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Jonathan Todres

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INTRODUCTION

Human trafficking is big business, with industry estimates running in the billions of dollars annually.[1] Much of that profit accrues to traffickers, illegal profiteers, and organized crime groups. However, the private sector—including legitimate businesses and industries—also reaps economic benefits, directly and indirectly, from the trafficking and related exploitation of persons.[2] Despite these economic realities, the dominant approach to combating human trafficking has been to rely almost exclusively on governments and social services organizations to do the job. Little has been asked of the private sector.[3] Two important bills—one adopted by the State of California and the other

* Associate Professor of Law, Georgia State University College of Law. Thank you to Afra Afsharipour, Cass Brewer, Russ Covey, Pratheepan Gulasekaram, Caren Morrison, and Nirej Sekhon for their helpful suggestions and to Jennifer Whitton and Monica Spitzer for excellent research assistance.

1. *See* U.N. OFFICE ON DRUGS AND CRIME, THE GLOBALIZATION OF CRIME: A TRANSNATIONAL ORGANIZED CRIME THREAT ASSESSMENT 39 (2010), *available at* http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf; Christopher P. Keleher, *The Illinois Predator Accountability Act A Sleeping Giant*, 98 ILL. B.J. 582, 583 (2010).

2. *See* U.N. GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING [UN.GIFT], HUMAN TRAFFICKING AND BUSINESS: GOOD PRACTICES TO PREVENT AND COMBAT HUMAN TRAFFICKING 11 (2010), *available at* http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_142722.pdf.

3. Select companies have taken it upon themselves to contribute to anti-trafficking efforts. *See, e.g.*, *Sex Trafficking The Story So Far*, THE BODY SHOP, http://www.thebodyshop.com/_en/_ww/values-campaigns/trafficking.aspx.

introduced in the U.S. House of Representatives—might signal the beginning of a change in the prevailing approach to combating human trafficking.

On January 1, 2012, the California Transparency in Supply Chains Act of 2010 ("California Transparency Act") entered into force.[4] It mandates that any manufacturer or retailer with worldwide annual gross receipts of at least $100 million that is "doing business" in the State of California disclose on its website its policies on, and measures undertaken to, combat forced labor and trafficked persons in its supply chain.[5] The new law is expected to apply to approximately 3,200 global companies.[6] At the federal level, Rep. Carolyn Maloney introduced a similar bill—H.R. 2759 Business Transparency on Trafficking and Slavery Act ("H.R. 2759")—in August 2011 that would require publicly listed companies to include similar disclosure in their annual reports filed with the Securities and Exchange Commission. Specifically, H.R. 2759 would require companies to disclose what, if any, measures they have taken to "identify and address conditions of forced labor, slavery, human trafficking, and the worst forms of child labor within [their] supply chains."[7] Although both acts are essentially limited to disclosure requirements,[8] they signify a departure from the prevailing approach to combating human trafficking and present new opportunities to reduce incidence of exploitation and human suffering.

Though the California Transparency Act took effect only last month, the early responses by various corporations offer important lessons. It is apparent that some businesses readily see the value of engaging in such efforts, whether they are motivated by brand management considerations, consumer relations, the advice of legal counsel, or ethical principles. Other businesses might require more incentive, or perhaps the threat of sanction, to act.

In either case, policymakers will learn a lot from the early responses to the California Transparency Act. Investors, consumers, and anti-trafficking organizations will learn too and be able to utilize this new knowledge in pressing for greater private sector involvement in the fight against human trafficking at both the company and industry level. Finally, businesses themselves will also be able to assess the value of proactively undertaking efforts to combat human trafficking and be able to monitor competitors' practices to ensure others do not gain an unfair competitive advantage by using slave labor.

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4. California Transparency in Supply Chains Act of 2010, S.B. 657, 2010 Reg. Sess., 2010 Cal. Legis. Serv. Ch 556 (West 2010) (codified at CAL. CIV. CODE § 1714.43).

5. CAL. CIV. CODE § 1714.43(a)(1). The disclosure must be posted on the company's website "with a conspicuous and easily understood link to the required information placed on the business' homepage." *Id*. at § 1714.43(b).

6. *Christian Brothers Investment Services Leads Investor Coalition to Encourage Governor's Support of California Supply Chain Transparency Bill*, PR NEWSWIRE, Sept. 16, 2010, http://www.prnewswire.com/news-releases/christian-brothers-investment-services-leads-investor-coalition-to-encourage-governors-support-of-california-supply-chain-transparency-bill-1030584 99.html.

7. Business Transparency on Trafficking and Slavery Act, H.R. 2759, 112th Cong. § 2 (2011).

8. Under the California Transparency Act, the exclusive remedy for violations of the Act is an action for injunctive relief brought by the Attorney General. CAL. CIV. CODE § 1714.43(d). It does not create a private right of action. *Id*.

In all of these ways, the California Transparency Act will provide important information that not only will inform congressional deliberations over H.R. 2759 but also can be used in developing other law or policy that engages the private sector in anti-trafficking initiatives. In this regard, the California Transparency Act and similar initiatives should be welcomed by policymakers, anti-trafficking advocates, and business leaders and embolden them to think more creatively about the role of the private sector in the fight against human trafficking.

Part I of this Essay briefly discusses human trafficking and current responses to the problem. As Part I reveals, despite the gravity of the problem, the private sector has been largely overlooked to date. Part II then looks specifically at the value of and rationale for private sector involvement in anti-trafficking efforts. The discussion in Part II implicates a much broader debate in the literature on corporate social responsibility.[9] I explore that literature in greater depth in a forthcoming article and instead focus in this shorter Essay on sketching out what the private sector could add to anti-trafficking efforts. Given that private sector involvement offers unique benefits to anti-trafficking initiatives, Part III explores governmental means of fostering private sector engagement in the fight against human trafficking. Finally, in Part IV, this Essay returns to the California Transparency Act—the first significant law aimed at spurring private sector efforts to stop human trafficking—to look at what lessons might be drawn from early responses to the new law.

I.
HUMAN TRAFFICKING AND STATE RESPONSES

Human trafficking is a gross violation of human rights and human dignity.[10] Trafficked individuals experience circumstances and treatment akin to enslavement.[11] They suffer physical, sexual, and emotional violence at the hands of traffickers, pimps, employers, and others, and are exposed to numerous workplace, health, and environmental hazards.[12] Trafficked individuals frequently suffer beatings and broken bones, face increased risk of

9. *See, e.g.*, Kent Greenfield, *Proposition Saving the World with Corporate Law*, 57 EMORY L.J. 948, 949 (arguing that corporate law could be used to make corporations a "progressive force in society"); D. Gordon Smith, *Response The Dystopian Potential of Corporate Law*, 57 EMORY L.J. 985, 1010 (2008) (arguing against proposals to change corporate law to incorporate the interests of non-equity stakeholders).

10. *See, e.g.*, Ursula Plassnik, Austrian Fed. Minister for European and Int'l Affairs, Opening Statement at the U.N. Global Initiative to Fight Trafficking (Feb. 13, 2008), *available at* http://www.ungift.org/ungift/vf/speeches/plassnik.html.

11. *See, e.g.*, Karen E. Bravo, *Free Labor! A Labor Liberalization Solution to Modern Trafficking in Humans*, 18 TRANSNAT'L L. & CONTEMP. PROBS. 545, 552 (2009).

12. *See* Jonathan Todres, *Moving Upstream The Merits of a Public Health Law Approach to Human Trafficking*, 89 N.C. L. REV. 447, 463–69 (2011) (detailing the range of harms trafficked individuals are exposed to regardless of type of trafficking); CATHY ZIMMERMAN, THE HEALTH RISKS AND CONSEQUENCES OF TRAFFICKING IN WOMEN AND ADOLESCENTS: FINDINGS FROM A EUROPEAN STUDY 4 (2003), *available at* http://www.lshtm.ac.uk/hpu/docs/traffickingfinal.pdf.

contracting HIV and other sexually transmitted infections,[13] are forced to live in overcrowded and unsanitary conditions with insufficient amounts of food,[14] and are exposed to toxic chemicals, carcinogens, and other harmful substances.[15] In short, human trafficking exacts a significant, sometimes life-threatening, toll on its victims.

Virtually no country remains unscarred by human trafficking. It is a global problem with victim estimates in the millions annually.[16] Recognizing the widespread and harmful nature of human trafficking and the long-standing universal condemnation of slavery, the international community coalesced around the issue of human trafficking, a modern form of slavery, in the late 1990s.

Subsequently, in 2000, the international community adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime ("Trafficking Protocol").[17] The Trafficking Protocol produced the first internationally agreed upon definition of human trafficking,[18] and established a three-pronged mandate requiring states to: (1) criminalize and prosecute acts of human trafficking; (2) protect and assist trafficking victims; and (3) implement prevention programs.[19] One hundred and forty-seven countries are now party to the Trafficking Protocol, reflecting both the increased emphasis governments are placing on combating human trafficking

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13. *See* Zimmerman, *supra* note 12, at 4.

14. *See* KEVIN BALES ET AL., FREE THE SLAVES & HUMAN RIGHTS CTR., UNIV. OF CAL. – BERKELEY, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 35 (2004), *available at* http://hrc.berkeley.edu/pdfs/hiddenslaves_report.pdf.

15. *See id.*; Sian Oram & Cathy Zimmerman, *The Health of Persons Trafficked for Forced Labour*, 4 GLOBAL EYE ON HUMAN TRAFFICKING: A BULLETIN OF NEWS, INFO. & ANALYSIS ON TRAFFICKING IN PERSONS PUBLISHED BY THE INT'L ORG. FOR MIGRATION 4 (2008), *available at* http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/projects/showcase_pdf/global_eye_fourth_issue.pdf.

16. *See* INT'L LABOUR OFFICE, ILO ACTION AGAINST TRAFFICKING IN HUMAN BEINGS 1 (2008), *available at* http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090356.pdf ("According to ILO estimates there are at least 2.4 million trafficked persons at any given point in time."); *see also* Elżbieta M. Goździak, *On Challenges, Dilemmas, and Opportunities in Studying Trafficked Children*, 81 ANTHROPOLOGICAL Q. 903, 906 (2008) (estimating that between one and two million children are trafficked each year worldwide while acknowledging that trafficking is "notoriously difficult to measure").

17. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, U.N. Doc. A/RES/45/49 (Nov. 15, 2000) [hereinafter Trafficking Protocol].

18. The Trafficking Protocol defines human trafficking as:

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

Id. art. 3(a).

19. Trafficking Protocol, *supra* note 17, arts. 5–6, 9 (mandating criminalization of trafficking, assistance to victims, and prevention measures).

and the widespread agreement that this three-pronged mandate provides an effective framework for responding to the problem.[20]

At the national level, more than 125 countries have adopted anti-trafficking laws since 2000.[21] The United States has adopted several major pieces of legislation—most notably the Trafficking Victims Protection Act of 2000 and its subsequent reauthorizations—to strengthen its capacity to combat human trafficking.[22] U.S. law has also embraced the Trafficking Protocol's three-pronged mandate, referring to it as the "three P's"—prosecution, protection, and prevention.[23]

Despite widespread acceptance of the Trafficking Protocol and its three-pronged mandate, the vast majority of countries that have taken action, including the United States, have not given equal attention to all three areas. Governments have focused efforts primarily on criminalizing human trafficking, establishing severe penalties for violations of anti-trafficking laws, and seeking to apprehend traffickers.[24] Although prosecution of traffickers is an essential component of the fight against human trafficking, its capacity to reduce the incidence of human trafficking on its own is limited.[25] More recently the United States and other countries have increased efforts to provide trafficking victims with much needed protections and services.[26] Such measures include the

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20. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime, Status of Ratifications, U.N. TREATY COLLECTION, *available at* http://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVIII/XVIII-12-a.en.pdf.

21. Amb. Louis CdeBaca, *Introductory Letter*, *in* U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2011 (2011), *available at* http://www.state.gov/documents/organization/164452.pdf (reporting that 128 countries have enacted laws prohibiting all forms of human trafficking). For steps taken by other governments, see, for example, U.S. Dep't of State, Trafficking in Persons Report. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 28 (2010) [hereinafter TIP REPORT 2010], *available at* http:// www.state.gov/documents/organization/142979.pdf (evaluating 175 countries' efforts to combat human trafficking).

22. *See* U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS & ASSESSMENT OF U.S. GOV'T ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS FISCAL YEAR 2008, 1–4 (2009), *available at* http://www.justice.gov/archive/ag/annualreports/tr2008/agreporthumantrafficing2008.pdf (summarizing major legislation adopted by the U.S. government).

23. *See* Kathleen Kim, *Psychological Coercion in the Context of Modern-Day Involuntary Labor Revisiting* United States v. Kozminski *and Understanding Human Trafficking*, 38 U. TOL. L. REV. 941, 960 (2007).

24. *See, e.g.*, Micah Bump, *Treat the Children Well Shortcomings in the United States' Effort to Protect Child Trafficking Victims*, 23 NOTRE DAME J. L. ETHICS & PUB. POL'Y 73, 73 (2009); Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 345 (2007).

25. *See* KEVIN BALES & RON SOODALTER, THE SLAVE NEXT DOOR 66 (2009) (noting that the vast majority of trafficking cases in the United States go unprosecuted); TIP REPORT 2010, *supra* note 21, at 7 (reporting that although human trafficking victims globally are in the millions, in 2009 there were fewer than 50,000 victims identified and only 4,166 prosecutions).

26. *See* U.S. DEP'T OF HEALTH & HUMAN SERVS., THE CAMPAIGN TO RESCUE & RESTORE VICTIMS OF HUMAN TRAFFICKING: VICTIM ASSISTANCE FACT SHEET (last updated June 28, 2011), *available at* http://www.acf.hhs.gov/trafficking/about/victim_assist.html (listing services available to individuals who HHS certifies as trafficking victims); *see also* Salvador A. Cicero-Dominguez,

creation of special immigration visa classes for human trafficking victims, counseling and related social services, and temporary housing and other assistance.[27]

Even though prosecution of offenders and protection for victims are vital to a successful response to human trafficking, both initiatives operate primarily *after* the harm has already occurred. Given the severity of the harms at stake, reacting after the fact, no matter how successful, is not enough. To reduce the incidence of trafficking, prevention needs much greater emphasis. Prevention will require governments and civil society to address the underlying causes of the problem, including both supply and demand issues. Addressing supply side issues and the seemingly endless number of vulnerable persons will require a comprehensive approach to reducing vulnerability through confronting systemic issues such as poverty, economic development, and the deprivation of economic and social rights.[28] Tackling demand side issues will require addressing demand for commercial sex or cheap goods and services and the attendant pressure on businesses to constantly increase profits.[29]

These are not easy challenges, but confronting these underlying supply and demand issues is essential to the prevention of human trafficking. And prevention is not only one of the three mandated action areas, it is the ultimate goal. Successfully confronting these challenges and achieving a meaningful reduction in the incidence of human trafficking therefore requires more than law enforcement, social services, and occasional assistance from other sectors. It demands a comprehensive response from all sectors of society, and the private sector is uniquely situated to make a significant contribution.

II.
THE PRIVATE SECTOR

Although generally there is reluctance in the United States to regulate the private sector, especially in pursuit of humanitarian goals,[30] the private sector

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Lessons from the Road Ecuador, Jamaica, and Other Efforts to Combat Trafficking in Persons in the Americas, 31 N. ILL. U. L. REV. 521, 539–43 (2011) (discussing Jamaica's victim assistance measures).

27. *See, e.g.*, UNITED NATIONS OFFICE ON DRUGS AND CRIME [UNODC], GLOBAL REPORT ON TRAFFICKING IN PERSONS 137, 159, 161 (2009), *available at* http://www.unodc.org/documents/Global_Report_on_TIP.pdf; Rosy Kandathil, *Global Sex Trafficking and the Trafficking Victims Protection Act of 2000 Legislative Response to the Problem of Modern Slavery*, 12 MICH. J. GENDER & L. 87, 99–100 (2005).

28. *See* UNODC, TOOLKIT TO COMBAT TRAFFICKING IN PERSONS 424 (2008), *available at* http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook%5B1%5D.pdf; Theodore R. Sangalis, *Elusive Empowerment Compensating the Sex Trafficked Person Under the Trafficking Victims Protection Act*, 80 FORDHAM L. REV. 403, 410–11 (2011).

29. *See* BRIDGET ANDERSON & JULIA O'CONNELL DAVIDSON, IS TRAFFICKING IN HUMAN BEINGS DEMAND DRIVEN?: A MULTI-COUNTRY PILOT STUDY 9–12 (2003), *available at* http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=226; Sangalis, *supra* note 28, at 411.

30. Enrique Armijo, *Media Ownership Regulation A Comparative Perspective*, 37 GA. J. INT'L & COMP. L. 421, 425 (2009) (describing the U.S. as a "historically laissez-faire free market state"); *see generally* Alfred E. Kahn, *Deregulation Looking Backward and Looking Forward*, 7

possesses characteristics that make it uniquely situated to play a critical role in the prevention of human trafficking. In particular, the private sector's (1) position in relation to streams of commerce, (2) focus on innovation, and (3) access to resources, position it as a potentially valuable partner in combating the trafficking and enslavement of human beings. This Part examines each of these three key features of the private sector. In doing so, I do not suggest that other entities are devoid of these traits—after all, non-governmental organizations can and do innovate. Rather, I argue that these features are core characteristics of private sector entities, and the fact that businesses possess all three traits simultaneously uniquely situates them in a way that is of significant value to anti-trafficking efforts. Following this analysis, this Part briefly discusses the rationale for requiring the private sector to utilize these strengths in participating in anti-trafficking efforts.

A. Uniquely Situated

Position. One of the central purposes of law is to allocate burdens in society.[31] In the human trafficking context, there are settings in which the private sector is well positioned to prevent the harm. Manufacturers and retailers already monitor their supply chains, seeking to ensure, among other things, that supply chains run efficiently. As such, they are well-positioned, or at least better positioned than consumers and other members of the public, to identify forced or exploited labor in their supply chains.[32] To the extent such monitoring imposes a cost, these manufacturers and retailers are also better positioned to absorb that cost.[33]

Perhaps most importantly, from a temporal perspective, the private sector might be better positioned than law enforcement to *prevent* slave-like practices in their industries. Government inspectors and law enforcement agencies

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YALE J. ON REG. 325 (1990) (discussing the preference in the U.S. for deregulation of markets); Mark A. Zupan, *The Virtues of Free Markets*, 31 CATO J. 171, 194 (2011) (extolling the benefits of free markets).

31. *See* Jeffrey O'Connell & Christopher J. Robinette, *The Role of Compensation in Personal Injury Tort Law A Response to the Opposite Concerns of Gary Schwartz and Patrick Atiyah*, 32 CONN. L. REV. 137, 137 (2000) (noting that one goal of tort law is "paying accident victims and spreading losses"); *see also*, EDWARD J. KIONKA, TORTS 10 (5th ed. 2010) ("Principles of economics suggest that, in general, the costs of an activity should be internalized . . . . The law may consider the relative capacity of the parties to absorb or spread the costs."); Lindley J. Brenza, *Asbestos in Schools and the Economic Loss Doctrine*, 54 U. CHI. L. REV. 277, 292 (1987) ("Products liability law thus fixes liability . . . [on] the party who has the most information and is thus best able to avoid the harm in the first place.").

32. Although for some businesses additional barriers to effective monitoring exist because raw materials might come from subcontractors, in contemplating costs to society, such manufacturers are still better positioned than consumers or government inspectors to demand and confirm that subcontractors not employ slave labor. *See* Aaron Grieser, *Defining the Outer Limits of Global Compliance Programs Emerging Legal and Reputational Liability in Corporate Supply Chains*, 10 OR. REV. INT'L L. 285, 286 (2008) ("Companies exert tremendous influence over the working conditions in foreign factories, touching the lives of millions of foreign workers.").

33. *See* KIONKA, *supra* note 31, at 10.

typically identify abuses once they have occurred or when they are ongoing. By contrast, private sector self-policing, if effective, can help prevent the harm from occurring in the first place. This is not to suggest private sector action would replace law enforcement, but rather that it provides an additional tool which can facilitate earlier intervention in or prevention of human trafficking abuses.

Innovation. Private sector involvement in combating human trafficking is also vital because, after a decade of anti-trafficking laws and programming and little evidence of a decline in human trafficking during that period, new ideas are needed. Existing anti-trafficking initiatives can be strengthened, but innovative ideas are likely needed if we are to end this form of exploitation. Innovations can come from any source, not just the private sector, but in general businesses have significant motivation to innovate.[34] Governments frequently rely on the private sector to drive innovation across a range of issues that provide broader social benefits such as job creation, improvements in health care delivery, advances in education, and more.[35] Yet in the context of combating human trafficking, governments have done little to encourage or draw upon private sector innovation.

Camel racing in Arab nations offers one compelling example of the potential value of private sector innovation to anti-trafficking efforts. Thousands of young boys have been trafficked from Bangladesh, Pakistan, Sudan, and Yemen to the United Arab Emirates and other countries to be used as camel jockeys.[36] These boys, many as young as five or six years old, are confined in unsanitary conditions, underfed, and often suffer serious injuries in races.[37] After human rights organizations highlighted this form of trafficking and exploitation, private sector technological innovation helped provide a solution: a robot jockey was developed, obviating the need to exploit children in this setting.[38] Innovations from the private sector are not limited to new

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34. *See* Dan L. Burk & Mark A. Lemley, *Policy Levers in Patent Law*, 89 VA. L. REV. 1575, 1618 (2003) ("[C]ompanies have ample incentives to develop business methods even without patent protection, because the competitive marketplace rewards companies that use more efficient business methods.").

35. *See, e.g.*, CASE WESTERN RESERVE UNIV., WORLD INQUIRY'S INNOVATION BANK: STARBUCKS COFFEE CO. (April 20, 2008), *available at* http://worldinquiry.case.edu/bankInnovationView.cfm?idArchive=629 (detailing that Starbuck's C.A.F.E. (Coffee and Farmer Equity) Practices Program "include[s] 28 indicators that fall under five main categories that include product quality, economic accountability, social responsibility, and environmental leadership in coffee growing and coffee processing").

36. *See* ANTI-SLAVERY INTERNATIONAL, INFO. ON THE UNITED ARAB EMIRATES COMPLIANCE WITH ILO NO.182 ON THE WORST FORMS OF CHILD LABOUR: TRAFFICKING OF CHILDREN FOR USE AS CAMEL JOCKEYS (May 2006), http://www.antislavery.org/includes/documents/cm_docs/2009/2/2006uae_cameljockeys.pdf.

37. *See Camel Jockeys Another Trafficking Evil*, USAID, Nov. 30, 1997, *available at* http://www.usaid.gov/bd/files/cameljock.pdf; SYED MEHMOOD ASGHAR ET AL., SAVE THE CHILDREN INT'L, CAMEL JOCKEYS OF RAHIMYAR KHAN: FINDINGS OF A PARTICIPATORY RESEARCH ON THE LIFE AND SITUATION OF CHILD CAMEL JOCKEYS (2005), *available at* http://lastradainternational.org/lsidocs/351%20Camel-jockeys_of_rahimyar_khan.pdf.

38. *See* Will Knight, *Robot Camel-Jockeys Take to the Track*, NEW SCIENTIST, Jul. 21, 2005, *available at* http://www.newscientist.com/article/dn7705-robot-cameljockeys-take-to-the-track.html

technologies that replace workers. Anti-trafficking advocates can capitalize on the private sector's skill set and its own incentives to innovate to improve initiatives to combat human trafficking. That might include innovations in technology or other improvements in safety or efficiency that reduce the pressure to exploit vulnerable individuals.[39] Thus, private sector emphasis on innovation offers the hope of new developments and approaches to the problem of human trafficking.

Resources. Resource constraints are one of the biggest obstacles to more robust anti-trafficking initiatives today. Governments, especially in today's economy, have significant budget constraints, and non-profit organizations are often worse off. Much greater resources are needed to ensure all survivors of human trafficking can access needed services to rehabilitate and reintegrate back into society following the trauma of trafficking. Prevention measures will also require resources, though as prevention programs gain traction, they will produce cost savings for governments who now have growing expenses in the form of prosecutions of traffickers, costs of their incarceration, and victims' services.[40] Private sector engagement offers the potential for new resources, in significant amounts.[41] This potential is evident in work on other social issues, such as global health, where, for example, the Gates Foundation (which is funded through proceeds derived from private enterprise) had made over $13 billion in grant commitments through the end of 2009.[42] More generally,

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(reporting that a Swiss company developed the robot jockey); *Robot Jockeys to Ride Gulf Camels*, BBC, Apr. 10, 2005, *available at* http://news.bbc.co.uk/2/hi/middle_east/4430851.stm.

39. I am not suggesting the private sector will solve a problem on its own. Thus, technology advances that obviate the need to use young children as camel jockeys should not be implemented without other measures, including economic development programs in areas where those children were trafficked from, so as to alleviate pressure on individuals and families to migrate in high risk situations.

40. *See* E-mail from ECPAT-USA to author (Nov. 21, 2011) (reporting on an informal survey finding that "the range of annual costs to serve a child in residence is roughly $48,000 to $72,000 with the average program costing about $65,000 per bed per year . . . . Most programs serve only 10 children in residence and some provided out-patient services and drop in programs for children not in residence [, though these latter costs are not included in the above numbers]") (on file with author).

41. *See* UNITED NATIONS COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE, REPORT ON THE VIENNA FORUM TO FIGHT HUMAN TRAFFICKING, ¶ 24, E/CN.15/2008/CRP.2 (Mar. 30, 2008), *available at* www.un.org/ga/president/62/ThematicDebates/humantrafficking/ECN152008CRP02.pdf ("Creative partnerships between State authorities, civil society and the private sector were deemed as important for maximizing resources, pooling data, and information and intelligence sharing."); *see also* Maudisa McSween, *Investing in the Business Against Human Trafficking Embracing the Fourth "P"–Partnerships*, 6 INTERCULTURAL HUM. RTS. L. REV. 283, 288 (2011) (noting public–private partnerships help combine governmental resources and private sector resources).

42. *Compare* BILL & MELINDA GATES FOUNDATION, GLOBAL HEALTH: STRATEGY OVERVIEW 2 (Sep. 2010), *available at* http://www.gatesfoundation.org/global-health/Documents/global-health-strategy-overview.pdf ("As of December 2009, we had made total grant commitments of $22.61 billion (U.S.), and the share for global health was $13.05 billion . . . . Annual global health disbursements, which in 2009 totaled $1.83 billion, have steadily increased . . . ."), *with* WORLD HEALTH ORGANIZATION [WHO], PROGRAMME BUDGET 2012–2013 15 (2011), *available at* http://whqlibdoc.who.int/pb/2012-2013/PB_2012%E2%80%932013_eng.pdf (reporting that WHO's proposed program budget for 2012–2013 comes to $3.96 billion).

revenues of major corporations frequently dwarf the gross domestic product of many countries (for example, if it were a country, Wal-Mart would be the world's twenty-fifth largest economy).[43] In short, private sector resources are vastly greater than resources of many governments and NGOs, and even relatively small contributions would mean significant opportunities for prevention programs and victims services.

That the private sector has much to offer anti-trafficking initiatives does not mandate it do so. Therefore, the next Section briefly discusses the rationale for private sector participation.

B. A Fair Exchange

As noted in the Introduction, the private sector derives economic benefit from human trafficking. Numerous business sectors are implicated by global human trafficking networks, including tourism; agriculture; construction; garments and textiles industry; hospitality and catering; mining, logging, and forestry; food processing and packaging; transportation; and domestic service and other care and cleaning work.[44] All of these sectors are end destinations for trafficked individuals.

Even though many businesses may be unaware that they are profiting from human trafficking, the reality is that many do, directly or indirectly.[45] For example, airlines, hotels, and other tourism-related businesses reap the benefits of tourists visiting various destinations for the commercial sex industry in those locales, where sex trafficking victims are exploited.[46] Similarly, manufacturers and farms benefit from the cheap labor supplied through labor trafficking networks.[47] Additionally, where a decade ago businesses might have been unaware that they reaped economic benefits from enslaved labor, today the issue of human trafficking is regularly in the news, making it much harder for

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43. *See* SARAH ANDERSON & JOHN CAVANAGH, INSTITUTE FOR POLICY STUDIES, TOP 200: THE RISE OF CORPORATE GLOBAL POWER (Dec. 4, 2000), *available at* http://www.ips-dc.org/files/2452/top200.pdf ("Of the 100 largest economies in the world, 51 are corporations; only 49 are countries (based on a comparison of corporate sales and country GDPs)."); *Global 500*, FORTUNE MAGAZINE, July 25, 2011, *available at* http://money.cnn.com/magazines/fortune/global500/2011/full_list/ (providing more recent data on revenues of the largest corporations). If Wal-Mart were a country and its revenues were its GDP, it would rank as the world's twenty-fifth largest economy, just behind Taiwan. *See id.*; CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK, *available at* https://www.cia.gov/library/publications/the-world-factbook/fields/2195.html (last visited Nov. 7, 2011).

44. UN.GIFT, *supra* note 2, at 17–18.

45. *See* UN.GIFT, *supra* note 2, at 11.

46. *See* Nancy Beyer, *The Sex Tourism Industry Spreads to Costa Rica and Honduras Are These Countries Doing Enough to Protect Their Children from Sexual Exploitation?*, 29 GA. J. INT'L & COMP. L. 301, 306 (2001); Hanh Diep; *We Pay—The Economic Manipulation of International and Domestic Laws to Sustain Sex Trafficking*, 2 LOY. U. CHI. INT'L L. REV. 309, 314 (2005).

47. *See* Grace Chang & Kathleen Kim, *Reconceptualizing Approaches to Human Trafficking New Directions and Perspectives from the Field(s)*, 3 STAN. J. C.R. & C.L. 317, 326–27 (2007); Kevin Bales et al., *Hidden Slaves Forced Labor in the United States*, 23 BERKELEY J. INT'L L. 47, 48 (2005).

any individual or entity to profess ignorance.[48] Businesses generally are aware that their operations create externalities that impose costs on local communities and other stakeholders.[49] With growing public awareness of human trafficking, they must now be aware of, and address, the potential trafficking-related costs of their operations.

The California Transparency Act and H.R. 2759 are aimed at asking businesses to draw upon their existing skill set and scope of knowledge and take steps that they are well-positioned to undertake. Simply put, such an approach fits with the notion of drawing on existing expertise of various stakeholders to ensure a comprehensive response to social ills.[50] More importantly, it is consistent with the notion of the social contract.[51] In order to live in a free society and continue to enjoy the benefits of a free society, everyone has a duty to contribute to that society and help ensure that individuals are not enslaved or otherwise exploited. Principles of equity dictate that corporate citizens are no exception.

III.
ENCOURAGING PRIVATE SECTOR INVOLVEMENT IN ANTI-TRAFFICKING INITIATIVES

As the prior Part details, leveraging the private sector's resources, innovative practices, and unique positioning will help advance anti-trafficking efforts. Although principles of equity support private sector involvement, legal and administrative measures are necessary to spur private sector involvement, especially given that research findings suggest most companies still fail to see the connection between business and human trafficking.[52] Free market advocates might resist such regulation, arguing that U.S. companies must be free to act without constraints to compete in the global economy.[53] However,

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48. A search of the Westlaw newspapers database ("allnews") on January 27, 2011 found that since January 1, 2011, "human trafficking" has been mentioned in more than 10,000 articles. *The New York Time*s even has a "Times Topics" devoted to human trafficking where news articles, blog posts, and other documents related to trafficking are accessible. *See Human Trafficking*, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/subjects/h/human_trafficking/index.html?scp=1-spot&sq=human%20trafficking&st=cse (last visited Nov. 2, 2011).

49. *See* Greenfield, *supra* note 9, at 959.

50. BILL SHORE, REVOLUTION OF THE HEART: A NEW STRATEGY FOR CREATING WEALTH AND MEANINGFUL CHANGE 8 (1995).

51. *See* Anita L. Allen, *Social Contract Theory in American Case Law*, 51 FLA. L. REV. 1, 2 (1999); Amb. Betty E. King, *The UN Global Compact Responsibility for Human Rights, Labor Relationship, and the Environment in Developing Nations*, 34 CORNELL INT'L L.J. 481, 483 (2001) ("The ultimate goal of the social compact is to enlist multinational corporations in the efforts of governments, multilateral institutions and non-governmental organizations to advance goals of social and economic development, such as reduction in poverty, enhancements in education, improvements in and access to healthcare, equal access to justice, and the universal engagement of human rights.").

52. U.N. GLOBAL COMPACT, ILO, & UN.GIFT, HUMAN TRAFFICKING: EVERYBODY'S BUSINESS (2009), *available at* http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2009_03_27/Story_Survey_Final.pdf.

53. As I explore in a forthcoming article, such concerns can be minimized significantly through

such opposition to regulations that seek to advance humanitarian or human rights goals overlooks important, long-standing principles that favor mandating private sector engagement in efforts to prevent human rights abuses, including the twenty-first century slave trade.[54]

In pursuit of the private sector incorporating humanitarian goals in their business models, law can be used as either a stick or a carrot. Frequently, in addressing human rights violations and social harms, the tendency is to rely on the law only as a stick.[55] Governments focus on criminalizing undesirable behavior and seeking to punish those who violate the rights of others. This has been the prevailing approach to human trafficking.[56] Without question, those engaged in and supporting human trafficking must be held accountable. Given this, a natural tendency would be to suggest corporate liability as a strategy for ensuring the private sector takes action to combat human trafficking, and it has a role to play in such instances. Criminal liability for corporate entities in this context is likely, however, to be utilized only in the most egregious cases (for example, a hotel in a red light district that offers rooms by the hour for commercial sex) and to provide little incentive for legitimate businesses that benefit indirectly from human trafficking to take ameliorative measures.[57]

A more promising starting point for fostering broad-based private sector participation in the fight against human trafficking might be to explore ways in which the law can be used as a carrot. That is, governments can employ the law to incentivize good practices and seek to encourage the private sector to do what it is capable of, given its unique position. In this way, law and policy can be utilized to advance anti-trafficking initiatives that address both the supply and demand sides of the problem.

Addressing demand for cheap goods and services is essential to combating trafficking and exploitation of human beings. Information-forcing laws and tax incentives are two examples of legal measures that offer the prospect of encouraging private sector action to address several demand-related issues.

First, information-forcing (or disclosure) regulations are commonplace across many areas of law.[58] They "promote transparency and facilitate

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a combination of national standards and the desire most global corporations have to access U.S. markets.

54. *See supra* Part II.

55. *See, e.g.*, John S. Baker, Jr., *Reforming Corporations Through Threats of Federal Prosecution*, 89 CORNELL L. REV. 310, 317 (2004); Win Swenson, *Growing the Carrot Encouraging Effective Corporate Compliance*, 109 HARV. L. REV. 1783, 1794 (1996).

56. *See supra* note 24.

57. The case for criminal liability is strongest for those businesses that "knowingly benefit" from human trafficking. *See, e.g.*, 18 U.S.C. § 1593A (benefitting financially from peonage, slavery, and trafficking in persons). On the prospects of holding a corporation liable for willful blindness, *see* Sarah C. Pierce, Note, *Turning a Blind Eye U.S. Corporate Involvement in Modern Day Slavery,* 14 J. GENDER RACE & JUST. 577, 598–99 (2011).

58. *See, e.g.*, David A. Westbrook, *If Not a Commercial Republic? Political Economy in the United States After Citizens United*, 50 U. LOUISVILLE L. REV. 35, 76 (2011) (noting the information-forcing function of securities law); J.H. Verkerke, *Legal Ignorance and Information-Forcing Rules*,

monitoring and enforcement."[59] They also are familiar to the private sector, which regularly must disclose a variety of information to guard against insider trading, fraud, and other harmful practices.[60] In this regard, information-forcing regulations, such as the California Transparency Act and H.R. 2759, operate as a carrot (as well as a potential stick) as they tie to two interrelated concerns of business: brand management and consumer opinion. Preserving the image of one's brand is essential to all businesses.[61] The California Transparency Act offers large manufacturers and retailers the opportunity to have their business practices validated as socially responsible.[62] Brand management, in turn, ties to consumer demand. With advances in technology, consumers increasingly have more information at their fingertips when making purchasing decisions.[63] Such private sector technological innovations have enabled consumers to more easily factor businesses' social responsibility policies (or lack thereof) in purchasing decisions.[64] Disclosure requirements also enable other businesses to consider these issues in choosing business partners.[65] Having some laws function as an

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Univ. of Virginia Law & Economics Research Paper No. 03–04, at 6–7 (2003), *available at* http://ssrn.com/abstract=405560 (discussing law's information-forcing function in the consumer protection context).

59. Evan J. Criddle, *Fiduciary Administration Rethinking Popular Representation in Agency Rulemaking*, 88 TEX. L. REV. 441, 469 (2010).

60. *See generally* Robert A. Prentice, *Regulatory Competition in Securities Law A Dream (That Should Be) Deferred*, 66 OHIO ST. L.J. 1155, 1229 (2005); Amir N. Licht, *Managerial Opportunism and Foreign Listing Some Direct Evidence*, 22 U. PA. J. INT'L ECON. L. 325, 334 (2001).

61. *See* Mario Simon, *Brands in Context*, 51 J. ADVERTISING RES. 189, 189 (Mar. 2011) (finding that today "close to 30 percent of total business value . . . is attributed to brand" making brand many companies' "single biggest asset"); Marc Fischer et al., *How Important Are Brands? A Cross-Category, Cross-Country Study*, 47 J. MARKETING RES. 823, 823 (Oct. 2010) (describing how brand power enables companies to "charge a significant price premium . . . [and] is reflected in higher firm valuation").

62. Codes of conduct, established by non-governmental organizations or by corporations themselves, are another way of confirming businesses' compliance with human rights law. *See, e.g.*, ECPAT, CODE OF CONDUCT FOR THE PROTECTION OF CHILDREN FROM SEXUAL EXPLOITATION IN TRAVEL AND TOURISM (Mar. 23, 2006) *available at* http://www.ecpat.net/ei/Publications/CST/Code_of_Conduct_ENG.pdf [hereinafter THE CODE]. U.S. law requires the Department of Labor to produce an annual report on goods produced by child labor or forced labor. While an important step, it only lists products and countries and does not name particular offending companies. *See* U.S. DEP'T OF LABOR'S BUREAU OF INT'L LABOR AFFAIRS OFFICE OF CHILD LABOR, FORCED LABOR, AND HUMAN TRAFFICKING, LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR (2011) *available at* http://www.dol.gov/ilab/programs/ocft/PDF/2011TVPRA.pdf.

63. Emma K. Macdonald & Mark D. Uncles, *Consumer Savvy Conceptualisation and Measurement,* 23 J. OF MARKETING MANAGEMENT 497 (2007).

64. *See generally* Shuili Du et al., *Reaping Relational Rewards from Corporate Social Responsibility The Role of Competitive Positioning*, 3 INT'L. J. OF RESEARCH IN MARKETING 224, 237 (2007) (finding that "consumers tend to have more favorable beliefs, make more charitable attributions and, consequently, reward CSR brands to a greater extent in terms of relational behaviors such as loyalty and advocacy").

65. For example, following the November 2011 disclosure of the child sex abuse scandal associated with the football program at Pennsylvania State University, Cars.com decided to withdraw its sponsorship of Penn State football games on television. *See* Michael McCarthy, *Sponsor Bails from ESPN's Penn State-Nebraska Telecast*, USA TODAY, Nov. 10, 2011, *available at* http://content.usatoday.com/communities/gameon/post/2011/11/sponsor-bails-from-espns-penn-state-

information-forcing mechanism, such as through the California Transparency Act or H.R. 2759, enables consumers and businesses to be better informed and direct their resources toward companies that are playing a role in combating human trafficking.

Second, tax incentive programs can foster constructive action by the private sector.[66] Ideally, businesses would not need incentives to undertake efforts to ensure it is not supporting human trafficking, even indirectly. However, the same could be said of all individuals with respect to charitable donations. Each of us should just want to do it. Even so, tax benefits for charitable donations incentivize good behavior. Similarly incentives should be contemplated to motivate businesses. Tax benefits offer one means of incentivizing socially responsible actions on the part of business.[67]

Whether it is information-forcing measures that motivate businesses to protect their brand and consumer base, tax benefits to incentivize better behavior, or other measures, policymakers need to consider the full range of legal tools available to help enlist the private sector in reducing demand for exploited labor or products produced by such individuals.

Businesses can also play a role on the supply side of human trafficking, in terms of facilitating both early intervention and prevention. By investing resources in vulnerable communities that can help strengthen local institutions and facilitate access to health care, education, and training programs, companies can help address some of the systemic issues that leave individuals vulnerable to human trafficking and related forms of exploitation.[68] And law can help incentivize such investment by creating tax advantages for investing in local communities (including tax-free investment zones and other tax programs). Longer term, investments in health and education in these areas can generate positive returns for business by producing a healthier and better educated workforce locally.[69]

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nebraska-telecast/1.

66. *See* Roger M. Groves, *A Radical Route to Funding Urban Revitalization Profitable Philanthropy Through Limited Liability Companies and a Market-Based Return on Investments*, 7 J.L. ECON. & POL'Y 393, 396 (2011); Janet Thompson Jackson, *Can Free Enterprise Cure Urban Ills? Lost Opportunities for Business Development in Urban, Low-Income Communities Through the New Markets Tax Credit Program*, 37 U. MEM. L. REV. 659, 662–64 (2007).

67. *See, e.g.*, *Habitat for Humanity Utilizes U.S. Bancorp's Tax Credit Assistance to Help Build 294 New Homes in Communities Affected by Hurricane Katrina*, THE COMMUNITY INVESTMENT NETWORK, http://www.communityinvestmentnetwork.org/nc/single-news-item-states/article/habitat-for-humanity-utilizes-us-bancorps-tax-credit-assistance-to-help-build-294-new-homes-in-co/?type=98?type=123?type=123 (last visited Jan. 31, 2012) (discussing the New Markets Tax Credit Program). The New Markets Tax Credit Program expired on December 31, 2011, but might be renewed by Congress.

68. *See* UN.GIFT, *supra* note 2, at 40–42 (discussing Manpower Inc.'s partnership with the International Organization for Migration in Colombia that "focused on preventing sexual exploitation of women and the forced recruitment of children by illegal armed groups by enhancing training and employment opportunities for potential victims"). The project included job placement assistance that connected youth with job openings at Manpower's clients. *Id*. at 42.

69. THE WORLD BANK SOCIAL DEVELOPMENT DEP'T, BEYOND CORPORATE SOCIAL

Law can also be used to compel greater awareness by requiring training and education of individuals working in sectors where they might come into contact with trafficked individuals so that they are better positioned to prevent the harm or ensure earlier intervention. The California Transparency Act requires that businesses covered by the Act disclose whether they "[p]rovide[] company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products."[70]

Manufacturing and retail companies are not the only industries that could benefit from increased awareness and training so as to facilitate early intervention. Training of personnel in the tourism industry might help hotel personnel identify trafficked individuals.[71] Shipping and transportation industries can also play a role. For example, long-distance truckers, some of whom in the past have provided demand for commercial sex, can with appropriate training facilitate early intervention.[72] In 2010, upon seeing two young girls moving from truck to truck at a rest stop, an observant trucker called police, leading not only to the rescue of the two girls but also to the rescue of seven other minors and to thirty-one convictions.[73]

Early intervention programs, such as efforts to engage truckers, can be expanded upon to help address supply issues, while also educating those who might provide part of the demand. In this way, supply and demand aspects of the problem are interconnected and can benefit significantly from greater private sector participation.

In short, there are a range of possibilities for private sector involvement in the fight against human trafficking on both the supply and demand sides of the equation. Government regulation can serve an essential function in incentivizing the private sector to use its unique characteristics and position to combat human trafficking. The examples provided here represent only a starting point. Governments would do well to explore the full range of vehicles for incentivizing constructive private sector initiatives and, in appropriate cases, seek to sanction the worst offenders.

RESPONSIBILITY: THE SCOPE FOR CORPORATE INVESTMENT IN COMMUNITY DRIVEN DEVELOPMENT, Report No. 37379-GLB, 2 (Mar. 2007), *available at* http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1164107274725/3182370-1164201144397/Beyond_CSR_CDD_Summary.pdf ("There is a growing recognition among the business community that 'doing business with the poor' can develop into a viable business model . . . . Extractive companies, because of their large social, physical, and environmental footprint, have an obvious powerful incentive to invest in their host communities.")

70. CAL. CIV. CODE § 1714.43(c)(5).

71. *See* THE CODE, *supra* note 62, at 3 (explaining that companies that endorse THE CODE commit themselves to implement six primary measures, one of which is to "train the personnel in the country of origin and travel destinations").

72. *See* Todres, *supra* note 12, at 484.

73. *See, e.g.*, Sarah Parker, *Truck Driver's 911 Call Stops Trafficking*, CHANGE.ORG, Sept. 6, 2010, http://humantrafficking.change.org/blog/view/truck_drivers_911.

IV.
FIRST STEPS: EARLY INDICATIONS FROM CALIFORNIA

As the prior Part indicates, there are various ways in which governments can incentivize private sector contributions to anti-trafficking efforts. The California Transparency Act provides an opportunity to gauge the private sector's response to one such measure, test the efficacy of information-forcing mechanisms, and develop a better understanding of how to successfully motivate the private sector to take appropriate actions to help combat human trafficking and slave labor.

Although the full impact of any new law can take years to assess properly, because the California Transparency Act requires companies to post their disclosure on their websites, it is possible to obtain an early picture of initial responses to the new law. Based on this early limited evidence, it appears businesses are responding to the California Transparency Act in one of four ways. First, some businesses are detailing policies and measures in place, evidencing a commitment to combating human trafficking and use of slave labor in their supply chains.[74] Second, some businesses are providing disclosure that suggests they may not have undertaken significant steps to date but are committing to particular actions to fulfill the intent of the new law.[75] Still other companies are disclosing that they are taking steps, but their disclosure merely tracks the statutory language and states they are doing what the law seeks without providing any details on how they are accomplishing this.[76] Finally, it appears that at least a few companies understand the law literally as only requiring disclosure, and its disclosure reports that it is undertaking none of the measures the law sets out to combat human trafficking and the use of slave labor in its supply chains.[77]

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74. *See, e.g.*, *California Transparency in Supply Chains Act Disclosure*, GEN. ELEC. CO., http://www.gecitizenship.com/our-commitment-areas/our-suppliers/california-transparency-in-supply-chains-act-disclosure/ (last visited Jan. 30, 2012).

75. *See, e.g.*, *Pride Mobility Products Corporation—Disclosure Statement Pursuant to Cal. Civ. Code 1714.43(a)*, PRIDE MOBILITY PRODS. CORP., http://www.pridemobility com/statement.asp (last visited Jan. 30, 2012) (detailing new measures aimed at fulfilling the mandate of the California Transparency Act).

76. *See, e.g.*, *Californian Transparency in Supply Chains Act Disclosure (Cal. Civil Code § 1714.43)*, EASTON-BELL SPORTS, http://www.eastonbellsports.com/supplychainsact (last visited Jan. 30, 2012) (including disclosure that confirms it is in compliance by tracking the statutory language without providing detailed descriptions of what the company is doing).

77. *See, e.g.*, *Compliance with California Civil Code 1714.43*, TETRA PAK, http://www.tetrapak.com/us/Documents/Compliance%20with%20California%20Civil%20Code%201714.pdf (last visited Jan. 30, 2012) (disclosing that it "does not engage in verification of product supply chains to evaluate and address risks of human trafficking and slavery" or take any of the other steps outlined in the California Transparency Act aimed at combating human trafficking and slave labor); *Disclosure Required of Retail Sellers Under California Civil Code Sec. 1714.43*, CIGNA, https://my.cigna.com/public/legal_disclaimer.html (last visited Jan. 30, 2012) ("Cigna Home Delivery Pharmacy does not make efforts to identify or eradicate human trafficking from its direct supply chains for tangible goods that it offers for sale.").

As one major law firm explains, but does not recommend, "companies subject to the [California Transparency] Act are merely required to disclose the extent to which they engage in specified acts designed to combat human trafficking and slavery. A company theoretically could simply state that it does not take any action and still be in compliance with the Act."[78] Such an approach could damage the company's public image and ultimately cost the company more than it would have had to spend to implement measures that would enable it to confirm that it is meeting the intent of the California Transparency Act.[79] Another national law firm also recommends that companies consider undertaking more than the bare minimum steps and that they consider the impact their actions will have on "human rights organizations, consumers, investors, and other interested parties."[80] Their advice reflects one of the potential benefits of information-forcing mechanisms such as the California Transparency Act: they enable other actors to monitor and put pressure on businesses that otherwise might not take significant steps on their own.

Under the California Transparency Act, the exclusive remedy is an action by the California Attorney General for injunctive relief. It is unclear, though, how and to what extent the California Attorney General will seek to enforce the Act or what injunctive relief will be sought. Although at least some companies' counsel have indicated that merely confirming the company is or is not doing anything with regard to the measures outlined in the California Transparency Act technically constitutes compliance, the state Attorney General might decide otherwise.

The statute requires that businesses "shall disclose, as set forth in subdivision (c), its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale."[81] Subdivision (c) in turn states that companies:

> . . . shall, at a minimum, disclose to what extent, if any, that the retail seller or manufacturer does each of the following:
>
> > (1) Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.
> >
> > (2) Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.

78. Timothy G. Hoxie et al., *California Transparency in Supply Chains Act New Disclosure Requirements for Companies Doing Business in California to Take Effect January 1, 2012*, JONES–DAY (Nov. 2011), *available at* http://www.jonesday.com/california_transparency/.

79. *Id*.

80. Anthony R. Klein et al., *The California Transparency in Supply Chains Act (SB 657)*, LATHAM & WATKINS CLIENT ALERT, Dec. 6, 2011, at 4, *available at* http://www.lw.com/upload/pubContent/_pdf/pub4481_1.pdf.

81. CAL. CIV. CODE § 1714.43(a)(1).

> (3) Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.
>
> (4) Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.
>
> (5) Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.[82]

The language requiring companies to disclose "to what extent" they do any of the above would appear to require more than disclosure that only states the company does the above. For example, the "to what extent" language could be interpreted to suggest it is insufficient to disclose that the company provides training programs without additional information such as whether every employee has received training or just select employees, and how often the training has been provided. This language arguably forecloses the option of providing disclosure that merely confirms the company does what is listed without any detail.

Ironically, for the company that openly declares it does nothing, it arguably has a better case for stating that it meets the "to what extent" language of the disclosure requirement. Although such a company might technically be in compliance with the new law, it also likely will face more significant public relations issues for openly declaring that it has not done anything to avoid using trafficked or enslaved labor and providing no indication that it intends to do anything to address this issue.

Regardless of how the California Attorney General responds and how the law is interpreted over time in terms of the level of disclosure it requires, the California Transparency Act represents an important first step in securing broad-based private sector involvement in the fight against human trafficking. Mandating disclosure on internal policies makes information available to consumers, investors, and other businesses. In turn, they can make purchasing or other decisions with this additional information. For example, in a report on the new California law, the Interfaith Center on Corporate Responsibility, Christian Brothers Investment Services, Inc., and Calvert Investments encourage companies to "go beyond minimum compliance."[83]

If investment services start considering company responses to the California Transparency Act when providing investment advice to clients,

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82. CAL. CIV. CODE § 1714.43(c).

83. INTERFAITH CENTER ON CORPORATE RESPONSIBILITY, CHRISTIAN BROTHERS INV. SERVS., INC. & CALVERT INVS., EFFECTIVE SUPPLY CHAIN ACCOUNTABILITY: INVESTOR GUIDANCE ON IMPLEMENTATION OF THE CALIFORNIA TRANSPARENCY IN SUPPLY CHAINS ACT AND BEYOND 3 (Nov. 2011), *available at* http://www.calvert.com/ NRC/literature/documents/WP10009.pdf.

businesses will have even greater motivation to take additional actions to combat trafficking and slave labor in their supply chains. Pressure from and campaigns by human rights organizations that highlight companies which are not doing enough in their eyes could further press manufacturers and retailers covered by the California law to do more. Over time, this disclosure law could spur meaningful changes in the private sector. Whether that happens will depend in large part on the response to companies' disclosure by investors, customers, human rights organizations, and anti-trafficking advocates.

CONCLUSION

Human trafficking implicates all sectors of society. To date, however, the fight against human trafficking has proceeded largely without a potentially valuable partner—the private sector. As discussed in this Essay, there are important reasons why the private sector is uniquely situated to address certain aspects of human trafficking. The California Transparency Act represents one of the first legislative initiatives to capitalize on the private sector's unique and essential role in this fight. It offers an opportunity to employ disclosure mechanisms to advance private sector involvement in the fight against human trafficking. This step essentially asks companies to build on existing expertise and do what they are capable of doing in pursuit of socially responsible humanitarian goals. Already there is evidence that companies are taking action to address the goals of this new law.

The adoption of H.R. 2759 would expand this approach nationally. Uniformity nationally on this issue will not only lead to more companies having to disclose, and ideally undertake, measures to combat human trafficking. It also will be good for businesses, as a uniform requirement will ensure that entities not subject to the California law do not gain a competitive advantage by benefiting from exploited labor. A national standard also would send a message to all companies globally that if they want the benefits of accessing U.S. markets, they must take steps to minimize the risk of human trafficking and slave labor in their supply chains.

The California Transparency Act represents an important shift in thinking creatively about the problem of human trafficking. Building on this example, governments, anti-trafficking experts, and business leaders must partner to develop more effective participation by the private sector in preventing human trafficking.