-tier suppliers, the thesis recognises the need for corporate responsibility for modern slavery beyond direct suppliers.

A third relevant perspective is the fact that although some MNCs are already acting in this regard – for example, corporations in the cocoa/chocolate industry and the garment industry are working with not-for-profit organisations like the International Cocoa Initiative, Clean Clothes Campaign and Fair Wear Foundation – progress has been slow. As evidence of this, Whoriskey and Siegel (2019) point out that the major chocolate companies' efforts to address child labour in the cocoa production industry "have missed deadlines ... in 2005, 2008 and

2010” and, according to industry officials, are likely to miss the 2020 target date too. The authors also highlight the result, namely that “the odds are substantial that a chocolate bar bought in the United States is the product of child labour” (2019). In the garment industry, a February 2019 UK Environmental Audit Committee report noted that retailers including Foot Locker and Versace are not complying with the Modern Slavery Act (Steiner-Dicks 2019). This situation indicates that, despite some efforts, the problem of modern slavery is still in need of serious, concerted attention.

Therefore, taking these three factors into account, it is argued that corporations should be responsible for modern slavery in their whole supply chain, from direct suppliers to indirect suppliers to the lowest tiers of their supply chain. This work also seeks to propose a more compelling moral argument that, ideally, would motivate increased and more willingly commitment by corporations to address the problem of modern slavery in their supply chains beyond their direct suppliers.

1.3 THEORETICAL FOCUS

The argument explores two key areas of applicable theory. Given that the problem centres on the corporate-supplier relationship, stakeholder theory is pertinent. So too is the theory on corporate responsibility and corporate social responsibility (CSR) core to this topic. A brief overview of these focus areas is outlined below.

1.3.1 Stakeholder theory

When a corporation is guilty of human rights abuses relative to its own employees, the organisation is clearly responsible for its own actions. However, the question becomes more complex when applied to the employees and workers² of the corporations’ suppliers, especially taking into account the length and complexity of labour supply chains (LeBaron 2014:238). The crucial question that is investigated is whether suppliers’ employees beyond direct suppliers can be considered to be stakeholders of the corporation. Clarity on this point directly addresses the thesis argument since, if these sub-tier employees can be categorised as

² The term ‘worker’ is used to recognise that the labour force engaged by suppliers under conditions of modern slavery may not be considered ‘employees’. Employees used in this context are deemed to include workers.

the corporation's stakeholders, stakeholder theory would dictate that their interests and wellbeing falls within the scope of corporations' responsibility.

Given that there is support for categorising employees of suppliers beyond just direct suppliers as stakeholders of the corporation (Mitchell, Agle and Wood 1997, Woermann 2013 and Bateman and Bonanni 2019), the argument follows that stakeholder theory applies to these workers. This study explores what this implies for corporate responsibility for stakeholders and, specifically, what this responsibility entails relative to sub-tier suppliers' workers.

This research concludes that there is a moral case for corporations to take on the responsibility of addressing modern slavery in their upstream supply chains beyond direct suppliers.

1.3.2 **Corporate responsibility**

The progression from a shareholder focus to a more inclusive stakeholder focus within the field of stakeholder theory has been mirrored in CSR. The broad business adoption of the concept of the triple bottom line – which encompasses corporate financial, social and environmental responsibilities – and current CSR definitions that encompass “social, environmental and societal issues ... that underlines [sic] the links between corporations and society as a whole” (Gainet 2013:254) attest to a more expansive approach to CSR. CSR is therefore recognised as entailing a responsibility towards society that is focused on the betterment of society. The social dimension of corporate responsibility is considered to encompass human rights abuse in the workplace and modern slavery.

The case for corporations being responsible for modern slavery in their supply chains beyond direct suppliers builds on the moral argument in the chapter on stakeholder theory in order to clarify the nature and scope of such responsibility relative to these stakeholders. This is explored via two arguments.

The nature and scope of corporate human rights responsibility in relation to these stakeholders is proposed as leverage-based and negative responsibility. Leverage-based responsibility recognises that organisations' responsibility for human rights abuse extends

beyond impact-based responsibility via its “direct and indirect contributions to social ... impacts”, to include responsibility that rests on “an organization's ability to influence the actions of other actors through its relationships” (Wood 2012:64). This approach is advocated as it aligns with the complex and lengthy nature of global supply chains and it extends corporate responsibility to include indirect and sub-tier suppliers’ employees. Adopting the position in support of negative responsibility of doing no harm – as opposed to positive responsibility which equates to doing good (Wood 2012:64-65) – is based on avoiding the very demanding scope of such responsibility which positive responsibility entails. Support for this stance is found in three influential, global frameworks that are focused on corporate human rights responsibility: the United Nations Global Compact (UNGC), the United Nations Guiding Principles on Business and Human Rights (UNGP) and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (the Guidelines): all three frameworks advocate a leverage-based approach coupled to negative responsibility as regards corporate responsibility for human rights abuse. This delineation of the scope of corporate human rights responsibility supports the argument that corporate responsibility should extend to include the workers in sub-tier suppliers.

A second argument that lends further support for such corporate responsibility rests on corporations’ culpability for the creation of supply chain conditions that lead to human rights abuse. LeBaron (2014) and New (2015) both support this view, recognising that corporations have driven the creation of lengthy, fragmented and complex supply chains to facilitate their own supply chain goals of cost cutting and risk reduction (LeBaron 2014:241-242), which has directly given rise to the conditions that fuel human rights abuse by suppliers (LeBaron 2014:239 and New 2015:697). Elaborating on this point, New acknowledges “how the buying firms – for example, [via] relentless cost cutting and the exercise of brutal commercial power – might stimulate supplying firms to feel the need to engage in, or turn a blind eye to, exploitative labour practices” (2015:701). The inherent conflict which this represents – between the espoused CSR goal to eliminate modern slavery and the supply chain business goals of lower cost and lower risk – is raised as a significant obstacle to eliminating modern slavery. It is recognised that this deliberate business model adds to the case for corporate responsibility for modern slavery throughout their supply chains.

The case for corporate responsibility also recognises the views of those who oppose corporations assuming responsibility for supply chain slavery on the basis that this should fall

within the domain of government responsibility. However, these views do not represent a major difference in relation to the argument in favour of such responsibility. Instead, the claim in favour of government responsibility is a core reason why this argument proposes that corporate responsibility take the form of negative responsibility. Without denying the benefits that can stem from CSR being focused on doing good, in the realm of modern slavery this represents a vast scope of responsibility, for example, to address the national economic, social and cultural factors that create an environment where modern slavery can arise. Therefore, the central focus of the argument for corporate human rights responsibility is aligned with the dictum, ‘first, do no harm’.

This study therefore recognises two core sources that support the thesis case for corporate responsibility for supply chain slavery beyond direct suppliers: the major frameworks of the UNGC, the UNGP and the OECD Guidelines all support a leverage-based approach that extends corporate responsibility beyond their direct actions and direct suppliers, and corporations’ low cost and risk-minimising supply chain strategies which, since they are a cause of such abuse, brings with it consequent responsibility for such labour abuse.

4. OVERVIEW

The thesis is structured into an introduction (as chapter one), two chapters and a conclusion. Chapter two addresses the question of whether corporations should take responsibility for eradicating modern slavery via stakeholder theory, with specific focus on the question of whether sub-tier suppliers’ employees are stakeholders of the corporation. Chapter three reviews the nature and scope of corporate human rights responsibility, proposing that leverage-based, negative responsibility is suited to these stakeholders and their situation of modern slavery. This chapter also highlights corporations’ complicit role in the formation of long, convoluted supply chains that create conditions that can fuel human rights abuse, and the fundamental conflict this creates, namely between the supply chain goals of lower cost and lower risk and the espoused CSR goal of addressing modern slavery. The views of those who do not support corporations taking on responsibility for supply chain slavery are also considered.

The conclusion is drawn that corporations do have a moral responsibility for modern slavery throughout their supply chain, not merely relative to their direct suppliers. This argument also

seeks to formulate a more persuasive moral case in favour of corporations' taking on this responsibility more willingly and with greater commitment.

CHAPTER 2: STAKEHOLDER THEORY

2.1 INTRODUCTION

LeBaron makes the claim that, arising from the increase in slavery related legislation and voluntary anti-slavery initiatives, “few corporations today would reject the notion that they have some responsibility for promoting labor standards in their supply chains” (2014:238). The assumption of this (expanded) moral responsibility is part of a larger shift in thinking from a shareholder to a stakeholder focus, and for a responsibility for labour conditions both inside and outside a company. Corporations are now thought to be responsible not only to shareholders, but to internal and external stakeholders as well.

LeBaron’s claim regarding labour standards in corporations’ supply chains becomes tenuous, however, as the scope of labour supply chains expands (2014:238). She describes current supply chains as amounting to “multi-tiered subcontracting networks” (2014:243) that include not only tier 1 or first tier suppliers that contract directly with the corporation (2014:241), but also many layers of sub-tier suppliers to whom the corporations’ work is outsourced, who may have a contractual relationship with a higher tier organisation, but not with the corporation (2014:243). However, the lengthy nature and complex structure of supply chains does not constitute an excuse to limit a company’s responsibility regarding labour conditions.

Within this context, the chapter focuses on the crucial question of whether the employees of indirect or sub-tier suppliers can be regarded as stakeholders of a firm based on the argument that these employees are stakeholders of the corporation. Based on this stakeholder status, the related argument is that there is a moral responsibility for corporations to treat all suppliers’ employees ethically. The chapter concludes that corporations do have a responsibility to address modern slavery in their upstream supply chains beyond direct suppliers.

2.2 OVERVIEW OF STAKEHOLDER THEORY

Stakeholder theory provides a theoretical framework against which corporations’ moral responsibility can be assessed relative to stakeholders in general and to suppliers’ workers in particular. The argument put forward is that corporations have a moral obligation to treat

their stakeholders ethically and to attend to their interests and concerns, especially as the latter derives from the action of the corporation.

Stakeholder theory recognises the relationships between the corporation and others who have a ‘stake’ in the organisation, such as employees, customers, suppliers, investors and communities, and recognises that the organisation should create value for all stakeholders, not just shareholders (Stakeholder Theory nd.). This differs from the earlier view expressed by Milton Friedman in his 1970 article, “The Social Responsibility of Business is to Increase its Profits”, which prioritised being responsible to and creating value for shareholders (stockholders) (1970:1-6). While Friedman’s stance was widely accepted at the time, Freeman, as a noteworthy proponent of stakeholder theory (among others), was instrumental in progressing thinking as regards corporate responsibility towards a broader, more inclusive stakeholder approach – for example, via his 1984 book, *Strategic Management: A Stakeholder Approach* (Donaldson and Preston 1995:65; Mitchell et al. 1997:853). This expansion of corporate responsibility is pertinent to the thesis argument as it increases the extent of such responsibility beyond the company’s own operation.

As a reflection of current progress in this regard, a noteworthy incident in support of the stakeholder-inclusive approach occurred when one of America’s leading lobby groups, Business Roundtable, and its 181 CEOs signed a statement that “We share a fundamental commitment to *all* of our stakeholders” (emphasis in the original) (Hiltzik 2019). What adds to the significance of this announcement is the fact that the CEO signatories included Jamie Dimon, chairman and CEO of JP Morgan Chase and the Roundtable’s chairman, Jeff Bezos of Amazon, Tim Cook of Apple, Ginni Rometty of IBM, and Mary Barra of General Motors (Hiltzik 2019).

What this expansion of corporate responsibility entails is well articulated by Evan and Freeman (1993), whose work is also stakeholder focused. They specifically sought to articulate “a stakeholder theory of the firm”, as opposed to the “stockholder theory of the firm” (1993:82). Focusing on the question “for whose benefit and at whose expense should the firm be managed” (1993:76), they advocate a balance between the two themes that inform their work, namely property rights – that is “the rights and duties of the owners (and their agents) of private property” (1993:78) – and the “effects of this property on the rights of others”, which is equated with the Kantian right to be respected (1993:78). In line with these

two themes, Evan and Freeman propose two principles as core to their “stakeholder theory of the firm” (1993:82):

- The “Principle of Corporate Rights”, in terms of which “the corporation and its managers may not violate the legitimate rights of others to determine their future” (that is, the right for people to be respected) (1993:79).
- The “Principle of Corporate Effects” which holds that “the corporation and its managers are responsible for the effects of their action on others” (1993:79), which reflects the moral theory of consequentialism (1993:78).

The redefined purpose of the firm that Evan and Freeman postulate is “to serve as a vehicle for the coordination of stakeholder interests” (1993:82), which encompasses two further principles:

- “The principle of corporate legitimacy” in terms of which “the corporation should be managed for the benefit of its stakeholders: its customers, suppliers, owners, employees, and local communities. The rights of these groups should be ensured, and, further, the groups must participate in some sense in decisions that affect them” (1993:82).
- “The stakeholder fiduciary principle” which holds that “management bears a fiduciary relationship to stakeholders and to the corporation ... It must act in the interests of the stakeholders ... and ... in the interests of the corporation ... safeguarding the long-term interests of each group” (1993:82).

The four principles that Evan and Freeman articulate as substantiating their “stakeholder theory of the firm” (1993:82) provide support for the case for corporate responsibility relative to suppliers, not least in terms of recognising corporate responsibility for the negative effects of their enterprise on suppliers.

Adding a further perspective to the overview of stakeholder theory, Donaldson and Preston put forward the view that stakeholder theory comprises three aspects, “descriptive/empirical, instrumental and normative”, which they view as “nested within each other” in a model comprising three concentric circles (1995:74). They clarify the different approaches where the descriptive, the outer circle of the model, “reflects and explains past, present, and future states of affairs of corporations and their stakeholders” (1995:71), the instrumental approach, which is positioned as the middle circle of the model, makes “a connection between

stakeholder approaches and commonly desired objectives such as profitability” (1995:71), and the normative aspect, occupying the position of the central circle, is “used to interpret the function of the corporation, including the identification of moral or philosophical guidelines for the operation and management of corporations” (1995:71). The rationale for corporations to address supply chain slavery falls within this latter aspect (although corporate action can also be driven by instrumental factors such as preventing reputational damage). Donaldson and Preston stress that the “fundamental basis” of stakeholder theory is normative (1995:66) and, significantly, they recognise the normative approach as categorical, in effect saying “Do (do not) this because it is the right (wrong) thing to do” (1995:72). Expanding on this point, they state that “the ultimate managerial implication of the stakeholder theory is that managers *should* acknowledge the validity of diverse stakeholder interests and *should* attempt to respond to them with a mutually supportive framework, because that is a moral requirement for the legitimacy of the managerial function” (emphasis in the original) (1995:87). Donaldson and Preston therefore present an unequivocal stance in support of the argument as regards corporations’ moral responsibility to their stakeholders.

The normative foundation of stakeholder theory is also recognised by Freeman in his 2002 article, “A Stakeholder Theory of the Modern Corporation”. He states that “stakeholder theory can be unpacked into a number of different theories, each of which has a ‘normative core’, inextricably linked to the way that corporations should be governed and the way that managers should act” (in Hasnas 2013:48). Freeman, Harrison, Wicks, Parmar and de Colle also acknowledge that “a significant portion of the academic community treats stakeholder theory ... as a moral theory designed to provide ethical guidance to managers – one from which definite prescriptions as to how managers should act can be derived” (in Hasnas 2013:49).

The core role of the normative aspect of stakeholder theory as well as Donaldson and Preston’s categorical normative stance are noteworthy inasmuch as they provide support for the argument that corporations have a moral responsibility to their stakeholders: “because it is the right thing to do” (Donaldson and Preston 1995:72).

Despite the support for a normative stance within stakeholder theory, in practice many organisations are not driven to do the right thing by moral considerations. Instead they are influenced more by practical, instrumental considerations, such as avoiding negative

consumer action and the reputational damage that can arise from revelations of modern slavery. Goodpaster (1991) holds an instrumental view. While acknowledging that “the stakeholder idea ... is typically offered as a way of integrating *ethical* values into management decision-making” (emphasis in the original) (1991:57), he recognises that stakeholders (as distinct from shareholders) can be viewed “instrumentally” (1991:58). Goodpaster’s discussion of the strategic stakeholder approach rests on such a view of stakeholders – as instrumental factors, either as “potential sources of good will or retaliation” (1991:58). He suggests that for stakeholders who may not be taken into account in terms of the strategic stakeholder approach, “market and legal forces are relied upon to secure [their] interests” (1991:58).

This, however, sounds more promising than the likely reality, since those stakeholders who, for whatever reason, are not able either to contribute good will or give effect to retaliation relative to corporations – such as would be the case for the victims of modern slavery – are similarly unlikely to be able to access market or legal forces to ensure that their interests are taken into account. Viewed from the corporation’s perspective, the instrumental approach to stakeholder theory may drive actions that would include the interests of stakeholders. But, this would rest on a form of ‘cost-benefit’ analysis, which pits corporations’ goals against the potential that stakeholders can affect the corporation’s desired outcomes, such as profitability (Donaldson and Preston 1995:71). This stands in stark contrast to the normative view that seeks to balance “the rights and duties of the owners (and their agents) of private property” and the “effects of this property on the rights of others” or the Kantian right to be respected (Evan and Freeman 1993:78).

The normative approach is therefore accepted as providing a much stronger rationale for the inclusion of stakeholder interests than the instrumental approach since it recognises the balance between the interests of both parties, the corporation and the stakeholder, and it encompasses that the corporation should take into account the interests and concerns of its stakeholders.

2.3 WHO CONSTITUTES THE CORPORATIONS’ STAKEHOLDERS?

As outlined above, stakeholder theory is characterised by the recognition of stakeholders – those who have a ‘stake’ in the organisation such as employees, customers, supplier,

investors and local communities – and the inclusion of their interests within the scope of corporations’ responsibility. Accordingly, Evan and Freeman describe stakeholders as “those groups who have a stake in or claim on the firm ... [would] [s]pecifically ... include suppliers, customers, employees, stockholders and the local community as well as management” (1993:76). Mitchell et al. view stakeholders even more broadly as encompassing “[p]ersons, groups, neighbourhoods, organisations, institutions, societies, and even the natural environment” (1997:855). The stakeholder approach thus extends beyond simply focusing on shareholders or stockholders as the only group to whom the organisation is responsible.

However, the inclusion of suppliers as a recognised stakeholder of the firm does not mean that corporations would recognise this inclusion as applying beyond their tier 1 suppliers (with whom they have a direct relationship, such as a contractual relationship) to the many sub-tier suppliers and, even less so, to their employees. The argument in this regard is that these workers are the corporations’ stakeholders, not least, given the circumstance of modern slavery, in terms of their right to be respected.

In order to support this argument, the definitions of who constitutes a stakeholder are reviewed. The review shares different definitions that categorise sub-tier suppliers’ workers as stakeholders, among which Mitchell et al.’s work stands out as the most comprehensive approach. The validation these definitions provide for recognising employees of indirect and sub-tier suppliers as the corporations’ stakeholders supports the argument in this regard, which provides the platform upon which the further argument for corporate responsibility towards these employees is based.

An approach that is supportive of the argument in favour of the inclusion of suppliers’ employees is the so-called wider definition of stakeholders. Since this is presented in relation to the narrow definition of stakeholders, the narrow view is also briefly outlined.

The narrow definition, which was first put forward in 1963 by the Stanford Research Institute (in Mitchell et al. 1997:856), is expressed by Freeman and Reed (1983) as those groups “on which the organisation is dependent for its continued success” (in Mitchell et al. 1997:856). Evan and Freeman’s narrow definition of stakeholders “includes those groups who are vital to the survival and success of the organisation” (1993:79) and specifically acknowledges that

suppliers are “vital to the success of the firm” (1993:80). Despite this acknowledgement of suppliers, the narrow stakeholder definition does not lend itself to the inclusion of suppliers’ workers beyond direct suppliers as the corporation’s stakeholders. This stems from the fact that the extent to which the corporation is dependent on a group for its continued success is likely to diminish with increasing distance from the organisation. For example, Unilever, a multinational organisation with “more than 400 brands” (Unilever nd.) providing products in foods and refreshment, home care and personal care, sources “materials from 150 000 suppliers” (Beard and Hornik 2011:96). Clearly, the potential to influence the organisation’s success would be far greater for major, direct suppliers than the 150 000th supplier that is most distant from the organisation. It follows that the employees of indirect or lower level suppliers would also not be considered vital to the firm’s success.

However, the wider definition does have application for the thesis argument. Freeman and Reed’s (1983) wider definition includes any group or individual “who can affect the achievement of an organization’s objectives or who is affected by the achievement of an organization’s objectives” (in Mitchell et al. 1997:856). This view is echoed in Freeman’s 1984 definition of stakeholders. It is also used in the 2016 King Report on Corporate Governance for South Africa (King IV) (IoDSA 2016), although not under the label of a wider definition. King IV defines stakeholders as “[t]hose groups and individuals that can reasonably be expected to be significantly affected by an organization’s business activities, outputs or outcomes, or whose actions can reasonably be expected to significantly affect the ability of the organization to create value over time” (IoDSA 2016:17).

This wider definition can apply to supply chain workers since, as Mitchell et al. acknowledge, it can include virtually anyone (1997:857). Interrogating the two criteria that inform the wider definition, it is evident that the first aspect – focused on the stakeholders’ impact on the organisation’s goals and objectives – echoes the narrow definition of stakeholders. Adding to the point expressed above, that the workers of lower level suppliers would not be considered vital to the organisation’s success, is the reality that the lack of voice, power and freedom of workers who are trapped in modern slavery would not enable them to affect the organisation or its objectives. However, the second aspect of the wider definition does apply, namely that sub-tier suppliers’ workers are affected by the achievement of the organisation’s objectives since their work and on-going subjugation – whether on cocoa plantations or in garment factories – stems from the organisation, its products and objectives.

However, in the case of King IV, the detail of the Report does not support the inclusion of supply chain workers. Given that King IV offers a virtually identical definition of stakeholders to the inclusive wider view, this anomaly is explored further to attempt to clarify the difference.

King IV is regarded as an important source on the basis that it promotes the concept of stakeholder inclusivity as a core tenet of corporate governance (IoDSA 2016:23). King IV comprises a set of principles and recommended practices that engender sound corporate governance (IoDSA 2016:35) which are voluntary, except for companies that are listed on the Johannesburg Stock Exchange (JSE) Limited for which compliance is mandatory (JSE Limited 2017). Stakeholder inclusivity is positioned as the primary principle aimed at the realisation of one of the four overall outcomes of King IV, namely legitimacy (IoDSA 2016:20), where legitimacy is linked to building trust with stakeholders and maintaining a good reputation (Harduth and Sampson 2016). However, the scope of inclusivity is qualified.

King IV requires that “the governing body takes account of the legitimate and reasonable needs, interests and expectations of all *material* stakeholders in the execution of its duties in the best interests of the organisation over time” (emphasis added) (IoDSA 2016:25). Clarifying who constitutes material stakeholders, King IV recognises that internal stakeholders “are always material stakeholders”, further defining internal stakeholders as those who are “directly affiliated with the organisation ... [which includes] its governing body, management, employees and shareholders” (IoDSA 2016:17). However, external stakeholders “may or may not be material” (IoDSA 2016:17), where external stakeholders include “trade unions, civil society organisations, government, customers and consumers” (IoDSA 2016:17), to which the community and the environment are also added (IoDSA 2016:26).

While the term “material” is included in the King IV Glossary of Terms, it is equated with the concept ‘materiality’: the explanation jointly addresses “material or materiality” (IoDSA 2016:14). The definition is related to information as it affects “the accuracy or validity of a statement (or decision)” (IoDSA 2016:14) which aligns with materiality as a common accounting or auditing term, as opposed to adding clarity relative to stakeholders. Therefore,

despite the centrality of stakeholder inclusion in King IV, its definition of stakeholders does not accommodate the employees of sub-tier suppliers.³

Beyond the narrow and wider definitions of stakeholders, Donaldson and Preston add another relevant perspective as regards who constitutes the corporations' stakeholders. They acknowledge the core question as "who are the legitimate stakeholders" (1995:85) and the enduring challenge in "identifying stakeholders and evaluating their legitimate 'stakes' in the corporation" (1995:67). They define stakeholders as follows:

"Stakeholders are persons or groups with legitimate interests in procedural and/or substantive aspects of corporate activity. Stakeholders are identified by **their** interest in the corporation, whether the corporation has a corresponding interest in **them**" [sic] (emphasis in bold in the original) (1995:67).

This definition allows the inclusion of supplier's workers within the scope of corporate responsibility. That supply chain workers may not necessarily be aware of the primary corporate entity would not detract from their legitimate interest.

Mitchell et al. add a great deal to the definition of stakeholders that augments what the authors included in this review have contributed to the topic, and provide strong support for

³ Since King IV draws a great deal of its content and concepts from the International Integrated Reporting (<IR>) Framework (2003) developed by the International Integrated Reporting Council (IIRC), this is explored as a source of further clarity as regards the concept of material stakeholders. The Framework defines materiality as pertaining to "matters that substantively affect the organization's ability to create value over the short, medium and long term (2003:18), where this involves "[i]dentifying relevant matters based on their ability to affect value creation" (2003:18). The added point that "[a]n understanding of the perspectives of *key* stakeholders is critical to identifying relevant matters" (emphasis added) (2003:19) would likely exclude sub-tier suppliers and their workers. But the Framework also states that "[k]ey to the materiality determination process is the concept of the reporting boundary" (2003:19). Suppliers are one of the groups that are included within the reporting boundary for risks, opportunities and outcomes, and the example used of this reporting boundary is that of labour practices in the organisation's industry: "If aspects of the labour practices in the organization's industry are material to the ability of the organization to create value, then disclosure in the integrated report might include information about those aspects as they relate to suppliers' labour practices" (2003:20). This example could be interpreted as contradicting the previous point about focusing on *key* stakeholders. The Framework therefore does not add further clarity on the question of materiality relative to stakeholders.

the argument regarding the stakeholder status of sub-tier suppliers' employees. Their pursuit of "some acceptable and justifiable sorting criteria" in order to narrow the range of stakeholders from everyone to those who really count (1997:862) translates into their model of stakeholder identification and salience, which adds greater clarity as regards identifying stakeholders by combining three variable attributes as "identifiers of stakeholder classes", namely power, legitimacy and urgency, into a model for stakeholder identification (1997:855). The model accordingly recognises "the stakeholder's power to influence the firm ... the legitimacy of the stakeholder's relationship with the firm, and ... the urgency of the stakeholder's claim on the firm" (1997:854). This, they propose, allows for the systematic evaluation of "stakeholder-manager relationships ... both actual and potential, in terms of the relative absence or presence of all or some of the attributes" (1997:864).

The perspectives and concepts that underpin and inform Mitchell et al.'s model are outlined below, the model is explained and the model and its collective features are discussed in relation to the question of the status of suppliers' workers as stakeholders.

The perspectives include a focus on what Freeman (1994) calls "The Principle of Who or What Really Counts" to clarify "who (or what) are the stakeholders of the firm" and "to whom (or what) do managers pay attention" (1997:853). Both these questions are pertinent to the thesis topic: the first, a prescriptive stance, "to explain logically why managers should consider certain classes of entities as stakeholders" and the second, a descriptive stance, "to explain the conditions under which managers do consider certain classes of entities as stakeholders" (1997:853).

Linked to this, the key question of what constitutes a stake also shapes Mitchell et al.'s model. They adopt a more inclusive approach as to what constitutes a stake, encompassing a broader group of stakeholders than other authors, which allows for the inclusion of supply chain workers beyond direct suppliers. These perspectives are explored relative to supporting and conflicting views by other authors before discussing their stakeholder model.

Mitchell et al.'s broader definition of what constitutes a "stake" applies to groups that include both "claimants" and "influencers" as stakeholders (1997:859), defining them respectively as groups "that have a legal, moral, or presumed claim on the firm" and those "that have an ability to influence the firm's behavior, direction, process, or outcomes" (1997:859). Echoing

this distinction, Donaldson and Preston recognise “stakeholders” and “influencers” (1995:86). They illustrate the difference with the examples that investors may occupy both roles, but stakeholders such as job applicants have a stake but no influence, and the media is an influencer without any stakes (1995:86). This defines who is or is not a stakeholder based on the presence or absence of having a stake: an influencer is thus not a stakeholder. In contrast to Donaldson and Preston, Mitchell et al. recognise both claimants and influencers as stakeholders based on their view that legitimacy and power – the legitimacy of claimants and the power of influencers – are pertinent to stakeholder identification (1997:859).

A further relevant perspective that Mitchell et al. raise in order to clarify the term “stake” is the distinction between actual and potential relationships (1997:859). In answer to the question of whether an entity can be a stakeholder without being in an actual relationship with the firm, they propose that “the potential relationship can be as relevant as the actual one” and “that a theory of stakeholder identification and salience must somehow account for latent stakeholders if it is to be both comprehensive and useful” (1997:859). By way of example, civil society organisations that can command the attention of the news media, but do not have a relationship with the corporation, would qualify as a latent or potential stakeholder.

An instance that reveals the impact of such a latent stakeholder is the Greenpeace campaign against Sinar Mas, an Indonesian palm oil producer. Crane and Matten (2010) awarded Greenpeace the “Ethical Corporation's campaigner of the year in 2010” for its campaign that forced various companies, including Nestlé, to stop buying palm oil from Sinar Mas because they were contributing to deforestation and the erosion of the orang-utan's habitat. Greenpeace achieved this via a satirical advert of an office worker eating a Kit Kat (a Nestlé product) where the chocolate bar morphs into an orang-utan's finger – with dripping blood as it is eaten – which went viral on YouTube. Woermann makes the point that prior to this incident Nestlé may not even have considered Greenpeace as a stakeholder (2013:147). And her broader definition of stakeholders that includes “marginal stakeholders” – in this case, Greenpeace (2013:147) – aligns with Mitchell et al.'s recognition of potential or latent stakeholders.

Applying these categorisations to the victims of modern slavery, they too can be regarded as potential stakeholders, despite their lack of an actual relationship with the corporation.

Woermann's concept of marginal stakeholders also applies even though, as for Greenpeace, the corporation may not have thought of sub-tier supply chain workers as their stakeholders.

Having reviewed the perspectives that inform Mitchell et al.'s stakeholder identification model, the three key concepts – power, legitimacy and urgency – are now defined and the details of their model are explored. This model provides a clear, comprehensive basis for the argument to regard suppliers' employees as stakeholders of the corporation.

Power is recognised as "the probability that one actor within a social relationship would be in a position to carry out his own will despite resistance" and, in practice, as "the ability of those who possess power to bring about the outcomes they desire" (Mitchell et al. 1997:865). Legitimacy is defined as "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions" (Mitchell et al. 1997:866). Mitchell et al. recognise urgency as the attribute that moves "the model from static to dynamic", where urgency is defined as "the degree to which stakeholder claims call for immediate attention" (1997:867). They further hold that urgency is based on two further attributes: "(1) time sensitivity – the degree to which managerial delay in attending to the claim or relationship is unacceptable to the stakeholder, and (2) criticality – the importance of the claim or the relationship to the stakeholder" (1997:867).

Reviewing their model in further detail, the three circle Venn diagram identifies eight classes of stakeholders.

"Latent stakeholders" (1997:873) comprise those three groups who only have one attribute:

1. "dormant stakeholders" who have power relative to the organisation but with no legitimacy or urgency, an example being civil society organisations that can command the attention of the news media (1997:874-5);
2. "discretionary stakeholders" who have legitimacy but no power or urgency. This can include "nonprofit organizations, such as schools, soup kitchens, and hospitals, who receive donations ... from ... companies" (1997:875);
3. "demanding stakeholders" whose relevant attribute is urgency but who lacks legitimacy and power, as illustrated by the lone protestor (1997:875-6).

“Expectant stakeholders” (1997:876) have two attributes:

4. “dominant stakeholders” such as investors have both power and legitimacy (1997:876-7);
5. “dependent stakeholders” have legitimacy and urgency, but lack power. They will consequently often “depend upon others (other stakeholders or the firm's managers) for the power necessary to carry out their will” (1997:877);
6. “dangerous stakeholders” are those who have urgency and power, but do not have legitimacy, such as those who engage in “wildcat strikes” (1997:877).
7. The seventh position is for “definitive stakeholders” (1997:878) who possess all three attributes. This category of stakeholder can arise when urgency is added to power and legitimacy, for example, when a dominant group of stakeholders, like a company’s board, is prompted to action by an urgent issue such as an ethical scandal.
8. The eighth category is for non-stakeholders or potential stakeholders who do not possess any of the three attributes relative to the company and thus fall outside all three circles of the model (1997:873).

Relative to a corporations’ supply chain, this model would recognise suppliers’ workers beyond direct suppliers as stakeholders, specifically as dependent stakeholders, inasmuch as the circumstances of modern slavery can be viewed as constituting both a legitimate and an urgent moral claim. Apart from the significance of this conclusion supporting the argument about the applicability of stakeholder theory to stakeholders, this body of work has further application for corporations.

Mitchell et al.’s recognition that the salience of dependent stakeholders can be compromised by the absence of power (1997:877) certainly applies to workers caught in the trap of modern slavery. Lacking power means that they are not able to realise salience in the eyes of the corporation. However, corporations need to be aware that this situation changes profoundly when dependent stakeholders combine with dormant stakeholders since this brings all three attribute together. This arises when power is added, for example, by those who can command the attention of the media, such as socially conscious consumers on social media, or influential civil society organisations who speak up for the workers’ cause.

A consumer-driven example of such a situation was the well-known consumer boycott in the 1990s in Europe and the United States against Nike for unacceptable labour practices in factories manufacturing their products in Indonesia and Vietnam (Cushman Jr. 1998). In this

case, it was arguably the negative impact of public pressure on sales and on the company's reputation that prompted Nike to action, rather than the moral case. Nonetheless, Nike promised "to root out underage workers and require overseas manufacturers of its wares to meet strict United States health and safety standards" (Cushman Jr. 1998). As evidence of concrete action, Philip H. Knight, Nike's then chairman and chief executive, agreed "to allow outsiders from labor and human rights groups to join the independent auditors who inspect the factories in Asia, interviewing workers and assessing working conditions" adding that "[w]e believe that these are practices which the [sic] conscientious, good companies will follow in the 21st century" (Cushman Jr. 1998).

The power of civil society organisations has also proved effective to elevate the salience of the victims of modern slavery. Human Rights Watch, for example, not only conducts research and acts as an advocate for human rights, but also brings other parties together to realise necessary action against modern slavery. One such case is their drive for greater transparency in global apparel companies' supply chains, where they brought together "a coalition of unions and human rights and labor rights advocates", namely Clean Clothes Campaign, IndustriALL Global Union, the International Corporate Accountability Roundtable, the International Labor Rights Forum, the International Trade Union Confederation, the Maquila Solidarity Network, UNI Global Union, and the Worker Rights Consortium (Human Rights Watch 2017). As Aruna Kashyap, senior counsel for the women's rights division at Human Rights Watch, states, "[o]penness about a company's supply chain is better for workers, better for human rights, and shows that companies care about preventing abuse in their supply chains" (Human Rights Watch 2017).

Returning to the question of the stakeholder status of sub-tier suppliers' employees, Phillips (in Phillips, Freeman and Wickes 2003:489) and Bateman and Bonanni (2019) offer further definitions of stakeholders that include sub-tier suppliers' employees as the corporations' stakeholders.

Phillips identifies stakeholders as comprising normative and derivative stakeholders, where normative stakeholders are defined as "those to whom the organization has a direct moral obligation to attend to their well-being ... such as financiers, employees, customers, suppliers, and local communities", and derivative stakeholders as "those groups or individuals who can either harm or benefit the organization, but to whom the organization has

no direct moral obligation as stakeholders ... such as competitors, activists, terrorists, and the media” (in Phillips et al. 2003:489). While Phillips acknowledges that the “organization is not managed for the benefit of derivative stakeholders”, he concedes that “to the extent that they may influence the organization or its normative stakeholders, managers are obliged to account for them in their decision-making” (in Phillips et al. 2003:489). This definition can include workers of indirect and lower-tier suppliers as derivative stakeholders on the basis that they could negatively affect the organisation. However, this would rest on the workers’ capacity to give effect to that influence which, on their own (that is without the advocacy from a strong supporter such as a civil society organisation like Human Rights Watch) is unlikely.

Bateman and Bonanni (2019) add further support for the argument that suppliers’ workers beyond direct suppliers are stakeholders of the buying corporate. They arrive at this via a different focus: not on stakeholders or stakeholder theory, but rather on supply chain transparency. Their identification of the concept of “supply chain scope” (2019) recognises that corporate upstream supply chains encompass more than just direct suppliers. This concept measures “the depth of interaction in the supply chain”, ranging progressively from a focus on internal operations only, to direct suppliers, to indirect suppliers, and finally to raw materials (2019). This accommodates supply chain employees and workers either under the banner of indirect suppliers, such as garment workers, or working with raw materials, such as child labourers on cocoa plantations.

A final consideration is whether suppliers’ employees can be regarded as the corporation’s stakeholders under the banner of being part of the community. Phillips et al. acknowledge that “[l]ittle has also been written about the role of ‘community’ as stakeholder” (2003:496). Orts and Strudler do address this, but they deny “that ... members of the community in which the firm operates must be regarded as stakeholders, even if their economic interests are affected by the firm” (2002:219). This stems from their “narrow version of stakeholder theory” and “the directness it requires of a stakeholder's interests in a firm”, in terms of which they define stakeholders as comprising “the participants in a business enterprise who have significant property rights in the firm or who have significant contractual relations with the firm” (2002:219).

In summary, the argument for recognising the employees of suppliers beyond just direct suppliers as stakeholders of a company enjoys strong support. This applies to the so-called ‘wider’ definition of stakeholder subscribed to by Freeman and Reed (1983) and Freeman (1984). These employees are also recognised as stakeholders under the categorisation of “dependent stakeholders” (Mitchell et al 1997:877) and as “marginal stakeholders” (Woermann 2013:147). In terms of the concept of “supply chain scope”, Bateman and Bonanni also recognise supply chain employees and workers either under the banner of indirect suppliers or working with raw materials (2019).

2.4 STAKEHOLDER THEORY: CORPORATIONS’ MORAL RESPONSIBILITIES TOWARDS STAKEHOLDERS AND THE APPLICATION OF THOSE RESPONSIBILITIES TO SUPPLIERS’ WORKERS

Since the employees of direct and sub-tier suppliers constitute the corporations’ stakeholders, the argument is made that corporations have a moral responsibility towards these stakeholders. Consequently, the normative features of stakeholder theory are recognised as especially applicable to these stakeholders who are victims of modern slavery. This corporate responsibility warrants that these stakeholders are treated ethically, which encompasses their right to be respected and that they should participate in decisions that affect them (Evan and Freeman 1993:79 & 82).

Evan and Freeman draw attention to the normative aspects of stakeholder theory and provide sound support for the consequent moral responsibilities for corporations. These are reflected in their four principles of stakeholder theory: the “Principle of Corporate Rights” and the “Principle of Corporate Effects” (1993:78), and the supporting principles, “the principle of corporate legitimacy” and “the stakeholder fiduciary principle” (1993:82).

Corporations’ moral responsibility towards stakeholders as articulated in the “Principle of Corporate Rights” maintains that “the corporation and its managers may not violate the legitimate rights of others to determine their future”, which encompasses the right of people to be respected (Evan and Freeman 1993:79). Applied to the victims of modern slavery, the right to be respected warrants, at an obvious level, that corporations recognise the plight of these workers and that they make an effort to create a circumstance that encompasses respect.

This would, for example, entail ensuring that working conditions and the treatment of workers are significantly improved.

A further, more important implication of Evan and Freeman's "Principle of Corporate Rights" centres on the fact that "the legitimate rights of others to determine their future" and to be respected gives rise to the Kantian-based responsibility that these stakeholders "are not treated as a means to an end" (1993:76, 78 & 79). This view is reiterated by Donaldson and Preston who regard the normative basis of stakeholder theory as encompassing the idea that "[t]he interests of all stakeholders are of **intrinsic value**" (emphasis in bold in the original) (1995:67). For corporations' moral responsibility to stakeholders, including supply chain employees, this implies that "each group of stakeholders merits consideration for its own sake and not merely because of its ability to further the interests of some other group, such as the shareholders" (1995:67). Applying the principle of being treated as an end to supply chain workers means that corporations should "promote their welfare, respect their rights, avoid harming them, and generally 'endeavor as far as ... [the corporation] can, to further the ends of others'": essentially that corporations "treat them with respect" (Rachels and Rachels 2019:147).

The "Principle of Corporate Effects" reflects the moral theory of consequentialism (Evan and Freeman 1993:78) that judges whether or not something is right by what its consequences are (McCombs School of Business nd.). The effect of this principle on corporations' moral responsibility towards stakeholders entails that "the corporation and its managers are responsible for the effects of their action on others" (Evan and Freeman 1993:79). While there are many corporate actions that can be called into question, the actions that most prominently reflect their responsibility to supply chain employees is the purposeful creation of the lengthy and fragmented supply chains to realise their goals of lower cost and lower risk (LeBaron 2014:239 & 242). The responsibility stems from the fact that the nature and structure of supply chains are a contributing factor to labour abuse by suppliers (LeBaron 2014:239). This point relates more particularly to the argument put forward in chapter three, and is therefore addressed there.

Both Evan and Freeman's two supporting normative principles add further clarity as regards the argument regarding corporations' responsibility to stakeholders. The "stakeholder fiduciary principle", which holds that "management bears a fiduciary relationship to

stakeholders and to the corporation” (1993:82), is also recognised by Hasnas. He identifies the normative proposition that “managers do not have an *exclusive* fiduciary duty to shareholders/owners/investors” (emphasis in the original) (2013:51). Hasnas, in turn, links this view to the stance taken by Phillips et al. that stakeholder theory requires managers to “distribute the fruits of organisational success (and failure) among all legitimate stakeholders” (Phillips et al. 2003:486). Since supply chain employees have been identified as stakeholders, corporations need to accord them this recognition by treating the relationship as a fiduciary one. This implies “a relationship in which one party places special trust, confidence, and reliance in and is influenced by another who has a fiduciary duty to act for the benefit of the party” (Merriam Webster nd.). Applied to supply chain employees, it means that the trust, confidence and reliance vested in the corporation should result in the corporation acting for the benefit of these supply chain employees. This obligation does not exclude the interests of the corporation itself, but rather addresses the more common situation where corporations act exclusively in terms of their own interests – such as recognised by Evan and Freeman where “firms have sought to internalize the benefits and externalize the costs of their actions” (1993:78). Acting for the benefit of supply chain workers encompasses a wide range of possible beneficial actions, from ensuring that workers are treated and rewarded fairly to ensuring that their freedom is restored to them.

Evan and Freeman’s normative “principle of corporate legitimacy” carries the responsibility that “the corporation should be managed for the benefit of its stakeholders ... [that their] rights ... should be ensured, and, further, [that they] ... must participate in some sense in decisions that affect them” (1993:82). This adds to the focus on actions in “the stakeholder fiduciary principle” (1993:82) with a focus on how the organisation is managed. The adoption of the principle of stakeholder inclusivity by the organisation’s governing body – as contained in King IV where it is the primary principle aimed at the realisation of corporate legitimacy (IoDSA 2016:20) – provides a sound basis for a style of management that is inclusive of stakeholders interests (provided the scope of inclusivity is not limited to material stakeholders as in King IV).

Ensuring the rights of the victims of modern slavery would ultimately require, as noted above, that they are returned to a state of freedom from whatever their source of bondage. This, however, is easier said than done as it often involves very complex situations. For example, it would not constitute a sustainable solution – and hence not a moral solution – if

the child who was sold into slavery by her family because of extreme poverty is simply returned to a home that remains in the same state of poverty. Consequently there are those who oppose the assumption of this responsibility by corporations (discussed further in the next chapter), such as the ILO's Simon Steyne who warns against expecting companies to assume responsibilities that would typically be the domain of governments, for example, the rights to education and health (Gould 2015). However, the challenge to be avoided here is that corporations do nothing because they can only do a little (Burke nd.). Qualifying the reestablishment of these stakeholders' rights with the criterion that they "must participate in some sense in decisions that affect them" (Evan and Freeman 1993:82) presents a sound, practical focus for this area of corporate responsibility. This calls for a cooperative, inclusive approach that focuses on the views and needs of the affected workers. To give effect to their responsibility, corporations should consider partnering with NGOs that have a sound knowledge and understanding of the local context and are thus well placed to facilitate the consultative process with the supply chain workers.

An example of such collaboration is the work of the International Cocoa Initiative (ICI), which has been operating in Côte d'Ivoire and Ghana since 2007 to promote the protection of children in cocoa-growing communities (ICI nd.a). Its work "unites the private sector, civil society, governments and farmers to protect children in cocoa-growing communities" (ICI nd.b).

Stakeholder theory therefore imposes a number of responsibilities on corporations relative to their stakeholders, all of which have application for suppliers' workers. That supply chain slavery represents a complex situation should not be overlooked by corporations, nor should the difficulty be reason to implement superficial responses. Instead the nature of the suffering that is part of modern slavery warrants that these moral responsibilities are embraced in pursuit of making a meaningful difference.

2.5 CONCLUSION

The argument has thus been made that suppliers' employees beyond direct suppliers are stakeholders of the corporation, which, in turn, supports the argument that these stakeholders fall within the ambit of corporations' moral responsibility. This is supported by the principles of stakeholder theory which reinforce this corporate obligation, specifically in terms of the

effects of their action on others, that corporate leaders and managers ought to pay attention to stakeholders' wellbeing and, crucially, that corporations have a moral responsibility to treat stakeholders ethically. Distinctive contributions include Evan and Freeman's "Principle of Corporate Effects" (1993:78) and Donaldson and Preston's view that "the interests of all stakeholders are of **intrinsic value**" (emphasis in bold in the original) (1995:67). Crucially, the applicability of stakeholder theory confirms the argument that corporations have a moral responsibility for those within their global supply chains who are the victims of modern slavery. A key issue that remains is the nature and scope of that corporate responsibility, which is addressed in the next chapter with reference to CSR theory: what form that responsibility should take and what the range of that responsibility should be.

CHAPTER 3: CORPORATE RESPONSIBILITY

3.1 INTRODUCTION

The concern with the legitimate interests of those affecting and being affected by the corporation that is found in stakeholder theory is shared in the literature on corporate responsibility and corporate social responsibility (CSR). Within this field, the case for corporate responsibility for supply chain slavery beyond direct suppliers centres on two arguments.

The argument that is proposed as regards the nature and scope of corporate human rights responsibility in relation to these stakeholders is leverage-based and negative responsibility. Leverage-based responsibility is advocated because it extends corporate responsibility to include indirect and sub-tier suppliers' employees. A leverage-based approach recognises that organisations' responsibility for human rights abuse derives from their "ability to influence the actions of other actors through its relationships" – in this case, indirect and sub-tier suppliers – thus extending beyond impact-based responsibility which stems from their "direct and indirect contributions to social ... impacts" (Wood 2012:64). This facet of the argument enjoys direct support from Wood (2012). The argument in favour of negative responsibility – of not doing harm as opposed to positive responsibility which equates to doing good (Wood 2012:64-65) – is made on the basis of the very demanding scope of such responsibility which positive responsibility entails, and in order to define a scope of responsibility that does not include core areas of government responsibility. Support for this stance and both these aspects of corporate responsibility are found in three influential, global frameworks that are focused on corporate human rights responsibility: the United Nations Global Compact (UNGC), the United Nations Guiding Principles on Business and Human Rights (UNGPR) and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (the Guidelines).

The second argument that lends support for corporate responsibility for supply chain slavery beyond direct suppliers arises from corporations being culpable for the creation of supply chain conditions that lead to human rights abuse. This view is supported by LeBaron (2014) and New (2015) who both recognise that corporations' impact on supply chains – via the structure of supply chains and via corporate pressure on suppliers – have given rise to the

conditions that fuel human rights abuse by suppliers (LeBaron 2014:239 and New 2015:697). This situation also gives rise to a fundamental conflict between the CSR goal of eliminating modern slavery and the business goals of lower supply chain cost and risk. The deliberate creation and pursuit of this business model augments the case for corporate responsibility for modern slavery.

The views of those who oppose corporations assuming responsibility for supply chain slavery are also considered in order to assess its impact on the arguments that have been proposed. However, these counter-arguments that consider human rights abuse as falling more within the sphere of governments' responsibility do not contradict the thesis arguments. This, in fact, represents a primary reason why the argument was made in favour of corporations adopting a negative form of responsibility.

3.2 OVERVIEW OF CORPORATE RESPONSIBILITY / CORPORATE SOCIAL RESPONSIBILITY

What CSR entails or implies is a much contested question, as illustrated by Votaw's 1972 comment that "corporate social responsibility means something, but not always the same thing to everyone" (1972:25). Garriga and Melé acknowledge that CSR "contains a great proliferation of theories, approaches and terminologies" (2004:51). So too does Gainet recognise that there are many definitions of CSR with little consensus (2013:254).

The central premise of CSR that is recognised is that it entails a responsibility towards society and that this responsibility is focused on the betterment of society. The voluntary nature of CSR is also a defining feature, which implies that corporate responsibility extends beyond the prescription of legislation.

These views are supported by Jones (1980), Gainet (2013) and Mishra and Schmidt (2018). Jones defines CSR as "the notion that corporations have an obligation to constituent groups in society other than stockholders and beyond prescribed by law" (1980:59-60). According to Gainet, CSR comprises "corporate processes that aim at improving the corporation's effects on society" which encompasses "social, environmental and societal issues ... that underlines [sic] the links between corporations and society as a whole" (2013:254). Mishra and Schmidt also recognise that CSR refers to "all those organizational actions that are meant to further

the good of society and the environment, and go beyond the company's legal obligations", emphasising that "CSR refers only to ... those actions that are explicitly aimed toward the betterment of society and the environment" (2018:835). Adding to this, Mishra and Schmidt, in their exploration of how leaders of MNCs can be ethical by contributing to CSR initiatives, put forward the following as regards CSR:

"It is a form of self-regulation that tries to eliminate or at least minimize the harm it may otherwise cause through its business processes. It is also the eagerness with which business organizations consider the interests of the larger society their responsibility and proactively attempt to do good for the society and environment" (2018:834).

Other concepts and terms are aligned with CSR. Garriga and Melé, for example, recognise that terms such as "[s]ociety in business ... [and] corporate accountability" are used to describe CSR, as are "new alternative concepts [of CSR] ... including corporate citizenship and corporate sustainability" (2004:51). All of these have application for the question of corporate responsibility for supply chain slavery. However, one particular concept warrants recognition, not merely for extent of its uptake in the business world, but rather for the expansion of the scope of corporate responsibility that it engendered. That concept is the triple bottom line, a term coined by John Elkington in 1994 (Elkington 2018). Norman and MacDonald's acknowledgement that CSR and the concept of the "triple bottom line" are often used synonymously (2004:247) reflects the alignment of these concepts. Elkington acknowledges the "sustainability agenda", that attempted to "harmonize the traditional financial bottom line with emerging thinking about the environmental bottom line", grew into the "triple bottom line", which focuses on "economic prosperity, environmental quality and ... social justice" (1999:2). Now, 25 years after introducing the term, Elkington stresses that the triple bottom line is a "sustainability framework": that it was not "designed to be just an accounting tool" (2018). Two features of the triple bottom line add to the scope of the definition of CSR as it pertains to modern slavery: sustainability and social justice.

Elkington's association of sustainability with corporations' responsibility in the social domain is supported by Spiliakos (2018). She defines sustainability in business as addressing "[t]he effect business has on society" with the goal of making "a positive impact" (2018), emphasising that "[w]hen companies fail to assume responsibility, the opposite can happen, leading to issues like ... inequality, and social injustice" (2018). While sustainability

represents a vast topic – as, for example, shared by Hattingh’s (2002) writing on sustainable development – the core imperative as it pertains to corporate responsibility for labour-based human rights abuse is clarified in the following perspectives. The approach to sustainability adopted by the so-called Brundtland Report rests on the definition of sustainable development as “development that meets the needs of present generations without compromising the ability of future generations to meet their needs” (WCED 1987:16). The Johannesburg Stock Exchange (JSE) adds a business perspective which defines sustainability as entailing the building of “a long term business model that takes cognisance of the impacts, risks and opportunities in relation to the environmental, social and economic contexts within which an organisation operates” (JSE Limited nd.). Sustainability, therefore, not only adds emphasis to corporations’ social responsibility but, more importantly, adds a time dimension in the sense that actions and outcomes are aimed beyond just the short term. Applied to supply chain slavery, it implies that corporate responsibility needs to focus on sustainable, longer-term solutions. This raises challenges about the limits of corporate responsibility which were identified in chapter two and which are addressed hereafter.

Social justice as a feature of the triple bottom line that adds to the scope of the definition of CSR, is not only recognised by Elkington (1999 and 2018) but also by Crane and Matten (2004:25). It represents a more comprehensive term than the more common recognition of a social dimension of CSR, and its breadth is especially pertinent to a topic such as labour-related human rights abuse. Madonsela defines social justice as “[j]ust and fair access to and equitable distribution of opportunities, resources, privileges and burdens in a group or between groups” which allows for “equal enjoyment of all rights and freedoms by all regardless of human diversity and historical injustices” (Madonsela nd.). Adding further detail, she points out that social justice is “driven by the founding values in the [South African] Constitution, particularly the values of [t]he achievement of equality; [h]uman dignity; and [f]reedom for all” (Madonsela nd.). The scope of the term ‘social justice’ thus speaks more clearly to what is at stake as regards corporations’ areas of responsibility when addressing the vast injustice and inequity that typify modern slavery.

The progressive expansion towards a more inclusive approach that was recognised in stakeholder theory – from a shareholder focus to a more inclusive stakeholder focus – is mirrored in the field of corporate responsibility. In this regard, Carroll’s definitions of CSR are noteworthy as another reflection of the shift in terms of areas of responsibility over time.

In 1979 he identified four dimensions of CSR, “economic, legal, ethical and discretionary”, as reflecting the “expectations that society has of an organisation at any given time” (1999:283). In 1991 he changed this model to label “the discretionary component as philanthropic” (1999:290), the rationale being that “[t]he CSR firm should strive to *make a profit, obey the law, be ethical, and be a good corporate citizen*” (emphasis in the original) (1999:289).

This overview of corporate responsibility illustrates the common inclusion of a social dimension in the different definitions and perspectives of CSR – not least in the term corporate *social* responsibility. Human rights and the abuse of human rights that constitutes modern slavery are recognised as falling within the social dimension of corporate responsibility, specifically as it relates to the corporate impact on society and the amelioration of social justice.

3.3 IN PURSUIT OF CLARIFYING CORPORATE RESPONSIBILITY FOR HUMAN RIGHTS ABUSE

Corporations’ impact on society has given rise to many expectations from many parties. These are explored briefly by way of context. However, what is necessary is further clarity as regards corporate responsibility for human rights abuse and modern slavery. Therefore this section explores the nature and scope of such corporate responsibility. In this regard, the argument is made in favour of leverage-based and negative responsibility: a leverage-based approach because its breadth encompasses sub-tier suppliers, and negative responsibility to create a scope of responsibility that takes cognisance of what corporations (as opposed to governments) are able to do. The argument for leverage-based responsibility is supported by Wood (2012) and both aspects of this argument find particular support in three global frameworks that specifically address corporate human rights responsibility: the UNGC, the UNGP and the OECD Guidelines.

Corporations face expectations from a range of parties that they should be responsible for human rights abuse in their supply chains. This includes the consumer lobby whose expectations of powerful corporations include that “the products they purchase are made in socially, ethically and environmentally conscious ways” (ASCM 2019), an expectation that is often amplified as a demand via social media and in the media. The media itself can play an

important role, as CNN does, for example via the CNN Freedom Project under the banner of “[s]lavery is not a thing of the past” (CNN 2019a) and #MyFreedomDay, “a day-long student-driven event to raise awareness of modern slavery” that takes place in March each year and enjoys international support from schools and educational facilities (CNN 2019b). There are also many noteworthy civil society and non-profit organisations working against facets of modern slavery that share this expectation of corporations. This includes the Walk Free Foundation which works toward a “world free of modern slavery and human trafficking” (Walk Free Foundation nd.), Anti-Slavery International which lobbies for global recognition and alleviation of modern slavery in all its forms, and the Business & Human Rights Resource Centre (BHRRC) which works to amplify the voices of the vulnerable, to advance human rights in business and to eradicate abuse.

Legislation about modern slavery and human rights abuse, which is applicable in some countries, also exerts a positive impact in support of corporate responsibility for supply chain slavery. For instance, both Goodpaster (1991) and LeBaron (2014) acknowledge the positive effects of legislation. Goodpaster notes that both conservatives and liberals view the law and regulation as being able to provide “a voice for stakeholders that goes beyond market dynamics” (1991:58). LeBaron recognises that legislation has served to increase corporations’ focus on slavery in their supply chains because it “has raised awareness about the links between consumer products and slavery, human trafficking, and forced labor” (2014:238). While these positive results are to be welcomed, in practice the impact of legislation is curtailed by the limited domains in which such legislation is enacted. Adding to this limitation, Harris, the California Department of Justice Attorney General, states relative to the Californian legislation (Transparency in Supply Chains Act, 2010) that “the law only requires that covered businesses make the required disclosures – even if they do little or nothing at all to safeguard their supply chains” (2015:i). The exclusion of a focus on legislation, however, does not rest on its limited jurisdiction or scope of responsibility, but rather on the view that CSR constitutes the company’s responsibilities and voluntary actions beyond its legal obligations (Mishra and Schmidt 2018:835 and Jones 1980:59-60). Zsolnai adds to this perspective, recognising that “[t]he global relationship between business and society cannot be framed in legal terms. Instead, the relationships are of a moral character, based on free will and on a combination of interest and a sense of duty” (2004:3).

3.3.1 Impact-based, leverage-based, negative and positive corporate responsibility

Against this background, the case is made for corporate responsibility to take the form of leverage-based and negative responsibility.

Wood provides support for the argument in favour of leverage-based corporate responsibility. He defines impact-based and leverage-based corporate responsibility as follows:

“Impact-based responsibility attaches to an organization's direct and indirect contributions to social or environmental impacts. Leverage-based responsibility, by contrast, arises from an organization's ability to influence the actions of other actors through its relationships, regardless of whether the impacts of those other actors' actions can be traced to the organization” (2012: 64).

Impact-based responsibility therefore rests on being able to establish a causal connection “between an agent's actions and the effects felt by others” (Wood 2012:63). Illustrating an indirect impact, Wood uses the example that corporations' pressure on suppliers for lower costs can contribute “to a supplier's decision to require its employees to work uncompensated overtime, in an effort to cut its costs” (2012:75). Thus, “the first company's action has an indirect impact, as one causal factor (possibly among many) contributing to the second company's decision” (Wood 2012:75). However, it is questionable whether clear, causal connections of a corporation's contributions to outcomes could be established within all the many layers of global supply chains. The argument in favour of leverage-based responsibility stems from this approach being able to address the likely absence of a clear, causal connection to the lower supply chain levels by relying instead on influence via relationships.

Supporting this, Wood answers the question of whether “a company's ‘leverage’ over other actors with whom it has a relationship ... give[s] rise to responsibility” with a “qualified yes”, stating that “leverage is one factor giving rise to responsibility even where the company is not itself contributing to adverse human rights impacts” (2012:63).

In clarifying the nature of corporate responsibility further, Wood distinguishes between negative and positive forms of responsibility, respectively to “do no harm ... and to do good” (2012:64-65). He emphasises that both approaches are necessary to address the problem of

human rights abuse, quoting Arnold that “it is not possible to protect a person from harm without taking proactive steps” (in Wood 2012:65).

Combining impact-based and leverage-based responsibility with negative and positive forms of responsibility, Wood identifies four forms of corporate responsibility: impact-based negative responsibility, leverage-based negative responsibility, impact-based positive responsibility and leverage-based positive responsibility (2012:65). However, the combination of leverage-based and positive responsibility, in particular, represents a very onerous scope of responsibility: it entails that “[c]ompanies have the responsibility to use their leverage to increase or maximize the positive social ... impacts of other actors with whom they have relationships” (2012:65).

The argument to limit corporate responsibility as regards supply chain slavery to negative forms of responsibility – in opposition to Wood’s view – does not disregard the value of good deeds by corporations. Indeed, it is recognised that being fully committed to eliminating all forms of modern slavery in their supply chains constitutes a significant contribution to social betterment and social justice. However, in the complex context of modern slavery, taking on both doing good and preventing harm represents an enormous scope of responsibility that extends into the realm of what governments should be doing. Holding corporations responsible for positive responsibilities could, for example, entail providing financial support to families to take back children sold into slavery out of extreme poverty, providing schooling for child labourers whose employment is terminated, or relocating trafficked workers back to their home. These actions clearly represent social betterment, but much of the responsibility this represents is considered to reside with governments as opposed to corporations. Supporting this stance, Nathan and George note that corporations “can eliminate child labour from all of its supply chains but it cannot end it” (2012:56). That greater goal rests on the local governments addressing the social, cultural or economic conditions that give rise to the ‘supply side’⁴ of modern slavery. It is also recognised that a positive-based span of responsibility could have the unintended consequence of acting as a deterrent for corporations to take on this responsibility. Nieuwenkamp, who chaired the 2011 revision of the OECD Guidelines, reflects this dilemma in the title his 2014 article “Cut and

⁴ Supply side is “the part of a country’s economy that involves producing goods and supplying services” (Cambridge Dictionary nd.).

run, or stay and help?” (2014). Therefore, the dictum, ‘first, do no harm’, is the central focus of the argument for corporate human rights responsibility. Adding support for this stance, Minor and Morgan state that “[w]hile CSR is often thought of as engaging in visible ‘doing good’ activities ... a less visible dimension of CSR, namely, ‘not doing harm’, is actually more important” (2011:41).

Coming back to Wood, he addresses the vast scope of the four forms of corporate responsibility by defining four conditions that limit corporate responsibility. While recognising that organisations may act voluntarily to “use their leverage to promote positive social or environmental outcomes, or prevent or mitigate negative outcomes”, he holds that “they have an obligation to do so” under the following four conditions: (2012:66):

- “(a) there is a morally significant connection between the company and either the perpetrator of human rights abuse or the human rights-holder,
 - (b) the company is able to make a difference to the state of affairs,
 - (c) it can do so at an acceptable cost to itself, and
 - (d) the actual or potential invasion of human rights at issue is substantial”
- (2012:82).

Applying these criteria to corporate responsibility for modern slavery beyond direct suppliers, the answers to the first, second and the fourth points are affirmative, and the third is probably affirmative for larger corporations. The first proposition is confirmed by the conclusion in chapter two that the victims of modern slavery in the corporations’ supply chain – the human rights-holders – constitute stakeholders of the corporation. Point (b) about the company’s ability to make a difference (2012:85) is manifest by the extent to which corporate involvement in their supply chains can minimise negative practices or improve working conditions. Tiffany and Co., the luxury jewellery retailer, is a good example. A study by Human Rights Watch, “The Hidden Cost of Jewelry”, documents “the use of hazardous child labor in gold or diamond mining in Ghana, Mali, Nigeria, the Philippines, Tanzania, and Zimbabwe” and found that “[i]n some gold and diamond mines, adults and children have become victims of forced labor and human trafficking” (2018b). Acknowledging companies that have contributed to improving conditions by taking steps towards responsible sourcing, Human Rights Watch reports that Tiffany and Co. can trace all of its newly mined gold back to one mine of origin and conducts regular human rights assessments with the mine (2018b).

The third point of Wood's conditions, that corporate responsibility is obligatory when its involvement would be at "an acceptable cost" (2012:82) is clearly subjective, dependent, for example, on the size of the company. What may be affordable for a large multinational may not be affordable for a smaller company. Supporting this reservation from the perspective of corporate capacity, Gold, Trautrim and Trodd acknowledge that "[l]arge businesses with more specialised functions and more resources may find it easier to develop capacity for such activities, but this may be more difficult for small- and medium-sized enterprises operating in fragmented industries" (2015:489). This criterion, therefore, does not add a distinction that can be accurately applied. The fourth condition, that the "invasion of human rights at issue is substantial" (2012:82), clearly applies to modern slavery whether it manifests as child labour, forced labour, debt bondage or human trafficking.

Despite the apparent limitation which Wood's four criteria create, it is unlikely to diminish the scope of corporate responsibility relative to the complex issue of modern slavery. Therefore, the argument for a leverage-based approach to corporate responsibility and for negative responsibility relative to supply chain slavery is maintained, respectively for its breadth of reach beyond direct suppliers and for its limitation relative to the nature of such responsibility.⁵ Both aspects of this argument are fully supported by the UNGC, the UNGP and the OECD Guidelines.

⁵ Given that corporate responsibility for supply chain slavery effectively expands the ambit of corporate responsibility beyond its own operation, the question can be asked in what other areas corporations are facing increasing areas of responsibility. Guardian Sustainable Business facilitated a debate on the question, 'where does a company's responsibility end', with experts from the academic, corporate, non-profit and business advisory sectors (Balch 2012). The debate focused in particular on consumer behaviour and company's responsibility for influencing it. Dax Lovegrove of WWF-UK acknowledged that "[m]any leading businesses ... see their responsibilities stretching across consumer use and disposal of products, where impacts are often at their highest" (Balch 2012). An example referenced was the 'Love Every Drop' campaign launched by Anglian Water, a major water supplier in England and Wales, that rests on their recognition that "if we can change the relationship we all have with water, we're likely to use it more responsibly and efficiently" (Balch 2012).

Another interesting example of expanding corporate responsibility centres on large technology companies like Facebook being responsible for the content on their sites. Despite Section 230 of the USA Communications Decency Act of 1996 providing "immunity from liability for providers and users of an interactive computer service who publish information provided by others" (Minc Legal Resources Centre nd.), Facebook CEO, Mark Zuckerberg, has acknowledged that "advances in artificial intelligence mean companies like Facebook will have to think about proactively removing objectionable content, for example, not just reactively after someone flags it" (Associated Press 2018). This reflects an ever increasing area of responsibility that can encompass a vast range of situations, from the March 2019 shooting in Christchurch, New Zealand (which the shooter livestreamed on Facebook) to Facebook's influence on elections.

3.3.2 The United Nations Global Compact

The UN stands out among the international institutions that have adopted a human rights approach to corporate responsibility. Building on the foundation of the UN's 1948 Declaration of Human Rights – which states in Article 4 that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” (UN 1948) – two noteworthy UN contributions that address human rights are the UNGC, which was officially launched in July 2000, and the UNGP, which was endorsed by the UN Human Rights Council in 2011.

The UNGC is “a voluntary initiative based on CEO commitments to implement universal sustainability principles and to take steps to support UN goals” (UNGC 2000a). It encompasses the expectation that corporations do business responsibly and pursue opportunities to solve societal challenges (UNGC 2000b). The UNGC articulates Ten Principles and supports the 17 Sustainable Development Goals (SDGs). The 17 SDGs were set by the UN General Assembly and adopted by all 193 UN Member States in 2015 for the year 2030, which includes fighting inequality and injustice (UNGC 2015). The Ten Principles are especially significant inasmuch as they are derived from the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention against Corruption (UNGC 2000c). Of the Ten Principles, four principles that address human rights, forced and compulsory labour and child labour (UNGC 2000c) speak directly to the argument in this chapter and articulate what is expected of corporations as regards human rights abuse. Principles 1 and 2 focus on human rights and advocate that “[b]usinesses should support and respect the protection of internationally proclaimed human rights; ... and make sure that they are not complicit in human rights abuses”, while Principles 4 and 5 address labour, advocating that “[businesses should uphold] the elimination of all forms of forced and compulsory labour; [and] ... the effective abolition of child labour” (UNGC 2000c). As can be inferred from principles 4 and 5, the UNGC's principles are focused on negative corporate responsibility: “to avoid infringing human rights ... and ... [to] address adverse human rights impacts with which they are involved” (UNGC 2000d), which aligns with the argument presented in this thesis.

Applying the UNGC principles to the case for corporate responsibility for supply chain slavery, they do not define or clarify the extent of business responsibility, for example in their supply chains. However, the use of the word “complicit” in principle 2 infers responsibility beyond the business’s own actions. This supports the argument for corporations’ expanded human rights responsibility since “complicit” can be interpreted to imply both that corporations are not involved with others in human rights abuses and that they do not contribute to or cause another party to engage in human rights abuses.

Adding to this extension of responsibility, the UNGC is credited with introducing the concept of “sphere of influence” into the “social responsibility discourse” (UN SRSG 2008:4), which “seeks to establish the scope of corporate responsibility for human rights issues based on the extent of a particular business’ influence” (in UN SRSG 2008:4). The UNGC’s aim to encourage corporations to incorporate the Ten Principles “into strategies, policies and procedures” (UNGC 2000c) “within their sphere of influence” therefore implies corporate responsibility both within and beyond the corporations’ workplaces (UN SRSG 2008:4) and deriving not only from their actions but also from their influence. This illustrates that the UNGC moves beyond an impact-based approach, where responsibility stems from the corporations’ “direct and indirect contributions to social ... impacts”, towards a more wide-ranging leverage-based approach that also requires the organisation to influence the actions of others with whom it has a relationship (Wood 2012:64). This enlarged scope of responsibility also supports the argument for corporations to take on the responsibility for modern slavery beyond their direct suppliers.

While this latter particular aspect of the UNGC’s support for the thesis argument is diluted by the fact that the sphere of influence concept is no longer a feature on the key pages of the UNGC’s website, the criterion of being complicit speaks to the expanded scope of corporate responsibility.

3.3.3 The United Nations Guiding Principles on Business and Human Rights

The UNGP is the second international framework that is examined to clarify the scope of corporate responsibility for human rights and to build a case for organisational responsibility for supply chain slavery. It too is a noteworthy publication for its international reach and

recognition, and for its focus on corporate responsibility to respect human rights and the detailed guidelines it provides in this regard (UNGP 2011).

The path to the development of the UNGP is informative as regards impact or leverage-based responsibility. Its development rested on the UN Secretary General's 2005 appointment of Prof. John Ruggie as the UN Special Representative on business and human rights (SRSG) with the mandate "to propose measures to strengthen the human rights performance of the business sector around the world" (IHRB nd.). In 2008 the UN Human Rights Council accepted the SRSG's UN "Protect, Respect and Remedy" Framework and Guiding Principles, generally referred to as the "UN Framework" (BHRRC 2008). While Ruggie in his role as a primary drafter of the UNGC had accepted the sphere of influence concept relative to CSR (Wood 2012:66 & 71), he rejected the concept relative to the scope of human rights responsibility of business (Wood 2012:68) on the basis of the concept's conflation of influence as "impact" with influence as "leverage", and because "[a]nchoring corporate responsibility in influence defined as leverage is problematic, because it requires assuming, in moral philosophy terms, that 'can implies ought'" (UN SRSG 2008:5). The SRSG held that "companies cannot be held responsible for the human rights impacts of every entity over which they may have some leverage, because this would include cases in which they are not contributing to, nor are a causal agent of the harm in question" (UN SRSG 2008:5). The SRSG also rejected defining corporate responsibility in positive terms, choosing the negative approach of avoiding harm (Wood 2012:68). This stance informed the 2008 UN Framework.

The task of "operationalizing" and "promoting" the Framework, for which the SRSG's mandate was extended until 2011, culminated in the publication of the UN Guiding Principles on Business and Human Rights (UNGP), which were endorsed by the Human Rights Council in resolution 17/4 of 16 June 2011 (BHRRC 2008). Despite Ruggie's objections to a leverage-based approach to corporate responsibility in the development of the Framework, the subsequent UNGP acknowledged that "a company may be responsible for human rights violations to which it has not contributed" (Wood 2012:71). The UNGP addresses corporations' responsibility via five Foundational Principles (numbers 11 to 15) and nine Operational Principles (numbers 16 to 24). Especially pertinent for the argument for corporate responsibility for supply chain slavery is Principle 13. This states that corporations' responsibility to respect human rights includes not only that they "avoid causing or contributing to adverse human rights impacts through their own activities", but that business

enterprises “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (UNGP 2011:14).

As the UNGC, the UNGP therefore also provide support for negative responsibility and a broader, leverage-based scope of corporate responsibility for human rights abuse in support of the argument in this chapter.

3.3.4 The OECD Guidelines for Multinational Enterprises

The OECD’s Guidelines for Multinational Enterprises (MNEs) is the third international framework that supports the argument in favour of leverage-based, negative corporate responsibility for human rights abuse. The Guidelines’ influence makes it deserving of the review: “44 adhering governments – representing all regions of the world and accounting for 85% of foreign direct investment – encourage their enterprises to observe [the OECD recommendations] wherever they operate” (OECD nd.).

The Guidelines constitute recommendations for “multinational enterprises operating in or from adhering countries” that “provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards” (OECD 2011a). The 2011 revision of the Guidelines, which under the influence of the UNGP saw a chapter on human rights added (Buhmann 2016:702 & 708), specifically recognises corporations’ responsibility for ethics within their supply chains and also adds a great deal of detail that clarifies the associated expectations. Roel Nieuwenkamp, who was Chair of the OECD Working Party on Responsible Business Conduct and who chaired the 2011 revision of the Guidelines, aptly conveys the OECD’s view relative to corporations that “[y]ou can outsource your production but you cannot outsource corporate responsibility” (2014). The Guidelines are thus an especially pertinent support for the arguments as regards corporations’ human rights responsibilities in their supply chains.

The details contained in the 2011 edition of the Guidelines both in Section II, which addresses General Policies, and Section IV, which addresses Human Rights, reveal that the Guidelines explicitly advocate a leverage-based, negative approach to corporate human rights responsibility. Section II addresses General Policies which prescribe what “enterprises should

do” (OECD 2011b). In the sphere of human rights, this includes that enterprises “[r]espect the internationally recognised human rights of those affected by their activities” (OECD 2011b:19), and “[s]eek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship” (OECD 2011b:20). The Commentary on these General Policies clarifies the meaning of key issues. Contributing to an adverse impact refers to a “substantial contribution, meaning an activity that causes, facilitates or incentivises another entity to cause an adverse impact and does not include minor or trivial contributions” (OECD 2011b:23). The term business relationship is defined as including “relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services” (OECD 2011b:23). Leverage is explained as existing “where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm” (OECD 2011b:24).

Section IV on Human Rights and the Commentary on Human Rights reinforces and repeats the prescriptions outlined in the General Policies. Section IV proposes that enterprises should respect human rights, avoid causing human rights abuse or transgressing human rights, and explicitly recognises both impact-based and leverage-based responsibility (OECD 2011b:31), even exhorting corporations to use their leverage “to the greatest extent possible” (OECD 2011b:33).

The OECD Guidelines therefore effectively support the argument for defining the scope of corporate human rights responsibility as leverage-based and negative.

The three frameworks that were reviewed based on their focus on human rights abuse coupled to their international influence and recognition – the UNGC, the UNGP and the OECD Guidelines – reveal two primary overlaps that are pertinent to the argument presented here. They all project the nature and scope of corporate responsibility for human rights abuse as including leverage-based responsibility, and all share the view that such responsibility takes the form of negative responsibility. All three frameworks therefore explicitly support the argument in favour of leverage-based, negative responsibility and, by extension, also support the overall case for corporate responsibility for human right abuse and modern slavery in their upstream supply chain beyond direct suppliers

3.4 CORPORATE COMPLICITY IN A BUSINESS MODEL THAT FUELS MODERN SLAVERY

The case for corporate responsibility for modern slavery beyond tier 1 suppliers is supported by another important argument. This centres on corporations' complicit role in shaping the nature and structure of supply chains to realise benefits such as lower costs and, crucially, on the effect of such corporate pressure on suppliers as a cause of labour abuse. This circumstance supports assigning responsibility to corporations for human rights abuse and modern slavery within all tiers of their supply chain.

This argument is supported by LeBaron (2014) and New (2015). LeBaron's review of corporate involvement in and responsibility for the unethical consequences of subcontracting and outsourcing⁶ finds a direct link between the occurrence of modern slavery in upstream supply chains and the pervasiveness of the practices of subcontracting and outsourcing. Exacerbating the problem is the fact that "forced labor and slavery are concentrated in the sectors and portions of supply chains where subcontracting and outsourcing are the highest" (LeBaron 2014:243). By way of example of the centrality of these practices, LeBaron notes that "firms like Gap, Apple, and Nike produce no actual goods themselves, but rather contract manufacturing and manage the logistics of delivery, shipment, and sale of goods produced under their brand through tightly coordinated supply chains" (2014:240). Thus "the production processes associated with a single good can span many different countries and can involve dozens, if not hundreds, of suppliers" (2014:241). This is confirmed in Apple's 13th Annual Supplier Responsibility Progress Report, released on 6 March 2019. In this report Apple acknowledges that its "products are made all over the world", with suppliers identified at the following stages of production: "mine, smelters and refiners, components, final assembly, logistics, retail stores, [and] recycling" (2019:6).

⁶ Although the terms subcontracting and outsourcing are often used interchangeably, there is a distinction. Both are suppliers to the corporation and both often represent a business strategy to minimise costs. But subcontracting entails getting an outside company to perform specific tasks that cannot be handled internally, which generally allows the company a measure of control over the process. Outsourcing, on the other hand, generally refers to tasks that can be performed by the company's staff. When this work is assigned to outside providers, they would typically work independently and hence the company exercises less control over this supplier arrangement (Investopedia nd.).

LeBaron's paper focuses on the intentional nature and structure of corporate supply chains. She puts forward that "corporations themselves have given rise to complexity and very high levels of subcontracting within both labor and product supply chains, as they have continually restructured production in recent decades to cut costs and reduce legal ownership to curtail liability" (2014:238). LeBaron elaborates on the outcomes that these business strategies (the ubiquity of subcontracting and outsourcing and the length and complexity of supply chains) aim to realise. The first outcome is both "to cut costs and maximize flexibility" (2014:239), a view echoed by Crane who describes slavery as "an attempt to underprice a key resource (labor) through illegitimate means" (2013:51). The second strategic goal is corporations' desire "to reduce responsibility and liability for the risks associated with this business model through arm's-length contractual relationships with mostly overseas suppliers" (LeBaron 2014:242) – the effect of which is that risk is moved ever further from the corporation, not only to its suppliers, but to their suppliers, subcontractors and shadow factories.

Consequently, LeBaron claims that "forced labor, slavery, and other forms of labor exploitation are not randomly occurring relations ... [but] [r]ather, they are a coherent management practice that suppliers use to balance contractual demands for low-priced production with quick turnaround times, short contracts, unstable demand, and quickening speed to market" (2014:239). She concludes that corporations' pursuit of the benefits of subcontracting and outsourcing drives "illegal and unethical practices like forced labor" (2014:239). She therefore advocates that the current business model needs to be reconsidered in order to eradicate modern slavery (2014:239).

New also supports the argument as regards corporate complicity, recognising that "modern slavery should be seen not merely as an exogenous problem which firms have a responsibility to address, but as an endemic feature of the socio-economic systems which is, in part, constituted by firms themselves" (2015:697). He elaborates on this view via his research into supply chain practices by UK supermarkets, which reveals that this occurs "not only to distant suppliers in remote geographies with specific cultural conditions but also with local suppliers in a developed economy" (2015:703). New acknowledges that "the large UK supermarkets have very well-developed CSR programmes" and that "all of the supermarkets ... have well-established and well-articulated anti-forced labour policies; [and] all would have no trouble in complying with the requirements of US or UK transparency legislation" (2015:702). However, New raises the core contradiction between this espoused stance and

“enacted practice” (2015:704). As evidence of actual practices, New acknowledges that “despite a rhetoric of partnership and collaboration, suppliers have consistently reported ‘a culture of fear’” and that suppliers are “faced with relentless pressure for price cuts and ‘bullying’” (2015:702). Adding to this, the UK Competition Commission acknowledges that “the transfer of excessive risk and unexpected costs by grocery retailers to their suppliers [occurs] through various supply chain practices” (in New 2015:702).

By way of example that this conflict is not adequately addressed, New refers to the 2014 publication by the Walk Free Foundation, the UK’s Chartered Institute of Purchasing and Supply and the ethical sourcing campaigning group Vertité, “Tackling modern slavery in Supply Chains: A Guide 1.0”. While acknowledging that the handbook is a “well-written and intelligent collection of best practice suggestions for firms seeking to avoid modern slavery in their supply chains”, New highlights that the report nonetheless “does not consider how the actions of the buying firms ... might stimulate supplying firms to feel the need to engage in, or turn a blind eye to, exploitative labour practices in the first place” (2015:701).

New also highlights the fundamental inconsistency between “the right hand (the CSR activity, the policy statements) [which] gives the appearance of working to reduce the problem [of forced labour]; and the left hand (the brutal exercise of commercial power, hard negotiation on prices and trading terms) [which] generates the conditions in which forced labour emerges” (2015:703). This leads him to go so far as to say that “conventional CSR approaches may not be capable of addressing the problem [of forced labour]” given that “it is the exercise of their own commercial policies that foster a situation [in] which their anti-slavery policies fail” (2015:704). This leads New, as LeBaron, to call for “a profound reappraisal of fundamental business models” (2015:703).

Gold et al. similarly recognise that “[s]upply chains leverage the profitable exploitation of cheap human resources ... for the production of goods to be sold on the world market” (2015:486) such that “[s]lavery taints numerous of our raw materials, commodities and goods” (2015:485). They too adopt a broad approach to corporate responsibility for labour slavery that recognises corporate responsibility for supply chain slavery beyond direct suppliers (2015:486).

These views confirm the role that corporations play in creating the conditions that lead to labour abuse by upstream suppliers, and hence support the argument in this regard. The conclusion focuses on two points. The first is that, based on corporations' primary contribution to the creation of this market structure and their perpetuation of the high-pressure business practices that fuel abusive labour conditions in their supply chains, corporations should assume this responsibility throughout their supply chains. The second rests on the core conflict that is exposed between the espoused aim of CSR to address human rights abuse and modern slavery, and the pursuit of strategic business goals via their supply chain management practices that lead to labour abuse. Corporations are therefore also complicit via their business model and hence are responsible on this count too.

3.5 THE ARGUMENTS AGAINST THE ASSUMPTION OF CORPORATE RESPONSIBILITY FOR SUPPLY CHAIN SLAVERY

The argument that corporations should be responsible for modern slavery in their supply chains is not shared by everyone: there are those who argue against corporations assuming this responsibility. These views are considered as possible objections to the thesis argument.

The central counter argument rests not on the denial that modern slavery warrants serious attention, but rather on who should exercise that responsibility. The majority view is that this largely falls within the domain of governments' responsibility. As elaborated upon below, however, these views do not actually conflict with the argument in favour of corporate responsibility for supply chain slavery beyond direct suppliers.

Homann raises two key questions relative to corporations having come to bear "responsibility for the social order of global society", asking "why should they accept this task, which is laden with so many difficulties? Maybe they should resist that task, because it has to be filled by other actors?" (2007:5).

Among the voices that speak in favour of governments' role, David Weiss of Business Social Compliance Initiative, a leading supply chain management system that supports companies to drive social compliance and improvements within the factories and farms in their global supply chains, agrees that "it is probably neither effective nor legitimate to ask the private sector to provide for the fulfilment of all rights" (Gould 2015). Gould supports this view,

listing among the “10 [t]hings we learned about eradicating child labour” that “it’s a bad idea to expect companies to replace government” (2015). The ILO’s Simon Steyne also warns against expecting companies to assume the responsibilities of governments, especially when it comes to ensuring rights to education and health, not least because, as he recognises, “[w]hat happens to company provision if the company decides to move its supply chain elsewhere?” (Gould 2015).

Illustrating his point, this is exactly what Nike did. In 2006 they terminated their contract with Saga Sports, their Pakistan-based supplier of hand-stitched soccer balls, because the supplier was having soccer balls made inside private homes which Nike recognised created the potential for using under-aged workers (Mail & Guardian 2006). Whether this action is viewed as avoiding the problem or walking away from the problem of labour abuse, the effect is nonetheless to negate the corporate responsibility.

Nick Weatherill, executive director at the International Cocoa Initiative, and Ursula Wynhoven of the UNGC hold the view that “child labour has systemic dimensions that often go beyond what any one company can do” (Gould 2015). Wynhoven explains that “[u]nless the root causes of child labour are addressed, the problem will persist and get shifted around to other companies and sub-sectors” (Gould 2015).

Nathan and George support this stance and acknowledge the limit of corporate responsibility. They recognise that even if corporations removed all child labour from their supply chain, that would not end child labour (2012:56) since the latter responsibility rests on local governments to address the social, cultural or economic conditions that are conducive to modern slavery.

These reservations are recognised and are not regarded as opposing arguments. Indeed, it is for the very reasons raised by these views that this argument limits corporate responsibility as regards supply chain slavery to negative forms of responsibility. As noted above, this is not to curtail the benefits that doing good can bring. Instead, the argument for negative corporate responsibility is in direct recognition that corporations cannot influence the supply side conditions of a country’s social, cultural or economic situation. This is the domain of government. That corporations also have a responsibility is core to this argument – and that entails making every effort to eliminate modern slavery in the full spectrum of their supply

chains. This latter point finds support in the UNGP where Foundational Principle 11 states that corporations' "responsibility to respect human rights ... exists independently of States' abilities and/or willingness to fulfil their own human rights obligations" (UNGP 2011:13).

The counter arguments also raise the point that governments are avoiding their responsibility by transferring their responsibility to corporations. This form of 'scope creep', where a project's scope continually grows, is something that warrants a note of caution. Despite the extent of corporate power and influence, by definition they lack political legitimacy, and thus should be cautious of taking on the role of governments, even by default. This stance is echoed by the UN, which acknowledges that corporations are "not democratic public interest institutions" and that, as such, "their responsibilities cannot and should not simply mirror the duties of States" (UN SRSG 2008:16). However, the challenge is that there are cases, such as via legislation, where this responsibility cannot easily be avoided.

Quoting the successful example of state action to address abuse in the Brazilian ethanol industry, Gold et al. acknowledge that in the opposite situation, where such state intervention is absent, "multi-national companies are essentially asked to step into the gap by policing their supply chains" (2015:489).

New echoes this view in relation to the California Transparency in Supply Chains Act, expressing "a general disquiet at the possibility that the passing of responsibility to corporate actors for such significant issues in fact represents a retreat of the state from its proper role" (2015:700). Sarfaty also voices this perspective, recognising that effectively,

"[t]he state is deploying multinational companies to regulate themselves and indirectly regulate other firms in their supply chain. Compliance by companies is thus linked to compliance by their suppliers. As a result, companies listed in the United States are responsible for implementing and enforcing regulatory standards on firms abroad, on behalf of the state" (2015:435).

This is a concern since current legislation is being adopted in more jurisdictions. In addition to current legislation in California, South Africa, the UK, France and Australia,⁷ in May 2019

⁷ The California Transparency in Supply Chains Act of 2010, the South African Prevention and Combating of Trafficking in Persons Act 7 of 2013, the UK Modern Slavery Act 2015, the French Corporate Duty of Vigilance Law 2017 (ECCJ 2017) and the Australian Modern Slavery Act 2018.

the Dutch Child Labour Due Diligence Bill was approved by its Senate (ECCJ 2019).⁸ And in Germany a group of “64 NGOs and trade unions ... – including Human Rights Watch – has launched a Supply Chains Law Campaign urging the German government to propose a bill by 2020 that would ensure German companies put in place human rights safeguards in their supply chains” (Kippenberg 2019).

While Rachels and Rachels note that moral conduct that protects the interest of everyone involved does not need to rely on legislation – that rules can be enforced via the law and via social customs (2019:91) or via “the court of public opinion” (2019:86) – this does not necessarily address the dilemma between corporations’ possible overreach in terms of their power versus states’ retreat from their legal obligations. The view that both governments and corporations have a responsibility for modern slavery also does not resolve this challenge. This leaves the problematic question of corporations taking on the responsibility of governments via the obligations imposed on them by legislation. It is proposed that this issue represents an area that would benefit from further academic attention and research.

3.6 CONCLUSION

The argument in favour of leverage-based corporate responsibility has the positive effect of expanding the scope of corporate responsibility beyond tier 1 suppliers. This is supported by Wood (2012) and by three global human rights frameworks, the UNGC, the UNGP and the OECD Guidelines. The argument for negative responsibility also finds support in the UNGC, the UNGP and the OECD Guidelines.

Corporations’ deliberate creation of the supply chain structures, coupled to the fact that their low cost and risk-minimising supply chain strategies are a cause of human rights abuse in supply chains, provide a separate argument that brings with it consequent corporate responsibility for human rights abuse and modern slavery at all levels of their supply chain. The fundamental conflict between CSR goals and supply chain goals is also recognised as an added source of responsibility, which leads to a call for corporations to review this business model and its intended and unintended consequences.

⁸ Although the legislation “has a tentative enforcement date of January 1, 2020 ... members of the Dutch Parliament indicated during their May 14 vote that they do not anticipate the Act will go into effect until 2022” (Arvanitis and Braine 2019).

A concluding caution to be recognised centres on corporate power. Wood acknowledges that “leverage-based responsibility starts with the fact of the substantial power of business enterprises to influence social conditions” (2012:76). He qualifies “the moral implications of power” as bringing with it responsibility. Certainly the “immense reach, power and influence” of business in society (Woermann 2013:138) is a key factor that entrains the principle of *noblesse oblige*, a French expression that holds that someone with power and influence should use their social position to help other people (Cambridge Dictionary nd.). Sarfaty confirms that “[w]hen a company has a high degree of control over its direct suppliers and the power to switch among suppliers, it can more easily monitor and influence their behaviour” (2015:432). Ulstrup Hoejmoose, Grosvold and Millington go a step further, recognising “that power, particularly buyer power, can create a multiplier effect, such that the influence of buyers on suppliers can force sub-suppliers to act in a responsible manner” (2013:277). Adding to this positive note, Ulstrup Hoejmoose et al. confirm that the results of their research “suggest that asymmetric power relationships are a significant driver of SR-SCM [socially responsible supply chain management]” and that “[t]his result is consistent with earlier studies of supplier development, which have argued that buyer power advantage (suppliers dependence) facilitates supplier adaptation and collaboration with buyer processes and requirements” (2013:285).

However, as corporate power is projected as an advantage in tackling modern slavery, the caution raised centres on also recognising the opposite effect. New supports this stance by acknowledging that a power imbalance between corporations and their suppliers allows “large oligopolistic customers ... [to] drive suppliers to the point at which terrible labour practices become an operational necessity” (2015:703).

It is therefore recognised that the potential exists for corporate power and influence to be used to drive commitment to and compliance with improved labour standards for the benefit of the victims of modern slavery, or to drive down costs further for the benefit of the corporation. The choice rests on the sincere assumption of responsibility by corporations for modern slavery among all their suppliers.

CONCLUSION

The case for corporate responsibility for modern slavery beyond their direct suppliers reflects circumstances that have a very high human cost and, often, a low corporate response. A report published in June 2019 by the Business & Human Rights Resource Centre (BHRRC), “Out of Sight: Modern Slavery in Pacific Supply Chains of Canned Tuna”, reveals that the biggest international canned tuna companies are not addressing modern slavery in their supply chains in the Pacific Ocean. The report found that “[m]odern slavery is endemic in the fishing industry, where the tuna supply chain is remote, complex and opaque”, leading to abuse “with migrant workers bought and sold as unpaid slaves, and tossed overboard if they complain or get injured” (2019:3). Although there are regular reports of the widespread use of forced, trafficked and slave labour in the fishing industry, “not one company disclosed having found a single worker in modern slavery in their supply chains” (2019:3). And, despite two thirds of the surveyed companies having corporate human rights policies, the report found that this does not translate into action, revealing “a pattern of policy over practice” (2019:3). The BHRRC highlights the implication of such ‘window dressing’ policies, namely that “these public policies ... [provide] the majority of laggard companies with ‘plausible deniability’ while slavery continues unabated” (2019:3).

There are, however, companies that are making an effort to rid their supply chains of modern slavery and that go beyond the legal limits required of them, such as Patagonia, the American outdoor clothing company. Their goal is “to reduce the adverse social and environmental impacts of ... [their] products and to make sure they are produced under safe, fair, legal and humane working conditions throughout the supply chain” (Patagonia nd.a). They give meaning to this goal via their ‘Footprint Chronicles’ which provide a global map of raw materials, mills, and factories that make Patagonia products, and include detailed information about suppliers’ operations and staff (Patagonia nd.b). While such good practice deserves to be recognised, these positive examples are eclipsed by negative ones.

Slavery is thus not simply an historical atrocity that is associated with the Atlantic slave trade in the 16th to 19th centuries. The number of people who are victims of contemporary forms of slavery significantly exceeds the number of people sold into slavery (respectively 40.3 million people (Global Slavery Index 2018a) and 11.9 million (Lovejoy 1989:368)). An abomination of this magnitude warrants urgent, concerted action by all involved parties. So

too does it warrant action based on the gross abuse of human rights which slavery entails. Crane notes that “[m]odern slavery represents one of the worst possible forms of human exploitation” (2013:63), which brings to mind Hobbes’ “state of nature” where the workers’ lives can indeed be seen as “poor, nasty and brutish” (Rachels and Rachels 2019:84-85). Supporting this point, Wörsdörfer recognises that since human rights “are rooted in human dignity”, it “justifies their status as universal, egalitarian, indivisible, inalienable, undeniable and unconditional moral rights” for all human beings (2015:200).

Against this background, the case for corporate responsibility for human rights abuse in labour practices and modern slavery beyond their direct suppliers is explored relative to two bodies of theory: stakeholder theory, and the theory of corporate responsibility and CSR.

Within stakeholder theory the expanded scope of corporate moral responsibility is recognised as reflected in the shift from a shareholder to a stakeholder focus, where corporations are now expected to be responsible not only to shareholders, but also to their stakeholders. The argument in favour of employees and workers of suppliers beyond direct suppliers being recognised as the stakeholders of the buying corporation is supported by various authors (Freeman and Reed, 1983; Freeman, 1984; Donaldson and Preston, 1995; Mitchell, Agle and Wood, 1997; Woermann, 2013; and Bateman and Bonanni, 2019).

The stakeholder status of sub-tier suppliers’ workers supports the further argument that corporations have a moral responsibility to behave in an ethical manner towards those within their global supply chains beyond direct suppliers who are the victims of modern slavery. This is supported by the normative features of stakeholder theory. The review of the theory confirms that corporations’ moral responsibility entails treating their stakeholders ethically and regarding their interest as being of “intrinsic value” (Donaldson and Preston 1995:67) – as something that is “good or desirable *in itself*” (emphasis in the original) (Singer 1993:274) – not least as this derives from having an impact of others (Evan and Freeman 1993:78).

As is the case for stakeholder theory, corporate responsibility and CSR also reflect an increased scope of responsibility, where corporate responsibility now encompasses a triple focus on financial, social and environmental responsibilities. Workplace human rights abuse and modern slavery are viewed as part of the social aspect of corporate responsibility, and CSR is recognised as comprising a responsibility towards society that is focused on the

betterment of society and that is of a voluntary nature which extends beyond the prescripts of the law.

In this chapter, two arguments are presented to support the case for corporations being responsible for modern slavery in their supply chains beyond direct supplies. The first proposes that the nature and scope of corporate human rights responsibility in relation to these supply chain stakeholders should take the form of leverage-based, negative responsibility. The case for such corporate responsibility is supported by the findings of an examination of three international frameworks that are focused on corporate human rights responsibility: the UNGC, the UNGP and the OECD Guidelines. A dominant common feature of these frameworks is their recognition of responsibility that is both impact-based and leverage-based. Buhmann, who views these responsibilities as the “minimum norms of conduct for business conduct”, also recognises that the guidelines articulated by global non-state entities confirm “the growing agreement across organisations, regions and states as well as non-state actors of the pertinence in regulating business impact on society by indicating to companies what society expects of them besides compliance with applicable national law” (2016:711). Therefore, it is concluded that the scope of corporate human rights responsibility as defined in these global frameworks supports the argument that corporate responsibility should include the workers in sub-tier suppliers.

The second common feature of these frameworks addresses the nature of corporate responsibility which, in turn, defines its scope, namely to require that corporations exercise negative responsibility: that is, to do no harm. This supports the argument in favour of such limitation. This limitation to negative responsibility does not ignore the benefits of positive responsibility that focuses on doing good, but instead is cognisant that the latter entrains an extensive scope of responsibility that can include addressing regional or national economic, social and cultural factors. Instead it is recognised that the greater goal of truly ending modern slavery also rests on local governments to address the conditions that give rise to the ‘supply side’ of modern slavery. Supporting this stance in relation to child labour, Nathan and George note that “the problem of employment of child workers cannot be ended by action alone on the demand-side; ending child labour also requires action on the supply-side” (2012:56). The argument for corporate human rights responsibility is thus proposed in line with the dictum, ‘first, do no harm’.

A second argument within the field of CSR is that corporate responsibility stems from corporations' complicity in the formation of supply chains where the nature and structure of those outsourcing arrangements facilitate conditions that lead to human rights abuse. This stance is supported by LeBaron (2014) and New (2015) who both acknowledge that the creation of lengthy, fragmented and complex supply chains has been driven by the business goals of reducing cost and reducing risk, and that this has also created the circumstances that can fuel abusive human rights practices by suppliers (LeBaron 2014:239 and New 2015:697).

This gives rise to a situation that pits two core, fundamentally contradictory business outcomes against each other: the eradication of modern slavery as a CSR business goal versus the supply chain goals of lower cost and lower risk. Aligned with this view, while LeBaron acknowledges that "NGOs and the social audit industry are currently working with corporations to 'slavery-proof' supply chains against these illegal practices through voluntary corporate social responsibility initiatives" (2014:237), Crane recognises that "[s]lavery ... remains a viable management practice for many enterprises, despite being universally condemned as unethical and indeed criminalized in most jurisdictions and under international law" (2013:49). This conflict is recognised as having the effect of undermining and minimising corporate responsibility for modern slavery and, as such, it is an issue which would benefit from further academic research. It is therefore concluded not only that this business model should be changed – a stand also expressed by LeBaron (2014:239) and New (2015:703) – but, crucially as regards the argument in this chapter, that the deliberate creation and pursuit of this business model adds to the case for corporate responsibility for modern slavery throughout their supply chains.

The chapter on CSR also examines the views of those who stand against corporations assuming these responsibilities as possible objections to the argument in favour of such responsibility. The opposing stance, which largely rests on this constituting the responsibility of local governments, does not in fact represent a contradictory view. The argument put forward here recognises that responsibility for modern slavery is reliant on both governments and corporations – on political and corporate will and commitment – where governments exercise most responsibility in terms of the 'supply side' of human rights abuse, and corporations on the 'demand side'. As noted, this shapes the argument in favour of corporations' responsibility taking the form of negative responsibility. However, a question that remains, which also warrants further academic attention, is the impact of modern slavery

legislation, specifically whether such legislation imposes a duty on corporations that should reside with governments or, phrased from the other side, whether governments are eluding their responsibility in favour of corporations.

The conclusion that corporations should be responsible for supply chain slavery beyond direct suppliers therefore finds support in both the theory of stakeholder theory and corporate responsibility and CSR. It is recognised that this responsibility will not be realised by corporate policies and platitudes, but by commitment and action, which together can deliver the positive difference to social justice that is needed.

Finally, in reply to the question “[w]hy act morally?”, Singer notes that there is no answer that “will provide everyone with overwhelming reasons for acting morally”, adding that “[w]e will probably always need the sanctions of the law and social pressure to provide additional reasons against serious violations of ethical standards” (1993:335). In this case, no such substitute reasons should suffice. Instead this should represent a conscious choice by corporations to act morally because it is the right to do in the face of such a social scourge.

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