

Criminological reflections on the regulation and governance of labour exploitation

Abstract

The regulation and governance of labour exploitation is a well-researched area across numerous disciplines. Common approaches towards regulating labour exploitation in businesses and supply chains include state interventions to tackle organised crime via the criminal justice system. However, due to strict criminal-legal definitions, these interventions are only possible when targeting severe exploitation. This emphasis means that a large amount of non-criminalised exploitation risks being overlooked. The purpose of this paper is to argue that non-state regulation is an important element in preventing routinised forms of labour exploitation, whereby a criminological perspective would help to understand and better prevent such practices. The paper examines state regulation, self-regulation of businesses, and trade union activity, which together addresses a wider range of labour exploitation. Semi-structured interviews from workers and supply chain stakeholders in the UK agri-food industry are used to inform this discussion. The governance of labour exploitation in relation to business activities has broader implications for the disciplinary areas of regulation and (corporate) criminology, whereby the former tends to prioritise restorative and persuasive approaches, whereas the latter focuses on deterrence and coercion. Ultimately, drawing together different strands of regulation into a hybrid approach is useful not only due to socio-political processes, but is arguably the most helpful in addressing routinised exploitation.

Author: Dr. Jon Davies, Tel Aviv University

Email: davies@mail.tau.ac.il

Introduction

Whether a government, business, or other entity tries to prevent labour exploitation or other activities, regulation is difficult to 'do well' in political, legal and technical terms (Braithwaite 2008: 62). This difficulty is partly due to competing interests and priorities between businesses, governments, regulators, and labour rights advocates. There are forms of regulation that states oversee, such as criminal justice systems and regulatory bodies, as well as a range of 'governance' approaches that non-state actors pursue, such as self-regulation and trade unionisation. Examining these forms of regulation and governance is not new, neither in themselves nor in relation to labour exploitation. However, regulation and governance warrant particular concern for corporate criminology, which tends to advocate criminal justice responses based on deterrence and coercion (Almond and van Erp 2018). These responses are important but limited, because they neglect a wider range of exploitative practices and strategies to address them. Importantly, routine exploitation that would otherwise fall under

the scope of labour law can develop into severe exploitation if not addressed (France 2016), which then does fall into the criminal justice system's remit. Therefore, traditional approaches based on the transnational crime agenda of prosecuting offenders and enforcing strict border controls is insufficient for addressing the labour exploitation spectrum. This article aims to address this imbalance by framing a discussion of alternative regulatory options, while recognising that there is no single comprehensive solution to such complex processes. It argues for a stronger regulatory focus on routinised forms of labour exploitation, and that in this context, corporate criminology in particular could consider control mechanisms from a broad perspective.

As others acknowledge, there is no internationally accepted definition of labour exploitation (OSCE 2018: 7). However, this paper draws on the spectrum of exploitative practices that occur, from severe exploitation that breaches criminal law (FRA 2015: 34), including modern slavery, forced labour and human trafficking, to 'routine exploitation' that breaches national or international labour law (France 2016), such as underpayment or unfair dismissal. There are a number of grey areas associated with these definitions, including workplace practices that may be legal but are 'ethically' dubious (REMOVED; Scott 2017), such as long working hours and flexible employment contracts. Despite these definitions, in practice it can be difficult to make clear distinctions between severe and routine exploitation, partly due to some criminal breaches being treated as non-criminal regulatory issues, or the full extent of routine practices not coming to light. When considering the role of legitimate businesses and their supply chains, however, it is evident that the full spectrum of labour exploitation continues to be a significant challenge for societies.

This paper begins by outlining contributions to the topics of regulation and governance. It then outlines existing regulatory approaches to labour exploitation, including 'top down' and 'bottom' up interventions. The article draws on data from a small-scale, qualitative study conducted in the UK agricultural and food sectors. This paper is not intended as a case study of these sectors, but aims to deliver a broader discussion on issues of regulation and governance within the spheres of corporate and organised crime. Based on the data collected, the paper discusses varying forms of intervention, while referring back to broader concerns on

labour exploitation and regulation¹. It is hoped that by providing an example of how corporate criminology can consider a range of regulatory responses in the area of labour exploitation, this will facilitate more critical discussion in order to ensure that criminology remains relevant when assessing the full exploitation spectrum, rather than just severe practices.

Criminology, regulation and governance

In the regulatory sphere, researchers frequently refer to the highly contested notion of 'neoliberalism' in order to frame discussions on global markets and their governance (Crane et al. 2019; LeBaron et al. 2018; Peck 2010); yet this is cited as a sometimes promiscuous and overused concept (Clarke 2008; Newman 2014). For some, neoliberalism is concerned with not necessarily weakening the state, but by transforming its role in the long term, primarily by securing conditions that allow the expansion of the scope and reach of capital (Jessop 2002). However, neoliberalism is commonly organised around key trends that limit the role of states, including outsourcing public services, devolved governance, and the weakening of national state capacities in favour of private enterprise (Peck 2010: 29). These trends have important implications for labour exploitation, since governments have encouraged non-state interventions through the increasing prevalence of 'corporate social responsibility' (CSR) (Tombs and Whyte 2015; von Elgg 2016). It is therefore important to distinguish between 'deregulation', which implies less regulation for businesses, and devolved regulation. Indeed, Braithwaite (2008) argues that increased business activity since the 1980s has led to a significant expansion of regulation – albeit the state does not directly oversee all forms of activity due to the prominence of non-state actors. This 'governance' refers to a broader scope of control mechanisms than government, since governments increasingly rely on networks and diffusion mechanisms in order to oversee sectors (Lazer 2005).

Criminological perspectives address a range of important factors, including causes of crime, their consequences, as well as patterns of offending and victimisation (Paoli and Greenfield 2015). All these issues are relevant when addressing labour exploitation; researching enforcement is one important aspect of this process, which forms the contribution of this

¹ UK responses to labour exploitation are the main focus in this paper due to the research being conducted there, although some points relate to broader regulatory concerns in other jurisdictions.

paper. Non-state regulation is arguably a key element in preventing routinised labour exploitation, whereby studying these mechanisms from a criminological perspective can lead to a more robust understanding of routine exploitation and so enable more effective prevention. While there are good reasons to be sceptical of non-state interventions such as CSR (CIOB 2018), other labour-based or worker-led interventions also emphasise the structural conditions associated with exploitation (Shamir 2012), which run parallel to discussions within (state-)corporate criminology by focusing on state and organisational structures.

From a criminological perspective, there is a divergence between the disciplinary areas of corporate criminology on the one hand, and regulation and governance on the other. Almond and van Erp (2018) critique the tendency of corporate criminology to focus exclusively on its traditional sphere of criminal justice, while overlooking other non-state controls that exist in civil society. Indeed, corporate crime is among the few branches of criminology where criminalisation, deterrence and punitive sanctions are viewed as positive (Almond and van Erp 2018: 6). Conversely, regulation and governance studies tend to focus more on administrative controls, self-regulation, and third-party auditing at the expense of criminal justice, which arguably contributes to the 'moral ambiguity' of corporate crime by implicitly tolerating social harms (Nelken, 2012). As part of these non-state approaches, regulatory bodies tend to emphasise soft persuasion rather than tough action (Tombs 2016; Vander Beken and Van Daele 2008: 743). These points are reflected in the regulatory 'pyramid' developed by Ayres and Braithwaite (1992: 35), which assumes that a significant amount of non-criminal regulation depends on persuasion and restorative options, whereas a smaller number of cases are subject to harsher tactics based on coercion and deterrence. Almond and van Erp's (2018) key argument is that the disciplines of criminology and regulation can each broaden and complement the other if they reach beyond their traditional responses to regulatory concerns.

In relation to labour exploitation, there have been arguments, which either implicitly or explicitly include criminology, that numerous 'grey areas' of the labour exploitation spectrum have traditionally been overlooked due to an overemphasis on organised crime groups, individual perpetrators, and severe exploitation (REMOVED; Scott 2017). In contrast, there is a strand of critical literature where researchers have framed this overemphasis at the expense of

broader societal processes (e.g. Lloyd 2018; Tombs and Whyte 2015). Related to these processes, routine exploitation may require intervention from actors other than the criminal justice system; and as noted above, routine exploitation can develop into severe exploitation if left unchecked, since it normalises poor employment practices and emboldens unscrupulous employers.

Existing regulatory responses to labour exploitation

There have been various regulatory responses to labour exploitation since it began to take a higher public profile from the early 2000s. However, the traditional 'top-down' or 'command and control' approaches of criminalising offenders, enforcing border controls, and ex-post human rights protection to identified victims, while important, do not address structural problems linked to companies, supply chains, and labour markets (Shamir 2012). In addition, these approaches only support a small number of victims out of the multitudes who are recognised as vulnerable to exploitation. These shortcomings have led to an increased emphasis on the role of companies in tackling exploitation through corporate social responsibility (CSR), or 'self-regulation', which is critiqued as superficial, since CSR costs tend to be transferred down supply chains and risks increased exploitation (LeBaron et al. 2018; Tombs and Whyte 2015). There are other 'bottom-up' worker movements such as trade unions (Crane et al. 2019), which form part of a broader 'smart regulation' consisting of non-state actors from civil society (Gunningham and Sinclair 2017). Each of these approaches has a role in tackling exploitation; albeit not without controversy, since they have their own competing priorities, interests, and claims to being 'effective'. These regulatory issues are especially prominent when considering the role of businesses and supply chain actors in facilitating exploitation (REMOVED).

State oversight in the form of criminal law is arguably the most robust option available to establish accountability, since this involves applying the criminal label to individuals or organisations, which in turn enables a wide range of punitive sanctions (Gobert and Punch 2003; Matos et al. 2018). Theoretically, the criminal label alone is a punishment for businesses due to associated reputational damage (Gobert 2014: 238), establishing the severity of the perpetrator's actions, and sending a signal to society that such actions are unacceptable. The

threat of criminal labels may encourage longer-term policy changes by businesses or governments. In the UK, the police and National Crime Agency (NCA) form a key part of starting such criminal proceedings against perpetrators of severe exploitation.

However, the criminal justice system has limitations, as is well documented in the corporate crime literature (Gobert and Punch 2003; Tombs and Whyte 2007). High standards of evidence are needed for criminal trials, which makes prosecutions unlikely, even in severe instances of exploitation such as the DJ Houghton case. This case involved a group of Lithuanian migrants being severely mistreated by their employers; the workers were subject to violence, threats, substandard accommodation, and underpayment of wages (Lawrence 2016). Despite initial police involvement in the case, a criminal prosecution did not occur, seemingly due to a lack of evidence. The workers later initiated civil proceedings against the company for financial compensation through lost earnings, and were awarded over £1m. More broadly, governments may be reluctant to legislate stronger criminal accountability for businesses over fears of damaging their 'business-friendly' credentials (Balch 2015: 94; Snider and Bittle 2014: 54). Due to these limitations with criminal accountability, state regulatory bodies emerge as an alternative means of enforcement in the context of labour exploitation.

Regulatory bodies can be seen as a more pro-active and less adversarial means of enforcement when compared to criminal law. With labour exploitation, the UK Gangmasters and Labour Abuse Authority (GLAA)² licenses and conducts inspections of labour intermediaries in the agricultural and food industries. However, while such regulatory bodies have a specialist focus that the criminal justice system may lack, they tend to be poorly resourced in order to implement their remit (Geddes et al. 2013), as well as regulating through persuasion and compromise, which risks severe actions being treated more leniently. The remit of such bodies is also highly fragmented – in the UK, there are at least 13 regulatory bodies which deal with different aspects of labour market enforcement (Citizens Advice 2017). Given the well-known limitations of resources associated with such public bodies, self-regulation is sometimes cited as a means of oversight throughout businesses and their supply chains (von Elgg 2016).

² Until 2017, the GLAA were called the Gangmasters Licensing Authority (GLA).

Businesses tend to operate in the context of oversight that prioritises the 'free market' and economic growth over workplace protection and labour regulation (Binford 2009). Since many businesses perceive state regulation as excessive and a hindrance to growth, they usually prefer to self-regulate - in particular, by developing their CSR policies and engaging in a 'regulatory dance' (Snider 1991) as a way to manage different forms of oversight. CSR in businesses and supply chains has become a significant issue in the area of labour exploitation, most recently with Section 54 of the UK Modern Slavery Act 2015 (MSA). This legislation requires large businesses³ to develop strategies to address 'slavery' in their supply chains, including an annual transparency statement (CIOB 2018).

In line with well-documented limitations of CSR (e.g. Crane et al. 2019; New 2015; Tombs and Whyte 2015), the rhetoric around ethical practices can be vague, and does not necessarily reduce the incidence of labour exploitation occurring in businesses or their supply chains. Larger companies in supply chains have been criticised for developing vague transparency statements, and for not implementing these strategies in their supply chains (CIOB 2018). One of the CSR measures frequently cited is that of companies conducting voluntary labour inspections or audits on their suppliers, in order to identify and address labour exploitation (Crane et al. 2019). These inspections have been criticised for being pre-announced, focusing on employers rather than workers, and for reporting their findings to the businesses who hired them, rather than the authorities if exploitative conditions are uncovered (LeBaron et al. 2018). While encouraging businesses to enhance their efforts in tackling exploitation may be a laudable aim, this is limited in practice, which means that workers taking a pro-active approach may be a necessary step.

Trade unions have been cited as a cornerstone of developing a labour-based response to exploitation, since they play an important part in organising workers, negotiating better conditions, and resolving disputes with employers (Potter and Hamilton 2014; Shamir 2012). However, trade union membership in Europe, and the UK especially, has been declining since the 1970s – in 1979, UK trade union membership stood at approximately 14 million, whereas in 2017 this number had fallen to around 6 million (BEIS 2018: 4). The reasons for this decline

³ Based on the legislation, businesses with an annual turnover of £36 million or more.

include an industrial relations shift from collective bargaining processes to individual workers' rights, largely through legislative changes that weakened trade union activity (Connolly et al. 2012: 9-10). More widely, due to flexible work becoming increasingly normalised, unions may find it difficult to recruit itinerant workers, especially migrants, who may only occupy jobs for a few days or weeks (CIOB 2015; FLEX 2018). Some unions have also been known to adopt resistive attitudes towards migrants, seeing them as a threat to their traditional workforces rather than incorporating them into existing worker movements (Foster et al. 2015).

Relating back to the regulatory context, the top-down (and possibly self-regulatory) approaches are most likely to be of interest to corporate criminology, which potentially overlooks other labour-based responses to exploitation. Each of these regulatory approaches contains advantages and drawbacks in relation to labour exploitation; the following sections aim to draw out the nuance in these areas, in order to reflect on non-criminal responses.

Note on methods

The data used to inform this paper was taken from a small-scale, qualitative study of the UK agri-food industry and its supply chains. Semi-structured interviews were conducted with 13 stakeholders, including representatives from industry, regulation, and trade unions, as well as 14 migrant workers. Migrant participants were recruited through NGO's in the UK who provide support services to migrants. Stakeholders were recruited primarily through networking events and existing contact networks at the author's institution. The key condition for all interviewees to participate was that they were employed within the agri-food industry, or had some professional connection with it through their position. Stakeholders were asked key questions concerning their professional experience in addressing the issue of labour exploitation, especially within supply chains. Key questions for migrant participants revolved around their day to day working experiences in the industry, as well as perceived challenges associated with these, including their labour conditions and treatment by employers. Following completion of interviews, a thematic analysis was conducted in order to draw out key issues for migrant and stakeholder participants. For example, a parallel concern between migrants and stakeholders was the perceived ineffectiveness and lack of regulation in the industry, which ultimately formed an over-arching theme of the project and later informed this paper.

Due to space limitations, this paper cannot do justice to the complex methodological challenges of conducting research in this area; nor is it the intention here to centre the discussion exclusively on the agri-food industry and migrant workers – the author expands on these issues in other work (REMOVED). In any event, most of the data extracts relate to regulation and governance in general terms, rather than being specific to one industry. Therefore, this paper considers wider points on regulation while referring to the data extracts on a complementary basis. Industry-specific clarification is provided when needed. Due to the limited data, the points discussed in this paper are intended to illustrate and explore existing regulatory practices, rather than provide generalisable explanations – pursuing the latter would require a wider range of participants and sectors to be included.

Examining forms of regulatory oversight

The purpose of this discussion is to draw out the key facets and limitations of regulatory approaches, using the data to complement this. It is centred on the key forms of oversight introduced at the start of this paper, including ‘command and control’ state regulation; ‘self-regulation’ focusing on the role of businesses and how they tackle exploitation in their supply chains; and ‘smart’ regulation, consisting of labour movements such as trade unions. It is not possible to examine all aspects of the regulatory approaches with the rigour they deserve; yet it is acknowledged that each approach contains significant nuance. However, placing a stronger emphasis on non-state responses to routine exploitation through a corporate crime lens may help to enhance its approaches towards ‘crime control’. As a side note, the paper draws primarily on stakeholder and business perspectives, since these participants all had experience on matters of regulation. Worker perspectives are drawn on when this is helpful, but a more complete account of their day-to-day experiences can be found in the author’s previous work (REMOVED).

Command and control regulation

As defined by McManus (2009: 546), ‘command and control’ regulation is broadly understood as the direct oversight of a sector or activity by legislation that establishes what is permitted and what is illegal or criminal. Typical actors involved in this enforcement are the police,

criminal justice system, and state regulatory bodies. While many local UK police forces now have specialised anti-human trafficking units, detection rates remain low, and even in severe cases prosecution is not assured. As Gadd et al. (2017: 2) found when researching modern slavery in the Greater Manchester area of the UK, only one in three suspects were subject to criminal charges. In other jurisdictions, police attitudes towards serious health and safety concerns have been derisory when compared to perceived 'more serious' issues such as murder investigations (Alvesalo and Whyte 2007: 58), which encourages the lack of police involvement in such cases.

However, low detection rates are not solely a police problem, since this assumes that exploited workers desire police involvement in the first place. Many workers do not report exploitation to the police, which inherently limits their involvement. Some reasons for workers not reporting their concerns were discussed by caseworkers who supported migrants, as represented here:

The police are an option, although not many clients would contact them. They would probably rather start with some kind of other place than the police, because the police are the last thing they would consider ... And it's because they are simply afraid. If we're talking about police, they might go to close down the factory or field, and then they'd lose their jobs, would be worse off, have to look for another job where they might also be exploited.

Caseworker-1

Numerous workers, especially migrants, may be wary of reporting mistreatment to the police, due to language barriers, fears over employer retaliation, loss of job and accommodation, and longer-term employment prospects (Lever and Milbourne 2017; Potter and Hamilton 2014). If migrants have irregular immigration status, labour market regulation may become conflated with immigration enforcement. In other words, undocumented migrants may not report abusive workplace experiences if the police think they are complicit in illegal practices (Ruhs and Anderson 2010). Therefore, police intervention and subsequent prosecution of perpetrators may in some cases adversely affect workers. Arguably, 'strong regulation' supported by enforcement are key benchmarks of any response to labour exploitation (GLA 2015). Yet in some cases, police intervention may result in further abuse, since workers face losing whatever job or housing security they had, on top of the exploitation they have already

experienced. Unless individuals are identified as victims of modern slavery through the UK's National Referral Mechanism (NRM), the support available to workers is likely to be negligible. As France (2016) posits, in cases of routine exploitation there are few formal support mechanisms, and law enforcement is less willing to intervene.

Despite its limitations, the criminal justice system may remain a preferable option in many cases for addressing severe exploitation, especially given the complex dynamics associated with these practices. For instance, some participants signposted a fusion between aspects of the MSA and financial laws, as shown in this extract:

The criminal justice system, that's absolutely the ideal way, because ultimately where exploitation leads to the denial of fundamental human rights, and also risking health and life, then that is a criminal act. The Modern Slavery Act up to a point reflects that in terms of exploitation here domestically. The transparency in supply chains stuff, although toothless, in conjunction with some of the financial laws which give extra territorial jurisdiction, is beginning to break down the barrier of, well it happened over there, it's nothing to do with us.

Trade-Union-Rep

The trade union representative highlights a potential fusion of the MSA with financial laws in order to address labour exploitation. While not explicit, it is possible that he referred to UK legislation such as the Bribery Act 2010, which contains extraterritorial provisions for some offences committed outside the UK, whereby UK courts have jurisdiction over individuals and businesses if they have a close connection to the UK (Lord 2014: 71). These are important considerations, especially given the complex dynamics associated with organised transnational criminal activities (Paoli and Vander Beken 2014). Ultimately criminal labels and penalties may be the strongest forms of accountability, but do not necessarily change workers' labour conditions, since they are reactive. In addition, criminal justice system interventions are unlikely to include routine exploitation, which potentially excludes these practices from the regulatory remit. As noted above, regulatory agencies arguably offer a more pro-active approach for a wider range of exploitation.

The ability of regulators to impose non-criminal sanctions on businesses is an alternative to criminal sanctions (Gobert and Punch 2003). As signposted, the GLAA licenses labour

intermediaries in the UK agri-food industry, and is gradually expanding its remit to cover the entire labour market. For example, it can respond to alleged incidents in the construction industry, but does not currently have a full licensing scheme that covers construction (CIOB 2018: 38). When they are pro-active, the GLAA can have positive impacts on workers that they reach out to, as noted by the caseworkers interviewed:

... we had this training with the Gangmasters licensing place, we've got even leaflets and everything in different languages, numbers that you could contact that speak your own language. So we try to encourage clients, these are always on the desk, so lots of clients were taking these, actually there was nothing left on my desk. Because every time they see their language, and every time they see if you have trouble with your employer, they were picking these up. So we try to pass the message that there is this place that could help you.

Caseworker-1

This extract seems to support the caseworker's earlier point that many workers would rather contact a regulatory body such as the GLAA rather than the police, given how much interest in the information leaflets workers seemed to show. In addition, language may be key here, since workers may respond more positively to offers of help if they see information written in their own language – which the GLAA tends to routinely do with such leaflets. If bodies such as the GLAA are able to extend their licensing remit to other sectors, this outreach may be a vital part of the response to tackling exploitation. Despite the advantages that a labour inspectorate can provide, concerns have been raised about the GLAA's effectiveness:

... unfortunately, the GLA is very, what's the word ... hasn't got a lot of strength, hasn't got a lot of people working there, they can't cover the country. That's one of the problems with the GLA. I mean, of course we work with them and they examine us, make sure we're doing all the right things ... but the GLA haven't got any teeth, you know, they can do the odd person but they need far more strength.

Gangmaster-2

It should be noted that this interview took place while the GLA was evolving into the GLAA in 2017, which means that this viewpoint may relate to historic concerns, notwithstanding the wider range of policing powers that the GLAA now have. Nevertheless, this idea that the GLA had no 'teeth' is an issue that previous work highlights (EHRC 2012), and to some extent

remains a concern. For instance, there are concerns that the GLAAs workload may increase, but without the necessary funding and staff to manage its remit effectively (TUC 2016). In this respect, criticism of the GLAA has typically focused on these issues of remit and funding, rather than the efficacy of the work it does when adequately supported. Nevertheless, in recent years there has been a shift away from binary notions of regulators and the regulated towards 'self-regulation', either at an individual company level, or industry-wide level. Self-regulation is becoming especially prominent in the sphere of labour exploitation.

Self-regulation

There is growing recognition that many companies know that their supply chains are not free from exploitation (Lake et al. 2015). Arguably, these problems are not going to disappear immediately, but require long-term commitment from businesses (CIOB 2018; von Elgg 2016: 40). Rather than rehashing well-trodden discussions on the limitations of CSR, this section examines a specific aspect – the role of audits that companies voluntarily use as part of their efforts to demonstrate supply chain transparency. During the research, there was a frequent assertion from businesses that there are a number of blind spots regarding exploitation and supply chain transparency. A recurring view was that it is better to 'engage and influence' suppliers rather than ceasing business activity. These opinions are summarised by the two following extracts:

Is it better to continue to engage with their business in the hope and expectation that over time, you can change their views, and their ways to improve, and to modernise, or do you just walk away? Where we just say, well, no business for you. In some cases that could actually make things worse because it just drives factories underground ... and they can't get any better.

Buyer-1

... we've always accepted that there's lots of compromises in how we trade, because we want to be competitive with supermarkets. So we can never say that our supply chains are free from exploitation of labour ... What we can do is make more informed and better choices ... there are some wholesalers that we don't really buy anything direct from, and we later find out that workers further down their supply chains weren't being treated fairly, being underpaid ... there's no way a company our size could check all the thousands of supply lines on the ground ourselves. You do rely on good relationships and trust ...

Buyer-2

As Buyer-1 implies, disengaging from the offending supplier may appear to be an 'ethical' position, and potentially limits the reputational damage of the buyer in the event of publicity. However, such an approach does little to resolve the exploitative practices occurring in the supplier's business, which risks exploitation continuing in other business relationships. Previous work has noted that in such cases where buyers become aware of exploitation occurring in their supply chains, there is a tendency to 'drop' suppliers but not report them to regulatory authorities (Allain et al. 2013), which further erodes workers' conditions. Dropping suppliers also risks disrupting supply chain relationships, and potentially has negative consequences for labourers through insecure work and irregular working hours.

Buyer-2 makes a different point that maintaining effective oversight is problematic due to complex supply chains and the number of actors involved in the process. For example, in the construction industry, a contractor involved in a large building project can have dozens of subcontractors, who in turn use their own subcontractors and recruitment agencies in order to achieve specific tasks (CIOB 2018: 5). Importantly, Buyer-2 refers to 'compromises' in how her organisation does business, in that she cannot rule out exploitation occurring in their supply chains. According to Lake et al. (2015: 6), nearly 75% of UK companies believe that labour exploitation is likely to occur in their supply chains. If companies lack a transparency programme that considers all aspects of its business operations, including procurement, risk management, and training, it may be in the position of suspecting that exploitation is occurring, but not knowing where or what to do about it. Therefore, it is unclear at which point, or what forms of, exploitation become unacceptable for buyers to tolerate. It is possible that buyers would be more willing to tolerate 'minor' labour abuses when compared to severe exploitation, which contributes to some exploitation becoming normalised and embedded in legitimate business processes.

These business decisions are not simply based on problems of individual companies who occasionally encounter examples of 'rogue' firms and poor labour practices. Regardless of how far individual buyers support their suppliers and aim to improve labour practices, many supply chain structures are designed to benefit larger buyers, who have the bargaining power to

pressurise smaller suppliers and encourage them to cut costs, who in turn pass these on to workers (Allain et al. 2013; REMOVED); for example, in the form of poor safety standards or underpayment. Nevertheless, the need to hold suppliers accountable for their labour practices is one reason that audits may theoretically be helpful.

Labour inspections and audits have emerged as one way for businesses improve their supply chain oversight and identify problems. While regulatory agencies can conduct such inspections, private companies increasingly arrange their own audits in order to demonstrate their transparency credentials - for example, through organisations such as SEDEX (2019), who specialise in supporting businesses to improve supply chain management. In theory, audits provide 'snapshots' of working conditions, by identifying safety hazards and workers' concerns. Through the following three extracts, the audit process is concisely summarised by one buyer who had experience in overseeing such audits throughout his company's supply chains:

... depending what the audits find, there's a conversation about trying to resolve any issues ... we think of this as two or three buckets. One first bucket is the easy bucket, things which suppliers should be able to resolve themselves without too much support and guidance. If they don't have fire doors, or they don't have fire extinguishers or they don't keep records of working hours, things which aren't difficult so don't require a great deal of specialist knowledge to solve, they just need to knuckle down and put them in place. Health and safety is the most common issue under that heading.

Buyer-1

This first set of issues regarding health and safety practices is a longstanding concern in many industries, and if not addressed can have serious consequences. High profile examples internationally include the 2013 Rana Plaza incident, where 1,000 workers died following a commercial building collapse (CIOB 2015); as well as construction workers in the 2022 Qatar World Cup preparations, where an estimated 1,300 workers died between 2010 and 2013 due to poor safety standards (Ganji, 2016: 221). More broadly, there are concerns that safety incidents are deemed as accidents where workers are blamed for being clumsy or unlucky, rather than as systemic problems within organisations (Tombs and Whyte 2007). While some safety issues sometimes appear as relatively minor, it is precisely these initial concerns that can develop into neglect and severe injuries due to the lack of oversight. In other words, health and safety concerns may fall on the lower end of the exploitation spectrum (CIOB 2018: 19),

but contribute to poor standards becoming normalised and deteriorating further, which makes regulation a more difficult and time-consuming task.

The second set of challenges link more closely to labour conditions and management of workers. These issues are more complex and difficult for companies to resolve without support:

You get a second bucket of issues which are more complicated, but with the kind of support and guidance from ourselves, or people like ourselves, you can make progress. Sometimes that will be things again like working hours, in terms of putting better systems in place, in terms of, and by systems I mean like things like you're helping them to do production planning, and putting better management routines in place ...

Buyer-1

Smaller businesses in particular typically lack the resources or expertise to implement structural changes and formal systems in order to benefit their workers (Walters and James 2009) – whereas larger businesses are better able to face such pressures, whether from within or from state oversight (Braithwaite 2008: 94). This is problematic in industries that have narrow profit margins and where there is systemic pressure on smaller businesses to lower their costs for larger businesses. In principle, larger firms working with smaller firms to develop better systems for working hours, production planning and management routines may sound constructive. However, individual buyers alone cannot alter the structural market conditions that allow costs and responsibility to be outsourced from the top-end to bottom-end of supply chains, thereby giving smaller firms little choice but to cut corners when they face the reality of doing business with larger firms.

Buyer-1 highlighted a final set of challenges, which occur beyond individual organisational control at the macro level:

... the third bucket is the endemic issues, where ... with the best will in the world, one company can't change the situation because it's so ingrained in the general culture or national law or whatever the case may be.

Buyer-1

In the sphere of supply chains, endemic issues could refer to not just the supply chain pressures already outlined, but factors that are embedded in context-specific histories or cultures. For instance, some states regard trade unions with outright hostility, which is not the case in most European countries – albeit states can be far from supportive of unions (TUC 2016). In other areas, there are significant cultural issues which mean that women are treated as inferior to their male colleagues (Khurana 2017). Such issues are complex and difficult to resolve through any form of CSR, especially at an individual company level.

Therefore, audits initiated by buyers can help to identify exploitation, but their effectiveness is questionable in practice. There are well-grounded concerns that audits prioritise the views of management and employers over workers, and that employers may even cherry-pick ‘reliable’ workers who are likely to give a positive view of the company and their work conditions (LeBaron et al. 2018). There have even been instances of employers instructing agency workers not to attend work on the day of an audit, in order to minimise the chance of negative coverage (EHRC 2012: 42). Even where audits do cover labour conditions, they are not necessarily realistic – for instance, it is easy to see if a fire extinguisher is missing from a factory floor, but is less obvious how workers are being treated. While most worker participants never saw a labour inspection occurring, those that did were critical of inspectors’ approaches, citing key concerns over employers being notified in advance, and in the specific context of food production, that inspectors were concerned only with food quality and hygiene, not labour conditions:

Before the inspection comes, the company, the factory is notified in advance, so they have time to make preparations to look as if everything is perfect. So everyone has to wear clean clothes, everyone has to almost be like army standards, and this sort of thing happens when the inspection arrives. But I would like the inspection to come without notification so that they actually see what’s happening in the factory. If they came at night, for example, without notifying the owner, they would see all sorts of things happening, everyone’s wearing dirty clothes, no health and safety ... So they should come without notification.

Monika-Female-Lithuania-Age_46

... they do ask questions, do you wash your hands, how many times do you wash your hands, they ask the staff, they ask everyone, but they never ask like about the work, like,

are you happy with the work? Have you been treated properly? Do you always get paid on time? No, we never get asked things like that, no.

Xiao-Female-China-Age_32

Some degree of stage management is apparent from Monika's experience, whereby inspectors notify employers in advance of an audit, which enables them to hide undesirable practices. In contrast, auditors appearing unannounced would provide a rather different picture, including a disregard for safety and worker mistreatment. Regarding Xiao's experience, in the UK context food outlets are subject to unannounced inspections by the Food Standards Agency (FSA) – however, the remit of such inspections covers food quality and hygiene standards, not labour conditions (FSA 2018). Therefore, although companies may favour self-imposed audits, there are significant limitations to their effectiveness, and some workers take a critical view. The limitations associated with aspects of 'command and control' and 'self-regulation' approaches bring into question whether trade unions are a helpful alternative or supplement to these approaches.

'Smart' regulation

Moving away from traditional bipartite regulation, with the state as the regulator and businesses as the regulated entity, 'smart regulation' is facilitated by non-government agents (Gunningham and Sinclair 2017), which can include trade unions, NGOs and communities. As signposted above, trade union influence has been declining in some European countries, due in part to falling membership rates, as well as legislation that hinders trade union activity. This section of the discussion focuses primarily on workers' experiences with trade unions when faced with exploitative workplace practices, in order to consider the value of such non-criminal responses.

Most migrant worker participants claimed never to have heard of unions, which links to a wider point that migrants are less likely to be unionised than non-migrants (Turner et al. 2014). Those who had heard of unions described mixed views on their experiences. Some recognised the value of workers grouping together through a union in order to curb what they saw as unfair treatment by their employers. Others took a more critical stance, and complained that despite

paying for union membership, their effectiveness was limited when faced with workplace problems. These viewpoints are represented by the following two extracts:

First of all, I would organise enough people to have a union. I don't know if it would help them a lot or not, but at least the people working there would know, you know, we're not alone. You know that they're not going to treat us like a piece of shit. And more people do it, there is power in people. If it's just one person, you can sack them and take another. But when you have 50, then it's a different story.

Marcelina-Female-Poland-Age_33

I was a member for two months, but left when they didn't do anything about that complaint, I thought they just wanted the money. They said 'okay, we're going to investigate', but nothing came of this ... Some people didn't get paid, they complained and said 'I've not been paid this week, I'm at least £20 or £30 short', and they said 'okay, we get it'. But they're not working really clearly, because of this I got out, I left them.

Behrouz-Male-Iran-Age_26

Marcelina's view is consistent with points made in existing literature that trade unions can have a positive influence on employment relationships and problem-solving (Foster et al. 2015; Turner et al. 2014). Despite declining unionisation rates, unions retain their core functions of organising workers and advocating better labour conditions. Despite the potential for trade unions to have a positive impact on employment relationships and therefore the regulatory context, other workers are more critical of their ability to intervene and respond to problems, as shown with Behrouz' comments. His point about the perceived ineffectiveness of trade unions is not an isolated example, where he refers to complaints made on underpayment. Previous work has found that union efforts with recruiting migrant workers and responding to problems were met with only partial success, despite well-meaning intentions (Holgate 2005; Potter and Hamilton 2014).

Some limitations associated with unions recruiting members are beyond their control. For instance, union involvement likely requires some stability of employment, as well as a sense of workplace community in order to be successful. Workers are unlikely to have this community if large numbers are employed through labour intermediaries on flexible contracts. Trade union involvement could depend on the type of employment that dominates the industry, as well as the location of work sites, which sometimes demand greater levels of labour flexibility

(Lever and Milbourne 2017). Sectors that are vulnerable to exploitation such as agri-food and construction are characterised by flexible work, as well as large numbers of transient migrant workers who are more likely than non-migrants to be employed on flexible contracts (EHRC 2012). These factors help to explain low unionisation rates – even though some unions try to encourage membership by engaging with local communities rather than just the workplace (Holgate 2005). For workers who feel indifferent or have reservations about joining a union, community outreach can be a more neutral and constructive setting in which to learn about unions. Therefore, while there are obstacles towards achieving such a labour approach, it has potential to encourage workers to be pro-active and provide them with a stronger ‘voice’.

Discussion and conclusion

As is evident, there are advantages and drawbacks associated with the above forms of oversight, each of which have different priorities and interests. Command and control style, top-down regulation may be hailed as the ‘gold standard’ of regulation (GLA 2015), and is primarily concerned with retrospective accountability. In a broader context, this ‘top-down’ regulation is likely to be effective only for severe exploitation and for individual perpetrators. In the corporate crime literature, there are well-known hindrances associated with securing criminal convictions for corporations, partly due to difficulties with identifying the ‘controlling mind’ (Gobert and Punch 2003). While the threat of a criminal label might deter some companies from pursuing criminal practices in order to preserve their reputation, the likelihood of prosecution remains low.

In contrast, self-regulation emphasises positive rhetoric on ethical labour practices, whereby companies typically prefer to regulate themselves. However, the main priority of businesses is to remain competitive and safeguard their profit margins for shareholders (Tombs and Whyte 2007: xvi), which does not always complement labour ethics. Additionally, some supply chain actors may be willing to tolerate, at least temporarily, a degree of labour exploitation in their supply chains if they can persuade their suppliers to improve labour practices over the long-term. This ‘engage and influence’ approach has some precedent in industry practice (New 2015: 699). However, this approach risks normalising routine exploitation in the hope of preventing severe exploitation, which likely carries greater reputational damage. For example,

buyers could be more willing to tolerate health and safety breaches if severe practices such as physical coercion or confiscation of identity documents are addressed. From a regulatory perspective these developments are relevant, because they suggest that the state is either unable or unwilling to take a stronger role in requiring companies to develop their transparency provisions.

As a 'bottom-up' form of oversight, trade union activity may sound like a meaningful way to improve labour conditions in order to reduce the likelihood of exploitation. Yet in practice, labour movements are limited by declining membership and increasingly restrictive legislation on union activities. For example, under the UK Trade Union Act 2016 there must now be a 50% turnout of members for industrial action ballots in order for such action to be lawful (Liberty 2017). Unions' main priority is to enhance labour standards and ensure fair treatment in the workplace, which does not necessarily complement regulatory or business priorities, such as establishing (criminal) accountability or maximising profit levels respectively. From a criminological perspective, this 'bottom-up' oversight is arguably the most neglected, especially in the spheres of labour exploitation and corporate crime.

However, an approach to labour exploitation that is focused solely on organised crime, along with associated aspects of criminal law and border controls, is limited and covers only severe, criminalised practices. Examining a wider range of regulatory options helps to address the lack of attention given to non-criminal sanctions within (corporate) criminology. Given that criminology tends to be sceptical of criminal punishment and punitive sanctions in other areas of crime control such as sentencing, prisons, and probation, this article demonstrates a wider point made by Almond and van Erp (2018) that crimes and harms facilitated by corporations should be subject to the same rigour, i.e. that the state is not necessarily the (best) solution to all these problems. Given the argument in this paper that routine exploitation should be a stronger focal point, and that corporate criminology can provide a means for this by examining a range of regulatory options, criminology can maintain its relevance in greyer areas of exploitation. Other disciplines such as political economy and industrial relations discuss non-state responses to exploitation as a matter of course (LeBaron et al. 2018). These points are

especially important given the links between routine exploitation and severe exploitation, in that that the former may lead to the latter if left unchecked (France 2016).

The broader considerations of regulation and governance link back to the regulatory pyramid developed by Ayres and Braithwaite (1992), by recognising that sometimes persuasion works, and sometimes punishment works. Some may be wary of pursuing 'soft' approaches towards corporate criminals, arguing that events that deserve prosecution and punishment risk being normalised by more lenient options (Muncie 2005: 200). However, starting with less punitive options and becoming more punitive is not solely about encouraging 'softer' interventions and saving regulation costs. Braithwaite (2008: 92) asserts that where control based on dialogue does not succeed, then moving on to coercion-type controls seems more legitimate. If regulation is seen as legitimate and procedurally fair, then future compliance is more likely (Braithwaite 2008: 92); albeit the risk of punishment remains low, which some offenders will take advantage of.

Existing research on 'smart regulation' does of course emphasise exploitative labour practices and how to prevent them through non-criminalised responses (Foster et al. 2015; Holgate 2005; Potter and Hamilton 2014). For example, a labour-based framework starts with the position that 'victims' are workers who are exploited in a market context, and thereby attempt to address weak collective bargaining power, substandard working conditions, and a lack of labour rights (Shamir 2012). Many of these factors are structural, so cross-cut with immigration, labour, business, and welfare regimes. The contribution of corporate criminology to this existing work lies in its own discussions on state-corporate structures that facilitate a range of harms and crimes, which could be more strongly integrated with these 'smart regulation' issues via some form of 'roadmap'.

For example, mapping out supply chains and their key actors, as well as the dynamics between them, is an emerging trend in criminological research (Lord et al. 2017; REMOVED), which existing literature on smart regulation may overlook due to the primary emphasis on worker-employer relations/disputes. Therefore, such a roadmap to integrate criminology with existing labour responses to exploitation might include, firstly, corporate criminology examining the

advantages of non-criminalised responses, as discussed in this paper. Secondly, attempting to integrate a criminological and labour response to exploitation by examining key areas of common overlap (e.g. scepticism of CSR). This integration could help to identify gaps and address limitations between disciplinary spheres, using a combination of regulatory options in order to achieve full 'labour justice' that accounts for routine exploitation as well as severe practices.

The forms of regulation discussed in this paper – command and control, self-regulation, and 'smart' regulation, have each been examined in relation to labour exploitation across numerous disciplines (Crane et al. 2019; LeBaron et al. 2018). The broader concerns on regulating corporate and organisational crimes are also well-grounded (Almond and van Erp 2018; Lord 2014; Paoli and Vander Beken 2014). However, such discussions between the two spheres, i.e. labour exploitation and forms of corporate regulation or governance, are traditionally lacking in criminology, which tends to focus on severe and criminalised exploitation. It is clear that there is no singularly effective intervention for labour exploitation – such interventions depend on factors such as sector, country, type of business, type of exploitation, the status of workers, and existing regulatory practices (or lack of them).

A labour-based response to exploitation (Shamir 2012), while not a flawless approach, does at least provide the means for a more varied 'criminological imagination' by integrating existing approaches towards crime control with more pro-active, worker-led movements. It also allows criminology to remain relevant when faced with controversial issues of routine exploitation, whereby workers tend to not have any recourse through criminal law. This is especially the case given that routine exploitation, if left unchecked, can develop into severe exploitation, which is within the scope of criminal law. Therefore, developing a comprehensive response to labour exploitation requires more than a focus on organised crime, criminals and victims. Criminology, and corporate criminology in particular, can play a crucial role in such developments if it is open to assessing a wider range of regulatory options, just as it does with other crimes and harms. Ultimately a focus on 'labour justice' as well as 'criminal justice' is a key tool in addressing the entire exploitation spectrum. Such a hybrid form of regulation is not

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solely due to the wider socio-political factors discussed in this paper, but may be more effective in addressing routinised practices.

Compliance with ethical standards

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