



*Research Unchained:
The Multidisciplinary Future
of Antislavery Studies*

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Antislavery Early Research Project

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Research Unchained:

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Foreword

Dr. Jean Allain and Dr. Kevin Bales

This Special Issue provides us with the possibility to look into the multidisciplinary futures of antislavery studies and to appreciate the contemporary terrain in which early career researchers are seeking to establish and develop their voices. It is not surprising that fresh voices are represented here expressing fresh and challenging ideas.

Today's scholarly landscape is a challenging one for these authors, as they are the beneficiaries of an information revolution which has placed remarkable digitised primary sources, a flood of official reports, as well as an explosion in more readily available academic literature at their finger-tips. These riches require them to be discerning in drilling through the various layers of information before they find and develop the veins of knowledge they seek to mine. Each, in their own way, has demonstrated that their research has not been passive, that they have been active in either their empirical undertakings or their doctrinal studies so as to develop new understandings, new ideas, and new theories.

There is a clear sense in the writings of this generation that their work is not purely academic, that the issues of slavery and antislavery are at the forefront of the public agenda, and that they are seeking to be part of the solution rather than the problem. For some, this means a critique of broader political and economic systems that drive modern slavery, for others diving deeply into the lived experience of slavery, and for still others it is teasing out the policy implications and most powerful responses to slavery.

In finding their writing voice and developing it through this edition focused on *Research Unchained*, we all bear witness to embryonic avenues of research which may well define full areas of knowledge as we move forward in exploring the ways that human beings exploit each other. These new avenues of antislavery inquiry and knowledge are novel and important and push the boundaries of scholarship. As the study on satellite technology shows, the sky is no longer the limit. But while looking forward, these young scholars are recognising a past with which they must grapple, one which speaks to historical enslavement and manner in which that past speaks to the present. This is a *usable past*, for the history of all previous anti-slavery work has much to say and teach the current global antislavery movement—a movement that is often sadly unaware of the lessons of its past.

Beyond the technologies that will assist in defining this generation of academics, knowledge at their fingertips has also meant that voices long silenced and isolated are now being networked and heard again. As a result, social barriers

are being dismantled: #BlackLivesMatter, #Rhodesmustfall, #SlaveTech, and #Metoo speak to an emancipatory impulse which is central to antislavery efforts. Recognition of white supremacy, of the monuments to slavers of the past, of racial injustice, and structural inequalities; each emerging movement in its own way redresses the balance towards a more just world. The emphasis on survivors of slavery which is given voice in the three last studies of this *Special Issue* speaks to this shift and is a harbinger of things to come.

The development of these articles have been ‘workshopped’ through annual conferences of the Postgraduate Research Network of the *Antislavery Usable Past*, a programme of research funded by the UK Arts & Humanities Research Council. We have been privileged to see this Network grow and to engage these young scholars, creating an environment for them where they could meet each other, learn from their colleagues in other academic disciplines, enrich their academic lives, and ultimately build networks which can benefit them in their future endeavours - as well as teach us a great deal in the process. The collegiality that has developed is manifest in the co-publications which constitute the majority of the articles in the *Special Issue*.

This is one further example of the future of academic scholarship, where young scholars living and working in different countries, in different cities, having had the opportunity to get to know each other through the Postgraduate Research Network, have been able to bring multidisciplinary collaborative research to print, working at a distance. Each of the authors in the Antislavery Usable Past Postgraduate Research Network Special Issue, entitled *Research Unchained: Multidisciplinary Future of Antislavery Studies*, is to be commended for both their independent research and the multidisciplinary impulse which has brought them together. As this *Special Issue* attests, antislavery studies are well equipped to meet the challenges of the future. They have developed networks which will serve them well into this future and have come to learn from each other the various dynamics at play both in their academic lives, but more so in the lives of those who still live in bondage. Their studies, their written works, and their collaborations are in themselves acts of liberation.

Research Unchained: The Multidisciplinary Future of Antislavery Studies

Katarina Schwarz, Hannah Jeffery, and Rebecca Nelson
PhD candidates

With the growing visibility of the contemporary antislavery movement on the global stage, and the rising demand for new and revolutionary research about human exploitation, emergent scholarship in the field is becoming increasingly vital. New ideas and approaches are crucial to understand and engage with the complex and constantly evolving institution. As exploitation adapts over time in response to changes in context, efforts to combat the phenomena must also transform—demanding research that grapples with the myriad of possible forms it might take and presents solutions not only to the problems of today, but to the challenges of tomorrow. Yet, in order to tend to the future, it is fundamental that we listen to the past. History must be the bedrock for the development of law, business, policy, art, literature and technology in this field, because the contemporary manifestations of exploitation and enslavement do not exist within an historical vacuum.

It is with this perspective in mind that the Antislavery Early Research Association (Antislavery ERA) was established.¹ Conceived within the framework of the ‘Antislavery Usable Past’ project, funded by the Arts and Humanities Research Council, the Antislavery ERA brings together a group of interdisciplinary graduate students and early career researchers of historic and contemporary slavery and antislavery. Representing over 40 different institutions and organisations from all over the world, the Antislavery ERA builds collaborative partnerships between scholars by employing interdisciplinary approaches to original scholarship that paves the way for the future of antislavery research. With contemporary slavery existing at the nexus of social, economic and cultural forces, it demands responsive methodologies and constantly evolving scholarship to tackle its changing nature, and the Antislavery ERA aims to meet these challenges head on.

¹ For further information on the Antislavery Early Research Association, please visit <http://antislaveryera.com> or email antislaverypgrn@gmail.com

Beginning at a conference at the University of Hull's Wilberforce Institute for the Study of Slavery and Emancipation (October 2015), and developing through conferences and workshops at Masaryk University (Brno, November 2016), the University of Liverpool (October 2017), and the University of Nottingham (October 2018), the Antislavery ERA represents a groundswell of new antislavery scholarship. Over the course of its lifespan, the network has grown and evolved to provide a platform for meaningful dialogue on contemporary challenges and novel solutions, as well as constantly seeking the inclusion of new researchers who apply innovative approaches to this field of work. Representing both the culmination of three years of engagement between early career researchers and the launch of the network into the wider academic community, this Special Issue applies a new multidisciplinary framework for contemporary slavery research, incorporating fields of scholarship such as Law, American Studies, History, Geography, Literature, Social Science, and Business.

From the outset, the issue acknowledges the place of the voices of the past in contemporary discourse and seeks to empower these perspectives. To speak of history as if there is a fundamental rupture between the past and the present is to fail in recognising the continuities of experiences that connect the two. Considering the legacies of enslavement echoing around our world in numerous forms—from systems of racialisation that remain in place from the history of transatlantic chattel enslavement to the manifestation of new iterations of exploitation in response to changing legal frameworks—is crucial in the exploration of avenues of emancipation from these cycles.

Continuities and evolutions occur in the ways in which language is employed to categorise particular exploitative practices as inside or outside the definition of slavery as an institution. Associations with certain historic practices have, at times, been used as a rhetorical device to draw attention to contemporary practices without serious consideration of the ways in which this impacts the conceptualisation of slavery in theory, and the lived experiences of descendants of those who were enslaved within the transatlantic system who continue to live with its legacies. Rebecca Nelson and Alicia Kidd speak to this ongoing debate surrounding the characterisation of certain forms of human exploitation as 'slavery' in the post-abolition world, presenting a perspective that acknowledges both the shared characteristics, and crucial differences, between contemporary slavery and the transatlantic system of chattel enslavement.

The antislavery potential of established activist tools—those which have been employed throughout history to meet the demands of justice - have not yet

been comprehensively considered or employed. Legal frameworks, in particular are sites in which significant lacuna remain, but which might readily accommodate greater antislavery initiatives. While James Sinclair considers the potential for developing vicarious corporate accountability through strategic litigation (the application of existing law in new ways), Paola Cavanna, Ana Belén Valverde Cano and Amy Weatherburn consider the need for development of legislative frameworks to meet the unfulfilled demands of the antislavery movement. In both instances, the conceptualisation of slavery as an institution is lent greater nuance, moving beyond the individual perpetrator and individual victim paradigm to consider the role of corporations and the state in perpetuating exploitation. Alexandra Williams-Woods and Yvonne Mellon similarly present a perspective which engages with the complexities of the institution, through consideration of the tensions between immigration policy and victim protection and support mechanisms.

Ultimately, it is victims (past, present and future) that the antislavery movement must serve and empower both in practice and in theory. Research which centers the needs of victims and survivors is therefore vital in shaping contemporary efforts to combat human exploitation. Thus, the first Part of this special issue closes with a reconceptualization of victims of slavery and extreme forms of human exploitation that cements the need to care for and respect victims in the international legal frameworks—as an obligation rather than an option. Katarina Schwarz and Jing Geng argue for both recognition and empowerment of those subjected to exploitation within legal processes and antislavery efforts more generally through procedural justice for ‘victim/agents’.

Echoing the first Part of this issue, the second Part opens with a consideration of the historical continuity and legacies of abolitionism from the eighteenth century to the present. The contribution of Hannah Jeffery and Hannah-Rose Murray examines visual culture as a site in which this relationship between past and present is mediated, tracing the lineage of modern antislavery murals through 1960s black protest murals to nineteenth century panoramas. The ways in which the institution of slavery is represented and the impact of such therefore become key questions for historical and contemporary consideration, and the potential for contemporary activism that feeds from this long history of abolitionism through visual culture is explored. Charlotte James’ review of the growing body of children’ literature concerning slavery and trafficking, further highlights the role of arts and culture in the antislavery movement, presenting the

first comprehensive survey of slavery and antislavery narratives in children's texts. Thus, old and new antislavery strategies coalesce in these pieces.

Visualising exploitation can occur through many different media, and the contribution of Bethany Jackson et al highlights the instrumental antislavery potential of imagery beyond the artistic context. Demonstrating the power of new technologies to assist in practical efforts combating slavery, Jackson, from a geographical background, highlights the importance of a new practical method to capture the spread of contemporary slavery in inaccessible places. Through Jackson et al's review of remote sensing data, they engage with a brand new approach to tackle the United Nation's Sustainable Development Goals. Questions of representation, imagery, and combating slavery are therefore situated both in employing old media in new ways, and for new ends, and in employing new technology in the service of shared objectives.

Responding to the demand for victim-centric approaches to antislavery work that closed Part One of this Issue in the context of new antislavery strategies, Ben Brewster takes a novel organisational perspective to consider how relevant actors can collaborate through multi-agency partnerships to ensure victim identification, recovery, and support. Thus, the Special Issue comes full circle to the significance of representation in empowering those voices which ought to be central to the movement.

Centring victims is not only about caring for their needs, but about integrating their voices and perspectives into the processes which concern them at all levels. For this reason, this Special Issue piloted a new form of review in the process of evaluating the papers represented here, conducted by survivors themselves. This survivor review encouraged authors to engage in meaningful reflexivity, not only with regard to the body of academic knowledge and academic conventions, but with the place of their research in the lives of those whose lives have been directly affected by slavery. This review is a single step in a wider ongoing process of constructive dialogue between scholars and survivors, and the partnership between the Antislavery Early Research Association and the Survivor Alliance.

The integration of themes throughout the various articles in the Issue—the significance of representation, continuities and evolution in practices of enslavement through time, and the importance of a victim-centric approach—speak to the interrelations between a diverse range of fields of antislavery research. Addressing the complexities and nuances of exploitation discussed across the different contributions demands the adaptation of existing tools, and the

development of new ones. The Antislavery Early Research Association seeks to do just that by creating opportunities for collaboration between emerging antislavery scholars and encouraging participants to look beyond the borders of their own discipline to enter a research environment defined by the needs of the movement. The Network looks to develop scholarship that is both outward-facing and outwardly engaged—drawing the demands of activism and policy, as well as the voices of survivors into the work of participants (the focus of the Liverpool 2017 and Nottingham 2018 events respectively).

This Special Issue transcends disciplinary boundaries, fuels collaboration, and brings the evolving research of early career scholars to light. It offers a space to hash out debates on definitions; to think about the role of technology in mapping sites of exploitation; to survey and understand the ways in which antislavery messages and strategies can be embedded in legal frameworks, multi-agency partnerships, and children's literature; and to understand the lineage of slavery and antislavery from the past to the present. Featuring the work of nineteen academics in nine papers, it gives voice to a new wave of antislavery research that connects past, present and future and highlights the important role of research networks at all levels of scholarship.

Engaging with the past in antislavery scholarship is not limited to instrumentalising the lessons of history to meet the demands of contemporary activism. Recognising the lineage of antislavery activism and scholarship enables us to create spaces to listen and attend to the voices of the past, as well as letting those insights guide present and future research and action. This process is a work in progress that will never be complete; a process which requires the reconfiguration of scholarship in a constantly evolving and responsive way. This Special Issue highlights the growing body of emerging researchers shrugging off the mantles of their disciplines to take up the broader requirements of the movement as a whole, as the final contribution concludes, with victims and survivors at the heart of scholarship.

Approaching Contemporary Slavery Through an Historic Lens: an Interdisciplinary Perspective

Rebecca Nelson

Rebecca is an AHRC-funded PhD candidate on the Antislavery Usable Past Project (<http://www.antislavery.ac.uk/>), based at the University of Hull. Rebecca's research examines the way in which museums across the UK engage with antislavery, as both an historic and a contemporary issue. She has used a mixed-methods approach to her research, working closely with museum professionals, to identify the key challenges of interpreting antislavery for public audiences. Prior to this she completed a BA Hons Degree in History at the University of York and an MA in Museum Studies at Newcastle University.

Alicia Kidd

Alicia is a third year PhD candidate, researching the relationship between conflict and contemporary slavery using empirical, qualitative research based on interviews with individuals who have fled conflict zones and individuals who have experienced contemporary slavery. She has worked in the field of contemporary slavery since 2012, and currently holds the post of Vice Chair of the Humber Modern Slavery Partnership. Alicia recently received a High Sheriff's award in recognition of great and valuable services to the community in relation to her work on contemporary slavery.

Acknowledgements

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Abstract

This article uses an interdisciplinary approach combining social justice and history to address and offer a response to critiques that argue 'slavery' is not an appropriate term for present day cases of extreme exploitation. By analysing the means and modalities through which situations of slavery are established and maintained across various temporal and geographical examples, this article highlights how the practices of the past persist in the present.

Key words: contemporary slavery, transatlantic slavery, legality, othering

Approaching Contemporary Slavery Through an Historic Lens: an Interdisciplinary Perspective

Introduction

‘Charges of slavery are unlikely to be politically compelling... when they rest on a limited historical foundation’.¹

Current critiques regarding the use of the term slavery to refer to contemporary practices rest heavily on a construction of significant difference between historic slavery and that which occurs in the present.² As Joel Quirk implies in the quotation above, use of the term ‘slavery’ in the present is flawed if it fails to consider the long history of slavery across the world. However, those critical of using the term ‘slavery’ to describe contemporary practices fail in the same way by focusing predominantly on comparing current situations with transatlantic slavery alone, thus overlooking other examples of historic slavery. Using a unique interdisciplinary approach, this article combines practitioner experience with ideas of both social justice and history. Whilst there are clearly distinct differences between historic and contemporary slavery, this article highlights some of the complex commonalities across examples drawn from a wide temporal and geographical range to demonstrate that the concept of slavery is one still relevant today.³

There continues to be no universally accepted definition of contemporary slavery. While there are numerous definitions that could be employed, the Bellagio-Harvard Guidelines are used here. They provide an approach that combines both the legal definitions and lived experience of slavery, and offer a definition that allows historic and contemporary slavery to be understood under the same rubric. The overarching theme of these guidelines is:

¹ Joel Quirk, *The Anti-slavery Project: From the Slave Trade to Human Trafficking* (Philadelphia: University of Pennsylvania Press, 2011), 250.

² Julia O’Connell Davidson, “Rights Talk, Wrong Comparison: Trafficking and Transatlantic Slavery,” 1 June, 2015, *Beyond Trafficking and Slavery*, <https://www.opendemocracy.net/beyondslavery/julia-o%27connell-davidson/rights-talk-wrong-comparison-trafficking-and-transatlantic-sl>.

³ Although legal and theoretical writing more commonly references ‘modern slavery’, this piece uses ‘contemporary slavery’. This is to avoid confusion around what constitutes ‘modern’ and what constitutes ‘historic’ slavery when the modern period of history dates back to around 1750. David Brion Davis explores the foundations of Transatlantic Slavery, which he calls ‘Modern Slavery’, in relation to the examples of enslavement in the ancient world that provide the grounding for his analysis. See: David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (Oxford: Oxford University Press, 2006), 27.

In cases of slavery, the exercise of ‘the powers attaching to the right of ownership’ should be understood as constituting control over a person in such a way as to significantly deprive that person of his or her individual liberty, with the intent of exploitation through the use, management, profit, transfer or disposal of that person. Usually this exercise will be supported by and obtained through means such as violent force, deception and/or coercion.⁴

The primary concern of this article is not definitions, but the means and modalities through which situations of slavery are established and maintained. Taking inspiration from the Bellagio-Harvard Guidelines and the common traits identified by historians of slavery, this piece addresses some of the key methods that enable(d) slavery to exist both in the past and in the present; these themes are used to structure the article.⁵

Firstly, inherent to practices of slavery both past and present is the concept of othering, which sees groups of people identified as potential victims of slavery due to their perceived differences from the enslavers.⁶ The focus of the piece then turns to ideas about legality, examining the development of legislation in recognising the state of enslavement and the ensuing governmental responses. Finally, notions of relationships are discussed, including the use of violence, ideas of ownership and property, and profit generated by slavery.

The concept of othering

Central to, and arguably the first criterion which must be satisfied in enslaving a person, is the idea that they must be different in some way from the enslaver. This construction of difference, or process of othering, is widely

⁴ Jean Allain, et al “Bellagio-Harvard Guidelines on the Legal Parameters of Slavery,” in *The Legal Parameters of Slavery: From the Historic to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012), 375.

⁵ See for example Paul E. Lovejoy, *Transformations in Slavery: A History of Slavery in Africa* (Cambridge: Cambridge University Press, 2011), 1; Davis, *Inhuman Bondage*, 27.

⁶ ‘Victim’ is the term employed here to refer to those who have been enslaved, both in the past and in the present. Ideally, the individual being referenced would offer their preferred terminology, but this article refers to a generalised notion as opposed to specific individuals. ‘Victim’ is the most appropriate generalisable term when referring both to those who have escaped enslavement and those who continue to be enslaved. For further discussions on such terminology see; Mustafa Alachkar, “Victims or Survivors?” *Avicenna Journal of Medicine* 6, no. 3 (2016), 89; Michael Papendick and Gerd Bohner, “Passive Victim – Strong Survivor”? *Perceived Meaning and Labels Applied to Women who were Raped* (Bielefeld: Bielefeld University, 2017); Jan Van Dijk, “Free the Victim: A Critique of the Western Conception of Victimhood,” *International Review of Victimology* 16 (2009): 1-33.

discussed by both historians and contemporary scholars of enslavement.⁷ Historian Moses Finley asserts that this allocation of ‘outsider status’ has always been the critical attribute in the condition of enslavement.⁸ Scholars of contemporary slavery also consider this idea of othering, but for some of those critical of the use of the term ‘slavery’ in the present day, their focus on transatlantic slavery rests predominantly in ideas of race. The idea that race is no longer a key feature of slavery forms an essential part of their argument against contemporary slavery terminology.⁹ While this is a significant point which indicates the lasting legacy of racial inequalities from transatlantic slavery, the terminology of othering includes, but is not exclusive to, ideas of race. It therefore offers a broader application in the contemporary world.

Transatlantic slavery exploited racial difference, in both its justification and its prolonged maintenance across four centuries. The economic success of this system relied on the opportunity and ability of white Europeans to enslave black Africans in a brutal, completely inhuman manner which has been widely documented. From a contemporary perspective the extent of this racism, which ‘won wide acceptance and professional authority’ across the Western world, is shocking.¹⁰ During the eighteenth and nineteenth centuries, when transatlantic slavery was at its peak however, the commonly accepted view amongst the Western European public was that of their superiority over uncivilised, ‘savage’ black Africans.¹¹ This understanding was widely spread by popular ideas in religion and through the developing arena of scientific thought, based first on descriptions from the genre of travel literature, but which progressed into biological categorisations.¹² The methods employed by the white Europeans on the black Africans were so unique in their extremity that critics, including antislavery

⁷ Othering is a method of depicting a person, or people, as different from the self and thereby can influence the ways that people interact. See Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982); Lovejoy, *Transformations in Slavery*; Davis, *Inhuman Bondage*.

⁸ Moses Finley, “Slavery,” *Encyclopaedia of the Social Sciences*, Vol. 14, (New York: Macmillan Co. and Free Press, 1968), 307-313.

⁹ Julia O’Connell Davidson and Joel Quirk, “Race, Ethnicity and Belonging,” June 15, 2015, *Beyond Trafficking and Slavery*, <https://www.opendemocracy.net/beyondslavery/julia-o%27connell-davidson-joel-quirk/race-ethnicity-and-belonging>; Lindsey Beutin, “Black Suffering for/from Anti-trafficking Advocacy,” *Anti-Trafficking Review* 9 (2017): 14-30; Michael Dottridge, “Eight Reasons Why We Shouldn’t Use the Term ‘Modern Slavery’” October 17, 2017, *Beyond Trafficking and Slavery*, <https://www.opendemocracy.net/beyondslavery/michael-dottridge/eight-reasons-why-we-shouldn-t-use-term-modern-slavery>

¹⁰ Davis, *Inhuman Bondage*, 76.

¹¹ Kathleen Wilson, *The Island Race: Englishness, Empire and Gender in the Eighteenth Century* (Abingdon: Routledge, 2003), 10-11.

¹² Nicholas Hudson, “From “Nation to “Race”: The Origin of Racial Classification in Eighteenth-century Thought,” *Eighteenth Century Studies* 29, no.3 (Spring 1996): 249-250.

activist Michael Dottridge, argue that contemporary situations of exploitation cannot be defined as slavery because they fail to adequately match the experiences of the victims of transatlantic slavery.¹³ He is referencing the experiences of the kidnapping and branding of black Africans who were transported in terrible conditions and who suffered much pain and violence in being forced to work long hours for no pay. Dottridge goes further to argue that any use of slavery as a term in the contemporary world ‘has the effect of trivialising or relativising historical slavery [referring to transatlantic slavery] and thereby reducing any sense of responsibility for the countries that profited from slavery. This fits neatly into the agenda of white supremacists.’¹⁴ Transatlantic slavery therefore offers a significant case for understanding the implications of othering in the practices of slavery and offers a point of comparison to understand whether the process of othering still has ramifications in the contemporary world. This is discussed further below.

The unique nature of transatlantic slavery, stemming from its distinct racial agenda, has been the subject of much discussion from historians, with David Brion Davis describing it as an ‘extreme case’ in terms of the extent to which slave masters viewed their slaves as an ‘entirely different species’.¹⁵ There are others, however, who illustrate that the use of race particularly in terms of ‘blackness’, is part of a longer tradition of justifying enslavement both before and since the period of transatlantic slavery.¹⁶ Patterson describes the ways in which black skin was, and is still, associated with a status of enslavement in ‘almost all Islamic societies.’¹⁷ During the eighteenth and nineteenth centuries in Russia, noblemen reimagined a separate historical origin for Russian serfs and claimed they had black bones, thereby embedding racial difference even when the enslaved were of the same ethnic group.¹⁸ Paul Freedman also analyses the way in which Western European serfs in the medieval period were frequently reduced to ‘subhuman and even black’ as a result of their exposure to the sun and soil.¹⁹ Slavery in ancient India makes reference to race, with enslavement initially linked to dark skin; a concept still present in the Caste system today in cases of debt bondage.²⁰ These

¹³ Dottridge, “Eight Reasons Why We Shouldn’t Use the Term Modern Slavery.”

¹⁴ Ibid.

¹⁵ Davis, *Inhuman Bondage*, 32.

¹⁶ Patterson, *Slavery and Social Death*, 58.

¹⁷ Ibid. 58.

¹⁸ Peter Kolchin, *Unfree Labour: American Slavery and Russian Serfdom* (Cambridge: Harvard University Press, 1987), 170-73.

¹⁹ Paul Freedman, *Images of the Medieval Peasant* (Stanford: Stanford University Press, 1999), 300-303.

²⁰ Davis, *Inhuman Bondage*, 50.

examples illustrate the complex nature of the association between race and enslavement, throughout history, extending beyond the system of transatlantic slavery.

It is also clear from a wider consideration of enslavement practices throughout history that the use of race as the sole identifying feature of a group to enslave can also be somewhat problematic. As Patterson asserts, 'it is a mistake to generalise the social alienation of the slave as necessarily ethnic.'²¹ He goes on to state that it was not, as is traditionally accepted, colour differences that became the crucial mark of enslavement in the Americas, but rather a difference in hair type between the Europeans and the Africans. This, he argues, was a consequence of skin colour being 'a rather weak basis of ranked differences in interracial societies'; firstly because of the variations between skin tone being greater than just black and white, secondly as a result of skin exposure blurring distinctions between races, and finally due to miscegenation causing the significance of colour to diminish.²² In addition, Winthrop Jordan describes the way in which the 'we - they' distinction that developed between white Europeans and black Africans was 'really a fusion of race, religion and nationality in a generalised conception of us and them.'²³ These arguments illustrate the nuanced nature of the use of race in the system of transatlantic slavery, particularly as it became more embedded in American domestic society. However, as Davis argues, looking at the world today, there can be no doubt that the racial implications of slavery in the Atlantic World have widened the gap between the enslaved and their descendants, and other non-slave groups.²⁴ Thus in discussions of transatlantic slavery, it is important to recognise the significance of race alongside additional factors that were embodied in the justification of the enslavement practice, as well as to understand the multifaceted nature of race as a criterion.

The labelling of enslaved people as outsiders is one of the crucial factors that historian Seymour Drescher purports brings together a 'large cluster of analogous institutions and relationships extending across the globe and over millennia as variations on a condition called slavery.'²⁵ Beyond ideas of race, there have been numerous other characteristics that have been employed to justify enslavement. In the earliest recorded incidents of enslavement in pre-conquest Brazil for example,

²¹ Patterson, *Slavery and Social Death*, 7.

²² Patterson, *Slavery and Social Death*, 61.

²³ Winthrop D. Jordan, *White Over Black: American Attitudes Toward the Negro* (Baltimore: Penguin Books, 1969), 97.

²⁴ Davis, *Inhuman Bondage*, 3.

²⁵ Seymour Drescher, *Abolition: A History of Slavery and Antislavery* (Cambridge: Cambridge University Press, 2009), 4.

enslavement was the result of captivity following a war.²⁶ In societies where enslavement following conquest was common, as in Ancient Rome for example, racial identification was useless as the enslaved blended in with the proletariat.²⁷ This resulted in the development of other identification methods, including shaving heads, certain styles of clothing and tattooing or branding.²⁸ In a wider view, Davis highlights how the concept of slavery was a way of ‘classifying’ the most debased social class.²⁹ Thus regardless of race, ethnicity, location or time period, a set of distinct stereotypes for enslaved people can be identified. These revolve around ideas of the enslaved being animalistic, or childlike.³⁰ These stereotypes reinforce the notion that the enslaved were different, lesser and inhuman, regardless of their origin.

The notion of othering is also clear in situations of contemporary slavery, indicating a significant historical link. Patterson highlights how ethnic and racial distinctions between victim and perpetrator in some cases of contemporary slavery serve as a method of othering the victim, as was apparent in some situations of historic slavery.³¹ Although physical, biological differences are less clearly defined in some examples of contemporary slavery, those who hold people in situations of contemporary slavery tend to see a significant difference between themselves and their victims. As Martig argues, while othering is apparent in situations like Indian debt bondage and Burmese sailors on Thai boats, it need not be solely based on race, but could be constituted by any number of identity factors.³² These situations are based on setting some level of categorical difference between perpetrator and victim. Distinguishing the victim as ‘other’ in this way is a method through which perpetrators may justify the exploitation they enforce on their victims - people they do not consider equal to themselves. As discussed, this was standard practice during many instances of historic slavery.

However, it is not just the racial differentiation between victim and perpetrator that critics raise concern over in relation to discussions of contemporary slavery. A further criticism from this group focuses on a notion of

²⁶ Davis, *Inhuman Bondage*, 27.

²⁷ Patterson, *Slavery and Social Death*, 61.

²⁸ *Ibid.* 61-62.

²⁹ Davis, *Inhuman Bondage*, 32.

³⁰ *Ibid.* 52-53.

³¹ Orlando Patterson, “Trafficking, Gender, and Slavery: Past and Present”, in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford University Press, 2012), 322-359.

³² Alexis Jonathan Martig, “Slaving Zones, Contemporary Slavery and Citizenship: Reflections from the Brazilian Case”, *Studies in Global Slavery* 4 (January 2018): 336-359.

Western superiority possessed by ‘activists’ and academics. This argument suggests that contemporary slavery is an especially Western concept and its use allows white people to believe they are rescuing the vulnerable from ‘the darkest corners of the world’ thus further embedding the concept of othering.³³ Historically, this was bound up in the public discourse of abolitionism during the eighteenth and nineteenth centuries and can be seen explicitly in the abolition logo. Manufactured by Wedgwood to huge acclaim, the design featured a kneeling, chained, African enslaved man (later versions were made depicting women) posed with the question: ‘Am I not a Man and a Brother’. Contemporary critique of this image, alongside other abolitionist campaigning tools including the Brookes Slave Ship Diagram, depicts these sources as examples of white, British abolitionists removing individuality and agency from the enslaved in their effort to ‘gift’ them with freedom.³⁴ Such imagery overlooks situations in which emancipation was achieved through black agency. Many of these images are now contested in their use by scholars and members of the African community.³⁵

Practices of othering continue in everyday life, and this expands to issues of ethnicity when it comes to the treatment of victims of contemporary slavery. In the UK, for instance, this can be seen transparently by the figures that represent the number of potential victims of ‘modern slavery’ who go on to receive Conclusive Grounds decisions. Conclusive Grounds decisions are the second stage of decision making in the process of defining a person as a victim of ‘modern slavery’ in the UK and they state that on the balance of probability “it is more likely than not” that the individual is a victim of human trafficking or modern slavery.³⁶ Those who are from countries that require asylum in the UK are considerably less likely to receive a positive Conclusive Grounds decision than those who have the legal right to live and work in the UK.³⁷ In 2017, potential victims who were from a country outside the EU were almost equally likely to receive a negative Conclusive Grounds

³³ Garrett Nagaishi, “From Utah to the ‘Darkest Corners of the World’: The Militarisation of Raid and Rescue”, 17 April, 2015, *Beyond Trafficking and Slavery*, <https://www.opendemocracy.net/beyondslavery/garrett-nagaishi/from-utah-to-%E2%80%98darkest-corners-of-world%E2%80%99-militarisation-of-raid-and-re>.

³⁴ Zoe Trodd, “Am I Still Not a Man and a Brother? Protest Memory in Contemporary Antislavery Visual Culture,” *Slavery & Abolition* 34, no. 2 (May 2013): 340.

³⁵ See Trodd, “Am I Still Not a Man and a Brother?”; Celeste-Marie Bernier, *Characters of Blood: Black Heroism in the Transatlantic Imagination* (Charlottesville: University of Virginia Press, 2012); Marcus Wood, *Blind Memory: Visual Representations of Slavery in England and America* (London: Psychology Press, 2000), 22-23.

³⁶ “National Referral Mechanism,” National Crime Agency, accessed April 20, 2018, <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

³⁷ “National Referral Mechanism Statistics – End of Year Summary 2017,” National Crime Agency, accessed March 26, 2018, <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2017-nrm-statistics/884-nrm-annual-report-2017/file>

decision as a positive one (116 and 118 respectively). In comparison, victims from the EU (including the UK) were drastically more likely to receive a positive Conclusive Grounds decision, with 545 positive and 94 negative decisions. There is clearly a problem here regarding issues of discrimination and of ideas surrounding deserving and undeserving victims, reflecting some of the wider academic discussions regarding notions of the ideal victim.³⁸ Rather than highlighting a distinction from historic slavery, this mirrors some of the structural issues at play in the past; a concept discussed further below.

The examples of othering identified in this section reflect the commonalities between the present and the past more accurately than focusing on race during transatlantic slavery alone. By showcasing concepts of othering which embody numerous, more nuanced, characteristics, it is clear that the means through which contemporary perpetrators justify their enslavement of victims, as well as the ways that governments address the issue, are not new.

The legal status of slavery

While the process of othering in the practices of justifying and tackling enslavement is a similarity reflected in historic and contemporary slavery, one of the crucial differences is the concept of legality. Historic slavery has commonly been a state sanctioned and government sponsored activity, in which wide sectors of society actively participated. In British transatlantic slavery, for example, the legal parameters in place facilitated a common understanding of enslaved people as the property of others and thus the state of enslavement was entirely transparent.³⁹ After legal abolition in 1833, understandings of slavery became less clear. While slavery has been abolished in all states, an end to the legality of slavery has not equated to an end to slavery itself, nor to an end of the acknowledgement that it continues to exist, as can be exemplified through the continued development of anti-slavery legislation.

Such legislation includes, the international agreement for the suppression of white slave traffic which was developed in 1904 and highlighted discussions of trafficking. This was expanded into a convention in 1910 and ratified by the League of Nations in 1921 where it became the 'International Convention for the

³⁸ For discussions regarding notions of the ideal victim, see: Nils Christie, "The Ideal Victim." In *From Crime Policy to Victim Policy: Reorienting the Justice System*, ed. Ezzat Fattah (Basingstoke: Palgrave Macmillan, 1986), 17-30; Ronald Weitzer, "The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade." *Politics & Society*, 35 (2007), 447-475; Michael Wilson and Erin O'Brien, "Constructing the Ideal Victim in the United States of America's Annual Trafficking in Persons Report." *Crime, Law and Social Change* 65, no. 1 (2016): 29-45.

³⁹ Finkleman, "Introduction: The Centrality of Slavery in American Legal Development." In *Slavery and The Law*, ed. Paul Finkleman (Lanham: Rowman and Littlefield Publishers, Inc., 2002), 5.

Suppression of the Traffic in Women and Children'. The League of Nations then developed the Slavery Convention in 1926, which reverted terminology back from traffic to slavery, defining slavery as "the status of a person over whom any or all of the rights attaching to ownership are exercised".⁴⁰ This was expanded with a Supplementary Convention in 1956 to include practices that were considered tantamount to slavery. Despite these discussions of slavery in international law, contemporary slavery continues to be a contested notion and there has been no universally accepted legal classification of slavery since it was a legal practice.

After the legal abolition of the British slave trade in 1807, understandings of the methods of enslavement became less clear as the process of buying and selling people was prohibited. However, those who were already working on plantations in the British colonies remained enslaved. This was further complicated following the abolition of slavery in the British colonies, when the remaining enslaved became 'apprentices' to their masters until 1838.⁴¹ Jim Stewart emphasises how the mistreatment of the formerly enslaved continued after emancipation in a way that was essentially 'slavery by another name,' particularly across plantations in the American South.⁴² Although this phrase was coined to reflect systematic racism in post-emancipation America, the idea of 'slavery by another name' can be recognised today through the experiences of victims of contemporary slavery where a 'rescue' can result in worse conditions for the victim than their enslavement.⁴³ Although there are criticisms of 'new abolitionists' failing to provide a definition that suitably differentiates between slavery and exploitation, it is clear that the line was also blurred in the past when conditions post-emancipation were akin to slavery.

Despite this level of ambiguity, what was made clear by the earlier legal achievement of the abolition of the British slave trade in 1807, was the end of state sponsored slave trading. While forms of enslavement and exploitation continued under British rule in its colonies for a further twenty-six years, the process of trading in human beings was prohibited. This trading ban was quickly extended across a wider geographical area, with British naval ships patrolling the West

⁴⁰ "Slavery Convention Signed at Geneva on 25 September 1926," UNOHCHR, accessed May 17, 2018, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>

⁴¹ "An Act for the Abolition of Slavery throughout the British Colonies; for Promoting the Industry of the Manumitted Slaves; and for Compensating the Persons Hitherto Entitled to the Services of Such Slaves," UK Government (1833), accessed September 14, 2018.

⁴² James. B Stewart, "The 'New Abolitionists' and the Problem of Race," *Beyond Trafficking and Slavery*, April 21, 2015, <https://www.opendemocracy.net/beyondslavery/james-brewer-stewart/new-abolitionists-and-problem-of-race>

⁴³ Angelo Martins, "Interview with Julia O'Connell Davidson on modern slavery." *Theory, Culture and Society*, 33 (2016): 381-390.

African coast, the Atlantic Ocean and the Americas, blocking other European slave-trading practices.⁴⁴ This state-instigated naval suppression therefore illustrates the shift in British authority views of enslavement from acceptable to unacceptable as a system of trading. In the implementation of the system of suppression there was a new government-sponsored understanding of slave trading as a criminal act, dealt with by retributive action. However, the payment of compensation to slave owners for the loss of their ‘property’ upon emancipation highlighted substantial legislative hypocrisy by failing to provide consistency in the idea that slavery was wrong. Such a lack of consistency is mirrored in contemporary slavery, where the UK government, for example, reassures the public that ‘modern slavery’ is one of its priorities, and yet conviction rates in the UK remain negligible.⁴⁵

As this section demonstrates, the concept of legality in relation to slavery has changed significantly from historic to contemporary slavery. However, despite the abolition of slavery in the past it continues to exist in the present with new forms of legislation that seek to manage it.

Relationships in the practice of slavery

In addition to this discussion about using the legality of slavery to determine the relevance of the term for today’s world, there must also be a discussion of how systems of slavery are embedded in a range of societal relations. Kevin Bales asserts that contemporary slavery is a relationship between the perpetrator(s) and the victim(s).⁴⁶ O’Connell Davidson, however, suggests that ‘Atlantic World slavery was much more than simply a relationship between individuals. ‘Slave’ was a status ascribed by the state. It conferred on the enslaved a double status as... ‘things’ (property)’.⁴⁷ This notion of the enslaved as the property of another, is an issue tackled by contemporary slavery scholars through the Bellagio-Harvard Guidelines. The guidelines, as defined in the Introduction were developed by leading property scholars in conjunction with slavery experts. The involvement of these scholars highlights the importance of understandings of property in relation to slavery.

⁴⁴ Richard Huzzey, *Freedom Burning: Anti-Slavery and Empire in Victorian Britain*. (New York: Cornell University Press, 2012), 65-66.

⁴⁵ Theresa May, “My Government Will Lead the Way in Defeating Modern Slavery,” *The Telegraph*, July 30, 2016, <https://www.telegraph.co.uk/news/2016/07/30/we-will-lead-the-way-in-defeating-modern-slavery>

⁴⁶ Kevin Bales, *Testing a theory of modern slavery* (Washington: Free the Slaves, 2006).

⁴⁷ O’Connell Davidson, “The Presence of the Past.”

The Guidelines also draw attention to the notion of violence, stating that enslavement will usually ‘be supported by and obtained through means such as violent force, deception and/or coercion’.⁴⁸ Critics of contemporary slavery, however, underline the differences in terms of violence, particularly the violence experienced by the enslaved of transatlantic slavery, as one of the factors which negates the use of slavery as the appropriate term for today. They emphasise how the transportation of black Africans into chattel slavery relied on ‘overwhelming physical force at every stage’ from kidnap to arrival at their destination.⁴⁹ In contrast, they stress that those who experience physical violence as part of a contemporary slavery situation are uncommon, and that the majority of those labelled victims of contemporary slavery have some degree of agency in the choices that led to their exploitation. Although violence is common in situations of slavery, its presence is not a defining feature and, in contrast to the views of some critics, a victim does not have to report incidents of violence in order to be acknowledged as a victim.⁵⁰

What is key to highlight here is that a lack of physical violence does not mean that a situation cannot constitute slavery, but it emphasises how perpetrators of this crime have changed with the times. Practices of slavery are age-old, however the modalities through which they occur continue to change and reform, as is true of any crime. While historic slavery, including but not exclusive to transatlantic slavery, frequently involved kidnap and violence because of a lack of punishment, changes in transportation and technology provide a wealth of new methods of enslavement for perpetrators today. These include deceiving those who are looking for new opportunities, coercing those who are looking to leave their current situation and bribing those who are desperate. Kidnapping and force are no longer essential components because there is an abundance of other methods that perpetrators can now use to recruit and exploit their victims. In the case of historic slavery, although force and physical violence was one method of enslavement, this was not what exclusively defined a situation as slavery. The end results remain comparable, while the methods of enslavement have changed in response to needs, technologies and legislation.

Another distinction between historic and contemporary slavery exists in the nature of the relationship of the system of slavery to the state (or states) in which it operates. Where historically there were slave societies, today there are societies

⁴⁸ Allain, et al “Bellagio-Harvard Guidelines on the Legal Parameters of Slavery.”

⁴⁹ O’Connell Davidson, ‘The Presence of the Past.’

⁵⁰ O’Connell Davidson, ‘The Presence of the Past.’; Legislation does not require a person to have suffered physical violence to be recognised as a victim, yet notions of ideal victimhood suggest that a person who has suffered physical violence will be more likely to receive support.

with slaves.⁵¹ The former refers to situations in which slavery was part of the norm; it was an accepted aspect of everyday society and the profits generated by the enslaved were acknowledged in the radical economic development of countries that benefitted.⁵² In contrast, because slavery is no longer an accepted part of life, given its illegal status, slave states no longer exist, but states continue to be home to victims of slavery in an era in which slavery is considered unacceptable. Both historic and contemporary states in which slavery existed/exists have profited from the exploitation of the enslaved. However, this is to a lesser extent today where slavery does not provide the foundation for economic profit. While slave societies may no longer exist, the relationship between a victim of slavery and the state in which they are enslaved continues to be an important factor in their enslavement. States may no longer confer a slave status upon a person, but the perpetuation of hostile environments and restrictive immigration policies are a pertinent factor in putting individuals at risk of slavery today.

The way in which practices of slavery are considered within relationships, both between individuals as perpetrators and victims, and between the system as a whole and the state(s) within which it operates, are crucial to the understanding of slavery and how the term can be applied to the contemporary world. While these relationships have changed over time, they continue to exist.

Conclusion

Slavery is a term that has been assigned to practices that span thousands of years across vast geographical locations, which include, but expand far beyond, transatlantic slavery. These situations all have variations, from the perpetrators to the victims and the severity of the conditions to the justifications for enslavement. Despite the differences between examples of slavery, there are features common between them all; features which continue to exist today. Given the variation between the hugely differing experiences of the past which are all defined under the term 'slavery', this article argues that such terminology remains relevant to situations that continue in the present. By discussing three of the features common to all situations of slavery, this article has addressed some of the main criticisms that suggest that 'slavery' is not a suitable term to employ in relation to current situations of extreme exploitation.

Firstly, othering was introduced to highlight how its use has persisted through time. Notions of race are often employed in discussions of how the enslaved were recognised during transatlantic slavery, however, these discussions

⁵¹ Drescher, *Abolition*, 6

⁵² *Ibid.* 6.

fail to engage with other historical examples of slavery. While race was undoubtedly a key factor in identifying and justifying enslavement in some situations of historical slavery, it was only one of numerous forms of othering used to set apart the victims from the perpetrators. Other forms of categorical differences have been used in other examples of historic slavery including differences in hair type and religious beliefs. While racial differences may be less evident in contemporary slavery, the notion of othering is still very much apparent in identifying categories of people to be enslaved and in justifying their suffering.

The article also addresses ideas of legality, where historic slavery was legal but contemporary slavery is not. While this suggests differentiation between historic and contemporary slavery, the change in legal status does not negate a situation from being classed as slavery. Using transatlantic slavery as an example, historically there were clear parameters that identified a person as the property of another. After abolition however, these parameters became much more blurred where situations of extreme exploitation that were akin to slavery, such as apprenticeship, continued to exist, but were no longer classified under the rubric of 'slavery'. While one of the criticisms regarding the use of the terminology of slavery for current situations rests on the fact that there continues to be no universally defined distinction between slavery and exploitation, it is evident that this was also the case in the past when slavery was accepted terminology.

Finally, the features of the relationships associated with practices of slavery were addressed. The Bellagio-Harvard Guidelines stipulate that the powers attaching to the right of ownership should be understood in terms of control instead of property. The reframing of these notions in this way allows for understandings of slavery to extend beyond just those situations in which a person could be legally accepted as the property of another. In this way, the legal status is negated as a defining feature of slavery because it is the control, rather than the ownership, of a person that stipulates their victimhood, thereby allowing further comparison between historic and contemporary slavery. However, relationships in situations of slavery go further than between individuals, and the link between structures and individuals must also be acknowledged. This link was particularly evident in state sanctioned historical examples of slavery, but even after the abolition of slavery, state policies have played a fundamental role in causing individuals to become vulnerable to contemporary slavery. This is particularly apparent through the perpetuation of restrictive and hostile immigration policies.

While the ways in which they have presented themselves may have varied, the commonality of these three features of othering, legality and relationships in practices of slavery have existed regardless of their temporal or geographical location. Using these features as a basis for discussion and comparison, this article

has demonstrated how such factors continue to persist today, thereby justifying the use of slavery terminology for situations in the present.

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Securing the Prohibition of Labour Exploitation in Law and Practice: Slavery, Servitude, Forced Labour and Human Trafficking in Italy, Spain and the UK

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Abstract

The fight against contemporary forms of slavery is a top priority in the current global agenda. This article reviews and assesses the domestic diversity of labour exploitation regulation. In part 1, the article reviews the concept of labour exploitation in international and European law, whilst part 2 provides an overview of three legal frameworks - Italy, Spain and the UK. A comparative analysis considers the extent to which these countries implement international legal obligations both in law and practice. Finally, the article seeks to promote cross-fertilisation of experiences and dialogue among legal practitioners, both domestically and between different countries.

Key words: human trafficking; forced labour; slavery; servitude; positive obligations

Securing the Prohibition of Labour Exploitation in Law and Practice: Slavery, Servitude, Forced Labour and Human Trafficking in Italy, Spain and the UK¹

Introduction

The fight against contemporary forms of slavery is a top priority in the current global agenda, as can be deduced from its inclusion as Goal 8.7 within the United Nations Sustainable Development Goals and the identification of labour exploitation as the predominant form of trafficking in several European countries including Belgium, Cyprus, Georgia, Portugal, Serbia and the United Kingdom.² The international legal framework aimed at tackling labour exploitation is broad, comprising a dense web of rights, obligations, and responsibilities drawn from human rights law. Despite the international legal consensus reached on the most serious forms of labour exploitation (hereinafter “labour exploitation” will be used as term which encompass all forms of exploitation recognised in law, namely, slavery, servitude, forced labour including child labour and trafficking in human beings for the purpose of labour exploitation), a key indicator as to the effective implementation of the law is the manner in which countries have incorporated the adopted international definitions into their own legal systems.³ This article will undertake an exploration of the implementation in law and practice of three European countries: Italy, Spain and the United Kingdom.

Whilst Italy has developed an integrated system aimed both at tackling the phenomenon and protecting victims, it has only recently reframed its legal framework to implement EU and international standards, and prosecutions for cases of labour exploitation continue to be rare. Interestingly, Spain prohibits trafficking in human beings while it does not envisage a crime of slavery unless it occurs within a widespread and systematic attack against the civilian population - the latter being an expansion of Article 7(1)(c) of the Rome Statute wherein enslavement constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with

¹ Labour exploitation is bad for its victims, for business and development. A better understanding of the legal framework, its complexities, overlaps and inconsistencies is intended to counter the current culture of impunity. The authors are extremely grateful to the unknown survivor who reviewed the article providing precious insights, calling for a real victims-centered approach taking care of real people with their hopes and fears.

²Council of Europe, *Group of experts on action against trafficking in human beings, 7th General report on GRETA's activities, covering the period from 1 January to 31 December 2017* (March 2018), 38.

³Jean Allain, “No effective trafficking definition exists: domestic implementation of the Palermo Protocol”. In *The law and slavery. Prohibiting human exploitation* (Leiden: Brill, 2015), 265-294.

knowledge of the attack. Servitude and forced labour are not prohibited; instead, tangible cases of labour exploitation might be brought back under the umbrella of crimes against worker's rights. In the United Kingdom, the legal framework has recently undergone significant reform. In March 2015, the Modern Slavery Act received Royal Assent, consolidating the previous legal framework and adding a reporting requirement on private companies.

This article aims at reviewing and assessing these three legal frameworks diversely placed within the spectrum of regulation, specifically targeting labour exploitation. Both strengths and weaknesses will be highlighted, as well as best practices. Such a Euro-centric focus is deliberate due to the significant jurisprudence of the European Court of Human Rights, the dual regional framework tackling human trafficking (European Union and Council of Europe) and the diversity in national approaches, as demonstrated by the three comparative domestic settings. Ultimately, this article will be of use in other regional and domestic settings where legal reform is ongoing as close attention is being paid to efforts undertaken in European Member States and has been of inspiration for other countries (see for example, Australia⁴ and India⁵).

The article is divided into three sections. First, it reviews how the concept of labour exploitation is understood in international and European law, with reference to the jurisprudential evolution that has led to the articulation of positive obligations for States. The second section provides an overview of the three domestic legal frameworks. The final section, using the internationally acknowledged three-P framework — a human rights-based approach to anti-trafficking — outlines a comparative analysis of the law in practice will provide an implementation of the domestic legal frameworks.⁶ In the final section, the paper seeks to promote cross-fertilisation⁷ of experiences and dialogue among legal practitioners, both domestically and between different countries in order to enhance future legal and policy reform.

Labour exploitation in International and European Law

International and regional law conceptualises labour exploitation as slavery, servitude, forced labour and trafficking in human beings for the purpose of labour

⁴*Ibid.*

⁵Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018.

⁶Office of the United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, (2002).

⁷Cross-fertilisation, the mixing of the ideas, customs, etc. of different places or groups of people, to produce a better result, (Cambridge Dictionary, 2018).

exploitation. The following overview of the concept of labour exploitation in international and European law will work as the backdrop against which the three domestic legal frameworks will be assessed in section three.

Slavery: a property law paradigm?

The internationally agreed definition of slavery was crystalized in the 1926 UN Slavery Convention, conceived under the auspices of the League of Nations.⁸ Pursuant to Article 1(1), slavery is “*the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*”. The prohibition of slavery has also been envisaged, although not defined, in various regional treaties. At European regional level it has been recognised within Article 4 of the European Convention of Human Rights (ECHR) and Article 5 of the European Union Charter of Fundamental Rights (EU Charter).

The prohibition of slavery has been established as a supreme rule of customary international law,⁹ and the International Court of Justice has defined protection against slavery as an *erga omnes* obligation and a *jus cogens* norm in the landmark case *Barcelona Traction* (1971).

Despite consensus on the literal terms, practical issues with regard to the interpretation of slavery continue to arise. Two positions can be identified, (i) an expansionist approach subsuming a breadth of practices within the meaning of slavery;¹⁰ and (ii) a narrower interpretation limited to ‘chattel slavery’,¹¹ with a wide range of intermediate positions.¹² Following scholars’ call for common legal

⁸Joel Quirk, *The Anti-Slavery Project. From the Slave Trade to Human Trafficking*, (Philadelphia: University of Pennsylvania Press, 2011) 23-81; Jean Allain, *The Law and Slavery. Prohibiting Human Exploitation*, (Leiden: Brill Nijhoff, 2015), 46-100.

⁹Anne Gallagher, “Using International Human Rights Law to Better Protect Victims of Trafficking: The Prohibitions on Slavery, Servitude, Forced Labor, and Debt Bondage”, in *The Theory and Practice of International Criminal Law Essays in Honor of M. Cherif Bassiouni*, ed. by Leila Nadya Sadat and Michael P. Scharf, (Leiden: Martinus Nijhoff, 2009), 410.

¹⁰For example, the approach followed by the Working Group on Contemporary forms of Slavery. See: See Office of the United Nations High Commissioner for Human Rights, David Weissbrodt and Anti-Slavery International, *Abolishing Slavery and its Contemporary Forms*, HR/PUB/02/4, New York and Geneva: United Nations, 2000), 51-54.

¹¹*Siliadin v. France*, case no. 73316/2001, ECHR [2005], 122.

¹²This has become a recurrent assertion within legal literature. See Nicole Siller, “Modern Slavery. Does International Law Distinguish between Slavery, Enslavement and Trafficking?,” *Journal of International Criminal Justice* 14, no. 2 (2016): 405-407; Esteban Pérez Alonso, ed., *El Derecho ante las formas contemporáneas de esclavitud* (Valencia: Tirant lo Blanch, 2017), 341-48.

standards,¹³ the Bellagio-Harvard Guidelines,¹⁴ drawing attention to the property law paradigm, developed a contemporary interpretation of slavery: the exercise of powers attaching to the right of ownership and the control of a person tantamount to possession.

Servitude: the victim's feeling that the condition is permanent

The prohibition of servitude first appeared under Article 4 of the Universal Declaration of Human Rights of 1948. Although it had previously been addressed by the Temporary Slavery Commission's Report when developing the 1926 Convention, ultimately it was not included in the scope of the treaty, focused on slavery and slave trade.¹⁵ The subsequent work of the *ad hoc* Committee on Slavery established by the United Nations in 1949, and a report published in 1953 by the UN Secretary General, boosted the adoption of the 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Herein, "*institutions and practices similar to slavery*" are tantamount to servitude,¹⁶ namely: debt bondage, serfdom, servile marriage (bride purchase, wife transfer and widow inheritance) and child servitude. Prohibition of servitude has also been envisaged within Article 4 of the ECHR and Article 5 of the EU Charter of Fundamental Rights.

The lack of a definition of servitude has led to its understanding as a "categorical, not definitional" concept,¹⁷ since the diversity of the four practices makes it difficult to find common elements. However, on the basis of the ECtHR case law, it has also been argued that servitude is a distinct and independent legal concept under human rights law.¹⁸ The landmark judgement of *Siliadin* (2005), provided useful insights regarding the concept of servitude as prohibited by Article 4(1) of the ECHR. It was considered as a "particularly serious form of denial of liberty" involving "in addition to the obligation to perform certain services for

¹³Jean Allain and Robert Hickey, "Property and the definition of slavery", *International & Comparative Law Quarterly*, No. 61 (2012): 916.

¹⁴Research Network on the Legal Parameters of Slavery, *Bellagio-Harvard Guidelines On The Legal Parameters of Slavery*, 2012.

¹⁵League of Nations, Temporary Slavery Commission, *Report of the Commission*, A.19.1925.VI, (Geneva: League of Nations, 1925), 10-11.

¹⁶Jean Allain, "On the Curious Disappearance of Human Servitude from General International Law," *Journal of the History of International Law* 11, no. 2 (2009): 303-332.

¹⁷Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Leiden: Martinus Nijhoff, 2013), 145, 202.

¹⁸Vladislava Stoyanova, *Human trafficking and Slavery reconsidered. Conceptual limits and States' positive obligations in European law* (Cambridge: Cambridge University Press, 2017), 252.

others, the obligation for the 'serf' to live on another person's property and the impossibility of altering his condition".¹⁹ Importantly, the Court has stressed that servitude is an 'aggravated' forced labour, and that the distinguishing characteristic lies in the victim's feeling that the condition is permanent and unlikely to change.²⁰

Forced or compulsory labour: a private sector issue

The ILO Convention No. 29 of 1930 establishes the prohibition of all forms of forced or compulsory labour. Forced labour is defined as "*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily,*" subject to several State imposed exceptions.²¹ For the purpose of overcoming theoretical difficulties, a list of indicators both to assist identification of forced labour and forced labour as an outcome of trafficking have been developed.²²

Convention No. 29 was conceived in a time when a large part of the world was under colonial rule, while forced labour now mainly occurs within the private sector (90%).²³ It was recently supplemented by the 2014 Protocol. Wherein, the need for States to not only criminalise and prosecute forced labour, but also to take effective measures to prevent the phenomenon and provide victims with protection and access to appropriate and effective remedies is stressed.²⁴

Forced labour is prohibited by Article 4(2) of the ECHR and Article 5 of the EU Charter of Fundamental Rights, with definitional deference to Article 2(1) of the ILO Convention on forced labour. In *Chowdury and others v. Greece* (2017), the European Court specified that work imposed by exploiting the worker's vulnerability (i.e. undocumented migrant) under a menace of a penalty (such as persistent and deliberate non-payment of wages) meets the definition of forced labour. While the European Court missed an opportunity to delineate the definitional boundaries of human trafficking and forced labour, the judgment has the merit of clarifying that restrictions upon freedom of movement are not a

¹⁹*Siliadin v. France*, case no. 73316/2001, ECHR [2005], 123.

²⁰*C.N. and V. v. France*, case no. 67724/09 ECHR [2012], 91. This criterion has been rejected by Vladislava Stoyanova. See: Stoyanova, *Human Trafficking and slavery reconsidered*, 255-56.

²¹Article 2, LO Convention No. 105/1957.

²²International Labour Office, *ILO indicators of forced labour* (Geneva: ILO, 2012).

²³International Labour Office, *ILO global estimate of forced labour. Results and methodology* (Geneva: ILO, 2012).

²⁴Article 8, Protocol 2014 to Forced Labour Convention 1930 & Recommendation No. 203.

necessary element for qualifying a situation as either forced labour or human trafficking.²⁵

Trafficking in human beings: a criminal justice approach

The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (Palermo Protocol) defines trafficking in persons as:

the 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.²⁶

The forms of labour exploitation which, *at a minimum*, fall within the material scope of the definition include, forced labour or services, slavery or practices similar to slavery, and servitude. In this regard, the Palermo Protocol simply reiterates the internationally prohibited forms of labour exploitation and refers to the aforementioned international instruments for definitional purposes. However, inclusion of the phrase “at a minimum” in the provision suggests that other “lesser” forms of exploitation could also be relevant to the offence of human trafficking.²⁷ As with all other forms of labour exploitation requiring prohibition, the Palermo Protocol adopts a strong criminal justice approach to tackling human trafficking²⁸ with State parties required to criminalise the offence of trafficking in persons in their domestic legal frameworks.

In Europe, Article 4 of the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings (2005) replicates the Palermo Protocol definition. Where it differs is in the emphasis on human trafficking as a violation of human rights imposing stronger legal obligations on Member States to deal with

²⁵*Chowdury and others v. Greece*, case no. 21884/2015, ECHR [2017], 123.

²⁶Article 3, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime.

²⁷United Nations Office on Drugs and Crime, *Issue paper - The concept of ‘exploitation’ in the Trafficking in persons Protocol* (Vienna: UNODC, 2015).

²⁸Marie Segrave, Sanja Milivojevic, Sharon Pickering, *Sex Trafficking: international context and response*, (Cullompton: Willan, 2012) 18; Susan Kneebone, “Protecting trafficked persons from *refoulement*: re-examining the nexus”, in *Contemporary issues in refugee law*, ed. Satvinder Singh Juss and Colin Harvey (Cheltenham and Northampton: Edward Elgar, 2013), 149.

victim protection and prevention strategies (Articles 13-26). Nevertheless, some provisions serve a dual purpose and seek to strengthen the criminalisation of human trafficking by facilitating both investigations and prosecutions (e.g. the provision of a residence permit after the 30 days reflection period, generally to assist with ongoing investigations). The text of the ECHR does not specifically prohibit human trafficking. However, the European Court, in recognition of the living instrument doctrine, has extended the material scope of Article 4 to include trafficking in persons (*Rantsev*, 2010).²⁹ Article 5, para. 3 of the EU Charter of Fundamental Rights, unlike the ECHR, includes the prohibition of human trafficking. The EU anti-trafficking framework in EU Directive No. 36/2011, transposed in all EU Member States,³⁰ takes a more expansive approach than the CoE Convention by expanding the list of forms of exploitation to include forced begging and exploitation of criminal activities.

An overview of selected national legal frameworks against labour exploitation

This section will determine the extent to which the above international legal standards are implemented in the binding instruments of three national legal frameworks under scrutiny, i.e. Italy, Spain and the United Kingdom.

Italy

Italy prohibits slavery, servitude (Article 600 CC) and trafficking (Article 601 CC) as defined at the international level while the prohibition of forced labour is not explicit under Italian criminal law.³¹ The national legal framework has evolved over the years in light of Italy's obligations under international law. Since 1998, Italy has developed a victim rights-centred approach recognised as a best practice in the field.³² In particular, Article 18 of Legislative Decree No. 286/1999 provides *all* victims of violence or severe exploitation, whose safety is endangered,

²⁹*Rantsev v. Cyprus and Russia*, case no. 25965/2004, ECHR [2010]

³⁰European Commission, *Report from the Commission to the European Parliament and the Council. Report on the progress made in the fight against trafficking in human beings (2016) as requires under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, Com(2016) 267 final (19 May 2016).

³¹As amended by Legislative Decree No. 24/2014 transposing Directive 2011/36/EU.

³²Letizia Palumbo, Alessandra Sciarba, *The vulnerability to exploitation of women migrant workers in agriculture in the EU: the need for a human rights and gender based approach*, (Brussels: European Parliament, May 2018), 58.

(regardless of migration status) with a long-term programme of assistance and social integration, as well as with a residence permit for humanitarian reasons.³³ Following the increasing attention on labour exploitation in sectors such as agriculture, Law No. 199 of 2016 introduced Article 603 *bis* CC, the so-called “caporalato” provision (illegal gangmastering). Accordingly, a key priority is to “*tackle caporalato (especially in the agricultural and construction sector) and other forms of exploitation, forced labour, child labour, slavery and irregular work, with particular focus on migrants and victims of trafficking.*”³⁴

Despite the fact that most of the criminal proceedings related to Article 600 CC concern cases of sexual exploitation, Italian jurisprudence has always used the slavery offence to punish cases of severe labour exploitation.³⁵ However, in order not to render slavery banal, it has to be proven beyond any reasonable doubt that “*victims had no possibility to determine themselves in life choices*”.³⁶

Since 2016, where cases do not meet such a high threshold, Article 603 *bis* CC envisages the prosecution of whoever directly employs or recruits workers for third parties under exploitative conditions, taking advantage of the workers’ state of need. Criminalising labour exploitation as a stand-alone offence might result in better protection for workers. Importantly, the provision includes some indicators to identify cases of labour exploitation, namely: 1) repeated payment of wages excessively below the level fixed by national collective agreements or anyway disproportionate to the quantity and quality of performed work; 2) repeated violation of regulations concerning working time, weekly-off, compulsory leave, holidays; 3) violations of safety and hygiene regulations in the workplace; 4) demeaning working conditions, methods of surveillance or housing conditions. However, despite the high correlation between the domestic definition of trafficking and the Palermo Protocol,³⁷ this provision is rarely employed. GRETA³⁸ observed that the detection of victims of human trafficking for the purpose of labour exploitation is particularly complicated in Italy due to the significant size of

³³Following Law No. 132/2018, the humanitarian permit as such as been abolished. Thus, since 5 October 2018 victims of trafficking or serious exploitation are provided with a residence permit ‘for special cases’.

³⁴Italian National Action Plan on Business and Human rights 2016-2021 (December 2016), 7.

³⁵Article 600 CC, titled ‘Reduction or maintenance in a condition of slavery or servitude’.

³⁶Italy, Court of Cassation, Decision No. 13532/2011; Italy, Court of Cassation, Decision No. 24057/2014.

³⁷Article 601 CC.

³⁸Group of Experts on Action against Trafficking in Human Beings (GRETA), the independent expert body established as part of the monitoring mechanism responsible for assessing and improving the implementation of the obligations contained in it.

the informal economy in certain sectors and the high numbers of irregular migrants working in them, in particular agriculture, construction, and the textile industry.³⁹ Finally, it is also worth noting that Article 25 *quinquies* of Legislative Decree No. 231/2001 has introduced the so-called administrative liability of the legal person both for slavery and trafficking, and more recently for labour exploitation under Article 603 *bis* CC. The sanction provided is a monetary penalty from 400 to 1,000 quotas, based on the severity of the facts, the degree of responsibility of the body as well as on the activities carried out to cancel or reduce the consequences of the fact and to inform the supervisory body about the offence. The amount of each quota — that may go from a minimum of 258.00 euros to a maximum of 1,549.00 euros — is defined by the judge considering the economic and assets status of the entity to ensure the efficacy of the penalty. If the entity or one of its organisational units is permanently used for the sole or main purpose of enabling or facilitating the commission of the crimes under Articles 600, 601 and 603 *bis* CC, the revocation of the company's licence to operate applies. In order to avoid penalties, companies shall adopt and effectively implement a compliance model, based on the analysis of the corporate context, that meets certain requirements.⁴⁰ The company, therefore, should proceed with a risk assessment to map all the possible areas of risk. In particular, the model might provide for an appropriate due diligence process carried out throughout the entire supply chain.

Spain

The Spanish Criminal Code (CC) provides for the offence of trafficking in human beings in accordance with the EU Directive No. 36/2011 (Article 177 *bis* CC). Slavery is only prohibited when occurring within a widespread and systematic attack against the civilian population.⁴¹ As for servitude and forced labour, the Spanish Criminal Code remains silent. Thus, as the Spanish CC does not provide for specific labour exploitation offences beyond the context of crimes against humanity, offences against worker's rights are applicable.⁴²

³⁹Council of Europe (2018), 34.

⁴⁰Articles 6 & 7 of the Legislative Decree No. 231/2001.

⁴¹Article 607 *bis*, para. 1.10 CC.

⁴²Ministerio de Justicia, Fiscalía General del Estado, *Circular 5/2011 sobre criterios para la Unidad de actuación especializada del Ministerio Fiscal en materia de extranjería e inmigración*, 2011; Alberto Daunis Rodríguez, *El delito de trata de seres humanos: el art. 177 bis CP* (Valencia: Tirant lo blanch, 2013), 114-119; Esther Pomares Cintas, *El Derecho Penal ante la explotación laboral y otras formas de violencia en el trabajo* (Valencia: Tirant lo blanch, 2013), 124-142; Josune López Rodríguez, *Conceptualización jurídica de la trata de seres humanos con fines de explotación laboral* (Pamplona: Aranzadi, 2016), 172-183; Ana Belén Valverde Cano, *La protección jurídico-penal de las víctimas de las formas contemporáneas de esclavitud a la luz del derecho internacional, europeo y nacional* (Madrid: Editorial universitaria Ramón Areces, 2017), 81-92.

The definition of human trafficking in Article 177 bis CC meets the normative standards established within the CoE Convention, including the three components required:⁴³ an action, the use of certain means and the purpose of exploitation, including the imposition on the victim forced work or services, slavery or practices similar to slavery or servitude or begging.⁴⁴ The irrelevance of consent if any of the means are used is also explicitly envisaged,⁴⁵ and even when not resorting to any of the means listed, if one of the actions is perpetrated with regards to minors for the purposes of exploitation, it shall be deemed human trafficking.⁴⁶

For victims of trafficking, Article 177 (11) provides for a non-prosecution clause for criminal offences committed while being exploited.⁴⁷ And more generally, the protection and assistance of trafficked victims is developed within the Framework Protocol for Protection of Victims of Human Trafficking⁴⁸ and Law 4/2015 on the Statute of Victims of Crime, which also applies for victims of slavery, servitude and forced labour. For issuing residence permits to victims of human trafficking (regardless of cooperation of the victim in criminal proceedings), Article 59 bis (4), of the Law 4/2000 on the Rights and Freedoms of Foreigners in Spain is the relevant provision.

When it comes to slavery, servitude and forced labour, it will be necessary to resort to crimes against workers' rights that makes a distinction between the workers with regular and irregular administrative status.⁴⁹ If victims are Spanish nationals, EU citizens or third-country nationals with work permits, Article 311 CC envisages imprisonment of between six months and six years to those who, by means of deception or abuse of a situation of need, impose on the workers in their service, working or social security conditions that are detrimental to, suppress or restrict the rights granted to them by law, by collective bargaining agreements or by individual contracts.

⁴³Council of Europe, Group of experts on action against trafficking in human beings, *Report concerning the implementation of the CoE Anti-trafficking Convention by Spain in its Second Round*, GRETA(2018)7 (2018), paras. 222-239.

⁴⁴Article 177 bis, para. 1 (a)

⁴⁵Article 177 bis, para. 3

⁴⁶Article 177 bis, para. 2

⁴⁷Whose application in each case will require a 'proportionality test', according to the Prosecution service document: Ministerio de Justicia, Fiscalía General del Estado. *Circular 5/2011 sobre criterios para la Unidad de actuación especializada del Ministerio Fiscal en materia de extranjería e inmigración*, 2011.

⁴⁸For an unofficial English version submitted by the Spanish authorities to GRETA for the Second Round, see: <https://rm.coe.int/168070ac7e>.

⁴⁹Which has led to some legal doctrine to see Article 312.2 CC as an instrument to combat illegal migration. See Pomares Cintas, *El Derecho Penal ante la explotación laboral*, 94-96.

Conversely, if victims are third-country nationals without a work permit, Article 312(2) CC establishes imprisonment from two to five years for those who employ them under conditions that negatively affect, suppress or restrict the rights recognised by legal provisions, collective bargaining agreements or individual contracts.

It is important to note the wide range of behaviours involved: from the most severe forms of exploitation to breach of individual contract. Consequently, to distinguish it from a mere violation of administrative law, the judiciary requires a “*plus of harm*” when interpreting these two provisions, that is to say a *substantive* limitation or elimination of the labour rights legally recognised.⁵⁰ However, owing to the ambiguity of the scope of the abuses covered, there has been a lack of consistency in its judicial interpretation.⁵¹

Taking this framework into account, the point here is whether such a legal framework is adequate to afford practical and effective protection against treatment falling within the scope of Article 4 ECHR.

Drawing on Stoyanova’s study of positive obligations emanating from Article 4 ECHR as developed in ECtHR case law,⁵² it may be argued that neither the definition in Article 177 bis nor Articles 311 and 312(2) CC meet the high standards required of the contracting parties.⁵³ Although the ECtHR has not categorically required specific labels of slavery, servitude and forced labour within States’ domestic law,⁵⁴ what implicitly emerges from the ECtHR case law is the requirement of specific criminalisation thereof, with also certain benchmarks regarding the content and the quality of the definitions.⁵⁵ In *Siliadin v. France*, the ECtHR held that ‘the member States’ positive obligations under Article 4 of the Convention must be seen as requiring the penalisation and effective prosecution of

⁵⁰Supreme Court case law (Judgement Nos. 3389/2017, 247/2017 and 494/2016).

⁵¹For example, regarding the elements of the crime described in 311 CC, there has been a lack of agreement in how to interpret the term ‘abuse of situation of need’. The judiciary sometimes has considered that this term is consubstantial to every labour relationship, and sometimes it is required a more concrete abusive situation. For an analysis of the case law on crimes against workers’ rights see Mirentxu Corcoy Bidasolo and Mir Puig, ed., *Comentarios al Código Penal* (Valencia: Tirant lo blanch, 2015), 1100-1112.

⁵²Stoyanova, *Human Trafficking and Slavery Reconsidered*. 319-426.

⁵³*Siliadin*, para. 148.

⁵⁴The ECtHR has been careful not to instruct how a criminal offence should be defined within the national legislation. In *Siliadin*, paras. 147-148; *C.N. and V. v. France*, para. 107; and *C.N. v. the U.K.*, case no. 4239/08, ECHR [2012], para. 76, the ECtHR draws its conclusions on the basis of the interpretation and the effects of those interpretations in concrete cases, not prescribing a specific definition.

⁵⁵*X and Y v. the Netherlands*, case no. 8978/80, ECHR [1985], para. 27; *Siliadin*, para. 144 and *C.N. and V. v. France*, para. 107. See also Stoyanova, *Human Trafficking and Slavery Reconsidered*, 338-51.

any act aimed at maintaining a person in [...] a situation [of slavery, servitude or forced labour]'.⁵⁶

Importantly, in *Siliadin v. France* and *C.N. and V. v. France*, one of the major reasons for finding the national criminal law inadequate to effectively prosecute the conducts described in Article 4 were that the relevant criminal law provisions were open to very different interpretations by the judiciary.⁵⁷ Also, in *C.N. v. the U.K.*, the ECtHR explicitly envisaged that applying other legislative provisions criminalising certain aspects of slavery, servitude or forced labour, such as threats or illegal detention, leaves victims of conduct prohibited by Article 4 without any remedy.⁵⁸

In sum, building on the ECtHR's doctrine on positive obligations, Article 4 is not neutral concerning the assessment made at the national level of the different possible legal basis for prosecution. Specific criminal labels of slavery, servitude and forced labour are necessary because they have an impact on how these abuses are interpreted.⁵⁹ States could be in breach of Article 4 when definitions of these crimes are ambiguous, as with Articles 311 and 312(2) of the Spanish Criminal Code.

The United Kingdom: England, Wales, Scotland and Northern Ireland

In the UK, the legal framework was recently reformed to consolidate the existing provisions prohibiting slavery, servitude, forced labour and human trafficking. The criminalisation of labour exploitation in the UK is subject to three separate pieces of primary legislation: *Modern Slavery Act 2015 (England and Wales)*; *Human Trafficking and Exploitation (Scotland) Act 2015*; and *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*.

Prior to this reform, the offence of human trafficking for sexual exploitation, had been criminalised in 2003⁶⁰ the scope of which was extended in 2004 to include slavery, forced labour, the removal of organs, the provision of all types of services and benefits.⁶¹ The stand-alone offence of slavery, servitude or forced and

⁵⁶*Siliadin*, para. 112.

⁵⁷*Siliadin*, para. 147.

⁵⁸*C.N. v. the U.K.*, para. 76.

⁵⁹Stoyanova, *Human Trafficking and Slavery Reconsidered*, 340-1.

⁶⁰Section 57-59 Sexual Offences Act 2003 England, Wales and Northern Ireland; Section 22 Criminal Justice (Scotland) Act 2003, as amended by the Criminal Justice and Licensing (Scotland) Act 2010.

⁶¹Section 4 Asylum and Immigration (Treatment of Claimants) Act 2004 extending to Scotland as amended by Section 46 Criminal Justice and Licensing (Scotland) Act 2010.

compulsory labour was introduced in Section 71 of the *Coroners and Justice Act 2009* following a finding of the ECtHR of non-compliance with the positive obligation “to adopt criminal law provisions which penalise the practices referred to in Article 4 [ECHR] and to apply them in practice”.⁶² Such a piecemeal approach was subject to reactions from GRETA who considered that the domestic legal framework needed to be addressed in order to be in full conformity with the CoE Convention.⁶³ Thus, the enactment of the newly consolidated legislation in 2015 was considered as a significant shift towards a holistic approach to tackling labour exploitation.

The clear distinction between slavery, servitude and forced labour in international law has been highlighted (section 2), however the domestic provision does not distinguish between the different practices, consolidating them into one provision with one punishment. Also, the material scope of the offence is not specified with deference to the understanding of slavery, servitude and forced or compulsory labour, according to the jurisprudential interpretation of Article 4 ECHR, in accordance with the international legal standards and definitions. Despite the consolidation of the legal framework, differences exist between the domestic human trafficking offences, leaving a patchwork of provisions that are not only in conflict with the international definition but also with each other. Firstly, in England, Wales and Northern Ireland, the individual must **arrange or facilitate the travel** by *recruiting, transporting or transferring, harbouring or receiving, or transferring or exchanging control over* another individual (emphasis added). Such a two-tiered understanding of the action element—requiring the facilitation or the arrangement of the travel of another in combination with another action⁶⁴—is in stark contrast to the international and regional (and Scottish) understanding of trafficking in persons which does not require any movement.⁶⁵ Secondly, whilst the consent of the individual is irrelevant in all jurisdictions, there are differences as to what the consent refers. For instance, in England, Wales and Northern Ireland the consent refers to the travel and not to any of the other actions,⁶⁶ whereas in Scotland, the consent refers to *any* of the relevant

⁶²*C.N. v. the U.K.*, para. 89.

⁶³Council of Europe, *Group of experts on action against trafficking in human beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom Second Evaluation Round*, GRETA(2016)21 (2016), 5.

⁶⁴*Ibid.*, 65.

⁶⁵Section 1, Human Trafficking and Exploitation (Scotland) Act 2015.

⁶⁶Section 2(2) Modern Slavery Act 2015, Section 2(5) Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

actions.⁶⁷ Thirdly, the legislation for all three jurisdictions includes a separate provision that outlines the meaning of exploitation for the purposes of the offence of trafficking in persons. However, in contrast to the EU Directive and CoE Convention, the forms of exploitation are explicit and constitute an exhaustive list. Therefore, in all jurisdictions, trafficking for the purpose of labour exploitation is limited to three forms of exploitation: slavery, servitude and forced labour. Yet, it remains to be seen how the courts will interpret “*the securing of services or benefits*,” as this could be applied to a situation of labour exploitation.

In addition to the consolidation of the criminal framework, the UK legal reform led to some good practices in tackling labour exploitation. The supply chain transparency clause in Section 54 of the Modern Slavery Act 2015 places a reporting obligation on businesses to outline the measures taken to ensure that their supply chain is free of modern slavery. However, the strength of this provision is hindered as companies do not face any penalty for non-submission of the report, and indeed for reporting that they have not taken any steps to ensure that their business is not complicit in exploitation.⁶⁸ The defence of non-prosecution for victims of slavery and trafficking who have engaged in criminal activity and the provision of support and assistance regardless of cooperation of the victim in criminal proceedings (Italy and Spain above) demonstrates the extent to which the legislation seeks to be victim centred. However, whilst victim protection is a desired aim of the legislation, subsequent legal provisions, such as the confiscation of wages as proceeds of crime in instances of illegal employment⁶⁹ may hinder the identification of potential victims in the first instance. This is particularly of concern for those with an irregular status who may already fear approaching authorities and may be in contradiction to the non-punishment defence available to trafficking victims.⁷⁰

Application of the law in practice: a comparative analysis

While having discussed three legal frameworks diversely situated within the spectrum of regulation, the remainder of the article engages in a comparative analysis of the application of the law in practice by employing the globally accepted model for effective anti-trafficking law and policy responses, the three P’s (prohibition, prosecution and protection).

⁶⁷Section 1(3) Human Trafficking and Exploitation (Scotland) Act 2015.

⁶⁸National Audit Office, Report by the Comptroller and Auditor General, Reducing modern slavery, HC 630 Session 2017-2019 15 December 2017, 26-27.

⁶⁹Section 34(3), Immigration Act 2016.

⁷⁰Section 8 Modern Slavery Act 2015; Council of Europe (2018), 65.

i. Prohibition. The article observes a strong influence of the international and European legal frameworks on national law when it comes to the development of offences that prohibit forms of labour exploitation.⁷¹ The analysis of the national legislation demonstrates that all countries have undertaken recent legal reform in order to seek compliance with EU law. However, despite the clear shift towards aligning domestic legislation with international obligations, the material scope of the provisions is still not always consistent with the international and regional understanding of labour exploitation. For instance, the requirement of movement in England, Wales and Northern Ireland limits the applicability of human trafficking (section 2) and in Spain, the need to demonstrate a “widespread and systematic attack against the civilian population” leads to a very narrow domestic understanding of slavery. Where domestic interpretation remains strict, and in the absence of specific offences, the introduction of alternative offences such as the new Italian provision on labour exploitation (Article 603 *bis* CC) or Article 311 and Article 312.2 of the Spanish Criminal Code could provide an opportunity to ensure the protection of workers from exploitation.

It is also possible for existing criminal offences to be employed at the prosecutorial phase where appropriate, including offences against the public order, such as fraud; sexual offences; and offences against the person, such as false imprisonment, threats, injuries, coercion.⁷² Such an approach is used in practice in prosecutions to fill any legislative gap.⁷³

These issues give rise to two concerns: first, it may establish an excessively wide margin of interpretation for the courts. Second, it might lead to different treatment of victims depending on whether they can prove that they have also been subjected to other offences which often, but not necessarily, accompany the offences of slavery, servitude or forced labour. It is once again relevant to reiterate that the ECtHR found such an approach to be inadequate, as it did not afford practical and effective protection against treatment falling within the scope of Article 4 of the Convention, as explained in the previous sections.⁷⁴

ii. Protection. The analysis primarily identifies two good practices among the States to tackle labour exploitation: first, the increasing attention on legal persons and the creation of models of corporate responsibility shifting from the traditional

⁷¹Office of the High Commissioner for Human Rights (2002), Guideline 4.

⁷²Amy Weatherburn, *File study of modern slavery cases in England and Wales*, part of doctoral research (on file with author).

⁷³*C.N. v. The United Kingdom*, para. 56.

⁷⁴*Ibid.*, 76.

focus on individual liability and State action, especially in Italy and the UK. Second, a more victim-centred approach with legal provisions foreseeing non-prosecution for criminal offences committed while being exploited (required by Article 26 CoE Convention and Article 8 of the Trafficking Directive), and the issue of resident permits for trafficked victims regardless of cooperation of the victim in criminal proceedings.

Yet the effective application of measures of assistance and protection of victims of severe forms of exploitation is hindered by several considerations which are present, in greater or lesser extent, in the three States. First, a focus on human trafficking for the purpose of sexual exploitation, and much less efforts dedicated when it comes to other forms of severe exploitation⁷⁵ leading to the exclusion of access to protective measures for trafficked persons who were not subject to sexual exploitation.⁷⁶ This is not the case in the UK, where access to the National Referral Mechanism is guaranteed to all victims of modern slavery offences.⁷⁷

More generally, all jurisdictions prevent full protection of irregular migrants from exploitation, by legal provisions that are designed to prevent illegal migration. Consequently, in the UK, the focus on immigration and illegal working offences leads to concerns about the willingness of victims to come forward,⁷⁸ and the restriction of access to services such as housing could result in increased dependence being placed on exploitative employers who often provide sub-standard living conditions and restricts the ability to escape. Similarly, the crime of irregular entry or stay under Article 10 *bis* of the Italian Consolidated Immigration Act may result in impunity for exploiters, making (undocumented) migrants more vulnerable to human rights abuses. As a consequence, victims of trafficking in Italy have often been categorised as irregular migrants, thus not identified as victims.⁷⁹ Particular challenges arise when identifying victims in mixed migration flows, in particular with regards to cases where the victims have been exploited outside of

⁷⁵Council of Europe, *Report concerning the implementation of the CoE Anti-trafficking Convention by Spain in its Second Round* (2018), paras. 16, 168, 195.

⁷⁶In Spain, trafficked persons for non-sexual forms of exploitation are only eligible for protection of the general regime of victims' rights under Law 4/2015 on Statute of Victims of Crime. This is not the case in Italy, where - however - there still is a tendency to identify victims of sexual exploitation, while victims of labour exploitation have received so far less attention.

⁷⁷European Commission, *Report from the Commission to the European Parliament and the Council. Second report on the progress made in the fight against trafficking in human beings (2018) as requires under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, Com(2018) 777 final (3 December 2018), 2.

⁷⁸Council of Europe (2016), 39.

⁷⁹UN Special Rapporteur on Trafficking in persons, especially women and children, *Report of the Special Rapporteur on trafficking in persons, especially women and children - Joy Ngozi Ezeilo. Mission to Italy*, UN Doc., A/HRC/26/37/Add.4, (1 April 2014), 33.

the jurisdiction of the State. And in Spain, the access to assistance and protection mechanisms is hampered by two considerations: first, it still remains in practice heavily reliant on the victim's cooperation in criminal investigation,⁸⁰ and second, is hindered by the deficiencies in victim detection mechanisms, especially as part of border control procedures.⁸¹

iii. Prosecutions. It is finally interesting to assess the overall impact of national legislation by referring back to the original objective when drafting and being developed as part of the legislative process. Indeed, in all three countries, one of the principal aims of consolidating the criminal legal framework was to assist in facilitating and increasing the identification of victims and the successful prosecution of labour exploitation offences. In all three jurisdictions prosecutions remain low: as in Italy⁸² and Spain,⁸³ convictions are exceptional and in the UK, acknowledging the rise in referrals and crime reporting, prosecutions have increased⁸⁴ but overall remain low.⁸⁵

Prior to prosecution, it is important that alleged cases of exploitation are reported and brought to the attention of the authorities. In all countries, as a result of increased awareness of labour exploitation, reporting and referrals to National Referral Mechanisms have increased. However, in some instances, the data recorded does not always cover all forms of labour exploitation, but only refer to trafficking. For instance, in Italy no official data is available on serious forms of exploitation in the country (i.e. illegal employment of third country nationals under particularly exploitative working conditions, labour exploitation under Article 603 *bis* CC, slavery and servitude). Only data concerning trafficking is recorded, although not always made publicly available. This was the situation in Spain until

⁸⁰Council of Europe, *Report concerning the implementation of the CoE Anti-trafficking Convention by Spain in its Second Round* (2018), paras. 139, 151.

⁸¹*Ibid*, paras. 147-9.

⁸²Associazione per gli studi giuridici sull'immigrazione, *La tutela delle vittime di tratta e del grave sfruttamento: il punto della situazione oggi in Italia* (2015), <http://www.asgi.it/notizia/look-out-report-sfruttamento-lavorativo-tratta-italia>; U.S. Trafficking in persons Report 2016, 214-216. In 2014 Italian authorities investigated 2,897 suspected traffickers (3,803 in 2013), 824 were prosecuted (1,024 in 2013), 169 were convicted and appeals courts affirmed convictions of 184 defendants (representing a significant increase from the 74 traffickers convicted and 108 convictions upheld in 2013).

⁸³Center of Intelligence against Terrorism and Organised Crime (CITCO), *Balance Sheet 2017 on Prevention and Fight Against Human Trafficking in Spain* (2017).

⁸⁴Crown Prosecution Service prosecuting and convicting more cases of rape, domestic abuse, sexual offences and child abuse than ever before. See Crown Prosecution Service, *Violence against Women and Girls Crime. Crime Report 2015-16*, (September 2016).

⁸⁵National Audit Office, (2017) 43. In 2016, 80 defendants were prosecuted under the Modern Slavery Act for 155 modern slavery offences, rising from 26 in the previous year for 27 offences.

2015, when data collection was mainly focused on cases of human trafficking for purpose of sexual exploitation. However, as of 2015, cases involving labour exploitation are also collected.⁸⁶ In Italy, for the legislative objective of increased prosecution to be achieved, comprehensive data disaggregating labour trafficking cases should be provided.⁸⁷ Conversely, in the UK referrals to the National Referral Mechanism have increased.⁸⁸ As a result of a new requirement to refer all NRM cases to the police, there has also been a marked increase in the number of crimes reported.⁸⁹ However, the impact on such increases are taking a toll on the workload of police forces who have raised concerns about the complexity of ‘modern slavery’ investigations and the impact on resources.⁹⁰

Barriers to effective investigation and prosecution of slavery and trafficking include the complexity of the case which can lead to a lack of access to evidence, and impediments to accessing victims and their testimony, including the reluctance of victims themselves to cooperate for fear of further harm (i.e. imprisonment or deportation).⁹¹ One area of best practice in this regard, that encourages and facilitates effective prosecution, is the provision of a renewable residence permit to those who have received a positive conclusive grounds decision when their personal situation warrants it or when they are co-operating with the authorities in criminal investigations or proceedings and their presence in the country is required for this purpose.⁹² Italy goes even further providing, since 1998, for the issue of a special residence permit to third-country nationals subject to violence or serious exploitation without requiring the victim’s co-operation in criminal proceedings.⁹³ Besides, victims will not decide to report exploitation if they know that, once the trial is over, they will have to leave the country and go back to their State of origin, where other members of the same organization are waiting to punish and kill

⁸⁶However, as noted by the GRETA Report, the figures do not reflect the real scale of the phenomenon due to the absence of a comprehensive approach to detecting and combating all forms of human trafficking. See Council of Europe (2018), paras. 16 and 17.

⁸⁷U.S. Department of State, *Trafficking in Persons Report - June 2017*, 2017, 221-223.

⁸⁸National Crime Agency, *National Referral Mechanism Statistics - End of Year Summary 2016* (7 April 2017), 3, <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics/788-national-referral-mechanism-statistics-end-of-year-summary-2016/file> (1745 in 2013 to 3805 in 2016).

⁸⁹National Audit Office, (2017) 43., 159% increase in England and Wales from 870 in 2015-16 to 2,255 in 2016-17.

⁹⁰Ibid.

⁹¹Office of the High Commissioner for Human Rights (2002), Guideline 5.

⁹²*Ibid*, Guideline 4; Article 14(1), COE Convention.

⁹³Article 18, Consolidated Immigration Act, 1998.

them.⁹⁴ The rationale behind unconditional protection is, thus, simple: information from victims is crucial to really fight the exploiters. Such approaches are recognised as a best practice in the field,⁹⁵ though a victims-centred approach is still more an exception than a rule.

Operational and societal challenges to eradicating this phenomena exist, such as low incentives for conducting costly, time-consuming and often dangerous transnational investigations and a social acceptance of some forms of exploitation, that is reflected in the lack of political will to eradicate such phenomena.⁹⁶ Some of these barriers can be overcome by pursuing a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation by encouraging regular and co-ordinated multi-agency inspections: a recommendation explicitly given to Spain and the UK.⁹⁷

Concluding Remarks

A strong national legal and policy framework compliant with international standards is widely recognised as the foundation for an effective criminal justice response against labour exploitation.⁹⁸ However, a criminal justice response alone is insufficient.

A complex set of responses is required that intertwine issues of law enforcement, border control, and human rights, also tackling the root causes of the phenomenon. States should also support due diligence by both private and public sectors to prevent and respond to the risk of labour exploitation (see provisions for corporate entities in Italy and UK). This is crucial because companies have an increasing business interest (e.g. reputational risk) in not being linked to slavery, servitude, forced labour and human trafficking, especially in the context of increasing global supply chains.⁹⁹

⁹⁴Rosa Raffaelli, *The Protection of Trafficking Victims: Does Criminal Law Really Require the Sacrifice of Human Rights?*, STALS Research Paper, 13/2008, http://www.stals.sssup.it/files/STALS_Raffaelli.pdf.

⁹⁵Organisation for Security and Co-operation in Europe, *Report by Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to Italy from 17-18 June and 15-19 July 2013* (2013), para. 9.

⁹⁶Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, *Stolen freedom: the policing response to modern slavery and human trafficking*, October 2017.

⁹⁷Council of Europe (2016) 42; Council of Europe, *Report concerning the implementation of the CoE Anti-trafficking Convention by Spain in its Second Round* (2018), paras. 90, 110, 145, 151.

⁹⁸Anne Gallagher, *The International Law of Human Trafficking* (Cambridge: Cambridge University Press, 2010), 370-413.

⁹⁹Henry Petersen, and Fred Lemke, "Mitigating Reputational Risks in Supply Chains", *Supply Chain Management* 20, no. 5 (August 2015): 495-510.

Conducting such comparative analysis of the legal frameworks identifies areas where there are still deficits in the full compliance with international legal obligations, as a result of competing interests such as “crimmigration”.¹⁰⁰ Nevertheless, for the overall effectiveness of anti-trafficking law, it is important to ensure that a criminal justice response is holistic by ensuring compliance with a human-rights based 3Ps approach.

Italy should rigorously investigate and prosecute labour exploitation cases with a special attention to those sectors known for high incidences of undeclared work (e.g. agriculture, construction and the textile sector)¹⁰¹; provide adequate long-term funding to NGOs assisting victims of labour exploitation; and implement nationwide awareness-raising campaigns.

Spain should review its legislation to fully comply with international standards and effectively protect victims of labour exploitation. Not having specific criminalisation may lead to non-investigation of situations which meet the threshold of slavery, servitude or forced labour, which could eventually result in a failure of the State to accomplish the positive obligations under Article 4 of the ECHR.¹⁰²

The UK should develop a comprehensive monitoring and evaluation framework for effective implementation of anti-trafficking laws across all jurisdictions;¹⁰³ ensure implementation of special measures for victims to ensure a victim centered approach to participation in criminal proceedings and make sure that subsequent migration law does not adversely impact upon the modern slavery framework.

All three countries have adopted law and policy measures to tackle labour exploitation, however, this article has identified areas where further reform could be beneficial to ensuring that all persons subjected to exploitative working conditions are identified and protected. Exploitation training should be mandatory for all law enforcement, migration officers and social workers to improve responses to victims, ensuring they are not prosecuted as irregular migrants.

¹⁰⁰Juliet Stumpf, “Two profiles of Crimmigration Law: criminal deportation and illegal migration”, in *Globalisation and the challenge to criminology*, ed. Francis Pakes (London: Routledge, 2013).

¹⁰¹Council of Europe (2018), 34.

¹⁰²See case law of Article 4, European Court of Human Rights.

¹⁰³National Audit Office (2017).

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Strategic Litigation as a Tool to Combat Modern Slavery

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James Sinclair is an English lawyer, academic researcher and social entrepreneur. He qualified as a barrister in 2001 and spent the first five years of his practice working principally on international litigation matters. In 2006, James co-founded FSI Worldwide, an organisation dedicated to protecting vulnerable workers from exploitation and abuse in international labour supply chains. The company has now taken many thousands of people out of modern slavery networks by providing them with ethical employment opportunities. In recognition of their humanitarian impact, FSI won the 2013 United Nations Business Leaders Award and received commendations from the Thompson Reuters Foundation and International Stability Operations Association in 2017 and 2018. The company now operates in several countries across Asia, the Middle East, the UK and US. In 2018, James was named by Sustain Worldwide as one of the top 100 modern slavery influencers in the UK. James holds a Bachelor's Degree in Philosophy, Politics and Economics from York University, a Graduate Diploma in Law and Bar Vocational Qualification from the University of Law, and a Master's Degree in International Relations from King's College London. He is a registered Barrister and practicing Solicitor. He won four Lincoln's Inn Law Scholarships and is a Fellow of the Royal Society of Arts.

Abstract

The legal, political and commercial landscape surrounding modern slavery has developed significantly since 2008. However, the relative weakness of enforcement mechanisms within legislation designed to combat labour exploitation has meant that there have been few meaningful changes to abusive commercial practices. This article explores whether corporate accountability litigation could fill the enforcement void. It looks at the prospects for such litigation in the UK and concludes that there are significant challenges to be overcome. For litigation to be a successful lever of corporate change, it will require jurisprudential developments, extensive resourcing and dedicated, persistent professionals.

Key words: vicarious corporate accountability; slavery in supply chains; corporate veil; transnational litigation; Modern Slavery Act

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Introduction

The term ‘modern slavery’ has gradually entered the political and legal lexicon since the passage of the US Victims of Trafficking and Violence Protection Act 2000. Modern slavery encompasses many harmful activities, including, forced labour, bonded labour, child labour, trafficking for sexual or labour exploitation, and many associated forms of abuse. Such abuses are thought to affect over 40 million people worldwide at any given time.²

It is often difficult to delineate one form of modern slavery from another and they frequently co-exist within the same scenario. For example, a migrant worker recruited in Nepal may be required to pay a large fee to obtain his or her job. A 2017 report published by Amnesty International suggests that the average fee payable by Nepalese workers for construction work in the Middle East is \$1,346.³ More lucrative security roles in high threat environments can command higher fees of between \$4,000 and \$5,000.⁴ As the worker is unlikely to have sufficient funds to pay this fee, he or she may have to borrow the money at very high rates of interest from a local money broker. The Amnesty report found that such interest rates averaged 36% per year.⁵ Professor Ray Jureidini has found rates as high as 60%.⁶ This ‘debt bond’ means that the worker will have to dedicate a significant part of their wages to debt repayments for months or years of their employment. If their case were to be studied, this worker would be classified as one of the 8

¹ This article represents an academic debate in uncertain legal terrain, it is not legal advice and should not be relied upon as such.

² Alliance 8.7, *Global Estimates of Modern Slavery: forced labour and forced marriage* (Geneva: International Labour Organisation, Walk Free Foundation and International Office for Migration, 2017), 7, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf.

³ Amnesty International, *Turning people into profits: Abusive recruitment, trafficking and forced labour of Nepalese migrant workers* (London: Amnesty International Ltd, 2017), 38, <https://www.amnesty.org/download/Documents/ASA3162062017ENGLISH.PDF>.

⁴ James Sinclair, “Contractorisation and bonded labour in military and diplomatic outsourcing of security services”, in *Public procurement and human rights: Opportunities, risks and dilemmas for the state as buyer*, ed. Claire Methven O’Brien and Olga Martin-Otega (London: Edward Elgar, forthcoming).

⁵ Amnesty International, *Turning people into profits*, 27.

⁶ Ray Jureidini, *Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab States corridor* (Geneva: International Labour Organization, 2016), 8.

million people working in the global private economy thought to suffer from bonded labour practices.⁷

However, it is also quite likely that the worker may have been deceived as to the true nature of the job that awaited them. Jureidini has documented the common practice of contract substitution, whereby a job seeker is promised terms and conditions of employment during their recruitment process, which differ materially from those which eventually govern their service.⁸ At the job site, the worker may also find that they are forced to live in squalid conditions and may be prevented from resigning, by threats from the employer, identity document retention, or via the imposition of exit visa requirements which have been a feature of the *Kafala* system of employment regulation in several Middle Eastern countries for decades.⁹ These instances of deception, coercion and lack of freedom may mean that the bonded worker is also in a form of forced labour. Additionally, their case would almost certainly meet the threshold for human trafficking, defined as the movement of people for the purpose of exploitation, whether for sexual purposes or for work.

As shocking as such a scenario may seem to some readers, this is the reality of life for millions of vulnerable workers, particularly migrants and those with lower-value skills. Moreover, it is an existence lived within the supply chains of well-known global companies. Such companies have come under much greater scrutiny over recent years as a result of changes to legislation and a growing consumer intolerance of corporate wrongdoing. These legislative developments have largely come from the US, the UK and France. The UK passed the Bribery Act in 2010 and the Modern Slavery Act in 2015. The US has incrementally strengthened its Trafficking in Persons Regulations since 2009 and France introduced its ‘Duty of Vigilance’ law in 2017. However, there is an increasing realisation that new laws have not resulted in much meaningful additional pressure on companies to root out modern slavery abuses in their supply chains. As such, activists and lawyers are looking to strategic litigation to force companies to take more seriously the duties they owe to the workers who help create the value in their organisations.

⁷ Alliance 8.7, Global Estimates of Modern Slavery, 7.

⁸ Jureidini, Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab States corridor , 11.

⁹ In September 2018, the government of Qatar enacted Law No.13 of 2018, which substantially abolishes the requirement for migrant worker exit visas, a significant change to the *Kafala* system.

The law as a lever of change

Vicarious accountability

The type of litigation under consideration in this article is unusual; it is *vicarious* corporate liability litigation. This means establishing responsibility on the part of one company for wrongdoing committed by another company, albeit one with which the first company shares a close relationship. The circumstances under which the law will permit one party to be held liable for the wrongdoing of another party are restricted. In company law, this is reflected in a doctrine known as the *corporate veil*, which separates companies into distinct legal personalities with separate directors and shareholders. However, there are instances when the courts have determined that vicarious liability can be ascribed. Typically, in such cases the Claimant asserts that a parent company, domiciled in a well-regulated jurisdiction should be held liable for the actions of a subsidiary company that it owns and/or largely controls in a less well-regulated jurisdiction. Several such cases have reached the English courts in recent years, including *Lungawe and others v Vedanta Resources PLC and Konkola Copper Mines PLC*¹⁰ and *Okpabi and others v Royal Dutch Shell*.¹¹ The jurisprudence is still developing in this area, but these cases indicate a direction of travel in which a general principle is established that there are circumstances in which parent companies can and should be held liable for the wrongdoing of their subsidiaries overseas. This could have profound consequences for global corporations operating in jurisdictions where modern slavery and other corrupt practices are rife. Previously, such companies have relied on lengthy and opaque supply chains, complete with liability clauses flowing down the contractual chain, and the *corporate veil* rule, to insure themselves against liability for labour and environmental abuses.¹² If these mechanisms are no longer effective, it creates a problem for global companies and an opportunity for human rights lawyers and activists.

There are several potential reasons for seeking to bring claims in parent company jurisdictions of, say, the UK, US or France as opposed to the courts of the countries in which the harm originates or materialises. Three obvious reasons are: (i) because the rule of law is often stronger and the chances of a fair trial are therefore higher; (ii) because the bulk of the assets and insurance cover held by the

¹⁰ *Lungowe & others v Vedanta Resources PLC and Konkola Copper Mines PLC* [2017] EWCA Civ. 1528.

¹¹ Examples include *Lungawe and others v Vedanta Resources PLC and Konkola Copper Mines PLC* [2017] EWCA Civ. 1528; *Okpabi and others v Royal Dutch Shell and another* [2017] EWHC 89.

¹² Kamil Omoteso Hakeem Yusuf, "Accountability of transnational corporations in the developing world: The case for an enforceable international mechanism," *Critical Perspectives on International Business* 13, no. 1 (2017): 64, <https://www.emeraldinsight.com/doi/pdfplus/10.1108/cpoib-08-2014-0040>.

company group are likely to be held in, or controlled from, the parent jurisdiction; and (iii) because the reputation impact, and thus the prospects of corporate culture change, will be greater in a media rich environment.

In the analysis that follows, I sketch out some of the challenges and opportunities associated with corporate accountability litigation in the UK. For those who would like to see greater transnational corporate accountability, there are reasons for optimism, even if that must be tempered by the very real challenges that lie ahead.

Factual matrix

For the purposes of this analysis, I will apply the following fictitious factual matrix (hereinafter called the ‘Test Case’) to all the legal scenarios considered below. A ‘parent’ company — the senior company with a significant ownership stake or *de facto* operational control within a group of companies — is domiciled in the UK. The parent company partially owns and/or controls a Middle Eastern based subsidiary, for example in the construction or hospitality sector. The subsidiary engages a recruitment agent in a labour source country to recruit workers for a project. The workers are subject to bonded and forced labour practices, paying illegal fees to the agent and then suffering additional, consequential harms. The fees are used to pay kickbacks to senior managers at the subsidiary and both the subsidiary and the parent company gain or retain a commercial advantage by, effectively, paying nothing for the recruitment of their workers and/or receiving kickbacks from the recruitment agent and saving money on other employer liabilities. The basic parameters of the Test Case are not unusual and are documented extensively in Jureidini’s research.¹³

Criminal Litigation

Bonded and forced labour abuses are not simply breaches of internationally accepted standards of employment and, in many jurisdictions, crimes. They also give rise to sources of unlawful financial benefit for the companies ultimately employing the abused workers. This financial benefit can arise in several ways; in saving recruitment fees and thus obtaining a competitive advantage when bidding for contracts, in savings resulting from paying wages or other benefits below the legal minimum, and in the receipt of illegal kickbacks from source country recruitment agencies. Any one of these illicit financial benefits could potentially

¹³ Jureidini, Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab States corridor.

give rise to criminal prosecutions in the UK under two statutes; the Bribery Act 2010 and the Proceeds of Crime Act 2002.

Bringing proceedings for offences relating to forced or bonded labour practices under either of these Acts would be extremely challenging. Cases would require very specific sets of factual circumstances, uncommonly strong and direct evidence of corporate wrongdoing, and, in some circumstances, the prior personal consent of the Director of Public Prosecutions applying a public interest test.¹⁴ As these circumstances currently appear unlikely in the UK context, this article will not focus on the UK criminal litigation angle.

Civil litigation

An alternative approach is to bring a claim in the civil courts for financial compensation based on common law principles of negligence. This would have the benefit of obtaining a form of remedy or redress for the victims, a key consideration and part of the third limb of John Ruggie's 'Respect, Protect, Remedy' formulation in the UN Guiding Principles on Business and Human Rights.¹⁵ It would also bring significant media scrutiny to the operations of the defendant company and, potentially, impose a meaningful financial sanction on them. Several such cases have been brought by environmental activists against multinational extractive companies in recent years. Claimants in these cases have typically argued that the local subsidiary company has engaged in acts of environmental destruction harmful to local people and that the UK domiciled parent company should be ultimately responsible for those losses. A case alleging modern slavery abuses would be brought along similar jurisprudential lines; a UK based parent company should be held liable for modern slavery practices within its international operations.

A key current case in this area of law is that of *Lungowe & others v Vedanta Resources PLC and Konkola Copper Mines PLC*.¹⁶ Mr Lungowe is the lead claimant for 1826 farmers in Zambia, who have alleged that they have suffered losses as a result of contamination of their land by the activities of Konkola Copper Mines (KCM), a subsidiary of Vedanta Resources (Vedanta), which is domiciled in the UK. In 2015, Vedanta sought to strike out the claim at an early stage, arguing that the UK was not the appropriate jurisdiction for the case, which they asserted

¹⁴ "Consents to Prosecute", Crown Prosecution Service, accessed 10 October 2018, <https://www.cps.gov.uk/legal-guidance/consents-prosecute>.

¹⁵ United Nations Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights* (New York:United Nations, 2011), 102, https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

¹⁶ *Lungowe & others v Vedanta Resources PLC and Konkola Copper Mines PLC* [2017] EWCA Civ. 1528.

should be brought in Zambia. That application was rejected by the High Court, which accepted jurisdiction and set the matter down for trial. Vedanta appealed, but the High Court's decision was upheld by the Court of Appeal in May 2017. The question for both the High Court and Court of Appeal essentially turned on whether there was an 'arguable case' against Vedanta. Mr Justice Coulson in the High Court concluded that there was, and the Court of Appeal saw no reason to disturb that judgment. However, in March 2018, the Supreme Court gave Vedanta permission to appeal the jurisdiction point, which will now need to be resolved before the case proceeds further.¹⁷ If the Supreme Court rules that the UK is not the correct jurisdiction for the case, the matter will end there. However, if the Supreme Court upholds the view of the High Court and Court of Appeal, the matter will then proceed to a full trial on the facts, at which the issues of parent company liability for subsidiary wrongdoing and harm to third parties will be forensically examined. That trial is likely to clarify the law and, if the claimants are successful, provide a template for vicarious corporate accountability litigation alleging involvement in modern slavery abuses.

Legal tests

The gravamen of the Vedanta case is based on legal principles set down by the Court of Appeal in the 2012 case of *Chandler v Cape PLC*.¹⁸ This was a landmark judgment as it established the rule that, in certain limited circumstances, it was appropriate for a parent company to be held liable for the health and safety of employees of its subsidiary. That case turned on whether Cape PLC could be held liable for damages relating to Mr Chandler's lung disease, which he developed whilst working for a now defunct subsidiary, Cape Products. In *Chandler v Cape PLC*, The High Court applied the classic three-part legal test of foreseeability, proximity and fairness that has been required to establish a duty of care in negligence cases since the 1990 case of *Caparo v Dickman*.¹⁹ In the High Court, Mr Justice Wyn Williams held that, as Cape PLC had known about the possibility of harm caused by asbestos, and as it exercised a degree of control over the health and safety of Cape Products employees, it owed a duty of care to ensure that the employees of Cape Products were not harmed. The Judge made it clear that the existence of such a duty largely arose because Cape PLC had assumed that

¹⁷ For an interesting discussion on the challenges of jurisdiction in transnational tort litigation, see Aristova. Ekaterina Aristova, Tort Litigation against Transnational Corporations in the English Courts: The Challenge of Jurisdiction." *Utrecht Law Review* 14, no.2 (2018): 6-21.

¹⁸ *Chandler v Cape PLC* [2012] EWCA Civ. 525.

¹⁹ *Caparo v Dickman* [1990] 2 AC 605.

responsibility, rather than it being a necessary function of the parent-subsubsidiary company relationship. However, he also stressed that such a relationship does not completely preclude vicarious liability on *corporate veil* grounds. In that sense, the *corporate veil* rule was upheld, but clarified.²⁰

The key element of the *Caparo* test, when applied to vicarious corporate liability cases, is that of proximity. Specifically, for liability to be ascribed to the parent, it is necessary to establish a clear and close relationship of control by the parent company over the actions of the subsidiary. In giving judgment in the *Chandler v Cape* appeal case, Lady Justice Arden set out four tests that must be met for proximity to be established in vicarious corporate accountability cases, they are (in paraphrase):

- (i) That the business of the parent and subsidiary company are substantially the same.
- (ii) That the parent has, or ought to have, superior knowledge of the health and safety violation *vis a vis* the subsidiary.
- (iii) The subsidiary's system of work is unsafe and the parent knew, or ought to have known, that it was unsafe.
- (iv) That the parent knew, or ought to have foreseen, that the subsidiary would rely on the parent intervening to protect the employees from the unsafe system.²¹

It should be noted that the Arden tests may not be applied directly to a modern slavery scenario, as they were dealing with a personal injury, health and safety matter rather than labour exploitation and abuse. It seems likely that the High Court, when considering a modern slavery case may proceed with assistance from the Judgment of Lady Justice Arden but amend the tests to produce a *sui generis* formulation. Such a formulation might read into the second limb a superior knowledge of modern slavery practices by virtue of the parent company's size and its public statements on its efforts to combat modern slavery, as required by section 54 of the Modern Slavery Act. It may also use the section 54 compliance statement, and other pertinent evidence obtained during the disclosure phase, to infer knowledge that the subsidiary's system was unsafe and vulnerable to modern slavery abuses. Indeed, I would expect lawyers for the claimant to argue that the parent company was obliged to undertake enhanced scrutiny of its suppliers and subsidiaries in circumstances where it was sourcing its workers from countries or regions known to suffer comparatively high levels of modern slavery abuses, for example, parts of South Asia and East Africa.

²⁰ *Chandler v Cape* [2011] EWHC 951(QB) paragraph 66 to 77.

²¹ *Chandler v Cape PLC* [2012] EWCA Civ. 525 at paragraph 80.

The forth limb of the Arden test is a difficult proposition to meet in any event and would be especially so in transnational corporate accountability litigation. However, it could be argued that a ‘failure to prevent’ form of doctrine could be extended here, inspired by the requirements of S.7 of the Bribery Act 2010. Such a provision would require companies to prove that they had done all they reasonably could to prevent slavery in their supply chains, failing which they would be held liable. This is a partial reversal of the burden of proof and would require companies to demonstrate that they had sufficient anti-slavery procedures in place. As such, it would be a controversial extension of the current position and would almost certainly require the consideration of the Supreme Court and, ultimately, Parliament.

Evidence

In any event, to establish that the parent company should be held liable for the actions of the subsidiary in the Test Case, it will be necessary to establish a clear evidential pathway between the harm caused to the workers and the actions, omissions or failures of the parent company. Section 54 of the Modern Slavery Act 2015 may be a useful starting point for investigators to identify the policies and procedures that the parent company is applying to its subsidiaries. If those subsidiaries are sourcing workers from a jurisdiction where bonded and forced labour practices are known to be widespread, this should be an identified risk within the section 54 statement and should be accompanied by additional scrutiny of the recruitment and management practices followed by the subsidiary. Such corporate policy documents, amongst other evidence, played a key role in establishing the necessary proximity in the initial Vedanta hearings.²² If evidence can be adduced of the bonded and forced labour harms in the supply chain and the necessary proximity nexus is established, the parent company may be in difficulty if it cannot demonstrate that it had in place reasonable systems to prevent the harms from occurring. The widespread nature of bonded and forced labour practices in certain geographies and sectors suggests that if multinational companies operating in such areas do have procedures to confront modern slavery abuses, they are not very effective.

However, whilst discussing section 54 of the Modern Slavery Act, we must acknowledge that its goal, which was to encourage a ‘race to the top’ in corporate practices through the publication of shared experiences, has not yet been achieved. With some notable exceptions, such as the statements from John Lewis, Marks & Spencer and the Co-Operative Group, many companies have so far used the

²² Lungowe & others v Vedanta Resources PLC and Konkola Copper Mines PLC [2017] EWCA Civ. 1528 at paragraph 23, referencing paragraphs 80-90 of the Claimant’s Particulars of Claim.

exercise as a chance to engage in public relations and/or flatly deny that they have any exposure to modern slavery issues. Indeed, in April 2017 the Independent Anti-Slavery Commissioner was compelled to write to Chief Executives of large UK companies to express his “disappointment” with the “weak” statements produced to date.²³ In some ways, reticence to be open and engaging on the issue is an understandable reaction when companies are coming under ever greater legal scrutiny particularly in relation to their international operations. Not wishing to see their section 54 statement in an evidence file in a case against them alleging vicarious corporate wrongdoing, has driven many legal departments to neuter any attempts to be open and honest about the challenges presented by global supply chains.²⁴ Moreover, when there are no meaningful penalties for failing to disclose bad practices, and commercial incentives not to do so, it is hardly surprising that companies take the easy option and publish meaningless statements. This is not meant to excuse corporate chicanery, it is merely acknowledgment that a regulatory system which relies on appealing to the better aspects of corporate nature is unlikely to achieve much.

It is also important to recognise that the threat of vicarious corporate accountability litigation itself may have the unintended consequence of causing multinational organisations to pay even less attention to wrongdoing in their supply chains. One of the reasons why Cape PLC was held liable to Mr Chandler was their demonstrable knowledge of the problem and their apparent willingness gratuitously to intervene on occasion to protect employee health and safety at Cape Products. This engagement has been recognised and codified in the Arden tests set down in the *Chandler v Cape* appeal case. Whilst it would be unlawful for companies to engage in ‘wilful blindness’ to obvious illegality, it is foreseeable that risk managers and lawyers within multinationals may choose to erect corporate or commercial structures to try and insulate the parent company from any traceable knowledge or connivance in modern slavery activities. A ‘failure to prevent’ doctrine would counter some of this, however, such rules would almost certainly require primary legislation, which is not currently under consideration.

Damages

Assuming the various evidential and jurisprudential challenges could be overcome and the Test Case was successful, with liability established against the

²³ Kevin Hyland to Chief Executive Officers, April 4, 2017, accessed 10 October 2018, <http://www.antislaverycommissioner.co.uk/media/1134/letter-to-ceos-on-section-54-of-modern-slavery-act-1-year-on.pdf>.

²⁴ Core Coalition, Risk Averse? Company reporting on raw material and sector specific risks under the Transparency in Supply Chains clause in the UK Modern Slavery Act (London: Core Coalition, 2017), 11-13. http://corporate-responsibility.org/wp-content/uploads/2017/10/171003_Risk-Averse-FINAL-1.pdf.

defendant company on *Vedanta* and *Chandler v Cape* grounds, the next question would be the quantum of damages that the court should award.

In English law, victims of negligence are generally entitled to be compensated for their loss or injury. In this case, it would mean seeking redress from the defendant company for the bonded and forced labour practices and/or human trafficking they had suffered. This would include refunding illegal fee payments, plus associated interest, and other specific payments extorted from victims for amounts they were underpaid. Added to this would be a general sum to compensate the victims for their suffering. Estimating a likely quantum of damages in the Test Case is virtually impossible as there are so many variables to consider. However, it is worthy of note that there have been examples of quite large overall damages payments being made by the English courts to victims of human rights violations. These include the £19.9m paid in 2012 by the British government to 5,280 claimants in relation to the Mau Mau torture cases in Kenya during colonial rule in the *Mutana* case.²⁵ At first sight this appears to be a considerable award and one that would generate significant media interest and corporate concern. However, this overall sum was spread between thousands of claimants and included a contribution to legal costs, so the amount of compensation paid to each victim was less than £3,000. Based on the Amnesty and Jureidini research, the claimants in the Test Case may have incurred direct bonded and forced labour losses of between \$2,000 and \$5,000.²⁶ A further sum may be added to compensate the victims for their suffering. However, bearing in mind the relatively small sum awarded to each of the Mau Mau claimants, it is unlikely that this will result in more than a few thousand additional pounds per claimant. An award of perhaps £10,000 per victim may be significant for an individual who is used to earning £500 per month, but it is unlikely to cause a multinational company many concerns unless the class of claimants was very large with a commensurately large aggregate award.

If the court wanted to go beyond restitution and compensation for victims, it could order an additional punitive or exemplary award to mark its displeasure at the behaviour of the defendant company. The basis of such additional awards is not especially well understood in English law and they are sometimes confused with the very large, jury awarded damages against tobacco or oil companies in the United States of America. The circumstances in which exemplary awards can be made in the English courts (they are not permitted in Scotland) are highly restricted and the amounts awarded are usually relatively modest. One study, published in 2018, found that there had been 146 claims for punitive damages in the courts of

²⁵ *Mutana Others v Foreign and Commonwealth Office* [2012] EWHC 2678.

²⁶ Jureidini, *Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab States corridor*, 6.

England, Wales and Northern Ireland between 2000 and 2015.²⁷ Such claims were successful in 54.7% of cases relevant to corporate wrongdoing (category two cases in Lord Devlin's landmark formulation in the 1964 case *Rooks v Barnard*).²⁸ However, the average award was just £18,181.²⁹ The claimants in the Test Case could request damages that would inflict a meaningful penalty on a multinational company, but based on the findings of Goudkamp and Katsampouka, it seems unlikely that a very large award would be made. On this analysis, the prospect of inflicting a large financial penalty on a company and thus generating future corporate behavioural change to avoid such penalties seems remote. Of course, the publicity and media interest surrounding the Test Case is likely to be such that the experience would be uncomfortable for the directors and shareholders of the defendant company, and this alone may drive improvements in corporate accountability. However, we must acknowledge that such publicity might be achieved more quickly and cheaply using other methods, such as widely published investigative journalism.

Costs and funding

A further issue is that of legal costs. Preparing a vicarious corporate liability claim can be a lengthy and expensive process requiring the time of several lawyers, paralegals, investigators, translators and other support staff to interview victims and prepare the case for trial. It can take several years to undertake this work and is likely to require many hundreds of thousands of pounds of resources. Legal aid is not available for civil cases of this sort and the basic position in UK litigation is that the 'loser pays' both their own costs and those of the winning side at trial. This can be a very significant amount of money and can act as a deterrent to legitimate claimants. If a claimant is unable to meet in advance the costs of their legal representation and/or to risk the possibility of having to meet the costs of the other side in the event of a loss, they may ask their lawyers to act on a conditional fee arrangement underpinned by after-the-event insurance cover. This involves the legal team sharing the risk of losing, in which case they do not get paid and the insurance pays the winner's costs, but in which they can charge up to double their normal rate if they succeed. A 'contingency fee' or 'damages based' arrangement is also possible, in which the lawyers agree to act without an initial fee, in return for a

²⁷ James Goudkamp James and Elini Katsampouka, "Elini. 2018. *An Empirical study of Punitive Damages in Action*," *Oxford Business Law Blog*, 6 July 2017, <https://www.law.ox.ac.uk/business-law-blog/blog/2017/07/punitive-damages-action>.

²⁸ *Rooks v Barnard* 1964 AC 1129 HL.

²⁹ Goudkamp and Katsampouka, "Punitive Damages in Action."

promise to participate in a capped percentage of the award made to the victims. These agreements are less satisfactory as they reduce the compensation payable to victims. Campaigning human rights lawyers such as Leigh Day, the firm representing the claimants in the Vedanta case, have been known to assist claimants on a conditional fee basis.³⁰ However, such arrangements represent a significant commercial risk for any law firm and would only be available in cases with strong prospects of success and where potential losses can be insured or otherwise defrayed.

Alternatively, it may be possible to obtain funding for the Test Case from a commercial litigation fund. Such funds have grown very quickly in recent years to fill the gap created by the withdrawal of civil legal aid. The industry in the UK is now reported to be worth more than £10 billion, with banks, hedge funds and private investors tempted by “150% to 300% returns on investment”.³¹ Such funds invest in a wide spectrum of cases within a certain risk profile, thus aggregating and spreading the risk of individual cases failing. However, to qualify for funding, a case will need to meet a threshold of likely success, which frontier corporate accountability litigation is unlikely to meet unless the evidence base is especially clear and compelling. Moreover, even a large group action, is unlikely to generate the scale of damages necessary to attract commercial funders and, even if they were, there would be significant ethical questions arising from the transfer of damages payments from victims to hedge funds. As Philip Marshall QC has noted, “funders are essentially quite picky - they are looking for large claims that make it worth their while and one where the client is willing to take a significant discount on recovery [in exchange] for the funding”.³² In essence, third party commercial litigation funding is an expensive form of borrowing and one which seems ill suited to human rights focused cases.

An alternative means of funding the Test Case could be provided by crowdfunding platforms, such as Crowd Justice or the Good Law Project and/or contributions from philanthropic or development organisations, such as the Open Society Foundations (OSF) or Freedom Fund.

Crowd Justice, and similar sites, provide activists with a platform for their campaign and have facilitated some quite significant fundraising. Examples include the £170,550 raised to support Grahame Pigney in his challenge to the Brexit Article 50 process, which resulted in a Supreme Court hearing. Crowd

³⁰ Leigh Day, *Pushing the Boundaries, taking a stand* (London: Leigh Day, 2018). Accessed 10 October 2018. https://www.leighday.co.uk/LeighDay/media/LeighDay/documents/Brochures/International-brochure_Aug2018.pdf.

³¹ Barney Thompson, “Lawsuit funders raise £10bn from yield-hungry investors,” *Financial Times*, 19 November 2017, <https://www.ft.com/content/926355de-c941-11e7-ab18-7a9fb7d6163e>.

³² Thompson, “Lawsuit funders raise £10bn from yield-hungry investors.”

Justice charges a fee of 3% of money raised, which is attractive compared with the large returns on investment required by commercial litigation funders. The Good Law Project has a slightly different model. It takes on a relatively small number of cases, which are then funded by members, who make monthly contributions to support the general work of the Project and/or make contributions via sites such as Crowd Justice. There are several benefits of platforms such as these, including access to a wide funding pool and the ability to leverage the reputation of the platforms in bringing worthwhile cases. However, as with all fundraising campaigns, success or failure will be determined by the efforts of the campaigners in designing, maintaining and communicating a compelling narrative to potential funders. Also, it is important to note that crowdfunding platforms are currently unregulated and that could act as a brake on the ability to raise very large sums of money in support of the Test Case.

OSF has a program called the Open Society Justice Initiative (OSJI). Established in 2007, the OSJI is an operational (as opposed to pure funding) unit of OSF. Its declared intent is to “use law to protect and empower people around the world”.³³ OSJI has the capacity and the focus to lead the Test Case and, if clear *prima facie* evidence of wrongdoing was compiled, could be a useful partner in this work. Similarly, Freedom Fund has published a useful guide to strategic litigation in conjunction with the Human Trafficking Pro Bono Legal Center, called ‘Ending Impunity, Securing Justice: using strategic litigation to combat modern day slavery’.³⁴ The focus of this initiative is to create a network of lawyers, investigators, NGOs and donors to resource cases such as the Test Case. The work of organisations such as OSJI and Freedom Fund has the potential to galvanise the support and resourcing necessary to investigate and prepare the Test Case for trial and offers a tangible avenue for progress.

However the necessary funds and resources are raised, those developing the Test Case would need to approach the evidence gathering process with great care. At all times, they would need to prioritise the welfare of the claimants. As lawyers, we must always exercise ‘client care’ but in these circumstances it is especially important. Victims may be vulnerable to reprisals from powerful vested interests, such as the debt bondage money lenders, the employment agents, or traffickers. There may be cultural sensitivities around ‘victimhood’ and the perceived shame of abuse or exploitation. The team would also need to be careful not to act as a ‘pull factor’ for spurious claims. If stories of large compensation payments proliferate, it

³³ “Open Society Justice Initiative,” Open Society Foundations, accessed 10 October 2018, <https://www.opensocietyfoundations.org/about/programs/open-society-justice-initiative>.

³⁴ Martina E. Vandenberg, *Ending Impunity, Securing Justice: using strategic litigation to combat modern day slavery* (New York: Freedom Fund, 2015), <https://d1r4g0yjvcc7lx.cloudfront.net/uploads/STRATEGIC-LITIGATION-FINAL-FOR-EMAIL.pdf>.

could encourage fraudsters, thus undermining the claims of genuine victims. At all times, the team would need to remember that obtaining a meaningful remedy for the victims is paramount. If victims remained in employment with an allegedly abusive employer, a delicate balance would need to be struck between pursuing their case for the sake of bolstering a legitimate legal claim against the defendant company and jeopardising the livelihood of victims and their families. There are no easy answers to these issues and they would require sound legal and moral judgement.

Conclusions

The legal and political landscape has developed significantly over the past 20 years, with much greater emphasis placed on the protection of human rights within global corporate supply chains. However, enforcement of these provisions remains a challenge. Despite the best intentions of lawmakers in passing anti-slavery laws, modern slavery practices remain stubbornly endemic. Ultimately, companies will only start to invest meaningful resources into tackling slavery in their supply chains if they perceive either a significant benefit in doing so, or a significant disbenefit in failing to do so. Moreover, as companies are concerned about maintaining a level playing field *vis-a-vis* their competitors, they are unlikely to invest in expensive compliance procedures unless they can be sure that their competitors are similarly investing. Those who invest ahead of the curve may place themselves at a competitive disadvantage compared to other, less scrupulous companies. While there are no meaningful penalties for engaging in or tolerating modern slavery practices, it is difficult to convince companies to invest in compliance. In short, the costs of legal and ethical compliance are perceived to be high and the risks of non-compliance perceived to be low.

Arguably, the most effective way to clarify this uncertain legal terrain and ensure a level commercial playing field would be for Parliament to strengthen section 54 of the Modern Slavery Act 2015 with a ‘failure to prevent’ provision inspired by section 7 of the Bribery Act 2010. This would place a clear obligation on multinationals to enact measures that would more effectively police the practices of their subsidiaries and suppliers. It would encourage companies to invest in protecting the workers in their supply chain and create a level commercial playing field, incentivising good actors and dis-incentivising bad actors. Allied to a robust whistleblowing provision, with appropriate protections for workers encouraged to report abuse, this could radically increase the pressure on companies to protect workers. However, such strengthened provisions are unlikely to materialise from the UK Parliament unless pursued in conjunction with European and American counterparts to produce a harmonised transnational legal framework.

A unilateral approach would invite business flight that the UK government would be unlikely to risk. Regrettably, in the context of Brexit entailing the need for the UK to pursue international trade deals and President Trump's disdain for multilateralism, the legislative route to greater corporate accountability looks blocked for the foreseeable future.

Strategic litigation may be a mechanism through which existing legal measures can be clarified, strengthened and enforced. Shining a legal spotlight on corporate failings may result in directors taking their responsibilities towards workers in their supply chains more seriously. However, those seeking to bring such cases face serious challenges. Almost inevitably, those representing victims will be at a significant financial disadvantage when confronting a multinational company. Public funding is not available and the costs associated with investigations and case preparation and trial are high. In common law cases in the UK, there is a lack of any direct precedent relating to vicarious corporate accountability for labour rights abuses overseas. Moreover, companies may choose to interpret the Arden tests as a warning not to engage with the protection of subsidiary employees for fear of voluntarily attracting liability. There are also significant practical, financial and ethical challenges relating to evidence gathering. Modern slavery practices are often interwoven with violent, organised criminality, which can be difficult and dangerous to investigate. Finally, legal countermeasures by well-funded multinationals could be used to threaten the livelihoods or liberties of human rights defenders.

However, many of these challenges could be addressed by a patient and well-capitalised funder, allied to a brave and dedicated team of lawyers, investigators, journalists and support staff. Those who are prepared to invest the time and effort to bring a successful labour exploitation case may be rewarded with the kind of corporate culture shift apparently intended by the legislators in the UK, US and France, but which has hitherto been lacking. A persuasively argued legal case backed by solid evidence highlighting the ecosystem of corruption and abuse endemic in the employment of vulnerable workers worldwide could send a strong corporate accountability message. It could thus contribute to a significant improvement in corporate respect for the rights of workers employed in the supply chains of UK based multinationals. This is surely a prize worth fighting for despite the scale of the legal, commercial and practical obstacles involved.

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Irregular Victims: Investigating the Immigration Status Decisions of Post-NRM Victims of Human Trafficking, the Availability of Eligible Benefits and the Related Impact on Victims of Trafficking

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Abstract

Human trafficking is connected to migration as it often involves crossing international borders. This article argues that by failing to view the issue of human trafficking through the lens of migration, the current framework for assisting victims of human trafficking fails to ensure the protection of the individuals concerned. This article offers an innovative perspective by analysing the specific legal position of victims of human trafficking in the context of UK domestic law and international agreements, and tracing this to survivor experiences. The extent to which non-UK national survivors of human trafficking are able to access the rights that they are entitled to in the UK is explored, as well as what factors influence the accessibility of these rights. Utilising an interdisciplinary approach, encompassing scholarship of law and politics, this article links a review of the current legal landscape relating to immigration status for trafficking victims with empirical work exploring the experiences of non-UK national trafficking survivors.

Key words: Human trafficking; modern slavery; immigration law; victim impact

Irregular Victims: Investigating the Immigration Status Decisions of Post-NRM Victims of Human Trafficking, the Availability of Eligible Benefits and the Related Impact on Victims of Trafficking

Introduction

Whilst the crime of human trafficking has been foregrounded in human rights discourse within the UK, and its victims positioned by the media, campaigners, and Government as being in need of assistance and protection, when the measures put in place to do so are unpicked it becomes clear that there are serious gaps in provision. One predominant area in which these gaps can be identified is within the entitlement given to those who are non-UK nationals to remain in the UK, and their ability to access help and support. Currently, an identified victim of trafficking will enter a process called the ‘National Referral Mechanism’ (NRM), which will be discussed in detail below. This process theoretically lasts for forty-five days, after which time Government mandated provision ends. As the needs of victims often do not end simultaneously with this end of provision, this has created a space for the provision of various aspects of support and care, into which a number of charities and NGOs have moved. At this point, when Government provision ends, a non-UK national, without a pre-existing entitlement to reside in the UK, becomes at risk of deportation.

This research explores the specific legal position of non-UK national victims of human trafficking in the context of UK domestic legislation and relevant international agreements, particularly the Council of Europe Convention on Action Against Trafficking in Human Beings. For the purposes of this article, the definition used for human trafficking is that found in the Palermo Protocol:

“Trafficking in persons” shall mean the 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 services, slavery or practices similar to slavery, servitude or the removal of organs.¹

¹ UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000.

As will be discussed, the UK falls short of meeting international obligations stemming particularly from the Council of Europe Trafficking Convention, including in its provision of assistance for non-UK nationals of irregular status, meaning without specific entitlement to live, work, or access welfare in the UK.² Specific case law will be used to track the implementation of international obligations and the development of domestic policies within the UK context. Once the legal landscape has been established, using case examples, the second part of the article will consist of an empirical analysis of the impact of the legal landscape on non-UK nationals that have been through the NRM.

The empirical data gathered for this study consists of interviews conducted with eight caseworkers that work specifically with victims of human trafficking. These semi-structured interviews were carried out over a period of one month. Prior to the interview each caseworker was asked to consider a number of cases that they had dealt with, where the client had received a positive Conclusive Grounds (CG) decision but was not a UK citizen, and the resultant experience of that client. The term ‘client’ will be used when discussing caseworker interviews as this is the denomination used by caseworkers to describe the individuals they are working with. Some direction was given to the interviewees as to the type of information that was relevant to the study, for example specific legal obstacles they had encountered in applying for legalised immigration status, experiences of accessing benefits and the personal impact of irregular status on the individual. A total of twenty-eight anonymised cases were discussed over the course of the interviews. In some situations different caseworkers discussed different parts of the same client’s case, where the caseworkers were from the same organisation. Full ethical approval was received from the relevant bodies and procedures put in place to ensure the anonymity of caseworkers and their clients. The article concludes by discussing the previous points in the context of the development of the Modern Slavery (Victim Support) Bill and how this may or may not address issues both within the legal sphere and ‘on the ground’ for the individuals involved.³

Bridget Anderson argues that in relation to the immigration status of trafficking victims there is an inherent irony; whilst consistently using the language of ‘protection’, it is the state’s own border control that constructs the vulnerability of migrants.⁴ This dichotomous relationship with migrants frames the state

² Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197.

³ Modern Slavery (Victim Support) Bill [HL] (2017).

⁴ Bridget Anderson, “Where’s the Harm in That? Immigration Enforcement, Trafficking, and the Protection of Migrants’ Rights”, *American Behavioral Scientist* 56 no. 9 (September 2012): 1247.

response to trafficking specifically. For example, the UK Modern Slavery Act (2015) arguably reflects this in that the sole provision for leave to remain for an identified victim concerns domestic workers who came to the UK on a visa that effectively tied them to an abusive employer.⁵ The Act states that they should be granted leave to remain to enable them to work for another employer. For this to be singled out in this way implies an element of ‘reward’ for not having come to the UK illegally in the first place. Kiril Sharapov develops a related argument: the problems of the UK system, which is based on ‘illegal immigrant’ identification and organized crime, are highlighted in comparison with Ukraine’s system, which emphasizes the exploitation and infringement of the human rights of ‘irregular migrants’.⁶ Sharapov does however point out that there is little difference in the financial commitment of the two countries to eradicate trafficking, despite their operational differences. This dichotomy is further reflected internationally, for example in the European Union (EU) response to trafficking. Whilst the EU has developed a number of strategies and policies for dealing with human trafficking, Heli Askola argues that the EU Returns Directive constructs even the most vulnerable, including trafficking victims, as a threat.⁷ This has detrimental consequences for many.

Dependent on the narrative framing utilized in understanding human trafficking, a range of different remedies will appear appropriate to policy makers. If one understands trafficking as a crime committed by ‘evil’ traffickers against ‘innocent’ victims that were forcibly moved across borders for nefarious purposes, then it would perhaps seem natural that these victims would wish to be repatriated and restored to their home countries.⁸ If, however, trafficking is perceived to be a continuum of exploitation that occurs as individuals attempt to cross borders that they have no way to cross legally, then simply sending them home does not address the problem: the motivations the individuals had to migrate initially are unlikely to have changed.⁹ Stoyanova concurs by demonstrating that both internationally and domestically there was a prevalent presumption that people wanted to return home

⁵ UK Modern Slavery Act (2015), Part 5, 53.

⁶ Kiril Sharapov, “Giving us the ‘Biggest Bang for the Buck’ (or not): Anti-trafficking government funding in Ukraine and the United Kingdom”, *Anti-Trafficking Review* 3 (September 2014): 18.

⁷ Heli Askola, “‘Illegal Migrants’, Gender and Vulnerability: The Case of the EU Returns Directive”, *Feminist Legal Studies* 18, no. 2 (August 2010): 168.

⁸ Robert Uy, “Blinded by Red Lights: Why Trafficking Discourses Should Shift Away from Sex and the Perfect Victim Paradigm”, *Journal of Gender, Law and Justice* 26, no. 1 (2011): 210.

⁹ Julia O’Connell Davidson, “Will the Real Sex Slave Please Stand Up?”, *Feminist Review* 83 (2006): 4-22.

as quickly as possible.¹⁰ Developing the problematic nature of this argument further, Stoyanova claims that regardless of the original intention of the victim, the trafficking experience may have created a number of barriers to returning their country of origin.¹¹ For example, they could be at risk of reprisals or retaliation, they may be vulnerable to shame or honour-based violence (this is particularly pertinent for women that have been forced into prostitution), or there may be inadequate medical or other support mechanisms in their home country to ensure their safety and welfare.

Many scholars have argued that the lack of an automatic legal immigration status for victims of human trafficking leads to further harm towards an already very vulnerable group.¹² Martina Pomeroy, in a review of a number of different countries' anti-trafficking regimes, states that this harm is compounded by the complexity of accessing legal residence within many countries.¹³ Even if a country technically has a route to legal status, it is often so convoluted and inaccessible that it becomes exclusionary. Shannon Clancy argues that the US immigration system is so complex that it is difficult for anyone to navigate, but particularly someone in vulnerable circumstances.¹⁴ Clancy also makes the point that the way the system is set up creates an exclusionary legal space within which migrants are held that keeps them from many of the protections that US citizens are guaranteed by the Constitution.¹⁵ Anette Brunovskis claims that a similar situation exists in Norway, as identified trafficking victims can fall into different 'administrative categories', each with different legal standings and open routes to regularizing their status.¹⁶ Here, identified victims that do not have the right to remain in Norway are not automatically entitled to welfare, but their status gives them 'inroads' to accessing it through other routes; potentially creating gaps in support if the system is not easily navigable. Donald Kerwin states that in the USA Temporary Protection Programs that award a fixed term legal residency have the potential allow space for

¹⁰ Vladislava Stoyanova, "Complementary Protection for Victims of Human Trafficking under the European Convention on Human Rights", *Journal of International Law* 3, no. 1 (January 2011): 798.

¹¹ *Ibid*, 803.

¹² Farrah Bokhari, "Falling Through the Gaps: Safeguarding Children Trafficked into the UK", *Children & Society* 22, no. 3 (May 2008): 201-211.

¹³ Martina Pomeroy, "Left Out in the Cold: Trafficking Victims, Gender and Misinterpretation of the Refugee Convention's 'Nexus' Requirement", *Journal of Gender & Law* 16 (January 2010): 453.

¹⁴ Shannon Clancy, "Immigration and Modern Slavery: How the Laws of One Fail to Provide Justice to Victims of the Other", *University of Baltimore Law Review* (Spring 2017): 48.

¹⁵ *Ibid*, 48.

¹⁶ Anette Brunovskis, "Special rights within universal welfare: Assistance to trafficking victims in Norway", *Journal of Comparative Social Work* 11, no. 1 (2016).

the working out of long-term solutions to problems faced by victims.¹⁷ Currently this is discretionary, however if this was enshrined for trafficking victims this could potentially be a very positive step. Technically, victims could apply for refugee status in many countries. However, as the refugee system is not designed to deal with trafficking victims, they frequently fail to reach ‘nexus’ requirements needed to be granted asylum.¹⁸ This highlights that human trafficking policy is inadequate in this respect as victims are forced to utilise policies that were not designed for their particular situation, due to a lack of specific provision.

Within the literature explored, it is clear that the current situation of victims in relation to immigration status is complex and often problematic. What emerges repeatedly is that a lack of specific routes to assistance for non-national victims of trafficking and the necessity of attempting to utilise pathways designed for other purposes, such as asylum, raise a number of difficulties. Within this context, we will now outline the specific UK legal position, exploring specific legal issues therein, and particularly highlighting where the UK is failing to meet its international obligations. The impact of these failures on victims of trafficking will then be explored in the analysis of a series of interviews with trafficking caseworkers, demonstrating the need for bespoke legal provision.

Found only to be abandoned: The National Referral Mechanism and Victims of Modern Slavery and Human Trafficking in the UK

The National Crime Agency (NCA) reported that in 2017 there were 5145 victims of human trafficking or modern slavery identified in the United Kingdom.¹⁹ This figure was comprised of 116 different nationalities. Of these victims, 4,325 were from outside the United Kingdom.²⁰ This therefore represents the possibility that 84% of potential victims may experience issues relating to their immigration status. Victims in the UK are identified and processed via a system called the National Referral Mechanism (NRM), which operates as a gateway to protection and support for potential victims. The term ‘modern slavery’ is used widely in the political, academic and charitable sectors, and it operates as an umbrella term under which a wide range of exploitative practices is grouped. The

¹⁷ Donald Kerwin, “Creating a More Responsive and Seamless Refugee Protection System: The Scope, Promise and Limitations of US Temporary Protection Programs”, *Journal on Migration and Human Security* 2, no. 1 (2014): 44-72.

¹⁸ Kathleen Mallon, “Assessing the Board of Immigration Appeals’ Social Visibility Doctrine in the Context of Human Trafficking”, *Chicago-Kent Law Review* 89, no. 3 (2014): 1169-1190.

¹⁹ National Crime Agency, National Referral Mechanism Statistics – End of Year Summary 2017.

²⁰ *Ibid*, 7-10.

statistics provided for the NRM by the NCA are for victims of modern slavery and human trafficking. The NCA defines modern slavery as encompassing: human trafficking, slavery, servitude and forced labour. Human trafficking is a process defined by the Palermo Protocol.²¹ As discussed in the introduction the definition involves three elements: an action, the means and the purpose (exploitation).

Thus it can be seen that human trafficking is a process, which may or may not result in a number of exploitative outcomes including slavery, servitude and forced labour. Further to this, the crimes of slavery, servitude and forced labour are legally distinct categories, which can occur independently of human trafficking.²² Nicole Siller has commented that the international legal frameworks demonstrate that practices such as slavery are distinct from human trafficking.²³ It has been observed that in the last decade there has been a “rebranding of global anti-trafficking” as ‘modern slavery’ in legal and academic discourse.²⁴ The NCA annual reports on the NRM make no explicit reference to what percentage of victims have or have not been subjected to human trafficking, the reports only group victims via form of exploitation.

The UK’s NRM operates on a three-tier model. At the initial level are the first responders. These include local authorities, enforcement agencies, and NGOs who have the power to make an initial referral to a competent authority. These authorities constitute the second tier; there are two bodies in the UK with competent authority status, the UK Human Trafficking Centre (UKHTC) and the UK Visas and Immigration (UKVI), a Home Office agency with responsibility for considering immigration applications. It falls to the competent authority to determine whether there are reasonable grounds to consider a person a victim of trafficking. If an individual receives a positive decision, they are then accommodated for a reflection and recovery period of forty-five days. At the end of this period, stage three, a conclusive decision is made about an individual's status. When a decision has been made, in the instance of a negative decision an adult has forty-eight hours to leave the accommodation provided for them. Initially

²¹ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, Article 3, see fn 1 for definition of trafficking.

²² The definitions of the three practices can be found across a number of international legal instruments, the definition of slavery can be found in League of Nations 1926 Slavery Convention (Article 1), the definition of servitude can be located in the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Article 1) and the definition of forced or compulsory labour is provided by the International Labour Organisation Forced Labour Convention No 29 (Article 2).

²³ Nicole Siller, ‘Modern Slavery’, Does International Law Distinguish between Slavery, Enslavement and Trafficking? (2016) 14, *Journal of International Criminal Justice*, 405.

²⁴ Janie Chuang, Exploitation Creep and the Unmaking of Human Trafficking Law, (2014) 108, *American Journal of International Law*, 146–149.

in the case of a positive decision, the victim would be provided fourteen days additional support. In October 2017 it was announced by Sarah Newton (Parliamentary Under-Secretary for the Home Department) that this window of support has now been extended to forty-five days.²⁵ This means that in total in the instance of a positive conclusive grounds decision a victim has access to at least ninety days of support. Data published by the National Crime Agency in June 2017 shows that of the 3,804 victims referred into the NRM in 2016, 24% (907) had received a positive conclusive grounds decision.²⁶ The NRM, therefore, has been described as a system, which “finds victims of modern day slavery, only to abandon them.”²⁷ Thus this figure therefore, represents 907 individuals who have been proven to be victims of exploitation, who are then left adrift – possibly in relation to insecure immigration status - when their time in the safe house ends.

Navigating the Maze of Immigration Status: Accessing Discretionary Leave to Remain

For victims in the UK the granting of a positive conclusive grounds decision does not represent a complete solution. In reality, life after a safe house remains perilous, and a significant barrier to stability concerns the provision of leave to remain.²⁸ The current system in the UK presents a problem whereby recognition as a victim of exploitation carries no immediate right to remain and therefore no simple point of access to protection and support.

Discretionary Leave to Remain

There is no specific provision under the UK Immigration Rules relating to the granting of leave on the basis of ‘modern slavery’.²⁹ The High Court provided clarity on the issue of discretionary leave in *R (On the Application Of K) v Secretary of State for the Home Department*.³⁰

²⁵ HC Deb Vol 630 Col 513.

²⁶ 2017 Annual Report on Modern Slavery (October 2017) 8.

²⁷ Day 46: Is There Life After the Safe House for Survivors of Modern Slavery (Human Trafficking Foundation) 2.

²⁸ Ibid, 13.

²⁹ *Immigration Rules (last amended July 2008)* [], HC 395 (as amended), 23 May 1994.

³⁰ *R (On the Application Of K) v Secretary of State for the Home Department* [2015] EWHC 3668.

With conclusive status, there is no automatic grant of discretionary leave for one year and one day, although this may be granted if the individual is co-operating with the Police or owing to their personal circumstances (under Article 14 of the Trafficking Convention). Leave to remain as a victim is without prejudice to any other entitlement to leave as a refugee (a category of immigration leave).³¹

Thus, while there is no automatic grant of discretionary leave, there exists a narrow set of grounds on which leave can be granted. In line with the circumstances discussed in *R v Secretary of State for the Home Department*, the advice provided to the Competent Authorities in 2016 outlines three grounds on which discretionary leave to remain may be granted.³² The first ground is the pursuit of compensation against traffickers. In accordance with the Council of Europe Convention, those who possess a positive conclusive grounds decision must have access and support to the pursuit of compensation claims.³³ However, the fact that an individual may be pursuing compensation is not solely sufficient to obtain a discretionary leave decision. It must be determined by the Home Office that leave to remain is necessary for the claim to advance.³⁴ The second potential ground for discretionary leave to remain is co-operation with on going police investigations. The Council of Europe Convention creates an obligation to provide a residency permit to victims with a positive conclusive grounds decision who are aiding police enquiries.³⁵ Finally, perhaps the most opaque ground is personal circumstances; as required by the Convention, permits must be granted if leave to remain is necessary due to personal circumstances.³⁶ Discretionary leave to remain may be granted on an individual case-by-case basis for a minimum of twelve months and a maximum of thirty months.³⁷ There is no legal obligation to provide indefinite leave to remain.³⁸ Further to this the most concrete ground for leave to remain is that of police co-operation, this is reflective of the emphasis placed on

³¹ Ibid, para 53.

³² Victims of Modern Slavery – Competent Authority Guidance (Home Office 2016) 75.

³³ Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197, Article 15.

³⁴ Victims of Modern Slavery – Competent Authority Guidance (Home Office 2016) 75.

³⁵ Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197, Article 14.

³⁶ Ibid.

³⁷ Victims of Modern Slavery – Competent Authority Guidance (Home Office 2016) 75.

³⁸ Ibid, 122.

criminal justice responses within the modern slavery framework in the UK, as evidenced in the approach taken in the Modern Slavery Act 2015 and the Home Office Modern Slavery Strategy³⁹. This is problematic and illustrative of the broader approach to anti-trafficking/slavery in the UK, whereby criminal justice elements take precedence to effective victim protection and support.⁴⁰ In the case of DLR the current grounds on which leave may be granted seem to suggest that victims only need to be protected and given immigration status security when they are tool which can be used by the State.

Breaching Obligations and Opening the Door: PK and LL

As discussed above, the policy guidance provided by the Home Office regarding the grounds for discretionary leave to remain outside of the Immigration Rules provides a limited scope of opportunity for victims post NRM. However, recent legal developments regarding the policy have potentially increased options for victims by making it more possible for discretionary leave to remain to be awarded.

In February 2018 the Court of Appeal in *PK (Ghana) v Secretary of State for the Home Department* ruled that the policy set out by the Home Office for assessing discretionary leave applications was in breach of international obligations,⁴¹ particularly in relation to the Council of Europe Convention. The appeal focused on the requirement under Article 14 to provide a renewable residence permit if necessary due to personal circumstances.⁴² The applicant (PK) had been sold into slavery in his home country (Ghana) at the age of three.⁴³ In 2003 at the age of 25, the applicant was trafficked into the UK. Upon arrival he was detained, subjected to forced labour for up to fifteen hours per day, subjected to mental and verbal abuse, and given limited amounts of food.⁴⁴ The applicant, who had initially entered the country as a student migrant, was later convicted of possessing improperly obtained identification documents and then detained with a

³⁹ Home Office, Modern Slavery Strategy (Crown Publication 2014).

⁴⁰ See for example Modern Slavery Act s 45, under this section the principle of non-punishment is intended to protect victims of modern slavery crimes from prosecution for crimes committed during the course of exploitation. However, schedule 4 provides a large list of exemptions including, modern slavery, theft and immigration offences.

⁴¹ *PK(Ghana) v Secretary of State for the Home Department* [2018] EWCA Civ 98.

⁴² Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197.

⁴³ *PK(Ghana) v Secretary of State for the Home Department* [2018] EWCA Civ 98, para 23.

⁴⁴ *Ibid*, para 24.

view to removal from the country.⁴⁵ The appeal in question was in relation to a negative discretionary leave to remain decision relating to the applicants personal circumstances. It was submitted by the Secretary of State that:

In Article 14(1)(a), there are no restrictions upon the concept of "necessary", and thus, the Convention gives the Secretary of State as competent authority discretion which is both broad and untrammelled or open-ended. That is underscored by the fact that Article 14(1)(a) refers, not to an absolute requirement, but only that the competent authority "considers that their stay is necessary" ... the exercise of that discretion, the Secretary of State is entitled to have a policy that the discretion will only be exercised in favour of the victim of trafficking if there are compelling personal circumstances in his or her case.⁴⁶

The Court concluded that the Secretary of State's guidance regarding personal circumstances did not properly reflect the nature of Article 14 of the Convention.⁴⁷ Further to this, the Convention states that a renewable residence permit will be granted where "their [the victim's] stay is necessary".⁴⁸ Lord Justice Hickinbottom stated that 'necessary' in the context of Article 14 means "required to achieve a desired purpose, effect or result" and this must be seen through the "prism of the objectives of the Convention."⁴⁹ Thus the only necessary objective to assess owing to the personal circumstances is the objective to protect and assist victims of trafficking. The Convention provides clear obligations regarding the protection and support of victims in relation to identification, physical, psychological and social recovery and safety and protection.⁵⁰ Ultimately the guidance in place failed to engage with the relevant Convention criteria. There is no requirement under Article 14 for the Competent Authority to engage the purpose for which it is necessary for the victim to remain in the country. Thus the Court ruled there should be no requirement for the victim to demonstrate compelling circumstances.

⁴⁵ Ibid, para 26.

⁴⁶ Ibid, para 41.

⁴⁷ Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197, Article 14.

⁴⁸ Ibid.

⁴⁹ PK(Ghana) v Secretary of State for the Home Department [2018] EWCA Civ 98, para 45.

⁵⁰ see Article 10, 12.

I consider, the provision does not give an open-ended discretion, but rather requires an assessment of whether it is necessary for the purposes of protection and assistance of the victim of trafficking (or one of the other objectives of the Convention) to allow him to remain in the country. In this case, the Secretary of State's guidance neither requires nor prompts any such engagement. As a result, in my view, it does not reflect the requirements of Article 14(1)(a), and is unlawful.⁵¹

Following the delivery of this landmark judgment, the opportunity for victims in receipt of positive conclusive grounds decisions to acquire leave to remain has been enhanced. To this effect, the Home Office has issued interim guidance regarding discretionary leave.⁵² The current advice from the Home Office is to pause all discretionary leave decisions in which the decision reached will be negative.⁵³ The Modern Slavery Victim Support Bill looks to address the issues surrounding conclusive ground decisions and discretionary leave to remain.⁵⁴ The main aim of the Bill is to ensure that those in possession of a positive conclusive grounds decision have an extended rest and reflection period of twelve months once the ninety-day period under the NRM ends.⁵⁵ Further to this, the Work and Pensions Committee have made a recommendation regarding automatic discretionary leave to remain. It was commented that the lack of automatic entitlement upon a conclusive grounds decision was a “ludicrous situation”.⁵⁶

It is an extremely unattractive anomaly and an extremely expensive process putting a person through the NRM to get a positive outcome that everybody accepts that person is the victim of an appalling crime. At that stage, having spent all that money, having gone through all that process, there is no result except a piece of paper.⁵⁷

The Committee recommended that all victims be granted a minimum of

⁵¹ PK(Ghana) v Secretary of State for the Home Department [2018] EWCA Civ 98, para 51.

⁵² Interim operational guidance: Discretionary leave for victims of modern slavery (February 2018).

⁵³ Ibid, 4.

⁵⁴ Modern Slavery (Victim Support) Bill [HL] (2017) The Bill has currently completed the Lords stages and was presented to the House of Commons on the 18th May and is due for its second reading on the 23rd November 2018.

⁵⁵ Ibid, 48(b)(3).

⁵⁶ House of Commons Work and Pensions Committee, Victims of Modern Slavery – Twelfth Report Session 2016-2017 (April 2017) 40.

⁵⁷ Ibid.

twelve months leave to remain to allow a period to “receive advice and support, and give them time to plan their next steps.”⁵⁸ However, the Government’s response to this recommendation does not signal any imminent positive changes to the policy on discretionary leave to remain:

The decision about whether an individual is a victim of modern slavery and their immigration status are, and must remain separate decisions. The Government does not accept that all confirmed victims of modern slavery should be given at least one year’s leave to remain in the UK.⁵⁹

Nevertheless, despite the uncompromising position of the Government in their response to the Committee’s recommendation, it must be considered that this response was given prior to the judgement in *PK*. Thus, in light of the interim decision to suspend all negative decisions there remains the possibility that a change in direction in relation to discretionary leave to remain is still yet to come. Amidst the earthquake resulting from *PK*, a further breach emerged regarding the requirement to provide legal aid to victims of ‘modern slavery’. Under the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) 2012, victim are entitled to free legal aid. However, the case of *LL* saw the Government concede that it had refused free legal aid to the applicant who was in possession of a positive reasonable grounds decision.⁶⁰ The applicant had sought expert legal advice while it was considered whether or not she would receive a positive conclusive ground decision, to be told that due to changes in policy regarding legal aid, there was no entitlement for advice during the identification process. Further to this, there was no automatic entitlement for those seeking discretionary leave.⁶¹ It was conceded before the hearing that legal aid would be available to those with a reasonable grounds decision, so as to aid in obtaining a conclusive grounds decision, and those seeking discretionary leave to remain.⁶²

Impact on Victims: An Empirical Analysis

Having discussed the legal position of non-UK nationals who have exited the NRM, consideration will now be given to the experiences of those who have

⁵⁸ Ibid, 45.

⁵⁹ Victims of modern slavery: Government Response to the Committee’s Twelfth Report of Session 2016–17 – 30th November 2017 (<https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/672/67202.htm>)

⁶⁰ R (on the application of LL) v Lord Chancellor CO/3581/2017.

⁶¹ <http://atleu.org.uk/news/legalaidimmigrationadvice>.

⁶² R (on the application of LL) v Lord Chancellor CO/3581/2017, 1 (a),(b).

been forced to navigate this legal context due to their circumstances. This will highlight deficits in provision and the resultant difficulties; as well as the impact of this on the recovery of the individual who has been through the NRM and received a positive Conclusive Grounds decision. As referenced above, the Human Trafficking Foundation, in the report “Day 46: Is there Life After the Safe House for Survivors of Modern Slavery,” identify the three most commonly encountered difficulties with the current support system:

1. Finding suitable accommodation
2. Accessing on-going professional support and advocacy
3. Stabilised immigration status, therefore one year of automatic discretionary leave to remain is recommended by the report.⁶³

In view of these findings, this study seeks to further explore the lived experiences of trafficking victims in navigating the UK system as a non-UK national. This will be done by undertaking semi-structured interviews with caseworkers, who will each discuss a selection of anonymised cases, particularly discussing the various impacts that a lack of leave to remain in the UK has on the life of the individual. Having previously analysed the particulars of UK policy for non-UK national victims of trafficking, and the ways in which the UK is failing to meet its international (and self declared) obligations, these interviews and subsequent analysis will demonstrate the impact of the UK policy on victims, and further support the argument that the UK Government is failing to fully meet its obligations to protect victims.

After the interviews had been completed and transcribed, each was analysed to capture emerging themes using NVivo Computer Assisted Qualitative Data Analysis Software (CAQDAS). From this analysis, ‘top level’ or overarching themes were identified. Each top-level theme was then re-analysed to further categorise it into ‘micro-themes’ that emerged.

The top-level themes that emerged from this analysis were:

- The emotional impact of lack of regularized status
- Issues within the immigration system legal processes
- Home Office decision making
- The impact of lack of regular status on dependent children
- Navigating the welfare system as a non-UK national
- Policy Suggestions

⁶³ Day 46: Is there Life After the Safe House for Survivors of Modern Slavery (Human Trafficking Foundation).

Each of these emergent themes will be explored with regards to the identified micro themes within each section. Particular micro-themes that merit further explanation or expansion will be discussed in greater detail within each section. This will enable specific linkages to be made connecting the experiences of victims to Government policy. The authors acknowledge that this is not a definitive list of the problems faced by victims, but an overview that comes from the particular experiences of those caseworkers interviewed.

Emotional Impact of Lack of Regular Status

Identified within the broad theme of the emotional impact of the lack of regular status were eleven micro-themes:

1. Feelings of shame and isolation
2. Coercion into returning to origin country against initial wishes
3. Exacerbation of substance misuse issues
4. Fear of destitution
5. Fear of the future
6. Instability in circumstance and emotional health
7. Lack of coping with normal life
8. Negative impact on mental health
9. Homelessness
10. Impact of lengthy processes on emotional wellbeing
11. Victimhood perpetuated

One caseworker, referring to a female client that was currently awaiting an asylum decision, stated, “It keeps her isolated, basically, so that’s a big impact – both on the financial side it stops her accessing stuff and the emotional/shame side as well.”⁶⁴ Feeling that there was a stigma attached to not having a regularised status caused repeated emotional distress to a number of the clients that were discussed. One lady specifically stated she would have preferred to be waiting for a Discretionary Leave to Remain (DLR) decision rather than an asylum decision, as she was upset at the stigma of being an “asylum seeker”.⁶⁵ Rather than apply for DLR based on their status as a victim of trafficking, caseworkers will often pursue asylum claims on the basis of danger in returning to their country of origin — something reported by five of the caseworkers in further clarification discussion.

⁶⁴ Case worker 1, interview, 12th February 2018.

⁶⁵ Case worker 1, interview, 12th February 2018.

Connected to this, a negative impact on clients' mental health emerged as a frequent theme. In one particular case an Albanian woman who had been a victim of sex trafficking and had two children had been awaiting an asylum decision for three years. During this time she had reportedly been recovering well and had become engaged in a number of programs at the support centre, whilst effectively parenting her children. Having finally received a negative asylum decision her caseworker reported a serious detriment to her mental health, requiring intensive mental health care intervention and social services intervention to safeguard her children. She was also considered at risk of suicide. This was precipitated by the fear of reprisal in returning to her country of origin as well as the mental and emotional upheaval of moving her children alone away from the support networks she had developed.⁶⁶ The precariousness of the situation that those denied permanent residence face was reported to be, in some cases, highly injurious to the mental health of a number of clients, who are at higher risk of mental health issues due to their traumatic experiences.⁶⁷ In several cases, suicidal thoughts were discussed during the waiting process or upon receiving a negative decision.

A particular adverse effect in terms of emotional state referred to the ongoing victimisation caused by an uncertain immigration position. This is linked to the emotional uncertainty of not being able to plan for the future adequately. As a caseworker elaborated:

I think when people first come out of their exploitation (my general experience is) that they're really keen to work, really keen to move forward, keen to accept all the help they can, but if you're kept in a sort of a bit of a holding bay or you're just left uncertain for so long, it just kind of - you lose that motivation, that drive, and almost just become like a long term victim because that's how people have been treating you.⁶⁸

The inability of the client to work when they wished to, as part of their recovery, was stated by three of the caseworkers as a problem that contributed to a perpetuation of victimhood.

In a discussion about needs of clients, one caseworker argued that precarious immigration status immediately pushed almost all clients into a high-needs, complex casework category. Dependent on the individual, their personal circumstances and the level of trauma they had suffered, needs ranged from low to

⁶⁶ Case worker 2, interview 12th February 2018.

⁶⁷ Case worker 8, interview, 12th February 2018; Case worker 4, interview, 26th February 2018; Case worker 5, interview, 5th March 2018.

⁶⁸ Case worker 8, interview, 12th February 2018.

high, with differing levels of the necessary input of resources. The interviewee stated that often, once immigration issues were settled, a ‘high needs’ client would immediately drop down into a ‘low needs’ requirement. From a funding and resourcing standpoint, this is highly significant if the UK Government is considering extending the support offered beyond the initial forty-five day period. By removing insecurity around the right to remain, there is potential to enable more accurate ongoing assessment and the correct level of support for each individual and promote recovery.

Issues within the Immigration System Legal Processes

This was expected to be a common theme to emerge throughout the interviews, as already shown in the literature the system is complex and often not designed for victims of trafficking. Within this top-level theme, thirteen micro-themes emerged:

1. The difficulties with processing asylum claims
2. The complex issues of individuals’ circumstances requiring specialist legal work
3. The difficulties in exercising EU Treaty Rights
4. Cases of dependence of DLR applications on discretion of individual Police officers
5. The problem of DLR not automatically being considered for EU citizens
6. The gaps in support caused by inconsistencies within the bureaucratic system
7. The negative impact of the 2014 Immigration Act
8. Concern about the potential negative impact of Brexit
9. Individuals being wrongly incarcerated or deported
10. The lack of legal advice given within a useful timeframe, particularly whilst still in NRM, often due to lack of availability of Legal Aid
11. The lack of specific legal definitions of the terms used within legislation
12. The use of prevention orders
13. The prosecution of victims for crimes committed in the course of trafficking experience

In a high proportion of cases, the legal complexity, combined with the lack of available legal advice, became a barrier for achieving correct legal outcomes. One caseworker referred to the case of a Vietnamese woman that had been facing deportation after having a particularly complex history, however once a specialist legal team were able to “unpick” the case, she was awarded over two years of DLR and they are looking into permanent status for her. That an understanding of this

complexity is not reflected within current Government policy could be seen as a failure to engage with the specific needs of victims of trafficking. Due to the crime not being temporally discrete and involving many different facets, even once the victim has escaped the exploitative situation they are likely to have chaotic circumstances, such as a lack of stable housing, for some time. This is compounded when the person does not have a solid grasp of the English language and has no experience of navigating the State bureaucracy.⁶⁹

As discussed previously, DLR can be granted on the basis of cooperation with Police enquiries and ongoing prosecutions. In such instances, the police officer leading the investigation is in a position to submit the DLR application, pursuant to the individual's cooperation with their case. This raised a number of issues for different clients, specifically that it created an 'ad hoc' situation where DLR could become dependent on the particular practices of an individual officer. For example, situations were described where officers could be very helpful and submit applications in good time, with a time period that extended beyond the court case to allow time for extensions to be applied for.⁷⁰ However, in some cases due to a lack of awareness the officer would not know that this action was beneficial to the client.⁷¹ It was also reported that in some cases Police officers had specifically made decisions based on personal inclinations about the claiming of welfare. One caseworker stated:

And there'll be various battles with different officers. Some officers will be 'oh right, I guess they didn't tell you. We'll get that in place' or others, 'no, they just need to get a job if they're going to live here' and people's personal opinion can come into it, so it definitely isn't the same situation for everyone.⁷²

An issue that was raised by every caseworker was the impact of cuts to legal aid. Related to this was the difficulty of finding solicitors within a particular geographical locale that were able to take immigration cases, even more so if trying to find a solicitor who had experience with cases of trafficking.⁷³ This resulted in clients having to attend tribunals or immigration hearings, usually prior to their engagement with their current caseworker, without adequate advice or

⁶⁹ Case worker 1, interview, 12th February 2018.

⁷⁰ Case worker 4, interview, 26th February 2018; Case worker 3, interview, 26th February 2018.

⁷¹ Case worker 1, interview, 12th February 2018.

⁷² Case worker 1, interview, 12th February 2018.

⁷³ Case worker 7, interview, 26th February 2018.

representation. A caseworker at a safe house was asked specifically if any client had arrived having received prior immigration advice – he responded that according to the paperwork he had and interviews with clients, none had received specialist immigration advice whilst in the NRM.⁷⁴ This not only increases the risk of deportation and lack of access to welfare, but may also serve to exacerbate the complexities that are inherent within cases of trafficking.

Home Office Decision Making

This theme encompasses the interaction between victims, caseworkers and Home Office officials, particularly the decision making process and identified problems therein. Within this top-level theme, eight micro-themes were identified:

1. The degree of bias evident within decision making based on the choices of the client
2. The complex or confused decision making and justification of decisions
3. The delays in decision making
4. The procedures leading to the potential infringement of human rights
5. The lack of training on, or awareness of, issues surrounding human trafficking
6. The necessity of extensive advocacy work to navigate the immigration and welfare systems
7. The preponderance of negative decisions
8. The risks of repatriation not being fully considered

The picture emerging from each interview when discussing navigating the Home Office immigration decision making process was one of opaque, and at times inconsistent, decision making and a lack of understanding of the predominant issues faced by trafficking victims. An example of this is a reported lack of consideration of the risk factors associated with repatriation. One caseworker described an Albanian lady who had been trafficked by a group connected to her family that operated from several cities within Albania, who was facing deportation with her children after a negative asylum decision. That she had testified and contributed to the prosecution of some members of the group and could be at risk of reprisal was not considered sufficient to trigger principles of non-refoulement.

Another caseworker reported several cases of, as she perceived it, bias against women who had been sex workers in their home countries before being

⁷⁴ Case worker 5, interview, 5th March 2018.

trafficked and exploited in the UK. Encompassing concerns about lack of training and awareness in the Home Office, she related cases of two women who were asked in their Home Office interview what they had done in their home country (sex work) and what they had been doing in this country (sex work). When this was the answer given the case would have been rejected, had an advocate not interceded and asked further questions that exposed the exploitative nature of their experience with their traffickers in the UK.⁷⁵

As has been discussed within other emerging themes, the length of the decision-making process has been reported as having a deleterious effect on the recovery of clients. It was noted by several caseworkers that there appeared to be little accountability over delays.⁷⁶ One reported a conversation with a Home Office official who blamed staff churn and inadequate handover procedures meaning cases could end up ‘at the bottom of the pile’ for a long time. By failing to ensure adequate management of cases, the resultant delays and, at times, incorrect decision making, undermine Government aims to support and protect victims.

The Impact on Connected Children

Within the top-level theme of impact on connected children, the following micro-themes were identified:

1. Lack of coping with parenthood resultant from instability of immigration status
2. Lack of financial support potentially adversely affecting children’s development
3. Need for Social Services involvement with children
4. Risk of deportation to unknown ‘country of origin’ for children

It is not uncommon for individuals that have been through the NRM to be supporting children, potentially children that were conceived during their time of exploitation.⁷⁷ A number of issues were reported by caseworkers specifically relating to the children of clients. There were several reported cases of women who had been coping well with parenthood, but due to emotional instability caused by negative immigration decisions had degenerated mental health that precipitated potential removal orders of their children. In one particular case, social services

⁷⁵ Case worker 8, interview, 12th February 2018.

⁷⁶ Case worker 5, interview, 5th March 2018; Case worker 6, interview, 5th March 2018; Case worker 2, interview 12th February 2018; Case worker 7, interview, 26th February 2018; Case worker 3, interview, 26th February 2018.

⁷⁷ Case worker 1, interview, 12th February 2018.

only had to become involved in safeguarding the welfare of the children after a negative decision caused the mother to become unwell.⁷⁸

Difficulties in accessing benefits that the client was entitled to had a potentially detrimental effect on children's wellbeing, as one parent was unable to afford to take her child to appointments related to his health and development needs.⁷⁹ In the case mentioned above, the impact of moving from a country that had been 'home' for the child's entire life, to a country where they did not speak the language and was completely unfamiliar was seemingly not considered within the negative asylum decision.⁸⁰ Even more seriously, the threat of reprisals from traffickers against the children was also not considered as adequate reason to grant asylum.⁸¹ This is arguably a safeguarding issue for the children concerned, and one that highlights the lack of prioritisation of the needs of victims. In an intra-UK setting, a child would not, in normal practice, be allowed to live in a setting considered dangerous. Yet, seemingly because the danger is extraneous to the UK, the safeguarding of the child has not been adequately considered.

Navigating the Welfare System as a Non-UK National

Within the top-level theme of issues connected to accessing welfare, from further analysis emerged six micro-themes:

1. The risk of support failure due to the complexity of accessing benefits for non-UK nationals
2. The impact of the Immigration Act 2014 changes to benefit access for EU nationals
3. The potential impact of Brexit
4. A lack of awareness and training in Department of Work and Pensions (DWP) and Local Authority officials
5. People left destitute or homeless due to gaps or failures in support
6. The re-traumatizing effects of navigating system

A number of caseworkers reported the issue of the lack of 'portability' of a CG decision or even a DLR decision. In almost all reported cases that discussed accessing benefits or other welfare provision, there was a lack of knowledge about what some of these documents and statuses meant or what they entitled the

⁷⁸ Case worker 1, interview, 12th February 2018; Case worker 2, interview 12th February 2018.

⁷⁹ Case worker 2, interview 12th February 2018.

⁸⁰ Case worker 8, interview, 12th February 2018.

⁸¹ Case worker 7, interview, 26th February 2018.

individual too.⁸² Therefore high levels of advocacy were needed again to ensure that the client actually received the support they were entitled to. In some cases, this caused gaps in support that led to temporary, or in some cases permanent, homelessness and destitution. In at least one case this connected directly to the premature death of the individual.⁸³

Connected to this, the lack of knowledge of officials and the seeming lack of ‘portability’ of documents also led in several cases to reports of re-traumatizing of victims who were repeatedly asked inappropriate questions by officials that were not trained in dealing with such issues. An example was given of a housing official who was asking for specific details of the sexual exploitation suffered by a client in order to progress her housing application, despite this information being irrelevant to her entitlement.⁸⁴

It was also noted that the 2014 changes (such as the need for EU citizens to have worked in the country for three months prior to claiming welfare) to various benefits had made it significantly more difficult for victims of trafficking to access support.⁸⁵ Developing this idea, it was discussed by several caseworkers that the implications of Brexit on those who are going through the NRM and those who have exited the NRM with a positive CG decision needs serious consideration.

Policy Suggestions

From the policy suggestions made by the interviewed caseworkers five micro-themes emerged:

1. The automatic discretionary leave to remain
2. Individualised, needs-based support
3. A need to introduce a specific offense of exploitation
4. The development of stronger legal definitions within existing legislation
5. Support for the Lord McColl Bill⁸⁶

The suggestion was made by all caseworkers that automatic DLR upon a positive CG decision would have an immediate positive effect on outcomes. One

⁸² Case worker 5, interview, 5th March 2018; Case worker 6, interview, 5th March 2018; Case worker 4, interview, 26th February 2018; Case worker 2, interview 12th February 2018.

⁸³ Case worker 2, interview 12th February 2018.

⁸⁴ Case worker 1, interview, 12th February 2018.

⁸⁵ see Immigration Act 2014, sections 38-47 detail a number of changes to benefit entitlements including the NHS, Bank Accounts, Work and Driving Licenses.

⁸⁶ Modern Slavery (Victim Support) Bill [HL] (2017).

caseworker expressed the idea that by giving an automatic DLR for at least a year would provide the space to begin recovery and put tools in place to rebuild the client's life without the pressure of immigration proceedings.⁸⁷ As an automatic entitlement to twelve months DLR has been included in Lord McColl's Private Member's Bill, this legislative development was broadly welcomed, although some expressed that they felt it did not go far enough in a number of ways.⁸⁸ One caseworker mentioned that they felt a particular offense of "exploitation" would be beneficial, as this could create a more tiered approach to combatting this issue legally. They stated that there are times when offenses do not quite meet the threshold for "Modern Slavery" in the UK, but that exploitation has still occurred, which should itself be criminalised.

Thinking more broadly about the needs of clients, it was expressed that there was sometimes a tendency from within Government to develop a 'one size fits all' approach to victim support and care needs.⁸⁹ This underestimates the spectrum upon which trafficking offenses exist and is likely to lead to under or over provision of support. This could either overly stretch the system, or lead to support gaps, which lead to further and potentially more complex problems developing.

Conclusion

From both the legal analysis and the exploration of victims' experiences, it seems clear that the UK is not meeting its obligations to provide support for victims of trafficking, either morally or legally. As argued by a number of the caseworkers interviewed, the provision of an easier route to regularised status would aid the recovery and rehabilitation of their clients immeasurably, and in myriad ways. What would be considered as basic rights, for instance access to housing, employment and welfare, become much more attainable once the question of immigration status has been resolved.⁹⁰ This is so even if on a fixed term basis of one year. The Case of *PK* demonstrated that by not providing this relief the Home Office was in breach of its obligations; therefore the onus is on the Government to permanently rectify this situation. The case of *LL* also demonstrated that one of the issues the empirical analysis showed to be particularly problematic for victims, the lack of access to legal aid, was again a result of the Government being in breach of its obligations. Were this to be rectified, an on-

⁸⁷ Case worker 8, interview, 12th February 2018; Case worker 7, interview, 26th February 2018.

⁸⁸ Case worker 3, interview, 26th February 2018.

⁸⁹ Case worker 8, interview, 12th February 2018.

⁹⁰ Case worker 6, interview, 5th March 2018; Case worker 8, interview, 12th February 2018; Case worker 4, interview, 26th February 2018.

going injustice would be remedied. There is little doubt that the system as it currently stands fails in fully achieving its necessary aim of aiding recovery and restoration.

The current response to this emerging from Parliament is the Modern Slavery (Victim Support) Bill.⁹¹ This includes both twelve months of DLR and a requirement for “legal assistance” to be granted. These would be positive steps. However, the exact nature of the legal assistance would need further clarification; as we have identified that expert immigration law advice, given in a timely fashion, is specifically needed to remedy some of the particular issues victims are facing. What does not seem to be explicitly covered in the Bill are steps to make navigating the system of UK bureaucracy easier for those that have been awarded a CG decision. The lack of ‘portability’ of the CG paperwork, coupled with a lack of awareness and training within various Government and local Government departments, continually acts as a roadblock to accessing support. Specific measures aiming to counter this would be a welcome addition to current policy. Even more concerning, there are signs that the Victim Support Bill⁹², may not have a positive reception in the House of Commons.⁹³ It is to be hoped that the tension between protecting victims and protecting borders finds some resolution that enables the human beings affected to receive the support that they are both morally and legally entitled to.

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⁹¹ Modern Slavery (Victim Support) Bill [HL] (2017).

⁹² Ibid.

⁹³ <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/672/672.pdf>.

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Reasserting Agency: Procedural Justice, Victim-Centricity, and the Right to Remedy for Survivors of Slavery and Related Exploitation

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Abstract

One of the biggest failings of contemporary regimes governing human exploitation is their treatment of 'victims'. This paper roots narratives of victimhood and agency in the legal frameworks through analysis of the right to effective remedy in human rights and international law. Dominant characterisations of 'victimisation' are problematised and an alternative formulation - the 'victim-agent' - proposed in order to recognise agency and its abrogation, advocate for participation consistent with the demands of procedural justice, and contribute to meaningful redress.

Key words: modern slavery; remedies; victimhood; agency; procedural justice

Reasserting Agency: Procedural Justice, Victim-Centricity, and the Right to Remedy for Survivors of Slavery and Related Exploitation

Introduction

Criminal justice responses to extreme forms of human exploitation are vital.¹ Domestic prohibition and punishment for infractions represent a key first step in eradicating these practices. Their importance is heralded by the terms of the cornerstone international instruments dealing with slavery, servitude, forced labour and human trafficking, which place domestic prohibition and criminalisation at the forefront of efforts to eradicate exploitation in international law.² Moreover, their realisation is a central element of victims' right to redress in international law. That states have responded to these international frameworks by prioritising criminal justice processes is therefore unsurprising. Yet, this preoccupation with criminality often obscures both the needs and the legal rights of those made most vulnerable by exploitation—victims themselves—and overlooks the multiple dimensions of the legal obligation on states to ensure the right to effective remedy.

In legal processes designed to address human exploitation, failures occur at all levels. Police, prosecutors, and judges have significant discretion in the investigation and dispensation of criminal cases, and have demonstrated resistance to legal reforms and uncertainty over how to approach cases.³ The number of successful convictions achieved globally remains extremely low in relation to the number of people identified as potential victims and the estimated number of

¹ In this paper, we consider slavery, servitude, institutions and practices similar to slavery, forced or compulsory labour, and human trafficking under the broader category of 'extreme forms of human exploitation' or 'human exploitation'. Although the label 'modern slavery' is increasingly used as an umbrella term encompassing these practices, this language is not rooted in international or domestic laws which define each form of exploitation – including slavery - as distinct offences. As this paper finds its foundations in the legal frameworks governing the identified forms of exploitation, we generally avoid using the term modern slavery - which is a term of art rather than law – except where required in reference to existing literature or legislation.

² See Article 6, Slavery Convention (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253; articles 3, 5 and 6, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 266 UNTS 3; article 25, Forced Labour Convention (adopted 28 June 1930, entered into force 1 May 1932) C029; article 5, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS.

³ See Cassia Spohn, "The Non-prosecution of Human Trafficking Cases: An Illustration of the Challenges of Implementing Legal Reforms," *Crime, Law and Social Change* 61 (2014):169. See also Amy Farrell et al., "Police Perceptions of Human Trafficking," *Journal of Crime and Justice* 38 (2015): 315; William McDonald, "Explaining the Under-performance of the Anti-human-trafficking Campaign: Experience from the United States and Europe," *Crime, Law and Social Change* 61 (2014): 125.

people in slavery and related forms of exploitation.⁴ Shifting the focus from extreme forms of human exploitation to labour exploitation within these categories of abuse creates an even harsher picture. Although labour exploitation (omitting sexual exploitation) is estimated to make up 50% of modern slavery globally, only 6.9% of human trafficking convictions worldwide were cases of labour exploitation.⁵ Moreover, under-reporting of offences compounds the lack of investigation and prosecution, as victims are often hidden and fearful of authorities.⁶ Thus, victims are underserved because of failures in institutional understandings of victimisation and criminality.⁷

The failures of criminal justice responses with regard to victims are not only failures for domestic criminal law but breaches of states' international obligations to ensure effective remedies for victims of human rights violations. This paper places procedural justice at the heart of victims' legal right to remedy, thereby giving participation and the perspectives of individuals subjected to human exploitation a place in responses to violations. Through the reformulation of dominant understandings of victimisation, the complex nature of situations of extreme exploitation is recognised, and the capacity of legal frameworks to respond to these abuses increased. Good intentions of officials (such as, for instance, expressed commitments of governments to combating human exploitation) are insufficient to satisfy the obligation to ensure remedy for victims, particularly where implementation falls short of protecting and assisting victims.⁸ Without a nuanced understanding of the interplay of victimhood and agency in human exploitation, responses to abuses consistently fail to satisfy victims' right to effective remedy.

⁴ For instance, the United Nations Office on Drugs and Crime's 2016 review revealed that only 19% of the 136 countries reviewed conducted more than 100 investigations per year, and only 26% of investigated cases (on average) resulted in first-instance court convictions - UNODC, *Global Report on Trafficking in Persons 2016* (2016), 51. See also UNODC, *Global Report on Trafficking in Persons 2014* (2014), 1; U.S. Department of State, *Trafficking in Persons Report* (2016), at 40.

⁵ International Labour Organisation and Walk Free Foundation, "Global Estimates of Modern Slavery: Forced Labour and Forced Marriage," (report, International Labour Office, Geneva, 2017). https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf; U.S. Department of State, *Trafficking in Persons Report* (2016), 40.

⁶ See for instance Johnny McGaha and Amanda Evans, "Where Are the Victims? The Credibility Gap in Human Trafficking Research," *Intercultural Human Rights Law Review* 4 (2009): 239-266, 243-47.

⁷ On failures in understandings of victimisation and criminality, see for instance, Jack McDevitt and Amy Farrell, "Understanding and Improving Law Enforcement Responses to Human Trafficking: Final Report," (Northeastern University National Institute of Race and Justice, 2008).

⁸ See Jennifer Chacón, "Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking," *Fordham Law Review* 74 (2006): 2977, 2978; Dina Haynes, "Good Intentions Are Not Enough: Four Recommendations for Implementing the Trafficking Victims Protection Act," *University of St. Thomas Law Journal* 6 (2008): 81.

Throughout this article, we use the term ‘victim’ fully cognisant of its status as a controversial and loaded term.⁹ In particular, we recognise that the social stigma and weakness associated with the ‘victim’ label have caused many individuals to reject the term in their self-identification.¹⁰ We employ it in identifying individuals who meet, or potentially could meet, the legal definition of ‘victim’ under domestic and international law, and not as a complete definition of these individuals’ identities. Use of the term here is not to deny agency or to contribute to disempowering rhetoric.¹¹ Indeed, tensions regarding victimhood and agency are a central focus of the following analysis. Rooted in legal doctrine, victimology, and socio-legal studies, this paper presents a non-dichotomous perspective on the realities of unfreedom. This approach accounts for the significance and inadequacies of agency, recognising and valuing victims’ voices in the processes of justice and repair.

The Right to Effective Remedy in International Law

The right to an effective remedy for violations of rights is central to the function of legal obligations generally and key to ensuring that the interests of victims are respected. According to general international law, the responsibility to make reparations in the instance of a violation is an ‘indispensable complement’ of legal rules and need not be specifically articulated in the texts of relevant treaties.¹² Thus the failure of most international instruments dealing specifically with extreme forms of human exploitation to address the entitlement is largely irrelevant.¹³ The requirements of public international law in relation to redress supplement the terms of the Conventions themselves, requiring that violations of international obligations to bring about the abolition of human exploitation are met with appropriate remedies.

Although states are traditionally considered the sole subjects of international law, remedies in a claim between states do not necessarily accrue for the benefit of

⁹ See for instance Makau Mutua, “Savages, Victims, and Saviors: The Metaphor of Human Rights,” *Harvard International Law Journal* 42 (2001): 203; Sara Kendall and Sarah Nouwen, “Representational Practices at the International Criminal Court: The Gap Between Juridified and Abstract Victimhood,” *Law and Contemporary Problems* 76 (2014): 235.

¹⁰ See Stephanie Fohring, “What’s in a word? Victims on ‘victim,’” *International Review of Victimology* 24 (2018): 151.

¹¹ See Janie Chuang, “Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy,” *University of Pennsylvania Law Review* 158 (2010): 1655, 1711.

¹² *Case Concerning the Factory at Chorzów (Germany v Poland)* (Merits) [1928] PCIJ Rep Series A No 17, 21.

¹³ The omission of consideration of remedies in the 1926 Slavery Convention and 1956 Supplementary Convention, for instance, is not therefore an indication that no obligation in this regard exists.

the wronged state. As the International Court of Justice concluded in *Armed Activities on the Territory of the Congo*, acts of Uganda in respect of which reparations were due related both to injury done to the Democratic Republic of the Congo as a state and to ‘persons on its territory’ as individuals.¹⁴ Wrongdoing states have an obligation to make full reparations for such injuries caused by their wrongful conduct, including for material and moral damage to individuals; awards in respect of damages to individuals are directed to them through the claimant state.¹⁵ Thus, even lacking international legal personality, individual victims may be the beneficiaries of international reparations and states may have a duty to redress the damage done to them. A state breaching its international obligation to bring about the abolition of slavery, for instance, might be obligated to provide reparations to individuals for all injuries caused by their failure, despite the fact that the individuals themselves could not invoke international responsibility. The individual right to remedy therefore takes root in the *corpus* of general international law.

As well as being potential beneficiaries of international reparations in state to state disputes, individuals may also become the subjects of rights and obligations in international law through the terms of specific treaties.¹⁶ In the context of the prohibitions against extreme forms of human exploitation, human rights treaties enshrine the rights of individuals both to be free from exploitation and to reparation in the instance of a violation. Attaching primarily to individuals within the state, the initial function of these rights is to prohibit direct violations — making directly exploiting people legal wrongs. However, they also entail corresponding duties on states to ensure the realisation of the rights of individuals and to ensure access to effective remedy for victims of violations. Thus, the state may be held responsible in international human rights law for failing to exercise due diligence to properly ensure both the protection of primary rights, and individuals’ right to access to justice and redress in the event of a breach.¹⁷

Human rights instruments often also afford individuals rights of petition to bring a claim to an institutional body (whether a Court or Commission) in respect of a breach of their right to be free from human exploitation, and in relation to the

¹⁴ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (Judgment) [2005] ICJ Reports 257.

¹⁵ International Law Commission (ILC), “Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries,” (ARSIWA) *Yearbook of the International Law Commission*, 2, no. 2 (2001): 31, article 31.

¹⁶ *Jurisdiction of the Courts of Danzig* (Advisory Opinion) [1928] PCIJ Series B, No 15, 26-27.

¹⁷ African Committee of Experts on the Rights and Welfare of the Child, “Centre of Human Rights (University of Pretoria) and la Rencontre Africaine pour la defense des droits de l’homme (Senegal) v Senegal,” Decision Number 003/Com/001/2012 (15 April 2014).

infringement of their right to effective remedy for such violations.¹⁸ These procedures enable victims to hold states accountable for failures to fulfil their positive obligations in relation to the provision of effective remedies. Moreover, they further situate victims at the centre of international obligations of States responding to, and redressing, human exploitation. The terms of these treaties alone do not, however, clearly articulate the nature and scope of the reparatory obligations.

What does ensuring effective remedy involve?

In considering the scope of the positive obligation on states to ensure victims have access to effective remedies for the violations of their rights, the jurisprudence of a range of international adjudicatory bodies ought to be considered even if a case occurs in the context of a state party to only some of these bodies. This approach was exemplified in *Ahmadou Sadio Diallo*, wherein the International Court of Justice took account of the remedial practices of other international courts, tribunals and commissions including regional human rights courts.¹⁹ Judge Greenwood, in his concurring opinion, emphasised that this approach should be adopted by all international courts in drawing their conclusions.²⁰ It is therefore appropriate to frame the requirements particular states must meet in relation to the *corpus* of international law concerning the positive obligation to ensure effective remedies, regardless of whether the state is party to the particular instrument under which the pronouncements are rendered.

States possess a range of positive obligations in relation to the protection of human rights, and may be in breach of their obligations ‘as a result of... permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.’²¹ Although the European Court in *L E v Greece* highlighted the dominance of criminal justice in fulfilling states’ obligation to ensure remedies are

¹⁸ See, for instance, Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; article 34, Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS 5; article 44, Organization of American States, American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978); Organization of African Unity, African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) CAB/LEG/67/3 rev. 5, 21 ILM 58.

¹⁹ This approach is exemplified in *Ahmadou Sadio Diallo* wherein the International Court of Justice *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)* (Compensation) [2012] ICJ Rep 103.

²⁰ *Ibid.*

²¹ UN Human Rights Committee (UNHRC), “General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant,” CCPR/C/21/Rev.1/Add.13 (2004), [8].

available to victims, penal law alone cannot be considered to meet the positive obligation of individual redress.²² Criminal prosecutions of perpetrators are necessary but insufficient to satisfy victims' right to a remedy for the breaches of their rights constituted by extreme forms of human exploitation. Victims must also have access to legal avenues for seeking and receiving reparations for the violations committed against them. As noted by the Human Rights Commission in relation to the ICCPR: 'Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged.'²³ The Inter-American Court in *Velásquez Rodríguez v. Honduras* similarly highlighted the obligation to provide reparations and 'indemnify the victim for damages' as additional to the state's obligation to prevent, investigate and punish violations.²⁴

For the purpose of satisfying the right to remedy, effective reparation may be provided in a number of different ways, or by a combination of means, but generally requires states ensure appropriate compensation is paid to victims.²⁵ Avenues to claim redress against both the state and the individual perpetrators of the violations must be available to victims in order to satisfy the international human rights obligations in this regard.²⁶ Beyond ensuring monetary redress, reparations appropriately entail measures of restitution, rehabilitation and satisfaction in both general international and human rights law.²⁷ Satisfaction in this context might include measures such as 'public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.'²⁸ Ultimately, reparatory measures provided in the instance of a violation should be responsive to the needs of the victim with regard to all the circumstances of the case in order to ensure effectiveness in both their material and their symbolic functions. Without engaging with victims themselves, the obligation to ensure effective remedy is unlikely to be properly fulfilled.

²² *L E v Greece* [2016] ECHR Application No.71545/12 (21 January), 13.

²³ UNHRC, "General Comment no. 31," [16].

²⁴ *Velásquez Rodríguez v Honduras* (Merits) [1988] IACHR Series C No 4 (29 July), [175].

²⁵ UNHRC, "General Comment no. 31," [16].

²⁶ (see *Judicial Condition and Rights of Undocumented Migrants* (Advisory Opinion) [2003] IACHR OC-18/03 (17 September), 106).

²⁷ ILC, "ARSIWA," art 34; UNGA, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," (UNBPG) UN Doc A/RES/60/147 (2006), principle 18.

²⁸ UNHRC, "General Comment no. 31," [16].

The importance of procedural justice

Unlike criminal justice responses or economic and political reforms, reparations are an inherently victim-centric response to injustice.²⁹ Reparations are an effort on behalf of victims while criminal justice is, in the end, a struggle against perpetrators.³⁰ Approaches that place victims at the heart of reparatory measures in a meaningful, rather than merely tokenistic, way are crucial in incorporating victim-centricity into remedy frameworks. As recognised in 1993 by then Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Theo van Boven, the often overlooked perspectives of victims are crucial in reparations discussions and the needs and wishes of victims should be a central concern in giving effect to the right to remedy.³¹

Current mechanisms in response to human exploitation consistently fail to meet the needs of victims and survivors. Not only do states continue to prioritise criminal justice responses by focusing on perpetrators often to the exclusion of victims, they also fail to enable participation of victims in these criminal justice processes or to provide sufficient support for victims after identification and rescue.³² Measures of procedural justice, which demand the reconceptualisation of victimisation, meaningfully improve this dynamic. Julia Muraszkwicz aptly frames the significance of procedural justice for victims through participation in criminal trials:

Noting the loss of dignity, the inclusion of a human trafficking victim in a trial and not merely making them the subject of evidence makes a contribution to the restoration of agency. It conveys the message that their concerns are as important as those of the state.³³

²⁹ Luke Moffett, “Transitional Justice and Reparations: Remediating the Past?” in *Research Handbook in Transitional Justice*, ed. by Cheryl Lawther, Luke Moffett and Dov Jacobs, (Cheltenham: Edward Elgar Publishing, 2017) 377-400, 1.

³⁰ Pablo de Greiff, “Repairing the Past: Compensation for Victims of Human Rights Violations,” in *The Handbook of Reparations*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 1-20, 2.

³¹ See UN Commission on Human Rights, “Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms: Final Report Submitted by Mr Theo van Boven, Special Rapporteur,” UN Doc E/CN.4/Sub.2/1993/8 (1993), [133] and [137].

³² See Jennifer Burn and Frances Simmons, “Trafficking and Slavery in Australia: An Evaluation of Victim Support Strategies,” *Asian and Pacific Migration Journal* 15, no. 4 (2006): 553; Elaine Pearson, *Human Traffic, Human Rights: Redefining Victim Protection* (London: Antislavery International, 2002); Katharine Cunningham and Lisa Demarni Cromer, “Attitudes about Human Trafficking,” *Journal of Interpersonal Violence*, 31, no. 2 (2016): 228.

³³ Julia Muraszkwicz, “Article 12 of the EU Human Trafficking Directive: Fulfilling Aspirations for Victim Participation in Criminal Trials?” *New Journal of European Criminal Law*, 7, no. 3 (2016): 331, 341.

The dehumanising nature of extreme forms of human exploitation - the denial of rights, subjecthood, identity, dignity and freedom - makes the procedural justice dimension of responses all the more significant. Orlando Patterson's characterisation of slavery as 'social death' entailing *dominium* exercised over a person by another, including 'inner power beyond mere control,' reflects this objectification of victims.³⁴ By incorporating participation of victims, response mechanisms can provide official recognition to their humanity and their suffering. The re-affirmation of the agency of the victim can, in turn, assist in countering the narrative of victimisation, aid recovery and serve a signalling function for other victims.³⁵ Measures of procedural justice which place victims at the centre of reparatory processes and ensure their involvement at all levels of decision-making can thus transform the lives of survivors and help rebuild their civic identities.³⁶

In order to facilitate the full participation and inclusion of victims in reparations processes, outreach, support and education programmes which enable victims to express their own perspectives and desires are essential. Without the operation of these mechanisms, victims might be unable or unwilling to make claims because of lack of knowledge, understanding, or support. Thus, the absence of appropriate procedural support represents a significant barrier to victims' ability to realise their right to remedy. As REDRESS, a prominent non-governmental organisation focused on ending torture and seeking justice for survivors, highlights:

without a fuller understanding of survivors' perceptions and without the necessary support structures in place we are in danger of encouraging people whose lives have been traumatized to exercise rights they are unclear about, through processes that they are not actively involved in and do not understand, which then produce outcomes that do not match their expectations.³⁷

³⁴ Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, Mass.: Harvard University Press, 1982), 31.

³⁵ See Yael Danieli, "Massive Trauma and the Healing Role of Reparative Justice," in *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making* eds. Carla Ferstman, Mariana Goetz and Alan Stephens (Leiden: Martinus Nijhoff, 2009), 41-78, 66.

³⁶ Margaret Urban Walker, *Moral Repair: Reconstructing Moral Relations after Wrongdoing*, (Cambridge: Cambridge University Press, 2006).

³⁷ REDRESS, "Torture Survivors' Perceptions of Reparation: Preliminary Survey," 2001, accessed October 10, 2017, <http://www.redress.org/downloads/publications/TSPR.pdf>, 9.

The inclusion of victims in the processes through which redress is determined and provided can, therefore, improve the efficacy and efficiency of chosen programmes. The views and concerns of victims, when directly engaged, can impact the substantive outcomes of reparations, increasing their capacity to understand and respond to the specific needs of victims taken in context.³⁸ As Fiona McKay advises, it ‘is not simply a question of whether any remedy or outcome is produced, but whether that remedy or outcome is the right one for the victim.’³⁹ Substantive participation is required in order to achieve responsiveness. Conversely, the effectiveness of reparations mechanisms and their ability to achieve the desired outcomes can be undermined when they fail to meaningfully engage victims in decision-making and negotiation.⁴⁰

Although it is often impossible to satisfy the needs and wishes of all victims in all situations, meaningful measures of procedural justice can assist in ensuring the best possible programmes are implemented in the interests of victims. Brandon Hamber suggests that reparations may be perceived as ‘good enough’ by victims where there has been sincere recognition of the violations and sufficient effort to redress harms, regardless of whether full and proportionate remedy is provided.⁴¹ By integrating the voices of victims into justice processes, reparations awards can more closely respond to the perspectives and needs of victims, leaving them psychologically satisfied. Participatory approaches can therefore ensure that victims accept the justice of the process even where they dispute the substantive outcomes.

Procedural justice can also, in turn, improve the effectiveness of criminal processes, for victims are often central to the successful prosecution of perpetrators. Measures of procedural justice designed to ensure they are sufficiently supported materially and psychologically to recover from the trauma of their exploitation may be essential to their capacity to provide reliable evidence at trial.⁴² Nonetheless, it is important that victims are not seen as a means to a

³⁸ Edgar Lind, and Tom R Tyler, *The Social Psychology of Procedural Justice* (New York: Springer, 1988), 31-34.

³⁹ Fiona McKay, “What Outcomes for Victims?” in *The Oxford Handbook of International Human Rights Law*, ed. Dinah Shelton (Oxford: Oxford University Press, 2013), 921-954, 922.

⁴⁰ Carlton Waterhouse, “The Good, the Bad, and the Ugly: Moral Agency and the Role of Victims in Reparations Programs,” *University of Pennsylvania Journal of International Law*, 31 (2009): 257, 258. For examples of victim dissatisfaction because of failures in procedural justice, see Phuong Pham et al., “Victim Participation and the Trial of Duch at the Extraordinary Chambers in the Courts of Cambodia,” *Journal of Human Rights Practice*, 3 (2011): 264; Mariko Izumi, “Asian-Japanese: State Apology, National Ethos, and the ‘Comfort Women’ Reparations Debate in Japan,” *Communication Studies*, 62, no. 5 (2011): 473.

⁴¹ Hamber, “Dilemmas”, 137.

⁴² Susan French and Cindy Liou, “The Importance of Strategic, Victim-Centred Human Trafficking Prosecutions,” *Anti-Trafficking Review*, 6 (2016): 114.

conviction but are recognised as agents in their own right, whose roles and responsibilities in legal mechanisms are respected.⁴³ Ultimately, placing the victim as a conscious actor and human being at the centre of responses to human exploitation is vital to the effectiveness of investigations and prosecutions, the recovery of the victim from their experiences, and the prevention of future exploitation. Yet, it is impossible to achieve where victims are perceived as ‘powerless’, ‘helpless’ or ‘depoliticised’.⁴⁴ It is therefore necessary to interrogate the ways in which victimisation is constructed to ensure measures targeted towards redressing exploitation do not perpetuate the very dehumanisation and denial of agency they seek to suppress.

The Dilemma of Victimhood and Agency

Stereotypes and the ‘Ideal’ Victim

The notion of the ‘ideal victim’ significantly infringes on the realisation of victims’ right to remedy, and the integration of procedural justice mechanisms responding to human exploitation. Despite identified ‘victim protection’ objectives in anti-trafficking and modern slavery law, in practice only some victims are afforded protection and assistance. The phenomenon of human exploitation is complex, exacerbated by a lack of conceptual and definitional consensus, yet stereotypes of idealised victimhood shape social perceptions of victimisation. These perceptions influence who qualifies for the sympathy of both society and officials responsible for responding to exploitation, as they shape who receives ‘the complete and legitimate status of being a victim.’⁴⁵ As a result, the law as applied is often under-inclusive of the broad range of victim experiences and thus fails to meet the rights of substantial numbers of victims.

In the context of human rights violations, vulnerability and victimhood intertwine, with the ‘ideal victim’ fundamentally understood as ‘helpless, powerless, unable to make choices for themselves, and forced to endure forms of pain and suffering.’⁴⁶ The ‘ideal victim’ is therefore typically female, weak, either very young or old, blameless, and participating in a respectable activity when

⁴³ Stephen Schafer, *Victimology: The Victim and His Criminal* (Virginia: Reston Publishing Company, 1977).

⁴⁴ Mutua, “Savages”: 203; Kendall and Nouwen, “Representational Practices”: 235.

⁴⁵ Nils Christie, “The Ideal Victim,” in *From Crime Policy to Victim Policy: Reorienting the Justice System*, ed. Ezzat Fattah (London: Macmillan, 1986), 18.

⁴⁶ Sally Merry, “Introduction: Conditions of Vulnerability,” in *The Practice of Human Rights: Tracking Law Between the Global and the Local*, ed. Mark Goodale and Sally Merry (Cambridge: Cambridge University Press, 2007), 195.

confronted by a big, bad, typically male offender who is a stranger.⁴⁷ At the centre of this construct is the notion of agency, such that ‘[r]isk-takers tend to elicit less sympathy when they are injured and are unlikely to be defined as victims of human rights violations.’⁴⁸ In other words, choice must be removed from the equation for recognition of victimhood.⁴⁹

The closer individuals are to meeting the requirements of idealised victimhood, the more likely they are to be considered victims.⁵⁰ Yet, because baseless assumptions often shape these attitudes towards victims, a gap between idealised images and empirical realities arises.⁵¹ In the context of public and legal responses to human trafficking, the issue is frequently narrowed to one of sexual exploitation; of innocent, usually white, women abused by foreign men and in need of rescue.⁵² News media portrayals have contributed to this narrative and legitimised official discourse and policy responses.⁵³ While exploited children might also appear somewhat frequently in paradigm representations of trafficking victims, the press has ‘all but ignored’ labour exploitation of men and women, despite evidence that it is more prevalent.⁵⁴ Moreover, the contemporary anti-trafficking movement has perpetuated racial myths which undermine the identification of minority youth victims, and discount victims who escape on their

⁴⁷ Christie, “The Ideal,” 19. See also Sandra Walklate, “Ways of Thinking About Victims and Victimology,” in *Imagining the Victim of Crime* (Open University Press, 2007), 26-56, 28.

⁴⁸ Merry, “Introduction,” 195.

⁴⁹ Merry, “Introduction,” 195.

⁵⁰ Christie, “The Ideal,” 19.

⁵¹ James Dignan, “Victims, Victimization and Victimology,” in *Understanding Victims and Restorative Justice* (Open University Press: 2005), 13.

⁵² Edith Kinney, “Victims, Villains and Valiant Rescuers: Unpacking Sociolegal Constructions of Human Trafficking and Crimmigration in Popular Culture,” in *The Illegal Business of Human Trafficking*, ed. Maria Guia (New York: Springer, 2015); Gretchen Soderlund, “Running from the Rescuers: New U.S. Crusades Against Sex Trafficking and the Rhetoric of Abolition,” *NWSA Journal* 17 (2005): 64.

⁵³ See Amy Farrell and Stephanie Fahy, “The Problem of Human Trafficking in the US: Public Frames and Policy Responses,” *Journal of Criminal Justice* 37 (2009): 617; Rachealle Sanford et. al., “Framing Human Trafficking: A Content Analysis of Recent U.S. Newspaper Articles,” *Journal of Human Trafficking* 2 (2016): 139.

⁵⁴ Doreen Marchionni, “International Human Trafficking: An Agenda-building Analysis of the US and British Press,” *International Communication Gazette* 74 (2012): 145, 155. On prevalence, see International Labour Organization and Walk Free Foundation, “Global Estimates”.

own or who suffer subtle forms of coercion through a narrow focus on rescues and physical violence.⁵⁵

Dominant frames of victimisation deeply impact both public perception and policy, with many problematic and discriminatory outcomes.⁵⁶ Certain victims are prioritised within response mechanisms, while others are rendered invisible – ‘imperfect victims’ are deemed unworthy of legal protection even at the most basic level.⁵⁷ As a result of the conceptualisation of victimhood identified above, the legislative provisions of many states still fail to include less visible categories of victims — particularly male victims of labour exploitation. Thus, the skewed and narrow construction of the archetypal victim means that individuals are effectively punished for non-conformity and subjected to a ‘hierarchy of victimhood.’⁵⁸ Suffering thereby becomes selectively recognised by the state, with the risk of generating further harm to victims whose rights are breached twice: once by the exploitation itself, and again by the denial of the right to redress.⁵⁹

Defining individual experiences based on ideal victimhood creates additional challenges in relation to groups of people whose agency and voice are already abrogated by paternalistic social attitudes. International emphasis on violence against women, for instance, reinforces stereotypes of women as vulnerable and in need of protection, reinforcing state paternalism. This effectively minimises female agency and the heterogeneity of lived experiences.⁶⁰ Although highlighting victimisation can mobilise action to protect vulnerable people, it may do so at the expense of the further disempowerment of already marginalised or devalued groups of people. This extends to situations where vulnerability and exploitation are substantially connected to other identity factors associated with

⁵⁵ Cheryl Butler, “The Racial Roots of Human Trafficking,” *UCLA Law Review* 62 (2015): 1464; Saskia Blume, “Masculinity and the ‘Ideal Victim’ in the US Trafficking Discourse,” (working paper, Centre on Migration, Policy and Society, University of Oxford, 2015). <https://www.compas.ox.ac.uk/2015/masculinity-and-the-ideal-victim-in-the-us-trafficking-discourse/>; Dina 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,” *Georgetown Immigration Law Journal* 21 (2007): 337; Srikantiah, “Perfect Victims”.

⁵⁶ For an introduction to framing theory and public opinion, see Dennis Chong and James Druckman, “Framing Theory,” *Annual Review of Political Science* 10 (2007): 103.

⁵⁷ See Maggy Lee “Constructing and Denying Victimhood in Trafficking,” in *Trafficking and Global Crime Control* (Thousand Oaks, California: SAGE, 2011), 65.

⁵⁸ Lee, “Constructing,” 67-71. See also Jayashri Srikantiah, “Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law,” *Boston University Law Review* 87 (2007): 157, at 197.

⁵⁹ See Julia O’Connell Davidson, “Migration, Suffering and Rights,” in *Migration: The COMPAS Anthology*, ed. Bridget Anderson and Michael Keith (Oxford: COMPAS, 2014).

⁶⁰ Ratna Kapur, “The Tragedy of Victimization Rhetoric: Resurrecting the ‘Native’ Subject in International/ Postcolonial Feminist Legal Politics,” in *Erotic Justice: Law and the New Politics of Postcolonialism* (Norwich: Glasshouse, 2005): 129.

paternalistic policy responses—for instance, indigeneity, race, class, and caste. In short, emphasising individual ‘woundedness’ may foreground passivity and helplessness at the expense of capacity for choice.⁶¹

Perhaps the most problematic requirement in the ideal victim construct, in light of international and domestic definitions of human exploitation, is that of innocence. Although legislative efforts have sought to protect rather than criminalise victims, in practice victims are required to be ‘innocent’, demanding ‘the complete absence of consent at all stages of transportation and employment.’⁶² Yet, human exploitation regularly involves some degree of choice on the part of victims through consent to some part of the process—often driven by economic vulnerability.⁶³ At the same time, coercion and the abrogation of consent at other points in the process is central to the abuses. Focusing on victim passivity ignores individual agency and choice, as well as the circumstances of the exploitation.⁶⁴ Thus, the exacting standard of weakness and blamelessness means that the majority of potential victims are deemed unworthy of protection, despite meeting legal definitions of exploitation and being entitled to redress.⁶⁵

The False Victim/Agent Dichotomy

Despite significant progress and calls for greater nuance, the victim/agent dichotomy persists in legal and popular discourse.⁶⁶ On a theoretical level, the law tends to favour binaries rather than ambiguity or complexity.⁶⁷ As Joanne Conaghan has observed, the law is structured in dichotomies such as ‘criminal/

⁶¹ See Wendy Brown, *States of Injury* (Princeton: Princeton University Press, 1995). See also Rebecca Stringer, *Knowing Victims: Feminism and Victim Politics in Neoliberal Times* (London: Routledge, 2014); Jan van Dijk, “Free the Victim: A Critique of the Western Conception of Victimhood,” *International Review of Victimology* 16 (2009): 1.

⁶² Chacón, “Misery,” 3022.

⁶³ See Ramona Vijeyarasa, “Stigma, Stereotypes and Brazilian Soap Operas: Road-blocks to Ending Human Trafficking in Vietnam, Ghana and Ukraine,” *Gender, Place and Culture* 20 (2013): 1016.

⁶⁴ See Lee, “Constructing”; Srikantiah, “Perfect Victims,” 211.

⁶⁵ See Wendy Chapkis, “Soft Glove, Punishing Fist: The Trafficking Victims Protection Act of 2000,” in *Regulating Sex: The Politics of Intimacy and Identity*, ed. Elizabeth Bernstein and Laurie Schaffner (New York: Routledge, 2005), 51; Denise Brennan, “Myths Meet Reality: How We Are Not Fighting Trafficking or Supporting Trafficking Survivors,” *New York Law School Law Review* 60 (2016): 605; Shelley Cavalieri, “The Eyes That Blind Us: The Overlooked Phenomenon of Trafficking into the Agricultural Sector,” *Northern Illinois University Law Review* 31 (2011): 501; Dina Haynes, “Exploitation Nation: The Thin and Grey Lines Between Trafficked Persons and Abused Migrant Laborers,” *Notre Dame Journal of Law, Ethics and Public Policy* 23 (2009): 1.

⁶⁶ See Elizabeth Schneider, “Feminism”, 390.

⁶⁷ See Kathryn Abrams, “Sex Wars Redux: Agency and Coercion in Feminist Legal Theory,” *Columbia Law Review* 95 (1995): 304, 374.

civil, public/private, form/substance, innocence/guilt, good/bad, just/unjust, legal/illegal.⁶⁸ These dichotomous representations within the legal system are especially pronounced in areas directly related to gender.⁶⁹ In short, conventional legal discourse appears to preclude the possibility of being both a victim and an agent. Yet this dichotomy is inadequate to describe victimisation and agency in many contexts—particularly human exploitation—and is remote from lived realities.⁷⁰ As James Dignan notes, ‘questions relating to the concept and identity of victims are highly problematic, often controversial and generally call for highly nuanced answers.’⁷¹

It is not sufficient to shift the narrative concerning victims of human exploitation from one of unfreedom, coercion, and victimisation to affirm individual agency, for the offences require the diminution of choice by definition. While terms such as ‘survivor’ are meant to emphasise resilience, they do not necessarily align with legal frameworks and run the risk of minimising the harm suffered or the need for a legal remedy. An emphasis on agency may exacerbate the problem of failure to recognise, and ensure redress for, ‘imperfect’ victims by playing into existing narratives of choice and consent. Foregrounding choice and personal responsibility may be empowering, but it can also lead to victim-blaming.⁷² In 1971, William Ryan defined the phenomenon as ‘justifying inequality by finding defects in the victims of inequality.’⁷³ In the complex contexts of human exploitation, it can be easier to shift responsibility for harm and suffering to individuals rather than addressing structural causes. Indeed, focusing on the conduct and choices of the individual leads to arbitrary outcomes and risks trivialising the harm suffered.⁷⁴ Thus, the exclusive focus on the agency of victims can also create lacunae in processes to ensure the right to redress.

While representations of the ideal victim and ideal offender may capture attention and interest, the reality is multi-dimensional and ambiguous; most victims are not completely blameless and most offenders are not completely culpable.⁷⁵

⁶⁸ Joanne Conaghan, *Law and Gender* (Oxford: Oxford University Press, 2013), 98.

⁶⁹ Abrams, “Sex Wars,” 375.

⁷⁰ See Chi Mgbako and Laura Smith, “Sex Work and Human Rights in Africa,” *Fordham International Law Journal* 33 (2010): 1178; Deborah Tuerkheimer, “Recognizing and Remediating the Harm to Battering: A Call to Criminalize Domestic Violence,” *Journal of Criminal Law & Criminology* 94 (2004): 959.

⁷¹ Dignan, “Victims,” 13.

⁷² See William Ryan, *Blaming the Victim* (New York: Vintage, 1971).

⁷³ Ryan, *Blaming*.

⁷⁴ See Martha Minow, “Surviving Victim Talk,” *UCLA Law Review* 40 (1993): 1411.

⁷⁵ Christie, “The Ideal,” 29.

The reality of exploitation is complicated and each individual case is unique.⁷⁶ Despite the ‘innocent victim’ and ‘deviant offender’ paradigm which dominates discourse on human exploitation, multiple studies have revealed the diversity of exploited persons’ experiences.⁷⁷ For instance, many individuals willingly migrate in search of better economic opportunities. That does not mean they also agree to abuse and exploitation by others. Initial consent to the movement or type of work must not be equated with consent to exploitation, and this must be true in practice as well as in law.⁷⁸ Thus, overemphasis on agency in cases of human exploitation may be distracting and misses the critical issue: the abuse and exploitation of a human being. Accepting the victim/agent dichotomy cannot correct the failures of measures targeting human exploitation to enable procedural justice and ensure the right to effective remedy.

Not Simply Passive or Active: The Victim/Agent

Is it possible to move beyond stereotypical notions of an ‘ideal’ victim of exploitation or to overcome the persistence of the false victim/agent dichotomy? The law (and wider society) often functions in dualities, and by definition, victims are acted-upon while agents act. Commentators have, however, challenged this binary assessment in a range of contexts. Linda McClain, for instance, proposes a continuum model of agency and responsibility to respond to stereotypes about ‘irresponsible motherhood’.⁷⁹ McClain draws attention to the range of choices and constraints that may impact a woman and her reproductive decisions, rejecting the monolithic notion of the poor, single mother. In the context of domestic violence, Elizabeth Schneider argues that viewing individuals as either victims or agents is static, incomplete, and overly simplistic.⁸⁰ Schneider contends that rather than opposites, victimisation and agency are ‘interrelated dimensions of women’s

⁷⁶ Srikantiah, “Perfect Victims,” 161.

⁷⁷ Michael Wilson and Erin O’Brien, “Constructing the Ideal Victim in the United States of America’s Annual Trafficking in Persons Reports,” *Crime, Law and Social Change* 65 (2016): 29; Lee, “Constructing,” 61.

⁷⁸ See Dina Haynes, “Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers,” *Human Rights Quarterly* 26 (2004): 221, 231.

⁷⁹ Linda McClain, “‘Irresponsible’ Reproduction,” *Hastings Law Journal* 47 (1996): 339.

⁸⁰ Schneider, “Feminism.”

experience.⁸¹ Other scholars have noted that focusing on gender-based victimhood may inadvertently ignore racial or cultural factors in oppression and resistance.⁸²

To counter the exacting standard of an innocent and helpless victim subject, we propose the term ‘victim-agent’ to encourage a more nuanced and inclusive understanding of victimisation in the context of human exploitation. This term rejects the victim/agency dichotomy and instantly evokes the idea that a victim is not necessarily weak and vulnerable, challenging the notion that victim status requires a total lack of agency. The term ‘victim’ remains to recognise that some harm happened to the individual which requires compassion and legal redress according to the relevant frameworks discussed above.⁸³ Simultaneously, the term ‘agent’ implies that the individual maintains some degree of volition despite experiencing exploitation, and provides a pathway to procedural justice.

This reformulation of the language of victim identity is not simply a theoretical foray into the narratives of exploitation, but a necessary element of the attempt to do justice for victims. Cases of extreme human exploitation are complex. Relying on stereotypes of the archetypal victim leads to discriminatory impact in practice through systemic failures to recognise entire swathes of victims, as discussed above. This reflects significant failures in prevention, identification, investigation, prosecution, punishment and the provision of redress globally, and thus a substantial breach of states’ obligation to ensure effective remedies. Moreover, this alternative conceptualisation opens the door for meaningful measures of procedural justice by simultaneously recognising voice and victimisation — measures that are integral to the realisation of reparation for victim-agents.

States’ international obligations to ensure redress for victims of exploitation demand that governments identify cases of exploitation, protect victims, punish perpetrators, and enable reparations for victims. Thus, recognising victimisation according to the established parameters of the legal definitions of exploitation, rather than on the basis of stereotypes, is crucial to the fulfilment of international law.⁸⁴ Focusing on victim choice is a distraction, especially when it means an

⁸¹ Schneider, “Feminism”, 395.

⁸² See Angela Harris, “Race and Essentialism in Feminist Legal Theory,” *Stanford Law Review* 42 (1990): 581; Julie Stubbs and Julia Tolmie, “Race, Gender and the Battered Woman Syndrome: an Australian Case Study,” *Canadian Journal of Women and Law* 8 (1995): 122; Ratna Kapur, “The Tragedy”.

⁸³ See Minow, “Surviving,” 1415.

⁸⁴ The emphasis on non-prosecution of trafficking victims in international guidelines specifically calls for an understanding of coercion which removes liability for the illegal actions of trafficking victims. See Working Group on Trafficking in Persons, “Non-punishment and Non-prosecution of Victims of Trafficking in Persons: Administrative and Judicial Approaches to Offences Committed in the Process of Such Trafficking,” CTOC/COP/WG.4/2010/4 (9 December 2009); Office of the High Commissioner for Human Rights, “Recommended Principles and Guidelines on Human Rights and Human Trafficking,” E/2002/68/Add. 1.

exploited individual is denied crucial services or access to legal remedies. Emphasis on an ideal, non-agentic victim excludes certain people, because there are always complications and inconvenient details if individual blamelessness is scrutinised. The term ‘victim-agent’ is meant to encourage more nuanced approaches and understandings of exploitation, agency, and choice, consistent with the demands of procedural justice, rather than focusing attention on rigid constructs.

Conclusion

Narratives of victimhood and agency in human exploitation do not exist in a vacuum, but within the context of a developed international jurisprudence situating abuses within human rights and general international law demanding that violations be identified, investigated, prosecuted, punished, and effectively remedied. This obligation is incumbent upon all 170 states party to the ICCPR, 173 parties to the Palermo Protocol, and the parties to regional human rights instruments (as well as a range of other international instruments). Ensuring remedies for victims of exploitation within domestic frameworks is an obligation, not an option, for these states. Stereotypes of ‘innocent’ victims and ‘evil’ offenders mobilise public sympathy, determine what is newsworthy, elicit support from moral entrepreneurs and politicians, and impact policy. These archetypes dominate legal, media and political discourse to the detriment of real individuals who do not conform to the ideal representations.⁸⁵ Combined with the polarisation of victimhood and agency, this discourse fails to reflect the realities of exploitation and thereby obstructs justice for the majority of victims.

There is much work to be done to deconstruct the dominant and persistent discourse regarding victims of extreme forms of human exploitation, but this is work that is required by the legal frameworks and necessary to achieve justice. Reconceiving victimhood and agency as a more nuanced equation is vital to counter idealised victimisation, to properly identify and respond to situations of exploitation, and to ensure procedural justice in the provision of redress for victims. For that reason, this article calls for a shift toward the ‘victim-agent’: someone who has made choices, albeit structurally constrained ones, but who still potentially experiences harm and exploitative conditions. By recognising both the agency of victims and the abrogation of freedom inherent in extreme exploitation, this formulation acknowledges the voice and perspectives of victims and survivors in the plethora of contexts in which they exist. Thus, it enables a more effective realisation of the obligations to ensure effective remedies for victim-agents, and

⁸⁵ Dignan, “Victims,” 17 and 20.

does so consistently with the demands of procedural justice — with victims at the heart of the analysis.

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“A Colossal Work of Art”: Antislavery Methods of Visual Protest From 1845 to Today

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Abstract

In 1967, the faces of black antislavery figures were woven into the fabric of the urban US environment to showcase radical black narratives and empower segregated black communities. Murals depicting the faces of Frederick Douglass, Nathaniel Turner and Ida B. Wells lined the streets alongside visualizations of self-emancipated figures slashing chains and unshackling bodies. Although these 1960s murals visualized subversive antislavery narratives in the streets for the first time, the cultural form of black protest murals was not new. In this paper, we trace the visual lineage of antislavery protest from the nineteenth century panorama to the modern antislavery mural.

Key words: Abolition; mural; Black Power; panorama; visual culture

“A Colossal Work of Art”: Antislavery Methods of Visual Protest from 1845 to Today

When I was growing up, I was taught in American history books that Africa had no history, and neither did I—that I was a savage, about whom less said the better—who had been saved by Europe and brought to America. And of course I believed it. I didn’t have much choice. Those were the only books there were, and everyone else seemed to agree.¹ – *James Baldwin* (1965)

“Why did black people leave Africa?” Miss Martin asked a group of young African American school children as they toured around the Anacostia Neighborhood Museum (ANM) in Washington D.C. “Because they were afraid of animals,” the school children shouted back in unison.² Reported in a 1973 article in the *Washington Sunday Star*, ANM assistant director Zora B. Martin recalls how a young class were unaware of their own history whilst touring one of the capital’s museums. “Black people didn’t want to leave their homes. White people came to Africa, separated the families, and put them into boats. When black people were brought to America, they called them by a different name. Do you know what that

¹ The Riverbends Channel, “James Baldwin Debates William F. Buckley (1965),” *YouTube* video. 57:57. 27 October 2012 <https://www.youtube.com/watch?v=oFeoS41xe7w> accessed 14 July 2017.

² Andrea Burns, *From Storefront to Monument: Tracing the Public History of the Black Museum Movement* (Amherst, MA: University of Massachusetts Press, 2013), 72

was?” Miss Martin asked as a follow up question, this time with less expectation in her voice.³ “White people?” a child retorted. “No,” Miss Martin replied, “they called them slaves.”⁴

For centuries, African American history and culture has been erased from dominant historical narratives in the US, leaving a void in public knowledge about the experiences of America’s black population since their physical removal from Africa in the seventeenth-century. Ever since, the horrors of slavery have been conveniently airbrushed out of America’s historical narrative, leaving a historical amnesia untreated for decades — and to a large degree still untreated today. Pervasive white supremacist discourses perpetuated the myth that African Americans were, as James Baldwin acknowledges in 1965, “savages, about whom less said the better.”⁵ As a result, since the nineteenth century, the lived experiences of African Americans in the US — like the institution of slavery — have been largely absent from official modes of documentation like school curriculums, university degrees, the media and history textbooks, as well as dominant cultural outputs like art, theatre, poetry and literature. Yet throughout the nineteenth and twentieth-century, the erroneous but ubiquitous narratives of US history did not exist unchallenged in the transatlantic public consciousness.

Since the 1850s, antislavery visual culture has existed to recuperate black history from the grips of white historical bias. Pulling back the heavily draped curtain obfuscating black history, antislavery visual culture challenges dominant, biased, historical narratives in order to fill the many gaps in black American history. Starting in the 1850s in both the U.S. and the U.K., William Wells Brown and Henry ‘Box’ Brown reclaimed the use of the nineteenth-century panorama after witnessing the omission of enslaved individuals from a panorama detailing a journey along the Mississippi River. Formerly enslaved themselves, Brown and ‘Box’ Brown, subverted the idyllic, picturesque, large-scale drawings to instead depict the horrors of slavery. The panorama gave the two activists a platform upon which to illustrate the terror of enslavement into the public consciousness when the panorama became a visual protest tool to convince white audiences of the true nature of slavery, as so many were blissfully ignorant of its horrors. As an essential part of transatlantic abolition throughout the nineteenth century, activists travelling abroad to Britain gave men like Wells Brown and ‘Box’ Brown the opportunity to

³ *ibid.*

⁴ *ibid.*

⁵ We are referring strictly to the fact that slavery is overlooked in dominant white, mainstream discourses here. Black cultural outputs like music, poetry, literature, theatre and gallery art constantly reference slavery and seek to write it into the public consciousness, and this chapter is not seeking to erase their significance and position in American culture. Instead this chapter makes the point that African American literature, artwork, music etc. are seldom sat alongside Eurocentric, white outputs in America’s mainstream.

challenge and criticize the land of their birth, as well as those who sought to defend the stain of slavery.

As antislavery content in the panorama slowly began to fade away, such iconography was later portrayed in interior murals of the 1920s Harlem Renaissance and African American murals from the 1940s Works Progress Administration era. Murals depicting revolutionary abolitionist figures then exploded in the streets for the first time in black history against the backdrop of the Black Power Movement. Unlike the earlier panorama however, Black Power murals were aimed at black audiences in the enclaves of black America. Instead of using their visual protest tool to wake white Americans up to the horrors of enslavement, muralists in the 1960s wove radical scenes of black rebellion and resistance into the streets of America’s black communities for educational purposes. Whilst the panoramas of Brown and ‘Box’ Brown visually wrote the reality of enslavement into America’s historical narrative despite battling Victorian racial dynamics, the murals of the Black Power Movement recuperated an erased narrative of black strength, empowerment, survival and unity during enslavement. History textbooks, the media and school curriculums failed to teach this history and therefore murals of the Black Power Movement textured the streets of Detroit, New York, Chicago, Los Angeles, St Louis and Boston with radical black narratives of rebellious enslaved figures alongside the likenesses of Nathaniel Turner, Harriet Tubman, Sojourner Truth and Frederick Douglass. With an ideological backdrop of Black Nationalism, Pan-Africanism, separatism and self-defense, imagery depicting the brutal reality of slavery was no longer the order of the day. Instead, a subversive aesthetic depicting self-emancipating slaves slashing their own chains and forging their own freedom served as the most important use of their visual protest platform.

The historian Alan Rice has described how activists — like formerly enslaved individual Henry ‘Box’ Brown — engaged in “guerrilla memorialization,” a process where activists politicize the process of “making individual diasporan African stories live and breathe.”⁶ By sharing their testimony, challenging white preconceptions of slavery and racial stereotypes, or by intervening in traditional white dominant spaces, such resistance strategies offered a “signal intervention into a landscape that has traditionally elided their presence.”⁷ Rice points to city walking trails as just one example of the “potential to educate and politicize their audience” and “shows that the performing of guerrilla

⁶ Alan Rice & Johanna C. Kardux, “Confronting the Ghostly Legacies of Slavery: The Political of Black Bodies, Embodied Memories and Memorial Landscapes,” *Atlantic Studies* 9:3, (2012), 252-256. For further discussion on guerrilla memorialization, see Rice, “Tracing Slavery and Abolition’s Routes and Viewing Inside the Invisible: The Monumental Landscape and the African Atlantic,” *Atlantic Studies* 8:2, (2011), 253-274.

⁷ *Ibid.*, (2012), 252-256.

memorialization is made possible by a civic engagement that might involve merely the walking of a city with new information that provides radical new perspectives that transform the cityscape.” Building on this concept, this article uncovers how radical antislavery visual culture has been employed throughout the nineteenth and twenty-first centuries to recuperate erased black narratives of slavery. Such radical iconography was created to visually subvert dominant white narratives of history. Throughout the article, we unveil how formerly enslaved individuals have employed these methods of visual protest to celebrate their self-reflexive identities and freedom from slavery. We also assess how the mural is used to resist pro-slavery narratives and empower black communities with subversive aesthetics, detailing self-emancipation and resistance. This article ends with a call to arms to the modern abolitionist movement, as there is an urgent need to fill a gap with survivor led artwork today. Although differing in content, context and circumstance, survivors of oppression in the nineteenth, twentieth and twenty-first century have, and should, engage with antislavery visual culture that offers a depiction of freedom and liberation from a first-hand perspective.

A “Beautiful Series of Views”: Antislavery Panoramas in the Nineteenth Century

Since the dawn of the nineteenth century, transatlantic antislavery activists placed heavy emphasis on visual culture. As early as the 1830s, American abolitionists were printing and distributing over 40,000 illustrations of slavery every year, primarily to white audiences who were transformed from distant participants to witnesses in the violent drama of slavery, forcing them to *act* against such an injustice. The abolitionist newspaper *The Emancipator* wrote that images could “excite the mind” and “awaken and fix attention” like no other medium.⁸ Abolition was a visual protest movement that relied on images and photography to raise awareness, share testimony from witnesses, and paint graphic pictures in order to persuade the transatlantic (and specifically, *white*) public of slavery’s horrors.⁹

Artfully negotiating multimodal means of self-representation, formerly enslaved African American abolitionists constructed a visual protest tradition that challenged white supremacy in both private and public spheres. For example, African Americans adapted to, and exploited, the revolutionary changes in technology in the nineteenth century in order to harness the visual culture of

⁸ Teresa A. Goddu, ‘Antislavery’s Panoramic Perspectives’, *MELUS*, 39:2, (Summer 2014), 1-3.

⁹ See Jasmine Nichole Cobb, *Picture Freedom: Remaking black Visuality in the Early Nineteenth Century*, (New York, New York University Press, 2015) and Martha J. Cutter, *The Illustrated Slave*, (Athens, University of Georgia Press, 2017).

protest: daguerreotypes and photographs were used by both free blacks and formerly enslaved individuals to highlight their liberty and civility, and to challenge ugly racial caricatures which pervaded the transatlantic.¹⁰ Frederick Douglass in particular used photography to counteract racial stereotypes and orchestrated more images of himself than any other American in the nineteenth century.¹¹ Other figures such as Olaudah Equiano, Phyllis Wheatley, William Wells Brown, and Sojourner Truth used the frontispiece portraits in their slave narratives to demonstrate their identity and authenticate their written testimony. Furthermore, activist-authors such as Moses Roper and Henry Bibb used illustrations alongside their narrative texts of barbaric plantation life to counteract popular, contemporary stereotypes of a happy and peaceful life in slavery.¹²

During their transatlantic visits to Britain, black American activists continued to create a unique, visual, multimodal response to racism and slavery. Throughout the nineteenth century, scores of African Americans travelled to Britain to raise awareness of American slavery, some of whom exhibited panoramas. Some wanted to raise money to free themselves, enslaved family members or for a particular antislavery society. Others sought to write and publish their narratives, or even find employment. They spoke to thousands of Britons and styled their lectures around the weapons of slavery or visual representations of the ‘peculiar institution’, travelling hundreds of thousands of miles to large cities and far-flung rural villages. While many experienced racism on British soil, most were welcomed, particularly those who exploited narratives of British moral superiority.¹³ An essential part of their performative and educative strategies included a complex and extensive interaction with nineteenth century visual culture. Protesting against the erasure of black bodies and voices, they used

¹⁰ Jasmine Nichole Cobb, *Picture Freedom: Remaking black Visuality in the Early Nineteenth Century*, (New York, New York University Press, 2015), 3-5.

¹¹ Celeste-Marie Bernier, ‘A Visual Call to Arms against the “Caracature [sic] of My Own Face:” From Fugitive Slave to Fugitive Image in Frederick Douglass’s Theory of Portraiture’, *Journal of American Studies*, 49, 2, (2015), 327-328.

¹² Marcus Wood, ‘The Slave Narrative and Visual Culture’, 196-219, in John Ernest, *Oxford Handbook of the African American Slave Narrative*, (Oxford, Oxford University Press, 2014), 198-204.

¹³ Audrey Fisch, *American Slaves in Victorian England: Abolitionist Politics in Popular Literature and Culture* (Cambridge, Cambridge University Press, 2000), 1-10. Hannah-Rose Murray, “‘It is Time for the Slaves to Speak:’ Transatlantic Abolitionism and African American Activism in Britain 1835-1895’ (PhD Diss., University of Nottingham, 2018) and the accompanying website www.frederickdouglassinbritain.com, and R.J.M Blackett, *Building an Antislavery Wall* (Baton Rouge, Louisiana State University press, 1983).

illustrations, panoramas, exhibited whips and chains, made woodcuts and printed photographs.¹⁴

African Americans also exploited the largest visual medium of the nineteenth century—the panorama. First produced in England during the 1790s, most early panoramas concentrated on specific conflicts or landscape views that, according to Daphne Brooks, “evoked a sense of visual impressiveness by virtue of their size and their ability to convey the illusion of reality.”¹⁵ Initially, the panorama—or “all-embracing view” in Greek—was stationary and audiences paid a small entry fee to view a 360-degree painting from a central circular platform. Moving or “peristrepthic” panoramas were created in 1819 and were defined by a series of scenes on one large canvas, kept in rolls on either side of the exhibiting stage. The painting was then unrolled from one side of the stage to “evoke the sense of large-scale spatial movement.”¹⁶ Brooks describes antislavery panoramas as “a kind of moving revolution in space, time, form, and content.” Not only was the format a “provocative space to mine the politics of freedom, travel, and representational agency” it also provided a way for black activists to escape controlling or paternalistic white abolitionists who sought to edit their performances on the Victorian stage. Indeed, they sought to become the subject rather than the object of their own stories, and were free to relate their experiences in their own voices rather than being restricted by white activist frameworks.¹⁷

Henry ‘Box’ Brown and William Wells Brown remain the prominent examples of activists who employed the panorama as a visual form of protest and a medium through which they could share their testimony of slavery to white audiences. Both noticed the glaring nonexistence of slavery in American panoramas, and devised their own to challenge such silences and reclaim their own space to make a political intervention into the landscape. Where were the scenes of torture, family separation and death in such beautiful paintings of the Mississippi River? Wells Brown challenged the “very mild manner in which the ‘Peculiar Institution’ of the Southern States was represented,” and his enormous painting together with his aural testimony was a political and radical expression of his freedom and activism.¹⁸ Not content with merely educating transatlantic audiences,

¹⁴ Murray (2018). See also Emilie Boone, ‘The Likeness of Fugitivity: William Notman’s Carte-de-visite Portrait of John Anderson’, *History of Photography*, 37:2, (2013), 221-234; Martha J. Cutter, *The Illustrated Slave*, (Athens, University of Georgia Press, 2017); Matthew Fox-Amato, *Slavery, Photography, and the birth of Modern Visual Politics in America* (London, Oxford University Press, 2017).

¹⁵ Daphne Brooks, *Bodies in Dissent: Spectacular Performances of Race and Freedom 1850-1910*, (Durham, Duke University Press, 2006), 79-81.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, 78-79.

¹⁸ *Ibid.*, 78-79.

he inserted his own testimony into a politically dominant white supremacist narrative that sought to erase his own history and memory. Brown’s escape from slavery was an incredible feat of resistance in itself, but his decision to pull back the curtain on slavery’s reality abroad was a direct challenge to those who supported slavery, including his former slave-owners.¹⁹ Unlike the 1960s protest mural, African Americans such as ‘Box’ Brown and Wells Brown could not take their art into the streets of America—abolition was dangerous and often life-threatening, particularly for men of color who risked re-capture into slavery. While they performed to white audiences in the northern states (who were often hostile to black people as well as to the prospect of antislavery), both men had particular success in the theatres, lecturing venues, chapels and village halls of the British Isles. Again, unlike the 1960s mural, these panoramas were designed to educate white audiences.

Before arriving in Britain, Wells Brown requested American artists sketch his designs. Avoiding the demanding competition in London, he exhibited his panorama in the provinces first, and used his oratory, together with whips and chains, to illustrate slavery’s horrors.²⁰ In Nottingham in 1851 for example, Wells Brown and fellow formerly enslaved individuals William and Ellen Craft organized three consecutive antislavery meetings, where both men would discuss their experiences of slavery alongside Brown’s panorama. The local newspaper correspondent described how Brown narrated “his beautiful series of views, painted on two thousand feet of canvas” which depicted “many characteristic incidents in the escapes and re-captures of slaves, their mode of labour, their prisons, the kidnapping of free and colored men without their free papers.”²¹ Henry ‘Box’ Brown was a virtuoso of the Victorian stage and approached his panorama with unrivalled versatility and flexibility.²² Born enslaved near Richmond, Virginia in 1816, Henry Brown was desperate to escape after his family were sold and used a trusted carpenter to make him a box within which he might flee. In what is now known as one of the most miraculous escapes from slavery,

¹⁹ *Ibid*, 81-92.

²⁰ Ezra Greenspan, *William Wells Brown: An African American Life*, (New York: W.W. Norton Co, 2014), 239-249.

²¹ *Nottingham Review*, 4 April 1851, 3.

²² Hannah-Rose Murray, “‘It is Time for the Slaves to Speak:’ Transatlantic Abolitionism and African American Activism in Britain 1835-1895” (PhD Diss., University of Nottingham, 2018) and Daphne Brooks, *Bodies in Dissent: Spectacular Performances of Race and Freedom 1850-1910*, (Durham, Duke University Press, 2006)

Brown then posted himself from Richmond to Philadelphia.²³ Brown discovered his life-story lent very well to the dramatic stage, and travelled to England in 1850 to educate British and Irish audiences; raising awareness of American slavery via his lectures and visual panorama. His first design (of which there were many throughout the 1850s) contained painted images of the slave trade; African families before enslavement, a slave ship, an auction block, torture scenes such as the burning alive of an enslaved individual, the plantation, and famous escapes by formerly enslaved individuals such as Ellen Craft and ‘Box’ Brown himself. The last scene involved a future where slavery did not exist, a hopeful and moral aim for all audiences to wish and agitate for. Chipping away at the historical amnesia of slavery that was created and sustained by white supremacy, ‘Box’ Brown literally pulled back the curtain that rendered black lives invisible. Brown was not only rewriting, representing and re-visualizing history, he was depicting scenes that had been deliberately obfuscated, and created his own lesson to teach transatlantic audiences, who were unaccustomed to seeing such staggeringly large paintings of slavery’s brutality. ‘Box’ Brown did not hesitate to challenge white misconceptions of European colonialism, the slave trade and the heartbreak on the auction block to thousands of people across Britain and Ireland.²⁴

With his panorama and the story of his thrilling escape, ‘Box’ Brown and his “colossal work of art” created an entertaining spectacle while simultaneously presenting a horrific account of slavery.²⁵ On both sides of the Atlantic, ‘Box’ Brown exploited the Victorian press and enlisted the growing mass media market to produce posters, adverts and copies of his narrative to promote his unique performances. He turned his story and indeed himself into a commodity, capitalizing on its thrills, twists and turns and became famous based on his escape, not for his oratory or account of slavery.²⁶

Furthermore, by creating such an impressive visual performance and exhibiting his panorama in industrial towns such as Manchester and Bolton, ‘Box Brown’ was politically intervening in a landscape that directly profited from the blood and sweat of enslaved labour. His panorama contained scenes of European violence against peaceful African tribes, and he subverted the hypocritical

²³ Brown, *Narrative of the Life of Henry Box Brown*, 1; 42-59. See Alan Rice, “Dramatising the Black Atlantic: Live Action Projects in Classrooms,” in *Teaching Transatlanticism: Resources for Teaching Nineteenth-Century Anglo-American Print Culture*, ed. Linda K. Hughes and Sarah R. Robbins (Edinburgh, Edinburgh University Press, 2015), 82-95. Brooks, *Bodies in Dissent*; Cutter, *The Illustrated Slave*; and Jeffrey Ruggles, *The Unboxing of Henry Brown*, (Richmond, University of Virginia Press, 2003).

²⁴ Brooks, *Bodies in Dissent*, 86-92.

²⁵ Preston *Guardian*, 5 March 1853.

²⁶ Cynthia Griffin Wolff, “Passing Beyond the Middle Passage: Henry ‘Box’ Brown’s Translations of Slavery,” *The Massachusetts Review* 37:1, (1996), 23-24; 28-29.

antislavery narrative within British society to remind audiences of the hidden roots of their wealth.²⁷ Thus, the panorama was a form of activism, a political and anti-colonial intervention into a white supremacist landscape which sought to erase black bodies and voices. It was an educational tool, for audiences of all age, class or creed and raised awareness of slavery’s horrors. It was also a visual form of expression, exploiting the popular entertainment sphere and antislavery’s reliance on the image to convey brutality and inspire action.

Over the course of the nineteenth century and into the twentieth, African Americans continued to adapt modern technology to their advantage. Obscured or forced to remain absent from mainstream narratives, they continued to rely on visual art to challenge the parameters of the white supremacist society. As Celeste-Marie Bernier argues, the “black visual arts have taken many forms including mural, portrait, landscape, and abstract painting, sculpture, daguerreotyping and photography, pottery, quilting, and collage, assemblage, installation, street and performance art.”²⁸ They have “repeatedly pushed the boundaries of media and materials in search for a visual language which would represent the difficult realities of African American struggles for existence,” in most cases displaying “radical act[s] of self-expression and resistance.”²⁹ Counteracting racial caricatures and white abolitionist paternalistic images from Josiah Wedgwood’s 1787 ‘Am I Not A Man And A Brother’ medallion, to stereotypes of black aggression in the riots of the twentieth century, African Americans fought against the ugly visualization of their corporeal selves to achieve education and empowerment.³⁰

“I’m just getting my strength”: Resistance, Revolution and Emancipation in Murals of the Black Power Movement

In the summer of 1967 against the volatile backdrop of the Long Hot Summer riots, the booming declarations of ‘Black Power!’, and the growing presence of the Black Panther Party nationwide, a mural emerged on a single street in Chicago’s south side that altered the face of public art in the US. Named the *Wall of Respect*, it was the first African American mural to be painted in the streets. It depicted heroes of a radical black past and present—people like Frederick

²⁷ Suzette A. Spencer, ‘An International Fugitive: Henry Box Brown, Anti-Imperialism, Resistance & Slavery,’ *Social Identities*, 12:2, (2006), 237-242.

²⁸ Celeste-Marie Bernier, *African American Visual Arts: From Slavery to the Present*, (Chapel Hill, University of North Carolina Press, 2008), 1-2.

²⁹ *Ibid.*

³⁰ Marcus Wood, *Blind Memory: Visual Representations of Slavery in England and America 1780-1865*, (Manchester, Manchester University Press, 2000), 19-20.

Douglass, Nathaniel Turner, Stokely Carmichael, Malcolm X, and Marcus Garvey—and placed them in visual dialogue with empowering scenes of revolutionary black history. The *Wall* became a touchstone of pride for the black community of Bronzeville, and catalysed the black mural movement throughout the US that saw murals showing resistance, revolution and emancipation painted in every major northern city.³¹ By the mid-1970s, the streets in the black enclaves of cities like Boston, Detroit, Philadelphia, New York, Los Angeles and Chicago, all had murals commemorating radical heroes from the past and present—many of whom were antislavery or abolitionist figures—whilst also displaying narrative scenes of individuals breaking their own chains and engaging in the subversive act of self-emancipation.

The mural became a visual language to display “radical act[s] of self-expression and resistance” in the streets of black America at a time when to be black was to be beautiful.³² Unlike the panorama which was created to subversively educate white audiences on the horrors of slavery, murals of the 1960s were created to educate, inspire and empower black communities who were told “in a million different ways, that they were not beautiful, that whiteness of skin, straightness of hair, and aquilineness of features constituted the only measures of beauty.”³³ As a result, inspirational figures from an unremembered history, specifically those from the anti-slavery past like Nathaniel Turner, Frederick Douglass, Denmark Vesey, David Walker, Harriet Tubman, Sojourner Truth, Ida B. Wells, Martin Delany and Gabriel Prosser, were recovered as symbols of black pride in the 1960s because they spoke to the consciousness of the decade—they were resurrected “in order to inspire black political and cultural liberation.”³⁴

Given the ideological reverberations from certain nineteenth-century abolitionists to twentieth-century Black Power activists, murals lined the streets of black America during the 1960s and 1970s for two main reasons: to educate, and to empower. Whilst Alan Rice discussed guerrilla memorialization in relation to the cultural outputs of formerly enslaved individuals, the idea that the panorama had the potential “to educate and politicize their audience,” also applies to these twentieth-century murals depicting antislavery content. Just like the nineteenth-

³¹ Abul Alkalimat, Romi Crawford and Rebecca Zorach, *The Wall of Respect: Public Art and Black Liberation in 1960s Chicago*, (Illinois: Northwestern University Press, 2017), 2.

³² Bernier, *African American Visual Arts*, 1-2.

³³ Hoyt Fuller, “Towards a Black Aesthetic,” in *The Black Aesthetic*, (New York: Anchor Books, 1972) ed. Addison Gayle Jr., 8.

³⁴ Celeste-Marie Bernier, *Characters of Blood: Black Heroism in the Transatlantic Imagination*, (Virginia: University of Virginia Press, 2012), 119.

century panorama, the mural was a medium to challenge silent narratives and historical inaccuracies, as well as being a medium to catalyse an empowering and introspective search for the redefinition of oneself.³⁵

The mural was a visual protest tool that could, just like the panorama, un-silence a stifled black history. They emerged in the streets during the Black Power Movement for educational purposes at a time when black history was — and to a large degree still is—peripheral to the white American experience. Institutional spaces of knowledge, like museums, schools, the press and history books, were full of biased narratives catering to white only history, relegating black historical experiences like slavery to the sidelines. “All the history books have been untruthful... —not with lies—but by what it excluded from the material,” ANM museum director John Kinard lamented.³⁶ The effects of mis-education were “emotionally exhausting” to black school students, as one young girl recounts:

I was taught to worship Western civilization, and I could hardly believe that racial repression was also a fact of history. Balancing inconsistencies and omissions of knowledge is too much for a black student to take alone. When the movement hit Radcliffe—it was a matter of clutching for a straw to save my very soul.³⁷

In response to the pervasive, deliberate and systematic mis-education of black people through white controlled institutions across the country, there was a pronounced nationwide push at the height of the Black Power Movement to bring African American history out from the shadows and place it firmly into the public consciousness—and murals were one of the ways in which this was done.

Murals emerged in the streets of black America in an educational capacity to erase the images of white only history assaulting the optics of black communities. “What led me to make murals was my need to record African American history,” San Francisco-based muralist Dewey Crumpler told James Prigoff and Robin Dunitz for their seminal book *Walls of Heritage, Walls of Pride: African American Murals* (2000).³⁸ “For me...murals became a way to writing novels, writing the history that had not been written,” he continued—a purpose not dissimilar to the

³⁵ Bernier, *African American Visual*, 1-2.

³⁶ Andrea Burns, *From Storefront to Monument: Tracing the Public History of the Black Museum Movement* (Amherst, MA: University of Massachusetts Press, 2013), 72.

³⁷ James Turner, “Black Students and their Changing Perspective,” *Ebony*, (August 1969), 139.

³⁸ James Prigoff and Robin J. Dunitz, *Walls of Heritage, Walls of Pride: African American Murals* (San Francisco: Pomegranate Press, 2000), 169.

creation of panoramas to challenge the erasure of black voices and bodies in a nineteenth century white supremacist landscape.³⁹ As Crumpler acknowledges, murals inserted an unknown, alternate history into the public consciousness via the streets by decorating the walls with narrative scenes of revolution and self-emancipation. However, these images served, not only to shed light on heroic narratives of enslavement, but to also counter the ubiquitous assumption that enslaved individuals were docile and subservient, akin to the supplicant figure depicted in Josiah Wedgwood’s paternalistic ‘Am I Not a Man and a Brother.’ As the mood of militancy rained down throughout 1968, a powerful mural emerged in the streets of Chicago’s south side to visually defy the erroneous claims of passive slaves, and to also offer an alternate curriculum in the streets of black America omitted from official textbooks.

Muralists Bill Walker and Eugene ‘Eda’ Wade decorated the Bronzeville community with a revolutionary likeness of Nathaniel Turner—an enslaved individual on a Southampton County plantation in Virginia, whom in 1831, led a rebellion that left fifty-five whites dead and cost him his life after being tried and hanged in November the same year. Historians, scholars, abolitionists and pro-slavery advocates frequently attempted to reclaim and reframe Turner’s existence in many ways, as David Blight, acknowledges in an article for *The New York Times*:

Nat Turner is a classic example of an iconic figure who is deeply heroic on one side and deeply villainous on the other... For those who need a slave rebel, he serves that purpose. For those who need to see him as a deranged revolutionary who likes slaughtering people, they can see that, too.⁴⁰

Turner’s identity as both a slave and a man who threatened the core values and institutional structures of the antebellum South means he remains a complex figure for historians to reconstruct, and the lack of textual and visual language surrounding him leaves his historical memory open to misinterpretation.⁴¹ Throughout history, his memory is frequently negotiated, yet his presence on the *Wall of Truth* in 1968 serves as a fundamental barometer for the hotbed of revolutionary activity in the 1960s. The mural militantly reclaims Turner as a hero

³⁹ *ibid.*

⁴⁰ Felicia R. Lee, “Nat Turner in History’s Multiple Mirror,” *The New York Times*, February 7, 2004, http://www.nytimes.com/2004/02/07/books/nat-turner-in-history-s-multiple-mirrors.html?mcubz=1&_r=0 Accessed: March 20, 2017.

⁴¹ Kenneth S. Greenberg, “The Search for Nat Turner: Name, Face, Body,” in *Nat Turner: A Slave Rebellion in History and Memory* ed. by Kenneth S. Greenberg (Oxford: Oxford University Press, 2003), 3; also see Bernier, *Characters of Blood* for more information of the invisibilisation of Turner.

in the American public imagination, subverting the inaccurate portrayal of enslaved figures as supplicant and passive, whilst also educating the public on a seldom-discussed figure of black history.

At around ten feet tall, a shirtless portrait of Nathaniel Turner lines the street of 43rd and Langley. In the *Wall of Truth*, created by Wade and Walker, Turner brandishes a bloodstained sword that has perhaps just taken the life of the man who shackled his wrists and stole his liberty. In an act of self-emancipation, he swipes the sword through the chains binding his freedom and breaks himself free, sending a fragment of the manacles flying into the distance. The sword is gripped firmly as the muscles on his right arm twitch with the thought of revolution. Braced at his hip, the handle of a shotgun is supported as he wields it upwards in military-esque fashion, pressing the cold steel into his cheek, perhaps about to fall in line with an army of Black Panthers. The use of color is cleverly manipulated in this mural when Turner’s torso is highlighted with accents of red to depict where the light contours his skin. In selecting red as the primary contrasting color, however, Wade and Walker convey the aftermath of a bloody and violent confrontation upon Turner’s body. The inflections of red upon his torso, as well as smattered across the background, resemble smudged, blood-ridden handprints grasping for mercy at the feet of the self-emancipator. Unshackled and liberated, the giant Turner wears a hardened expression on his face, eyes fixed and focused on his freedom. Whilst the image remains largely static—metaphorically representing the quiet after the storm—the dynamism of the swinging chains haunt the panel to the point where the viewer can almost imagine the sound of slashed and clinking metal.

One reason Wade was so intent on visualising figures of black history like Turner, he told the author, Jeffery, in a 2017 interview, was because “we did have our own sheroes and heroes, that made a contribution, that may not be included in a textbook because of whatever political or social reason”.⁴² By depicting a revolutionary portrait of Turner in Chicago, Wade was able to recuperate his memory from inaccuracy and obscurity and place it in the streets of Bronzeville for the black community to learn from. Whilst Wade clearly sought to educate individuals on the memory of Turner, by painting him in the streets, he also invokes the second reason for the emergence of a 19th century memory of enslavement during the Black Power Movement—to empower individuals.

The resurrection of an unseen black historical memory in the streets of black America fostered a space for individuals in communities to renegotiate the conception of themselves. To Black Arts Movement cultural theorist Larry Neal, learning black history enabled black Americans to finally be “comfortable in the knowledge of themselves” so they no longer attacked the “lips, skin, hair, legs...

⁴² Hannah Jeffery telephone interview with Eugene Eda Wade, June 1, 2017.

and self that we had been trained to hate.”⁴³ Through showing radical, revolutionary images of enslaved figures breaking their own chains and forging their own freedom, murals of the Black Power Movement partook in this relationship of self-exploration and consciousness-raising. In a 1991 interview, muralist Bill Walker reflected on an anecdote that exemplified how the recuperative memories upon the *Wall of Respect* provided a space for the elevation of a consciousness: “I saw a young man sitting [outside] and I was in the television shop, and I walked out of the television shop. He was sitting in front of the wall. So I said, “How are you doing, brother?” [and] he said, “I’m getting my strength.””⁴⁴ To the anonymous man on the street at 43rd and Langley, the historic and contemporaneous narratives included on the mural created a safe space for the contemplation of his identity. The untold stories of black America’s history satiated his desire to learn about himself, and in return he became energized, charged and empowered with the knowledge of a radical black past that could be carried with him throughout the turbulent racial present.

When asked the purpose of creating murals like the *Wall of Truth* and the *Wall of Respect*, Eugene ‘Eda’ Wade replied, “We were doing art that can hopefully uplift the spirit of the people and also bring about conscious awareness instead of dumbing down — we want to try and elevate the thinking in the mind,” he continued.⁴⁵ In 1976, at Howard University, Wade created a mural that resurrected the veiled memories of radical black revolutionaries in order to awaken and augment a consciousness of blackness amongst the university students. The *Cramton Auditorium Mural* recovers the historical memories of Frederick Douglass, Sojourner Truth, Harriet Tubman and Nathaniel Turner, and places them in visual dialogue with their contemporary counterparts, Malcolm X and Martin Luther King Jr. The two recent martyrs of the black liberation movement occupy the central two panels of the mural, and instead of being placed in an ideological binary, King and X coexist to present a unified black historical continuum. They offer an accessible entry point into an otherwise untold black history when they stand back-to-back, facing their nineteenth century ancestors. King faces left, pointing directly to Douglass and Tubman, whilst X faces right, pointing toward Truth and Turner.

Douglass and Truth, flanking the two martyrs, stand to attention with an upright posture and straight arms by their sides. Douglass wears a suit and holds a

⁴³ Larry Neal, “New Space/The Growth of Black Consciousness in the Sixties,” in *The Black Seventies* (Boston: Sargent Porter, 1970) ed. Floyd Barbour, 15.

⁴⁴ William (Bill) Walker Oral History, Interviewed by Victor A. Sorrell, June 1991 – Smithsonian Archives of American Art, 33.

⁴⁵ Jeffery interview with Wade, June 1, 2017.

rolled-up written document in his left hand. His well-dressed appearance and written possession of officiality reflect his intellectual work towards abolition and black liberation, and his intellectual likeness is countered by the dynamic, physical presentations of both Tubman and Turner as they wield weapons and break chains. To the right-hand side of the mural, a shirtless Turner brandishes a sword (akin to his visual resurrection on the *Wall of Truth*) and pulls with all his strength at a chain in the distance. To the far left of *Cramton Auditorium Mural*, Tubman’s engaged body leans back and pulls tightly on the same series of chains shackling an unknown figure out of sight. Her animated body uses an oversized rifle as a pillar of stability, and Wade uses her presence on the mural to, once again, invalidate the ubiquitous belief that enslaved individuals were passive and submissive. Tubman, Truth, Douglass and Turner stand proudly as symbols of defiance and bravery, and through their inclusion in the mural, they not only challenge misconceptions of enslaved supplication, but also awaken a liberating cultural awareness of oneself that was achieved in the 1960s through an examination and deeper understanding of black revolutionary history.

As with the nineteenth-century panoramas that sought to reclaim black history from the grips of a pervasive white supremacist narrative, murals of the Black Power Movement displayed radical abolitionist and antislavery memories in the streets of black America to educate and empower local communities. Similarly to the panorama, they circumnavigated biased institutional white spaces such as museums or the art galleries to ensure black history was recorded. Muralists like Wade visually recuperated nineteenth-century black heroes that risked their lives in the pursuit of freedom and liberation to help rewrite erased narratives of black strength, empowerment, survival and unity, and to instil pride and empowerment at a time when to be black was to be beautiful.

The visual protest tradition of antislavery visual culture arcs across the centuries, honoring marginalized voices and raising awareness of slavery and its legacies. Activists have sought to reclaim sites of their oppression, challenging white supremacist narratives and the erasure of their voices. In the nineteenth century, ‘Box’ Brown and Wells Brown used their panoramas as a visual form of protest to educate and remind their primarily white audiences that slavery could not be erased from transatlantic society. Both men subverted traditional white spaces and contested the great panoramas of the Mississippi River in particular with its deliberate silences around slavery’s cruelty. Both ‘Box’ Brown and Wells Brown thus used the panorama as a visual protest against white supremacist narratives, as an awareness-raising and educative tool, and as a medium to forge an independent path away from white abolitionists who sought to curtail their lectures.

While antislavery panoramas were designed primarily for white audiences who had little idea of slavery’s brutality, Black Power activists created murals solely for African American audiences. Muralists like Bill Walker, Eugene ‘Eda’ Wade and Dewey Crumpler, inspired by the radical backdrop of the Black Power Movement, recuperated the memories of radical antislavery figures like Tubman, Truth, Douglass and Turner and placed them alongside militant iconography of self-emancipating figures. In awakening a radical black memory and placing it directly into the streets of black America, muralists used subversive aesthetics to educate and empower communities in an era when black self-determination and pride was everywhere.

Panoramas and their contemporary progeny—murals—represent a visual form of activism that celebrates black activist resistance, testimony and survival. They embody an artistic and political intervention into a landscape that seeks to erase their activist bodies and voices, as well as the existence of the artistic piece itself. For marginalized voices, the panorama and the mural form an essential legacy of artistic defiance. Being traditionally excluded from political or mainstream narratives, African Americans fashioned their own resistance strategies that deserve not only a place in the lineage of antislavery iconography, but also within art history as a whole.

Conclusion: Contemporary Antislavery Visual Culture

In the first edition of his newspaper, *The North Star*, Frederick Douglass stated, “that the man who has *suffered the wrong* is the man to *demand redress*,—that the man STRUCK is the man to CRY OUT—and that he who has *endured the cruel pangs of Slavery* is the man to *advocate Liberty*.” Ultimately, Douglass believed survivors must be their “own representatives and advocates.”⁴⁶ In order to heed Douglass’ call, artists, scholars, and the public in general must create spaces for a radical survivor antislavery visual culture.

As of 2016, there were antislavery murals in every habitable continent. This revolutionary inheritance of the radical tradition of abolitionist and activist visual culture clearly has a significant place in the contemporary movement against human trafficking. As the US Goodwill Ambassador, Ross Bleckner, has said, “art is one of the most powerful advocacy tools to raise awareness and move people to take action. A painting says a thousand words.”⁴⁷

⁴⁶ Frederick Douglass, *The North Star*, 3 December 1847.

⁴⁷ United Nations Office on Drugs and Crime, “Combating Human Trafficking Through Collective Action and Art,” *United Nations on Drugs and Crime*, 11 May 2009, <http://www.unodc.org/unodc/en/frontpage/combating-human-trafficking-through-collective-action-and-art.html> accessed: 19/11/2017

However, there is a disturbing tradition of victimization in contemporary visual art that demeans and dehumanizes survivors. As Zoe Trodd has suggested in her work on protest memory, modern antislavery charities and NGOs often rely on specific imagery lifted from the eighteenth century, including images of “bleeding hands, hunched bodies, barred windows, dust-covered arms, [and] meat-market brothels.” In doing so, “contemporary artists and activists often repeat the same mistakes as their abolitionist forebears”, which often “heroises the abolitionist liberator, minimizes slave agency, pornifies violence and indulges in voyeurism.” The infamous Wedgewood medallion, “Am I Not a Man and a Brother?” is a common image, along with the cramped deck of the slave ship *Brookes*, commonly layered over images of modern transportation such as cars and airplanes.⁴⁸

To combat this victimization, contemporary antislavery visual culture should be survivor-led, informed by the oppressed themselves. For example, in 2008, Elena, a survivor of human trafficking, worked in conjunction with actress and activist Emma Thompson on ‘Journey,’ an art installation in Vienna. The project consisted of seven transport containers, each with a painting on the side illustrating women exploited through sexual slavery. Designed to raise awareness of human trafficking, partly through shock tactics, the artwork was informed in part by Elena’s experiences.⁴⁹

Going one step further, in 2015, in the rolling hills of West Bengal, a US-based muralist with the moniker Joel Artista created an evocative and empowering mural that gave agency to a survivor of contemporary slavery. Working with the Indian NGO, Shakti Vahini, Artista and a group of local artists created “a large-scale mural in a highly visible location in order to raise awareness” of human trafficking in the area.⁵⁰ Nestled at the foothills of the Himalayas, and in the “epicenter for human trafficking in South Asia,” stands a brightly coloured wall of hope, inspiration and strength.⁵¹ The mural depicts Sangeeta, a formally trafficked woman who now works with the organization *Kolata Sanved*—a group that uses dance as a form of therapy for survivors of trafficking. Prior to Artista’s arrival, Sangeeta and a host of female survivors of trafficking worked with photographer Brooke Shaden to create a series of self-portraits that creatively represented their

⁴⁸ Zoe Trodd, ‘Am I Still Not a Man and a Brother? Protest Memory in Contemporary Antislavery Visual Culture’, *Slavery & Abolition*, 34:2, (2013), pp.338-347

⁴⁹ United Nations Office on Drugs and Crime, “Emma Thompson’s Journey”, 8 February 2008, <http://www.unodc.org/unodc/en/frontpage/emma-thompsons-journey.html>

⁵⁰ Joel Artista, “Combating Human Trafficking Through the Arts,” *Joel Artista*, 18 March, 2016, <https://joelartista.com/2016/03/18/combating-human-trafficking-through-the-arts/> accessed: 17/10/2017

⁵¹ *Ibid.*

story of survival. Immediately drawn to the powerful yet graceful image of Sangeeta, Artista received her permission to paint her likeness on his mural.

The beautifully dressed figure of Sangeeta extends across the mural. Painted in a glowing palette of yellows, reds and burnt oranges to stand in stark contrast to the purple background, she extends her left hand towards an unseen figure and raises her head to meet their gaze as she glides across the artwork. She looks up with hope, determination and strength in her face. Whilst the grip of a menacing red hand envelops her left ankle, she continues forward with stoicism and power—the experiences of trafficking do not show on her face; she is so much more than her experience. Artista’s mural demonstrates a positive step towards survivor collaboration, yet there are still steps to be taken. From the nineteenth century to the present day, activists, survivors and liberators have, and should continue to build on, this visual legacy, to challenge historical amnesia and to fight against the invisibility of their bodies and voices in mainstream and public narratives.

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‘They don’t play or run or shout...They’re slaves’:¹ The First Survey of Children’s Literature on Modern Slavery

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Charlotte James is a postgraduate student at the University of Nottingham doing her PhD in American Studies. Having completed her Undergraduate degree in History at the University of Leeds, James stayed on to complete a Masters in Race and Resistance, an interdisciplinary taught course that offered insight into racial approaches and the various means of resistance. James’ Masters dissertation focused on 19th century black women and researched the memory of Harriet Tubman. Now completing a PhD at the University of Nottingham, she is expanding this research to include Sojourner Truth, examining black heroism and the evolution of black women’s memory. James worked for The Rights Lab at the University of Nottingham as a research associate, creating an online archive of over one hundred murals protesting modern slavery and analysing the use of children’s literature in the modern antislavery movement.

Abstract

This article provides the first survey of children’s literature on modern slavery and analyses the emergence of this movement. Exploring fictional texts and survivor accounts, this article explores how these texts bring modern slavery to children from the news and media. It examines the various trends that emerge from these pieces, including the countries included, types of slavery highlighted, the ages and genders of individuals, and the authors of these texts, survivors or not. It also includes preliminary conclusions about the effectiveness of those texts as educational tools, discussing how these texts highlight signs of slavery and unpack its scale.

Key words: children’s literature, modern slavery, fictional, non-fictional, human trafficking

¹ Francesco D’Adamo, *Iqbal* (New York: Simon & Schuster Children's Publishing Division, 2003), 111.

‘They don’t play or run or shout... They’re slaves’: The First Survey of Children’s Literature on Modern Slavery

The use of children’s literature in the fight against slavery dates back to the late eighteenth century, when American antislavery activists used literature, both fiction and non-fiction, to garner support in the fight for emancipation.² Antislavery organisations published texts such as *The Youth’s Emancipator*, *The Anti-Slavery Alphabet* and *The Young Abolitionists* that condemned slavery, declaring ‘if you make children abolitionists, slavery must come to an end’.³ Noah Webster’s ‘Story of the Treatment of African Slaves’ in *The Little Readers Assistant* from 1790 explained the cycle of slavery and declared that God would condemn its supporters.⁴ Nevertheless, after the thirteenth amendment of 1865, children’s books no longer called for abolition. Instead, they taught children about the history of slavery in America, educating them on movements such as the Underground Railroad, and publicising information on leading antislavery figures, such as Harriet Tubman and Frederick Douglass. In the realm of children’s literature, slavery became a thing of the past. However, slavery is alive today, and at the time of writing, there were an estimated 40.3 million individuals enslaved around the world, with 29.4 million people in forced labour and 15.4 million individuals in forced marriages.⁵ Organisations such as Anti-Slavery International and End Slavery Now continue the fight against this human rights issue by helping individuals escape, lobbying for antislavery legislation, and educating the public about the prevalence of slavery. Nevertheless, for over one hundred years, antislavery organisations and activists failed to use children’s literature in the fight against slavery. During much of the nineteenth and twentieth centuries, juvenile texts predominantly reflected on slavery, depicting it as an issue of the past. However, over the past thirty years there has been a proliferation of texts educating children on modern slavery.

From 1992 onwards, novels, short stories, and comic books offered educative stories of slavery both from the survivors’ perspective and omniscient narrators, bringing this human rights issue from the news and media into children's

² Paula T. Connolly, *Slavery in American Children’s Literature 1790 - 2010* (Iowa City: University of Iowa Press, 2013), 13–90.

³ *The Youth’s Emancipator* 1842–1843, *The Anti-Slavery Alphabet* 1847 and *The Young Abolitionists* 1848. Quote from ‘To Juvenile Anti-Slavery’ in Connolly, 3.

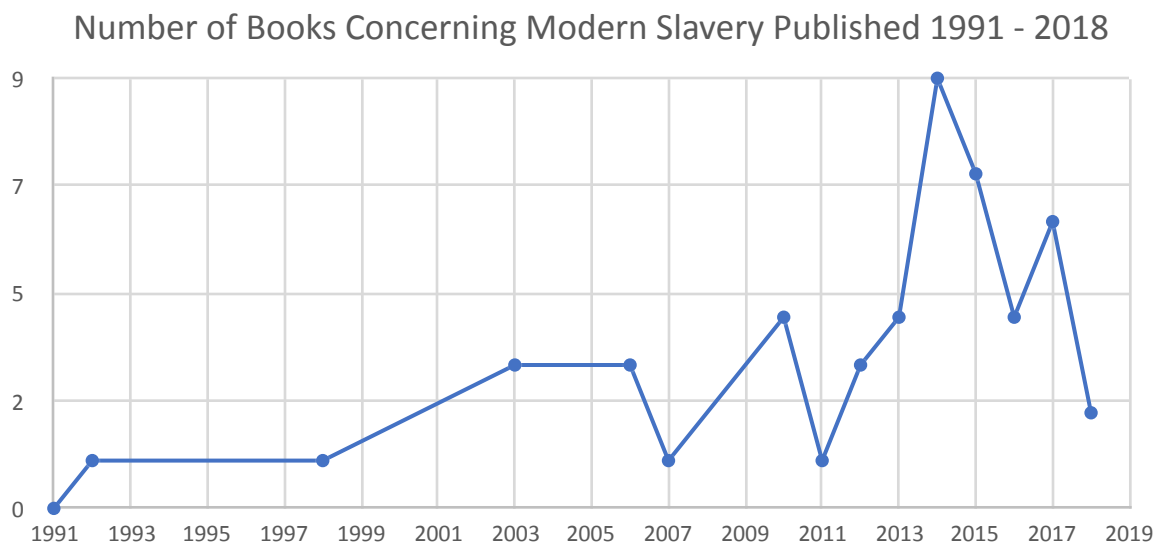
⁴ Noah Webster, *The Little Reader Assistant* in Connolly, 17.

⁵ *Global Slavery Index 2018*, The Minderoo Foundation Pty Ltd, available at <https://www.globalslaveryindex.org/resources/downloads/>.

literature. This article will provide the first survey of children’s literature on modern slavery, analysing the emergence of fifty-one fictional and non-fictional texts predominantly published in the U.S.A. Using John Rowe Townsend’s definition of children’s books as those that publishers place on children’s literature lists, whether fiction or non-fiction, this article will analyse the emergence of modern slavery children’s books from 1992 to the present day.⁶ It will explore fictional books and survivor accounts, examining and analysing various trends that emerge from these texts. This will include discussion of the initial stages of the movement, the various countries in these texts, the types of modern slavery highlighted, the ages and genders of the individuals, and comments on the authors. Furthermore, the article will conclude with preliminary ideas about the educational value of these texts, commenting on how they highlight the signs of slavery and unpack its scale for young readers.

A New Movement

This survey of children’s literature on modern slavery focuses on fifty-one texts published since 1992, with fourteen focusing on survivors’ experiences, and thirty-seven telling fictional stories. This new movement emerged in 1992, and the publication of children’s books on modern slavery began at an inconsistent and low rate, with books published sporadically until 2010, and no more than four texts being published in one year until 2013. However, as shown on the graph below, there is a sudden increase in the publication of texts in 2014, with nine published in this year and seven in 2015.



⁶ John Rowe Townsend in Murray Knowles and Kirsten Malmkjaer, *Language and Control in Children’s Literature* (London: Routledge, 1996), 1.

Although the number of texts published have since decreased, the increase in publications in 2013 can be attributed to the release of the Global Slavery Index, which estimated that there were 29.8 million individuals in modern slavery around the world.⁷ As modern slavery became a more public and pressing issue, authors and publishers recognised the need to raise awareness and educate young people on this issue. As the graph shows, the majority of texts were published in the twenty-first century and only two texts were released in the 1990s, namely *Taste of Salt* by Frances Temple and *Iqbal Masih and the Crusaders Fight Against Child Slavery* by Susan Kuklin.⁸ Based in Haiti, the former was published in 1992 and tells the story of Djo, a seventeen-year old bodyguard to Jean-Bertrand Aristide, the country’s first democratically elected President.⁹ The reader learns that Djo was sold into slavery as a young boy to work on a sugar plantation. On arriving, Djo asks another worker Donay ‘what is happening’, to which he replies that ‘they have sold you boy’ and ‘it is only for the season... just be careful you not fall into debt. For then they do own you’.¹⁰ Whilst this text does not focus on modern slavery, his experience as a forced labourer is an important part of Djo’s story. Conversely, Kuklin’s text focuses on modern slavery and details the activism of Iqbal Masih and the Bonded Labour Liberation Front’s (B.L.L.F.) fight against child slavery in Pakistan. Masih was a bonded labourer who worked as a carpet weaver to pay off his parents’ debt. After escaping the factory, the twelve-year-old attended a convention of the Brick Layer Union where he met Ehsaan Ullah Khan and learned that bonded labour was illegal. With the B.L.L.F. activist’s help, Masih freed the other children held in his factory and began attending the Bonded Labour Liberation Fund School. Although very young, Masih became a renowned activist against child slavery, helping the B.L.L.F.’s campaign to free children and giving speeches about the importance of education. Kuklin’s text was published in 1998, three years after Masih was murdered, and her biography celebrates his activism, whilst simultaneously educating the reader on modern slavery and bonded labour.

⁷ *Global Slavery Index 2013*, The Walk Free Foundation, available at <https://cdn.walkfreefoundation.org/content/uploads/2016/03/14153121/Global-Slavery-Index-2013.pdf>.

⁸ Frances Temple, *Taste of Salt: A Story of Modern Haiti* (New York: HarperCollins Publishers, 1992). Susan Kuklin, *Iqbal Masih and the Crusaders Fight Against Child Slavery* (New York: Henry Holt & Company 1998).

⁹ This text contains fictional characters and events, but is based on fact and contains sections from Jean-Bertrand Aristide’s sermon and speeches.

¹⁰ Temple, 53–54.

Inspiration from Survivors

Masih’s account forms the foundation for several other texts and this is a common theme in children’s books on modern slavery, whereby authors draw inspiration for their fictional texts from survivors’ accounts. *The Carpet Boy’s Gift* by Pegi Dietz Shea and *Iqbal* by Francesco D’Adamo celebrate the life and activism of Masih through their fictional characters Nadeem and Fatima. In the former, Nadeem hears Masih speak at a B.L.L.F. march and learns that the work he does as a bonded labourer is illegal.¹¹ In the latter, Fatima works alongside Masih in the carpet factory and she is inspired by Masih’s determination to leave life as a slave and look to a free future.¹² Both texts inform children about modern slavery through fictional stories based on Masih, allowing them to highlight his experience, celebrate his life, and educate young readers on bonded labour and modern slavery. Another text based on survivors’ accounts is *Borderland*. This comic, created by Dan Archer, Olga Trusova and John Knight, takes the accounts of human trafficking survivors and turns them into comic artwork, with information alongside the narrative to educate the reader on modern slavery.¹³ In ‘Lera’s Story’, the reader learns about forced criminal exploitation, where Lera’s mother forces her to sell poppy seeds after her failed attempt to sell her daughter into marriage.¹⁴ Moreover, the story ‘Chipped Away’ is based on three testimonies from a case of five-hundred Ukrainians trafficked to Russia for potato farming. Through the artwork, the reader learns that these people were threatened, beaten, starved, and forced to live and work in harsh conditions, before anti-trafficking organisations helped them escape.¹⁵

While these authors have taken inspiration from narratives, several authors have conducted their own research on modern slavery to write fictional texts and educate children on the issue. Two examples of this are Kashmira Sheth’s *Boys Without Names* and Patricia McCormick’s *Sold*. Both books, set in India, discuss child slavery—the former focuses on boys who are kidnapped and forced to make souvenirs, and the latter discusses the trafficking and sexual exploitation of young girls. Both authors include detailed statistics about modern slavery in their texts,

¹¹ Pegi Dietz Shea, *The Carpet Boy’s Gift* (Thomaston: Tilbury House Publishers, 2003).

¹² D’Adamo, *Iqbal*.

¹³ Dan Archer, Olga Trusova and John S. Knight, *Borderland* (Washington: International Organisation for Migration, 2010).

¹⁴ Ibid.

¹⁵ Ibid.

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and they conducted thorough research when writing their books.¹⁶ Sheth consulted with a non-profit organisation in Mumbai that worked with trafficked children, and writes that their work ‘provided me with invaluable insight about what is being done to help these children’.¹⁷ McCormick spent time with Nepali girls who had been trafficked from remote villages to Kolkata, alongside talking with aid workers from India and Nepal, and survivors themselves, which she described as ‘touching and inspiring’.¹⁸ In an interview from 2010, McCormick commented that she wrote the text with the ‘idea of activating people’ and was amazed at the fundraising efforts many people undertook in response.¹⁹ Indeed, *Sold* inspired students from Williams High School in Virginia, U.S.A. to help survivors of sex trafficking. They created a mural and raised money for Courtney’s House, a local charity that helps survivors of sex trafficking, with students donating three dollars to place their handprints around an Eli Wiesel quote that reads ‘Let us remember: what hurts the victim most is not the cruelty of the oppressor, but the silence of the bystander’.²⁰

Survivor Narratives

Many survivors have also written biographies or contributed their narratives to children’s books to educate young readers and raise awareness of this issue. Examples of texts by survivors include: *Hidden Girl* by Shyima Hall, *The Slave Across the Street* by Theresa Flores, *Trafficked* by Sophie Hayes, and *Slave: My True Story* by Mende Nazer.²¹ Hall and Nazer were forced to work as young children, while Hayes and Flores were sexually exploited by men they trusted. Other examples of texts not written by survivors but including their narratives are: *A Babe in the Woods* by John Anthony Davis, *Daddy’s Curse* by Luke Dahl, and *Breaking Free* by Abbey Sher. Survivors use their experiences to educate children on modern slavery, explaining how they were exploited, detailing their escape, and describing what their life has been like post-enslavement. For instance, Maria

¹⁶ Kashmira Sheth, *Boys Without Names* (New York: Balzer and Bray, 2010) 135. Patricia McCormick, *Sold* (Crows Nest: Allen & Unwin, 2007), 271–276.

¹⁷ Sheth, 313.

¹⁸ McCormick, 271.

¹⁹ Cindy Hudson, ‘Interview with Patricia McCormick, Author of *Sold*’, *Mother Daughter Book Club*, February 23, 2010, <https://motherdaughterbookclub.com/2010/02/interview-with-author-patricia-mccormick/>.

²⁰ Lora Strum-Vaitas, ‘Titans Put Up a Hand to Stop Sex Trafficking’, *Theogony*, June 9, 2011.

²¹ Shyima Hall and Lisa Wysocky, *Hidden Girl: The True Story of a Modern Day Child Slave* (New York: Simon & Schuster Children’s Publishing Division, 2014). Theresa L. Flores with PeggySue Wells, *The Slave Across the Street: The True Story of How an American Teen Survived the World of Human Trafficking* (Boise: Ampelon Publishing, 2010). Sophie Hayes, *Trafficked: My Story of Surviving, Escaping and Transcending Abduction into Prostitution* (London: HarperCollins, 2012). Mende Nazer, *Slave: My True Story* (New York: PublicAffairs, 2003).

Virginia Farinango’s narrative highlights the difficulties survivors endure in rebuilding their lives after their escape. Sold by her parents as a domestic servant at the age of seven, Farinango struggles to reconcile with her parents after her escape, writing:

It might feel good to be able to forgive them, respect them, maybe even love them. But that hasn’t happened, and I’m beginning to doubt it ever will.²²

Shyima Hall also writes of the difficulties she faced in having a relationship with her parents, who sold her to a family as a domestic servant at the age of eight.²³ After her escape, Hall had a telephone conversation with her parents, where her father yelled ‘you have disrespected me’ and demanded ‘how could you leave those people who took such good care of you’.²⁴ Over the years, Hall struggled to come to terms with her parents’ actions and battled missing her family against the hurt of their betrayal.²⁵ Both Hall and Farinango highlight the difficulties survivors face after their enslavement, demonstrating to young readers that the battle is not over once someone has escaped slavery.

Several survivors also use their texts to highlight indicators of slavery and educate readers on the various possible signs of an enslaved individual. Many survivors encourage readers to be vigilant and speak out if they suspect slavery, with Hall remarking that ‘it only takes a single phone call to put the steps into action that could rescue someone like me’.²⁶ Hall and Theresa Flores’ texts include large sections that inform children of physical signs and behaviour that could indicate modern slavery, with Hall citing poor clothing and hygiene. She writes that ‘if you see someone who is dressed in clothes that do not fit, that are more out of style and much dirtier than the people they are with, that could be an indication’ and notes that their behaviour may be vastly different to their companions.²⁷ Hall explains that when the family went on holiday she was ‘not allowed to participate

²² Resau and Farinango, 279.

²³ Hall was sold into slavery at the age of eight years old by her parents and forced to work for a family in Cairo, who then trafficked her to America where she continued to work for them until a neighbour’s concerned phone call led to her escape.

²⁴ Hall and Wysocky, 83.

²⁵ *Ibid*, 83–85.

²⁶ Flores was sexually exploited as a teenager by her classmates when, after being raped by one classmate, she was blackmailed by his cousin who took pictures of the rape and threatened to give these to her father unless she had sex with whomever they wanted. Hall and Wysocky, 216.

²⁷ Hall and Wysocky, 83.

in the fun activities...I could not go on the rides or swim with the dolphins. And when the food or souvenirs were purchased, they were never for me’.²⁸ Similarly, Flores highlights signs of slavery, commenting that she published her account ‘to educate others on modern day slavery’.²⁹ In her text, she lists the many ‘clues that a person might be a victim of human trafficking’ or exploitation, such as physical abuse, lack of independence, poor health, and new “friends” and/or material possessions.³⁰ Flores also explains that traffickers come from all socio-economic backgrounds’, noting that ‘there is no stereotypical look to traffickers and pimps’.³¹ The chapter ‘Parents and Professionals’ also explains what they can do if they suspect a child is being abused and/or enslaved. Hall, Flores and many other survivors believe educating people on the signs of slavery is vital in eradicating this issue and preventing the exploitation of others. Indeed Hall encourages the reader to do something rather than nothing, as ‘if you do nothing and the person is in need of help, that would be a tragedy’.³²

Slavery Around the World

Hall and Flores’ accounts are based in the U. S. A., whereas Sheth and McCormick’s fictional texts are set in India. Overall children’s books explore the issue of modern slavery around the world, highlighting its occurrence in South East Asia, the Americas, Africa, and Europe. Texts based in South America include Deborah Ellis’ fictional novel *I am a Taxi* (set in Bolivia), Maria Farinango’s account *The Queen of Water* (set in Ecuador), and the comic *Les Mariposas* by Natsuko Utsumi and Tiffany Pascal (set in Colombia and Ecuador).³³ For Europe there is the comic *Borderland* by Trusova, Archer and Knight, and Sophie Hayes’ survivor account *Trafficked* set in Italy. Finally, in Africa there are the biographies of Mende Nazer from Sudan, and Shyima Hall from Egypt.³⁴ However, children’s books predominantly set modern slavery in the U.S.A. and India, where the Global Slavery Index from 2018 estimates there are 403,000 and 7,989,000 enslaved

²⁸ Ibid, 217.

²⁹ Ibid, xviii and xiii.

³⁰ Flores, 218-220.

³¹ Ibid, 317.

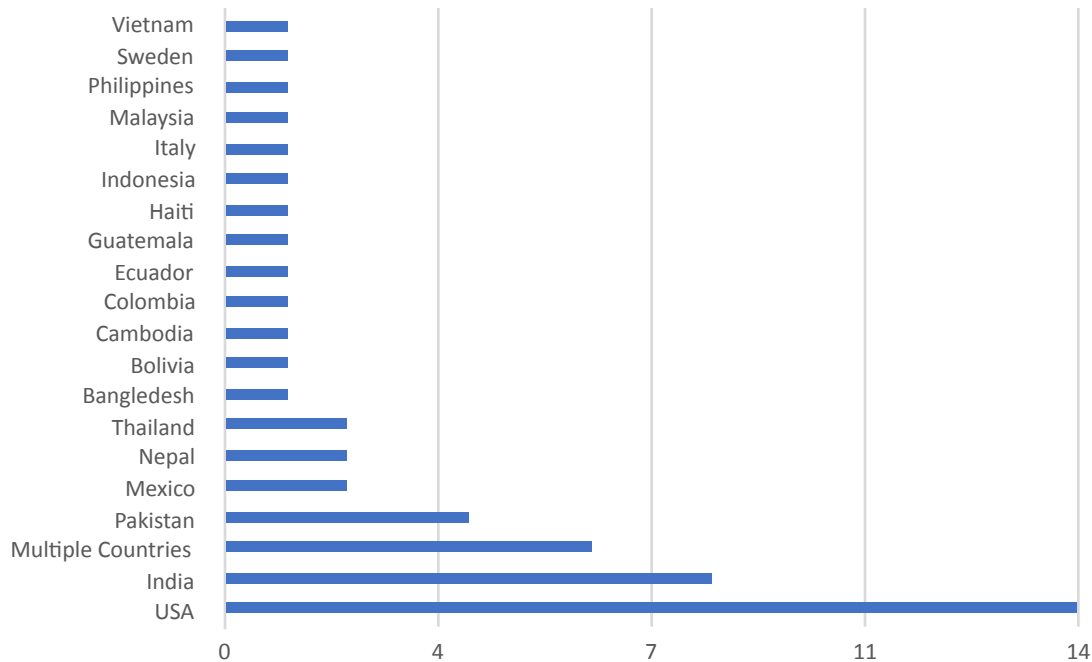
³² Ibid, 220.

³³ Deborah Ellis, *I am a Taxi* (Toronto: Groundwood Books, 2006). Laura Resau and Maria Virginia Farinango, *The Queen of Water* (New York: Random House Children’s Books, 2011). Natsuko Utsumi and Tiffany Pascal, *Les Mariposas* (New York: Cause Vision, 2016).

³⁴ Archer, Trusova and Knight, *Borderland*. Hayes, *Trafficked*. Nazer, *Slave*. Hall and Wysocky, *Hidden Girl*.

individuals respectively.³⁵ There are fourteen texts based solely in the U.S.A., two based in America and another country, and eight based in India.³⁶ All eight texts based in India are fictional narratives – alongside McCormick’s and Sheth’s books, Lynne Kelley’s *Chained* tells the story of a young boy who works in a circus to pay off his family’s debt and Kimberly Rae’s *India Street Kids* series follows the story of two children who work in a sweatshop.³⁷

Geographical Locations of Texts



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Conversely, children’s books based in America include several survivor narratives, including the accounts of Hall and Flores, and Abbey Sher’s *Breaking Free*, which details the experiences of Somaly Mam, Minh Dang, and Maria

³⁵ *Global Slavery Index 2018*, 78 and 88.

³⁶ Many books have several locations, either through the trafficking of the survivor as in Hall’s case, or because there are multiple stories.

³⁷ Lynne Kelley, *Chained* (New York: Farrar Straus Giroux Books for Young Readers, 2012). Kimberley Rae’s *India Street Kids* series contains three novels – *Capturing Jasmine* (Greenville: Journey Forth Books, 2014), *Buying Samir* (Greenville: Journey Forth Books, 2014) and *Seeking Mother* (Greenville: Journey Forth Books, 2015).

³⁸ For ‘Multiple Countries’, modern slavery texts are set in Eastern Europe, Cambodia and the U.S.A., Colombia and Ecuador, Egypt and the U.S.A., South East Asia and Sudan and the U.K.

Suarez.³⁹ Nevertheless, fictional novels still outweigh survivor narratives, with eleven of the former and four of the latter.⁴⁰ Examples of fictional texts include *Trafficked* by Kim Purcell, and *Where is Dylan* by Natsuko Utsumi and Foo Swee Chin.⁴¹ Purcell tells the story of seventeen-year-old Hannah, who is trafficked from Moldova to America to work as a maid, but her dream turns into a nightmare when she is forced to work sixteen-hour days, sleep in the garage, is confined to the house, and receives no pay.⁴² The *Where is Dylan* comic portrays the sexual exploitation of two teenagers, Ashley and Dylan. Ashley is blackmailed by her older boyfriend with ‘sex videos and pictures of her’, making her believe that ‘if I don’t sleep with those guys...he would put the pictures and videos of me on the internet’.⁴³ Similarly, Dylan is taken advantage of by his “friend” Tom, who rapes him before forcing him to perform sexual acts for other men, telling Dylan ‘you owe me a favour’ for taking him off the streets.⁴⁴ It is important that children’s books set modern slavery in the U.S.A. alongside developing countries, such as India, to highlight the fact that this is a worldwide issue affecting everyone. However, more work must be done to demonstrate its occurrence in other areas of the world, such as Europe and Australasia, so children truly understand its widespread nature.

Types of Slavery

Children’s books highlight different types of modern slavery, educating young readers on the ways it can manifest and explaining what slavery is. As shown in the graph below, the two most prevalent forms of slavery in these texts are forced sexual exploitation and forced labour. Twenty texts focus on sexual exploitation, including Cause Vision’s *Evelina*, Clara Roberts’ *I Have Been Sold* and *Taken* by Nevah Neal, and twenty-two highlight forced labour, such as *Circle*

³⁹ Abbey Sher, *Breaking Free: True Stories of Girls Who Escaped Modern Slavery* (New York: Barron's Educational Series, 2014).

⁴⁰ Theresa Flores published two separate books on her sexual exploitation. Theresa L. Flores with PeggySue Wells, *The Sacred Bath: An American Teen's Story of Modern Day Slavery* (Bloomington: iUniverse, 2007).

⁴¹ Kim Purcell, *Trafficked* (London: Walker Books Ltd., 2006).
Natsuko Utsumi and Foo Swee Chin, *Where is Dylan?* (New York: Cause Vision, 2016).

⁴² With no money and no official documentation, Hannah has no way to escape and return home. She believed that she had an authentic passport, but when she arrives in America she learns that her documentation is fake. Purcell, 86.

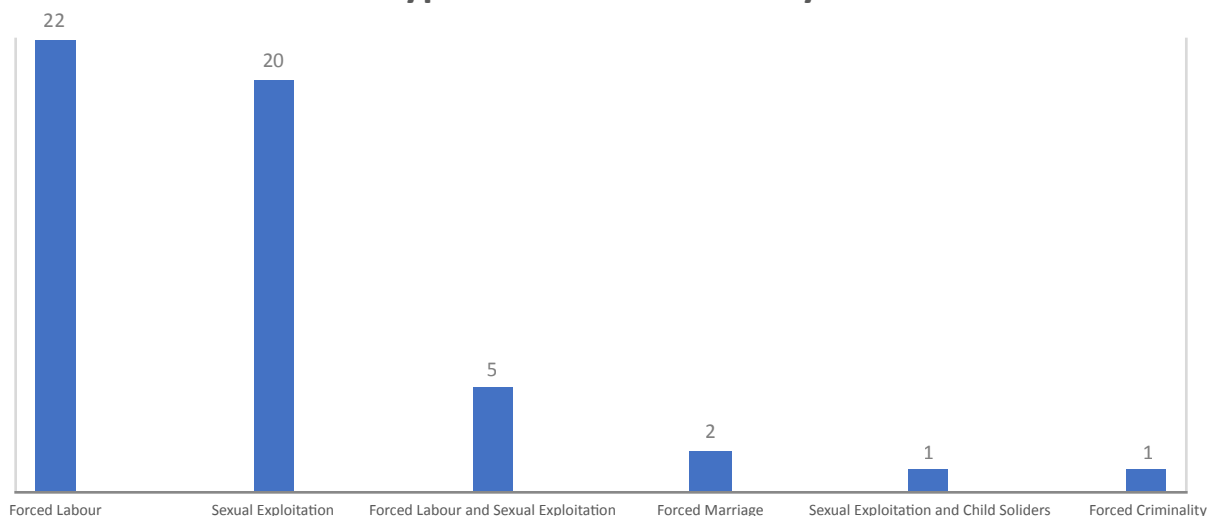
⁴³ Utsumi, *Where is Dylan*, 13.

⁴⁴ Dylan runs away from his abusive father and ends up on the streets when he meets Tom, who drugs and rapes Dylan after gaining his trust. Utsumi, *Where is Dylan*, 25-28.

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of *Cranes* by Annette LeBox and *Yasmin’s Hammer* by Ann Malaspina.⁴⁵ Five books discuss both forced labour and sexual exploitation, namely Dan Archer’s comics *Borderland* and *Nepal*, and Natsuko Utsumi and Jed Siroy’s *Stolen Promises*.⁴⁶ The high number of children’s books discussing forced labour aligns with the fact that this is the most prevalent form of slavery, with an estimated 24.9 million individuals.⁴⁷ Conversely, sexual exploitation is less predominant, with 4.8 million individuals.⁴⁸ The inclusion of stories of sexual exploitation in children’s books is surprising, yet this highlights the difference between the subject matter of books for teenagers and those for young readers. Texts for the former are more explicit in detailing the abuses of slavery, whereas books for the latter censor such details. Indeed accounts of sexual exploitation are reserved for teenage audiences and deemed inappropriate for younger readers. Although it is important children are made aware of the different types of slavery, authors must tailor their stories to their audiences.

Types of Modern Slavery



⁴⁵ Natsuko Utsumi and Yusaku Emoto, *Evelina* (New York: Cause Vision, 2013). Clara Roberts, *I Have Been Sold* (CreateSpace Independent Publishing Platform, 2016). Nevah Neal, *Taken* (CreateSpace Independent Publishing Platform, 2017). Annette LeBox, *Circle of Cranes* (New York: Dial Books for Young Readers, 2012). Ann Malaspina, *Yasmin’s Hammer* (New York: Lee and Low Books, 2010).

⁴⁶ Archer, Trusova and Knight, *Borderland*. Dan Archer, *Nepal: ‘I was 14 when I was sold’*, available at <https://www.bbc.co.uk/news/magazine-22250772>. Utsumi and Siroy, *Stolen Promises*.

⁴⁷ ‘Findings’, Global Slavery Index 2018, accessed September 6, 2018, <https://www.globallslaveryindex.org/2018/findings/highlights/>.

⁴⁸ *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, International Labour Organization and Walk Free Foundation (ILO Publications, 2017), available at https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf, 39.

‘They don’t play or run or shout... They’re slaves’: The First Survey of Children’s Literature on Modern Slavery. James.

There are four texts that look at other types of slavery, namely child soldiers, forced criminality, and forced marriage. Although primarily focusing on sexual exploitation, *Grace’s War* by Debbie Watkins includes the story of Aaynana who was kidnapped and forced to become a child soldier. The comic *Coercion* by Thomas Estler tells the story of Flora, whose boyfriend King Jones forces her to steal for his gain.⁴⁹ Moreover, there are two comics by Natsuko Utsumi, *Hoa and Lan* and *Forbidden Love*, that discuss forced marriage.⁵⁰ The low number of children’s books on forced marriage can be explained by the fact it was not defined as a type of modern slavery until recently. In September 2017, Anti-Slavery International won their campaign to have forced marriage included in the estimates of people in slavery by the International Labour Organisation.⁵¹ This recognition led to estimates of around 15.4 million individuals in forced marriages, over a third of which are children.⁵² With this new estimate and definition, one expects to see an increase in the number of texts discussing forced marriage.

Gender and Slavery

The texts discussed thus far include both male and female survivors and characters. However overall there is a strong gender discrepancy in these texts, with the majority highlighting the modern slavery experiences of girls and women over boys and men. Of the fifty-one texts, only ten books focus on the modern slavery experiences of boys. Of these ten texts, all of which focus on a child’s experience, six are fictional and four are survivor accounts. Three of the survivor accounts are biographies of Iqbal Masih, and the remaining text is Frances Temple’s *Taste of Salt*, which does not focus on modern slavery but discusses Djo’s experience in the wider context of his story.⁵³ Examples of fictional texts with male characters include Deborah Ellis’ *I am a Taxi*, Kimberly Rae’s *The Street King*, Lynne Kelley’s *Chained*, and Charlene Nall Vermeulen’s *Josh Bergman is*

⁴⁹ Thomas Estler and Sacred Mountain, *Coercion* (New York, 2017).

⁵⁰ Debbie Watkins, *Grace’s War: One Woman’s Journey to Rescue Girls from Modern Slavery* (Bloomington, WestBowPress, 2017). Natsuko Utsumi and Yusaku Emoto, *Hoa and Lan* (New York: Cause Vision, 2013). Natsuko Utsumi and Foo Swee Chin, *Forbidden Love* (New York: Cause Vision, 2018).

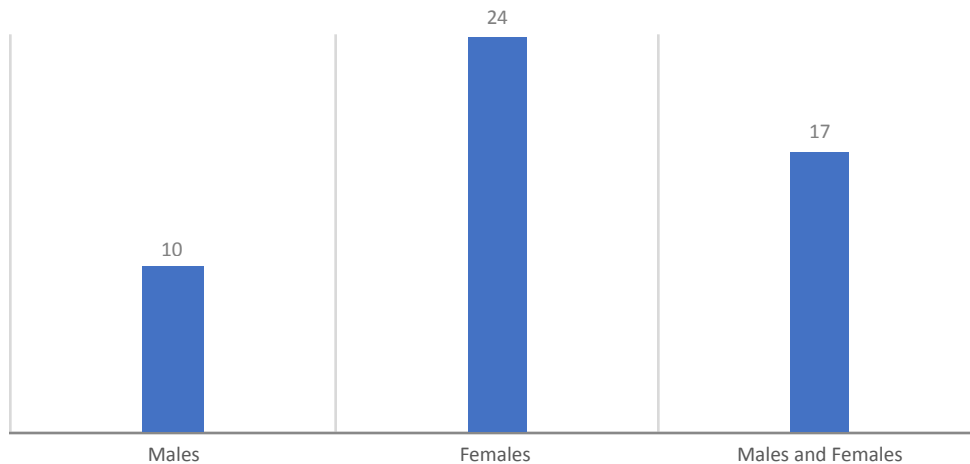
⁵¹ ‘Official: Forced Marriage is Slavery’, *Anti-Slavery International*, September 19, 2017, <https://www.antislavery.org/official-forced-marriage-slavery/>.

⁵² Ibid.

⁵³ Shea, *The Carpet Boy’s Gift*. D’Adamo, Iqbal. Kuklin, *Iqbal Masih and the Crusaders Fight Against Child Slavery*. Temple, *Taste of Salt*.

Missing.⁵⁴ In comparison, there are twenty-four texts focusing on the female experience of modern slavery, with fifteen fictional texts and nine survivor accounts. Examples of fictional texts include *Grace’s War* by Debbie Watkins, *Naked* by Stacey Trombley, *Dime* by E. R. Frank, and *Little Peach* by Peggy Kern.⁵⁵ The nine texts that discuss female survivors’ experiences include *A Babe in the Woods* by John Anthony Davis, *Breaking Free* by Abbey Sher, *Daddy’s Curse* by Luke G. Dahl, and *The Queen of Water* by Laura Resau and Maria Virginia Farinango.⁵⁶

Genders in Modern Slavery Books



It is important to note that there are seventeen books discussing the experiences of males and females together, such as Kimberly Rae’s *India’s Street Kids* series, and most comics created by the organisation Cause Vision. This American-based non-profit organisation was founded by Natsuko Utsumi in 2010 and raises awareness of human trafficking in under-informed communities. Their

⁵⁴ Ellis, *I am a Taxi*. Kimberley Rae, *The Street King* (South Carolina: CreateSpace Independent Publishing Platform, 2014). Kelley, *Chained*. Charlene Nall Vermeulen, *Josh Bergman is Missing: Human Trafficking is Real* (29:11 Publishing, 2018).

⁵⁵ Watkins, *Grace’s War*. Stacey Trombley, *Naked* (Fort Collins: Entangled Teen, 2015). E. R. Frank, *Dime* (New York: Atheneum Books For Young Readers, 2015). Peggy Kern, *Little Peach* (New York: Harper Collins Publishers, 2015).

⁵⁶ John Anthony Davis, *A Babe in the Woods: A True Story of Human Trafficking* (Norris: Raven Publishing, 2015). Sher, *Breaking Free*. Luke G. Dahl, *Daddy’s Curse: A Harrowing True Story of an Eight-Year-Old Girl Human Trafficking and Organised Crime Survivor* (CreateSpace Independent Platform, 2017). Resau and Farinango, *The Queen of Water*.

project is sponsored by the American Embassy and, at the time of publication, had distributed over 100,000 copies of twelve comics in thirteen different countries.⁵⁷

Their comics are based on journalistic research and interviews, with the first comic *Evelina* published in 2013 to warn teenage girls in Mexico about the dangers of sex trafficking.⁵⁸ The organisation has published several comics highlighting the exploitation of both men and women, boys and girls. For instance, *Stolen Promises*, set in Malaysia, focuses on the dangers facing migrant workers, describing how Stella and Anton were trafficked and forced to work for no pay.⁵⁹ Similarly, *Phea’s Dream*, set in Cambodia, focuses on forced labour and describes how the male character Sambath was tricked into working on a fishing boat for no pay.⁶⁰ The sexual exploitation of young boys is also alluded to in *Secrets*. Nene, Analisa and Joy are sexually exploited by Sarah, who became involved in child pornography when she became pregnant after months of sexual exploitation.⁶¹ When Sarah became pregnant, her abuser tells her:

‘You stupid girl!!! No way I’m supporting someone as gross as you! Go back to your village and operate an online child porn site or something! There must be lots of poor children that you can recruit! You can make enough money to raise your fatherless baby’.⁶²

On one occasion, the webcam viewers see Sarah’s young son in the background and ask ‘who is that boy’ and demand he ‘join the girls’.⁶³ Sarah refuses, telling them ‘he is only six years old’, but her boss orders her to include him, telling her ‘if you want to have a successful business, get the boy involved!’⁶⁴ Although there are several texts that include both male and female experiences of slavery, the majority focus on that of women and girls. The predominance of women and girls in these children’s books is largely because they make up a larger

⁵⁷ The countries that Cause Vision have distributed comics to include Mexico, Nepal, Vietnam, Cambodia, U.S.A., Thailand, Indonesia, Colombia, Ecuador, Malaysia, Philippines and Guatemala.

⁵⁸ Emoto, *Evelina*. Teachers from Mexico City received a preview and then requested 50,000 copies of the comic. A Kickstarter campaign then raised funds for the distribution of 12,000 copies in 110 schools throughout Mexico. ‘A Comic Book To Fight Human Trafficking in Mexico’, Kickstarter, accessed September 6, 2018, <https://www.kickstarter.com/projects/449223050/a-comic-book-to-fight-human-trafficking-in-mexico/description>.

⁵⁹ Natsuko Utsumi and Jed Siroy, *Stolen Promises* (New York: Cause Vision, 2016).

⁶⁰ Natsuko Utsumi and Tiffany Pascal, *Phea’s Dream* (New York: Cause Vision, 2014).

⁶¹ Natsuko Utsumi and Jed Siroy, *Secrets* (New York: Cause Vision, 2017), 29.

⁶² Ibid.

⁶³ Ibid, 15.

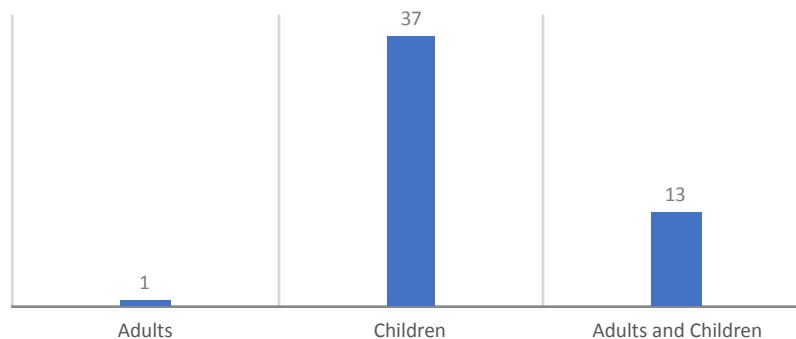
⁶⁴ Ibid, 21.

proportion of enslaved individuals. The Global Estimates of Modern Slavery from 2017 show that 71% of enslaved individuals are female—99% of individuals being sexual exploited are female, alongside 84% of people in forced marriages and 58% in privately imposed forced labour.⁶⁵ Thus, children’s books reflect the gender discrepancy that occurs in modern slavery. Nevertheless, it is important that children’s books do not disregard the fact that men and boys are also affected by this human rights issue.

Age and Slavery

There is a strong prevalence of female individuals in these texts, yet the predominance of child characters over adults is even greater. Indeed Sophie Hayes’ *Trafficked* is the only text that focuses on an adult’s experience of modern slavery. Hayes was twenty-four years old when she was kidnapped and sexually exploited by her boyfriend Kas. When Hayes arrived for a “holiday”, Kas confiscated her passport and threatened to kill her family if she did not prostitute herself for his financial gain.⁶⁶ Hayes was sexually exploited for six months before a life-threatening illness landed her in hospital, where her parents were called and took her home to England.⁶⁷ The text’s explicit nature means it is aimed at teenagers and young adults, with a view to educate young, vulnerable people about the dangers of trafficking. It is the only text emphasising an adult’s experience, with most books highlighting how modern slavery effects children—thirty-seven texts focus on children and thirteen contain both adults and children.

Ages of Characters In Texts



⁶⁵ May Bulman, ‘Women and girls make up ‘nearly three quarters’ of modern slavery victims’. *Independent*, September 19, 2017, <https://www.independent.co.uk/news/uk/home-news/modern-slavery-victims-women-girls-majority-world-report-a7954066.html>

⁶⁶ Hayes, 75-77.

⁶⁷ Hayes called her parents under the watchful eye of Kas but they realised something was wrong. They drove to Italy around the time that Hayes was admitted to hospital and were close by when they got the call, meaning they could quickly get to Hayes before Kas could hide her away again. *Ibid*, 220-222.

Cause Vision’s comics provide the greatest range of age in characters, with both children and adults included in their texts, including Sambath in *Phea’s Dream*, Anton, Stella and Zara in *Stolen Promises*, and Sarah in *Secrets*.⁶⁸ Nevertheless, these adult characters are not the main characters—the story is always told from the child’s perspective and the twenty-something adults always form part of the “side-story”, where the child character learns what can happen should they accept a job abroad or trust an older boyfriend.⁶⁹ For example, in *Secrets* the sexual exploitation of Nene, Analisa, and Joy forms the main story, with Sarah’s past abuse forming a side story that explains how she came to exploit the three girls. Another example is Zara in *Stolen Promises*, an adult who tells the main child characters Kasih and Hana that she was sexually exploited by Leo, the man that Kasih is unknowingly communicating with online.⁷⁰ Zara tells the young girls that Leo promised her an exciting life in Kuala Lumpur, but when she arrived Zara was raped, abused, and sexually exploited for Leo’s gain.⁷¹ Cause Vision’s comics, and other children’s books on modern slavery, portray this human rights issue through child characters to educate children on the dangers of human trafficking and raise awareness about the ways in which children are enslaved. Although it is important that children are aware that adults are also affected, educating the child reader on how it can affect them and their peers is a priority for these texts.

Children’s Books as Educational Tools

This survey of children’s books on modern slavery demonstrates that antislavery activists are returning to this form of protest to raise awareness of this human rights issue among the younger generation. Authors and publishers are educating children and young adults about the prevalence of slavery, including whom it affects, where it occurs, and how it manifests. Many of these texts are read by children in schools, community groups, and at home, making them crucial educational tools.⁷² The importance of children’s literature as an educational tool has been widely supported. In his justification for an analysis of children’s

⁶⁸ Utsumi and Pascal, *Phea’s Dream*. Utsumi and Siroy, *Stolen Promises*. Utsumi and Siroy, *Secrets*.

⁶⁹ These examples are from Stella, Anton and Zara in *Stolen Promises*.

⁷⁰ Utsumi and Siroy, *Stolen Promises*, 21-22.

⁷¹ Ibid.

⁷² *Sold* by Patricia McCormick is widely read in American schools, including the aforementioned Williams High School in Virginia. Cause Vision’s comics are also distributed in schools all over the world, as well as hostels, remote villages and at young reader events, such as the 2017 Komikon in the Philippines.

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literature, Peter Hunt contends that it is impossible for such texts not to be educational, as they will always reflect a certain ideology or didacticism.⁷³ There are numerous studies highlighting the importance of children’s books in educating children on various important subjects, such as race and cultural differences.⁷⁴ For example, Marta Collier contends that immersing children in stories of their own people will develop a cultural mirror image that reflects children’s place in the world as valid, valuable and voiced, therein enhancing their educational experience.⁷⁵ Children’s books on modern slavery are crucial educational tools in two important ways—firstly they highlight the various signs of slavery and secondly they unpack the scale of this issue.

As previously demonstrated, several survivor accounts highlight indicators of slavery, with Hall and Flores prioritising informing children about possible indicators of modern slavery. They urge the reader to educate themselves on these signs and make the authorities aware of any suspicions. Hayes’ account also includes key information on signs of slavery, along with organisations and helplines the reader can use to gather more information and voice any suspicions. There is also a chapter by Bex Keer from STOP THE TRAFFIK, which includes signs of modern slavery. She writes that an example of where someone has been trafficked from a community could be if their accommodation is empty or if they have left their job without contacting their colleagues, friends, or family.⁷⁶ Keer also explains what someone can do if they suspect modern slavery, encouraging people in the U.K. to contact the police or an antislavery organisation, such as STOP THE TRAFFIK.⁷⁷ Moreover, the text lists the contact details of the Sophie Hayes Foundation, CrimeStoppers, the Salvation Army, the U.K. Human Trafficking Centre, STOP THE TRAFFIK, and the William Wilberforce Trust.⁷⁸

⁷³ Peter Hunt, *An Introduction to Children’s Literature* (Oxford: Oxford University, 1994), 3.

⁷⁴ Much research has been conducted on the importance of having characters of colour in children’s literature, with a focus on African American characters. See Nancy Larrick, “The All-White World of Children’s Books”, *The Saturday Review*, 11th September 1965, 63-65 and 84-85, Dorothy M. Broderick, *Image of the Black in Children’s Fiction* (New York: R. R. Bowker, 1973), Rudine Sims, “Strong Black Girls: A Ten Year Old Responds to Fiction about Afro-Americans”, *Journal of Research and Development in Education* 16, no. 3 (1983): 21-28, Elena Monoyiou and Simoni Symeonidou, “The wonderful world of children’s books? Negotiating diversity through children’s literature”, *International Journal of Inclusive Education* 20, no. 6 (2016): 588-603, and Ebony Elizabeth Thomas, Debbie Reese and Kathleen T. Horning, “Much Ado About *A Fine Dessert*: The Cultural Politics of Representing Slavery in Children’s Literature”, *Journal of Children’s Literature* 42, no. 2 (Autumn 2016): 6-17.

⁷⁵ Collier also maintains that including African American characters in juvenile literature is crucial to the enhancement of black children’s educational experience. Marta Collier, “Through The Looking Glass”, *Journal of Negro Education* 69, no. 3 (Autumn 2000): 235.

⁷⁶ Bex Keer in Hayes, 301.

⁷⁷ Keer recognises that contacting the police is not always possible in other countries. Keer in Hayes, 302.

⁷⁸ Hayes, 307.

There are also several fictional children’s books that highlight indicators of modern slavery, with Cause Vision providing strong examples. Every comic contains a specific section on ‘What is Human Trafficking’ and signs of ‘Trafficked Children’, and advises the reader on ‘how to report suspected cases of trafficking’, alongside providing the details of local organisations that combat modern slavery. These sections accompany each story, in which the various signs of exploitation are further demonstrated. For example, when Ashley in *Where is Dylan* is sexually exploited, it is her unexplained school absences, slipping grades, and new material possessions that concern her friend Jessica and prompt her to voice her fears.⁷⁹ Moreover, each comic book is tailored to the distribution country, highlighting the different types of slavery and enslavement methods most prevalent in that country. For example, Stella and Anton in *Stolen Promises* travel to Malaysia for work and find themselves trapped as forced labourers.⁸⁰ These characters’ stories reflect the current situation in Malaysia, in which the majority of slavery victims are both documented and undocumented migrant workers.⁸¹ Stella and Anton’s passports are confiscated, their contracts violated, wages withheld and movements restricted, all of which the Trafficking in Persons (T.I.P.) Report identifies as common factors of enslavement among migrant workers in Malaysia.⁸²

Another example is *Secrets*, in which women and children are sexually exploited in a remote village in the Philippines, which aligns with the T.I.P. Report observation that ‘women and children in indigenous communities and remote areas of the Philippines are the most vulnerable to sex trafficking’.⁸³ The Report goes on to state that ‘young Filipino girls and boys are increasingly induced to perform sex acts for live internet broadcast’, which is precisely what happens to Nene, Analisa, and Joy.⁸⁴ Thus, Cause Vision’s comics and survivor accounts are vital in educating children on the signs of enslavement. They implore the reader to learn about the signs of slavery and the different ways it can manifest, in the hopes that they can help someone if the situation arises.

⁷⁹ Utsumi and Chin, *Where is Dylan?*, 9-10.

⁸⁰ Utsumi and Siroy, *Stolen Promises*.

⁸¹ *Trafficking in Persons Report June 2018*, U.S. Department of State Publication, Office of the Under Secretary for Civilian Security, Democracy and Human Rights (Designed and printed by A/GIS/GPS, 2018), accessed September 6, 2018. <https://www.state.gov/documents/organization/282798.pdf>, 289.

⁸² *Ibid*, 289.

⁸³ *Trafficking in Persons Report June 2018*, 352. Natsuko Utsumi, *Secrets*.

⁸⁴ *Trafficking in Persons Report June 2018*, 352. Utsumi, *Secrets*, 13-14.

The Scale of Modern Slavery

These texts educate children on modern slavery by unpacking the scale of this human rights issue. The Global Slavery Index of 2018 reported that 40.3 million individuals are enslaved, with 29.4 million people in forced labourer and 15.4 million individuals trapped in forced marriages.⁸⁵ Facts and figures about modern slavery are communicated to readers in several survivor accounts, including Flores, Hall, and Hayes’ accounts. In the latter, U.K. coordinator of STOP THE TRAFFIK Simon Chorley states that there were ‘at least 12.3 million people in forced labour worldwide’ and ‘approximately 2.5 million are victims of human trafficking’.⁸⁶ Flores and Hall also state that there were ‘twenty-seven million’ individuals enslaved worldwide, an accurate estimate at the time of publication.⁸⁷ Fictional texts also provide such figures—Sheth’s *Boys Without Names* includes numbers on child labour from 2008 and McCormick’s *Sold* contains detailed statistics about modern slavery.⁸⁸ Children’s literature further unpacks the scale of modern slavery through the stories and accounts themselves. These modern slavery texts highlight various forms of modern slavery and demonstrate its occurrence across five continents—North America, South America, Europe, Africa and Asia. At the time of publication, Cause Vision alone has distributed over 100,000 copies of 12 comics in 13 different countries, informing children around the world about modern slavery, with comics passed out in schools, donated to visitors at the 2017 Komikon in the Philippines and given to children in hostels and remote villages.⁸⁹ Thus, children’s books unpack the scale of modern slavery by highlighting the facts, establishing its widespread nature and demonstrating the different ways in which slavery can manifest. Alongside emphasising the different signs of slavery, unpacking its scale educates children on modern slavery and thus these texts are important educatory tools.

Conclusion

This article presents the first survey of children’s books on modern slavery and highlights activists’ use of juvenile literature to protest this human rights issue.

⁸⁵ ‘Findings’, Global Slavery Index 2018

⁸⁶ Hayes, 305-306.

⁸⁷ Hall and Wysocky, 23. Flores, 282. This figure was thought to be an accurate estimate at the time of printing.

⁸⁸ Sheth, 135. McCormick, 271-276.

⁸⁹ Cause Vision have set their stories and distributed comics in the following countries – Mexico, Nepal, Vietnam, Cambodia, Thailand, Indonesia, Colombia, Ecuador, the U.S.A., Malaysia, Philippines, Guatemala and a forthcoming publication in Sweden.

Exploring the emergence of children’s books on modern slavery from 1992 to the present day, this article considers how fictional and non-fictional texts bring modern slavery to children. It highlights the texts written by survivors, noting how they educate children on the difficulties of life post-enslavement and the various signs of its occurrence. Listening to and using survivors’ experiences is vital in the eradication of modern slavery, with survivor Minh Dang noting that the antislavery movement must ‘be more inclusive’ and ‘ensure that survivors can contribute in meaningful ways’.⁹⁰ Although fictional texts dominate this field, many of these authors base their fictional stories on survivor accounts and/or carry out their own research to raise awareness of slavery’s impact on people around the world. It is important that children’s books continue to employ survivor narratives, using their experiences and knowledge to educate children on this issue. This survey also demonstrates the breadth of children’s literature on modern slavery. It highlights how these texts place slavery across five continents, with most based in the U.S.A. and India, and emphasises different types of modern slavery, with a focus on sexual exploitation and forced labour. It also analyses the individuals in these texts, examining how women and girls are more prevalent than men and boys, with child characters prevailing over adults. Preliminary analysis of these texts reveals their educational value and demonstrates that they are important educatory tools on this human rights issue. Children’s books highlight the signs of slavery, educating the reader on how it manifests and what they should do if they suspect its occurrence. Moreover, these texts unpack the scale of slavery, demonstrating its prevalence around the world and reinforcing to young readers the importance of eradicating this issue. Children’s books are vital in raising awareness and educating young readers on modern slavery and the antislavery movement, and thus their creation and distribution must continue.

⁹⁰ Minh Dang, ‘Survivors are speaking. Are we listening?’, *Global Slavery Index 2018*, 19.

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Analysing Slavery through Satellite Technology: How Remote Sensing Could Revolutionise Data Collection to Help End Modern Slavery

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Abstract

An estimated 40.3 million people are enslaved globally across a range of industries. Whilst these industries are known, their scale can hinder the fight against slavery. Some industries using slave labour are visible in satellite imagery, including mining, brick kilns, fishing and shrimp farming. Satellite data can provide supplementary details for large scales which cannot be easily gathered on the ground. This paper reviews previous uses of remote sensing in the humanitarian and human rights sectors and demonstrates how Earth Observation as a methodology can be applied to help achieve the United Nations Sustainable Development Goal target 8.7.

Key words: Crowdsourcing; Modern Slavery; Remote Sensing; Satellites; Sustainable Development Goals.

Analysing Slavery through Satellite Technology: How Remote Sensing Could Revolutionise Data Collection to Help End Modern Slavery

Globally an estimated 40.3 million people are currently trapped in modern slavery, a quarter of whom are children.¹ To tackle slavery, and a number of other developmental challenges, the United Nations (UN) created the Sustainable Development Goals (SDGs), which came into force on 1 January 2016, replacing the Millennium Development Goals (MDGs).² The MDGs aimed to remove people

¹ This figure was first estimated in 2017 when the International Labour Organisation (ILO) partnered with Walk Free, the producers of the Global Slavery Index (GSI). The figure is the most current estimate available, and was determined using surveys, interviews and datasets. The global estimate was first produced for the ‘Global Estimates of Modern Slavery’ report published by the ILO. These results were then expanded upon in the 2018 edition of the ‘Global Slavery Index’ which provides a breakdown of the figures by country. However, there are a number of critiques of the GSI approach, particularly regarding the methodologies used in the Index and the alterations of the definition of ‘modern slavery’ used within each edition (Guth *et al.* 2014; Gallagher 2017; Mügge 2017). The term ‘modern slavery’ is used throughout as it is the overarching term found within the United Kingdom’s legislation regarding slavery, the *Modern Slavery Act 2015* (<http://www.legislation.gov.uk/ukpga/2015/30/contents>). Whilst it must be acknowledged that there are a number of valid reasons against the use of this term, many of which are outlined by Michael Dottridge (2017), the widespread use of the term ‘modern slavery’ and the nature of exploitation described in the *Modern Slavery Act 2015* was deemed appropriate for this manuscript. Walk Free Foundation and International Labour Organisation. “Global Estimates of Modern Slavery: Forced Labour and Forced Marriage.” Geneva, 2017; ————. “Global Estimates of Child Labour: Results and Trends, 2012-2016.” Geneva, 2017; Walk Free Foundation. “The Global Slavery Index 2018.” Australia, 2018.

² World Bank and UNDP. “Transitioning from the MDGs to the SDGs.” New York, 2015.

from situations of poverty, whereas the SDGs aim to provide an environment that will keep them out of poverty for good. The remote sensing community has long worked to tackle issues within the SDGs, primarily those related to the environment. However, an increasing number of applications relate to targets and indicators that have social and cultural implications for sustainability across a number of fields.³ One target that could benefit from the use of geospatial information, is target 8.7 (part of SDG 8), which aims to tackle forms of modern slavery and child labour. Target 8.7 stipulates society must:

Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking... and by 2025 end child labour in all its forms.⁴

With the goal firmly set, governments, businesses and campaigners have joined the fourth anti-slavery movement to help eradicate slavery for good.⁵ However, technological advancements for data collection on modern slavery could hold the key to end this fight.

The use of satellite imagery for tackling the SDGs is a recent and growing phenomenon.⁶ Katherine Anderson et al. explored a range of possible uses for remote sensing technology and the SDGs, of which many examples touched upon the impact of changing environmental indicators and the effect that changes in ecosystems, climate variables and—in the most human orientated analysis—population exhibit.⁷ These examples barely touched on Goal 8, only briefly mentioning other economic indicators within the goal but never explicitly referring to target 8.7. Moreover, the use of remote sensing exploring cultural heritage has been examined.⁸ The work by Wen Xiao *et al.* is built upon a range of studies that

³ Qihao Weng. *Remote Sensing for Sustainability*. CRC Press: Boca Raton, 2016.

⁴ “Sustainable Development Goal 8.” Sustainable Development Knowledge Platform, United Nations, accessed May 18, 2017, <https://sustainabledevelopment.un.org/sdg8>

⁵ The fourth anti-slavery movement is one of the key factors driving the current academic scholarship and developments in anti-slavery community present today: see Zoe Trodd. “Introducing the Rights Lab.” University of Nottingham, accessed August 20, 2018, <http://blogs.nottingham.ac.uk/rights/2017/08/04/walkfree7/>; and “The Antislavery Usable Past.” Arts & Humanities Research Council, accessed August 20, 2018, <https://ahrc.ukri.org/research/casestudies/the-antislavery-usable-past/>.

⁶ John Trinder, Sisi Zlatanova, and Jie Jiang. "Editorial to Theme Section on UN Sustainable Development Goals (SDG)." *ISPRS Journal of Photogrammetry and Remote Sensing* 142 (2018):342-343.

⁷ Katherine Anderson *et al.* "Earth Observation in Service of the 2030 Agenda for Sustainable Development." *Geo-spatial Information Science* 20, no. 2 (2017):77-96.

⁸ Wen Xiao *et al.* "Geoinformatics for the Conservation and Promotion of Cultural Heritage in Support of the UN Sustainable Development Goals." *ISPRS Journal of Photogrammetry and Remote Sensing* 142 (2018):389-406.

had developed methods to investigate archaeological sites using remotely sensed data, which are commonly conducted using radar, LiDAR and imagery analysis from Unmanned Aerial Vehicles (UAVs) or satellite imagery. Their study impressed the importance of these methods in the context of supporting elements of both SDG 8 and SDG 11 which both include references to cultural heritage. Overall, Xiao *et al.*'s study demonstrates the benefit of remote sensing technology to protect cultural heritage, and suggests where such technology can be used in the future. The studies mentioned above show a clear movement in the remote sensing field to research which supports the SDGs and the associated 169 indicators.

While there is a limited amount of information referring to geospatial technology and the SDGs, there have been many uses of remote sensing for humanitarian and human rights research and practice, with new innovations in the types of data used for analysis.⁹ Non-governmental organisations (NGOs) are beginning to invest in the use of these technologies to tackle human rights violations, for example, Amnesty Decoders.¹⁰ The development of these uses represents an important step towards the use of remote sensing technology for social challenges.

Remote Sensing for Humanitarian and Human Rights Cases

Remote sensing is the practice of collecting data predominantly passively (using reflected sunlight from the Earth's surface to measure the reflectance of features on the ground to determine their properties) from a distance. Since the first satellite was launched in the 1950s, capabilities to monitor the Earth have continued to develop. There were more than 600 earth observation (EO) and earth science satellites orbiting the planet in 2017 collecting large volumes of data with untapped potential to investigate industries, known to be utilising modern slavery practices, from above.¹¹ There are large temporal sets of data, for instance, the U.S. Landsat mission. The data from this mission was made freely available in 2008, providing an archive of imagery spanning more than 40 years.¹² The Landsat missions have a medium spatial resolution (30m pixels), allowing for vast data

⁹ Naomi Larsson. "How satellites are being used to expose human rights abuses." *The Guardian*, accessed May 19, 2018, <https://www.theguardian.com/global-development-professionals-network/2016/apr/04/how-satellites-are-being-used-to-expose-human-rights-abuses>; Robin Pierro, Tom Walker and Ben Davis. "Satellite Imagery for Human Rights Monitoring." *The Engine Room*, accessed May 19, 2018, <http://library.theengineroom.org/satellite-imagery-human-rights/>.

¹⁰ "Amnesty Decoders." Amnesty International, accessed May 18, 2018, <https://decoders.amnesty.org/>.

¹¹ Union of Concerned Scientists. "UCS Satellite Database." 2017.

¹² Mariel Borowitz, *Open Space: The Global Effort for Open Access to Environmental Satellite Data*. London: MIT Press, 2017.

collection at a reasonable level of detail across the entire planet. However, the continuing availability of the imagery is uncertain.¹³ Other satellites, with even higher resolutions, allow us to view features on the Earth's surface in detail, such as DigitalGlobe, a commercial satellite imagery provider. Increasingly data are improving in all resolutions—source (as in laser, radar, optical), spatial (different pixels sizes), spectral (different wavebands), temporal (collected on different dates) and radiometric (data content of the pixel). Data are also becoming free at the point of access, particularly from satellites owned and operated by national space agencies; greatly increasing the range of possible uses.

Remote sensing comes from three primary platforms: UAVs, airborne (for instance planes), and satellites. In the fight against modern slavery it is satellite imagery that is the most appropriate, not only because of the vast abundance of imagery, but also for two other key reasons. First, it provides detail which is cost-effective compared to launch, collection and processing costs. Second, it protects vulnerable people's privacy should they be enslaved because they are not visible at the spatial resolutions available. Coarser imagery, such as those which are available freely, are therefore beneficial as they prevent slaveholders from identifying workers and locations which may lead them to take harmful actions, impacting on those who are enslaved. Cost-effective, open access, data affords NGOs, academics and policy makers the opportunity to conduct analysis with a focus on modern slavery. Monitoring cases of human rights violations and humanitarian crises with remotely sensed data have become common, however, these platforms have never been used within the modern anti-slavery movement.¹⁴

UAVs, a recent technological development, have taken the practice of remote sensing to the mainstream. However, imagery collected from the small cameras placed on board (known as the payload) have primarily been used in humanitarian cases; such as in disaster hit areas to help develop clear plans for delivering aid and assessing damage within remote areas before aid workers arrive.¹⁵ When a camera is situated in the payload imagery can be captured and has been used in a number of contexts. For example, refugee camps have grown large in number and size across the Middle East, particularly since the start of the Syrian conflict in 2011. Satellite imagery has revealed rapid expansion of the UN's refugee camps and can help to protect those within the camp in conflict

¹³ Gabriel Popkin. "US government considers charging for popular Earth-observing data." *Nature* 556 (2018): 417-418.

¹⁴ AAAS. "Human Rights Applications of Remote Sensing: Case Studies from the Geospatial Technologies and Human Rights Project." Washington DC, 2014.

¹⁵ Kalev Leetaru. "How Drones Are Changing Humanitarian Disaster Response." *Forbes*, accessed May 18, 2018, <https://www.forbes.com/sites/kalevleetaru/2015/11/09/how-drones-are-changing-humanitarian-disaster-response/#6a39b3a0310c>.

situations.¹⁶ Despite the registration process upon entering a camp, population monitoring can be difficult, and analysis of data collected by an on board UAV camera, or a satellite image, can provide a more accurate estimation of the number of residents, thus assisting registrars on the ground. These methods use tents and shelters to estimate the number of people present which is vital as it informs the volume and scale of provisions required for each camp.¹⁷

Whilst the use of UAVs may be beneficial in some contexts they may not be for all. UAVs fly close to the ground, thus they can capture a lot of detailed images; features such as people and vehicles are visible. Airborne sensors fly higher, but they also carry sensors which may put people at risk, these features are also becoming common in commercial satellite data. For example DigitalGlobe's 'WorldView' satellites have a spatial resolution of up to 31cm (high enough to view and detect the model of a car, but not so high as to identify people) which is available commercially for the first time since changes to U.S. law.¹⁸ It is therefore important to consider the ethics of using remote sensing for a human rights issue such as modern slavery, as high levels of detail in the future may put vulnerable people at risk of further harm. There is no guarantee that imagery will not be used nefariously, however, these high resolution data are still primarily commercial, limiting those who can access the data to those who have the financial means, or are restricted by governments.¹⁹ The technology is already available and there appears to be very little will to restrict access again, but perhaps imagery providers need to consider who the data are released to and users must also play a role in thinking carefully about what data are required, and why, when engaging in remote sensing investigations of vulnerable populations.

¹⁶ Joe Belliveau. "Humanitarian Access and Technology: Opportunities and Applications." *Procedia Engineering* 159 (2016):300-306.

¹⁷ Francesco Checchi, Barclay T. Stewart, Jennifer J. Palmer, and Chris Grundy. "Validity and Feasibility of a Satellite Imagery-Based Method for Rapid Estimation of Displaced Populations." *International Journal of Health Geographics* 12, no. 1 (2013):4; Stefan Lang *et al.* "Earth-Observation (EO)-based *ex post* assessment of internally displaced person (IDP) camp evolution and population dynamics in Zam Zam, Darfur." *International Journal of Remote Sensing* 21, no. 21 (2010):5709-5731; Patrick Meier. "The First Ever 3D Model of a Refugee Camp Made with UAV Imagery." *iRevolutions*, accessed May 4, 2018, <https://irevolutions.org/2015/08/17/first-3d-model-refugee-camp/>.

¹⁸ Michael Koziol. "Lifting restrictions on satellite imagery means even closer close-ups from space." *The Sydney Morning Herald*, accessed December 4, 2018, <https://www.smh.com.au/technology/lifting-restrictions-on-satellite-imagery-means-even-closer-closeups-from-space-20140618-zsdh1.html>.

¹⁹ Ann M. Florini, and Yahya Dehqanzada. "Commercial Satellite Imagery Comes of Age." *Issues in Science and Technology* XVI, no. 1 (1999).

Ethical Considerations

The ethics of remote sensing have been considered since the first high spatial resolution satellite was launched in the 1990s. More recently Tanya Notley and Camellia Webb-Gannon have explored the issues of remote sensing and privacy with special reference to the application of remote sensing for human rights analysis.²⁰ There are a number of concerns about the use of satellite imagery for tackling human rights violations, including slavery. NGOs do not want to endanger vulnerable people should cases of slavery be identified, and the slaveholders somehow become aware of this. Concerns such as these should be considered within all remote sensing analysis that aims to protect people from human rights abuses. The community of analysts and NGOs must be aware of the possible risks to those they are trying to help, to protect them from further harm. Similar ethical considerations have been noted with reference to required regulations that prevent the marginalisation and targeting of vulnerable groups within society.²¹ This idea is considered further by Austin Choi-Fitzpatrick who argues that researchers and organisations using UAVs to enable societal change for good need to prioritise six key concepts: subsidiarity, physical and material security, the 'do no harm' principle (balancing the situation being monitored and the risks involved to those producing, using and featured within the data collected), the public good, respect for privacy and respect for data.²² It is important that a strict code of ethics, common in the field of remote sensing and study of modern slavery, is adhered to in order to mitigate risk of further distress, harm or violation to enslaved workers through the use of the technology—bearing in mind the 'do no harm' aspect of the work.

Some of the issues of privacy may also apply to very high spatial resolution satellite imagery. The sensors that supply this type of data tend to be commercially owned and therefore the data can be extremely expensive. This is where tradeoffs regarding satellite data selection are often made. In the case of investigating industries using modern slavery practices, the most vital consideration is the protection of vulnerable populations, these must also be considered alongside costs and the level of detail needed within the imagery in order to conduct meaningful

²⁰ E. Terrence Slonecker, Denise M. Shaw, and Thomas M. Lillesand. "Emerging Legal and Ethical Issues in Advanced Remote Sensing Technology." *Photogrammetric Engineering and Remote Sensing* 64, no. 6 (1998):7; Tanya Notley, and Camellia Webb-Gannon. "Visual Evidence from Above: Assessing the Value of Earth Observation Satellites for Supporting Human Rights." *The Fibreculture Journal* 3, no. 27 (2016).

²¹ R.L. Finn, and D. Wright. "Unmanned aircraft systems: Surveillance, ethics and privacy in civil applications." *Computer Law and Security Review* 28 (2012):184-194.

²² Austin Choi-Fitzpatrick. "Drones for Good: Technological Innovations, Social Movements, and the State." *Journal of International Affairs* 68, no. 1 (2014):19-36.

analysis. Whilst the majority of open-source data have pixel resolutions of around 30m, the new European Space Agency (ESA) Copernicus programme's Sentinel-2 satellites have 10m spatial resolution and a revisit rate of 5 days; these pixels are still large enough, however, to diminish the risk of privacy violations.²³ Consequently, satellite imagery is seen as the most applicable form of data to help analyse practices of modern slavery.

Remote Sensing Modern Slavery

There is precedent for the use of remote sensing in a range of human rights applications but there has not been a concerted effort to apply these practices to instances of modern slavery.²⁴ The idea for using satellite imagery in the effort to measure and end slavery was first mooted by Kevin Bales when visiting the UN's Office for Outer Space Affairs (UNOOSA).²⁵ He recognised how satellite technology could help to target the remotest of areas where slavery often takes place. This is an important benefit as imagery can help support anti-slavery NGOs on the ground by providing detailed maps of industries in remote areas which may have previously been inaccessible, or even unknown. Although remote sensing methods may not be applicable to collect data on all types of slavery, the use of remotely sensed imagery provides an additional resource to enhance understanding of numerous industries. However, this does not mean the method will replace interactions with survivors and organisations on the ground working to end slavery; the view would be to create additional avenues of data collection alongside these established techniques. Industries where satellite imagery would be applicable include: brick kilns (see Figure 1), quarries, mines, charcoal camps, fish-processing camps and fishing (in both open water and oceans). The problem of modern slavery is so widespread and the collection of remotely sensed imagery is so frequent, that the technology would be beneficial as an additional methodological tool to use in this field.

Satellites and Slavery in Academia

At the time of writing only one published research paper has used remotely sensed imagery to provide information on slavery within an academic setting, but

²³ ESA. "Sentinel-2 User Handbook." *European Commission*, 2015; M. Drusch *et al.* "Sentinel-2: Esa's Optical High-Resolution Mission for GMES Operational Services." *Remote Sensing of Environment* 120 (2012):25-36.

²⁴ AAAS. "Human Rights Applications of Remote Sensing: Case Studies from the Geospatial Technologies and Human Rights Project."

²⁵ Kevin Bales. *Ending slavery: how we free today's slaves*. Berkeley, CA: University of California Press, 2007:163-164.

there has been a growth in the number of studies specifically investigating modern slavery.²⁶ Doreen Boyd *et al.* estimated the number of brick kilns in South Asia using open source imagery available through Google Earth Pro.²⁷ This is an important piece of research as it assesses an industry that is known to use bonded and child labour. Previously, little was known about the extent of the South Asian brick manufacturing industry, and the development of this estimate would not have been possible without geospatial technology due to the size of the region being investigated. The work by Boyd *et al.* is a beneficial development in the possible use of technology for human rights analysis but is also important for NGOs and local governments, as the information can be used to help with the decision-making process when abolishing slavery practices within brick manufacturing.²⁸ Moreover, the study embraces crowdsourcing to collect data and demonstrates the engagement of civil society with the SDGs—which is key to ensuring they are sustained and successful—as well as processing large volumes of data quickly.

Building on this, researchers at the University of Nottingham have begun to investigate the impact of illegal fish-processing camps within the UN Educational, Scientific and Cultural Organization (UNESCO) protected Sundarbans Reserve Forest, Bangladesh (Figure 2).²⁹ These sites are known to use child labour.³⁰ They are also understood to have an adverse impact on the mangroves in which they are situated. Geospatial technology in this case can be used to protect the environment and help to support the liberation of enslaved workers through the provision of evidence to encourage government and UN-led action.

The Slavery-Environment Nexus in Research

Satellites are used extensively to monitor the Earth System's environment, providing a robust and continuous method to measure and monitor our

²⁶ Details of research on modern slavery occurring within the UK are available through a database supported by the Independent Anti-Slavery Commissioner and the University of Nottingham's Rights Lab; the database is accessible via <http://iascresearch.nottingham.ac.uk/>

²⁷ Doreen S. Boyd *et al.* "Slavery from Space: Demonstrating the role for satellite remote sensing to inform evidence-based action related to UN SDG number 8." *ISPRS Journal of Photogrammetry and Remote Sensing* 142 (2018):380-388.

²⁸ *Ibid.*

²⁹ Cara McGoogan and Mukhtadir Rashid. "Satellites reveal 'child slave camps' in UNESCO-protected park in Bangladesh." *The Telegraph*, accessed October 26, 2016, <https://www.telegraph.co.uk/technology/2016/10/23/satellites-reveal-child-slave-camps-in-unesco-protected-park-in/>.

³⁰ Kari B. Jensen "Child Slavery and the Fish Processing Industry in Bangladesh." *Focus on Geography* 56, no. 2 (2013):54-65.

anthropogenic footprint.³¹ The knowledge acquired through the analysis of satellite imagery provides data to manage the environment, limit damaging actions, and establish measures of the relative successes, or failures, of environmental policies which have been employed to mitigate damage. The environmental destruction of our planet is documented daily by EO satellites, creating an extensive and valuable archive of data. These data are used to inform practice and improve environmental awareness, but the question remains, how may they also be used to assist in the eradication of modern slavery.

The destruction of the environment and the presence of modern slavery are entwined in a ‘deadly dance’.³² Those subject to debt bondage or forced labour are often involved in dangerous and destructive practices that have the potential to etch large physical signatures upon the landscape; deforestation of the Amazon is a clear example of this.³³ If modern slavery were a country it would be the third largest emitter of carbon dioxide (CO₂) globally, yet, little emphasis has been placed on the study of the powerful linkage between such social and physical variables.³⁴ Common debt bonded labours with high environmental impacts include forestries, fisheries, factories and farming.³⁵

The brick kiln industry is widespread across South Asia, as discussed previously, but the true scale of the environmental impacts have not yet been realised. At present, the volume of emissions have been explored, as has the extraction of clay, used to produce the bricks, which strips the land reducing the fertility thus pushing those reliant on agriculture into further vulnerability.³⁶ Similarly, mining releases a variety of heavy metals via the extraction of particular

³¹ Andrew J. Tatum, Scott J. Goetz and Simon I. Hay. “Fifty Years of Earth Observation Satellites.” *Am Sci.* 96, no. 5 (2008):390-398.

³² Bales. *Blood and Earth: Modern Slavery, Ecocide and the Secret to Saving the World*. New York: Speigel & Grau, 2016.

³³ Philip M. Fearnside. “The Roles and Movements of Actors in the Deforestation of Brazilian Amazonia.” *Ecology and Society* 13, no. 1 (2008):23.

³⁴ Bales. *Blood and Earth: Modern Slavery, Ecocide and the Secret to Saving the World*.

³⁵ Doreen Boyd *et al.* “Modern Slavery, Environmental Destruction and Climate Change: Fisheries, Field, Forests and Factories.” Rights Lab, University of Nottingham, Royal Holloway University of London and IASC, 2018.

³⁶ Boyd *et al.* “Slavery from Space: Demonstrating the role for satellite remote sensing to inform evidence-based action related to UN SDG number 8.”; Bhat Mohd Skinder, Afeefa Qayoom Sheikh, Ashok K. Pandit and Bashir Ahmad Ganai. “Brick kiln emissions and its environmental impact: A Review.” *Journal of Ecology and the Natural Environment* 6, no. 1 (2014):1-11; Bhat M Skinder *et al.* “Effect of brick kiln emissions on commonly used vegetables of Kashmir Valley.” *Food Science and Nutrition* 3, no. 6 (2015):604-611; Suman Kumar Pariyar, Tapash Das and Tanima Ferdous. “Environment and Health Impact for Brick Kilns in Kathmandu Valley.” *International Journal of Scientific & Technology Research* 2, no. 6 (2013):184-187.

ores; Mercury is common across Gold mining in West Africa and South America.³⁷ Planet satellites, for example, have captured evidence of extensive gold mining in Peru.³⁸ Elsewhere, Mercury can have devastating health effects, and in the Eastern Congo, illegal mining impacts water quality, increases deforestation and contributes to poaching.³⁹ The environmental damage caused by industries known to heavily use modern slavery practices are perpetuating a socially and ecologically damaging cycle, increasing the risk of populations becoming vulnerable to enslavement.

Shrimp farms and fish-processing camps in the Sundarbans use slave labour to remove coastal mangroves, as discussed above.⁴⁰ These forests are a globally important carbon sink, and a key defence against erosion and natural disasters.⁴¹ The cyclicity between human vulnerability and its exploitation, and environmental vulnerability and its exploitation, continues to be exacerbated. In Brazil, the agricultural industry plays a large role for those living in modern slavery. Illegal deforestation for logging and cattle ranch land clearance are common, despite tough anti-slavery laws and the climate protection offered by the rainforest.⁴² There is growing evidence of a modern slavery-environmental destruction nexus. Exploring the interactions between the two is important not only to preserve the environment from serious threats such as climate change, but also protect those at risk of modern slavery.

These examples demonstrate synergies within environmental signatures that have the potential to be located in remote sensing imagery. Primary visual signatures such as the shapes and patterns of industries, and secondary signatures held within the environment can be explored. Visual signals for instance include

³⁷ Martin J. Clifford. "Assessing releases of mercury from small-scale gold mining sites in Ghana." *The Extractive Industries and Society* 4, no. 3 (2017):497-505; Jacqueline R. Gerson, Charles T. Driscoll, Heileen Hsu-Kim and Emily S. Bernhardt. "Senegalese artisanal gold mining leads to elevated total mercury and methylmercury concentrations in soils, sediments, and rivers." *Elementa Science of the Anthropocene* 6, no. 1 (2018):11.

³⁸ Planet Labs. "Illegal Mining in Peru." *Planet*, accessed December 6, 2018, <https://www.planet.com/gallery/mining-peru/>.

³⁹ Carlos Salazar-Camacho *et al.* "Dietary human exposure to mercury in two artisanal small-scale gold mining communities of northwestern Colombia." *Environmental International* 107 (2017):47-54; Bales. *Blood and Earth: Modern Slavery, Ecocide and the Secret to Saving the World*.

⁴⁰ *Ibid.*

⁴¹ L.G. Gillis, E.F. Belshe and G.R. Narayan. "Deforested Mangroves Affect the Potential for Carbon Linkages between Connected Ecosystems." *Estuaries and Coasts* 40, no. 4 (2017):1207-1213; Bales. *Blood and Earth: Modern Slavery, Ecocide and the Secret to Saving the World*.

⁴² Brazilian Penal Code. "Article 149: Reduction to Condition Analogous to Slavery." Brasília, 2003.

the distinct oval kilns and rows of drying bricks in the ‘Brick Belt’.⁴³ Whereas secondary signatures can include land-use change, alteration of vegetation health and flood frequencies, among others.⁴⁴ Remote sensing technology is already capable of detecting many of these signatures at differing scales. Satellite imagery provides a unique line of enquiry, with remote sensing methodologies enabling evidence-based decisions for both social and environmental science policy. Indeed, such cross disciplinary projects are beginning to explore these themes.⁴⁵ Projects at Stanford University are utilizing remote sensing imagery to assess the environmental output of brick kiln pollution in Bangladesh, and the University of Nottingham’s Rights Lab has investment in the field with their ‘Data Programme’, researching the uses of remote sensing to measure modern slavery and assess its impact on the Earth’s environmental systems.⁴⁶

The link between climate change, poverty and forced labour is well documented, yet the ability to conduct local analyses efficiently to provide action to limit the impacts of these issues is poor due to the remoteness of locations, lack of resources and limited enforcement of laws to protect people and the environment – satellites can be used to identify these potential vulnerabilities, prior to entrapment.⁴⁷ By highlighting spatial patterns and causal variables at high temporal resolutions, remote sensing allows the development of monitoring programmes. For Cambodia – ranked second in the list of climate vulnerable countries – the relationship between changing work opportunities, due to climate forced landscape alterations, and migration, which often leads to debt bondage, is

⁴³ Boyd *et al.* "Slavery from Space: Demonstrating the role for satellite remote sensing to inform evidence-based action related to UN SDG number 8."

⁴⁴ Laura J. Sonter *et al.* "Mining drives extensive deforestation in the Brazilian Amazon." *Nature Communications* 8 (2017):1013; Chandra Giri. "Observation and Monitoring of Mangrove Forests Using Remote Sensing: Opportunities and Challenges." *Remote Sensing* 8, no. 9 (2016):783; G.M. Foody. "Remote sensing of tropical forest environments: Towards the monitoring of environmental resources for sustainable development." *International Journal of Remote Sensing* 24, no. 20 (2003):4035-4046.

⁴⁵ Such as Royal Holloway’s Blood Bricks project (www.projectbloodbricks.org/project) and the University of Nottingham’s Rights Lab (<http://rightsandjustice.nottingham.ac.uk/>).

⁴⁶ Rob Jordan. "Stanford researchers team up to reduce pollution and improve health." *Stanford News*, accessed May 16, 2018, <https://news.stanford.edu/2017/09/14/stanford-researchers-team-reduce-pollution-improve-health/>; Rights Lab. "Data Programme." *University of Nottingham*, accessed December 4, 2018, <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/programmes/data/index.aspx>; Todd Landman. "Out of the Shadows: Trans-disciplinary Research on Modern Slavery." *Peace Human Rights Governance* 2, no. 2 (2018):143-162.

⁴⁷ Mike Kaye and Aidan McQuade. "Poverty, Development and the Elimination of Slavery." *Anti-Slavery International*. London, 2007.

closely studied.⁴⁸ The Blood Bricks project is one such study that is examining how climate change is facilitating modern slavery.⁴⁹ The combination of local ground intelligence, coupled with analysis of satellite imagery showing environmental change provides a powerful opportunity to analyse spatial, physical and human pressures which may increase vulnerability. It is possible to use satellites to both understand past patterns and model future modern slavery-environmental destruction scenarios so support can be provided to strengthen security and reduce vulnerability across these regions.

Documenting the scale of these environmental impacts are the first steps in being able to evaluate the damaging contribution of modern slavery on the environment. With space agencies continually responding to the demand for satellite data to monitor Earth's environment, advances in sensor design and delivery of knowledge products (that enable a user to easily access information); there is no reason to believe that a satellite derived 'Geospatial Environmental Slavery Index' product would not be achievable which could support the end of modern slavery, alongside a number of environmental SDGs.

Further Developments in Academia

Work undertaken at the Harvard Humanitarian Initiative (HHI) with the Satellite Sentinel Project (SSP) combines evidence from satellite imagery and witness testimony, to draw together details to assess humanitarian crises and human rights violations.⁵⁰ The HHI is one of the leading academic institutions looking at the way new data technologies can support humanitarian work. This was demonstrated successfully when SSP collaborated with DigitalGlobe to assess the impacts of the Sudanese conflict.⁵¹ Piecing together multiple analysis methods allows NGOs to create a holistic story surrounding an event.⁵² Although these studies do not specifically relate to modern slavery, the humanitarian crises analysed by the HHI and SSP contain risk factors that may lead to increased

⁴⁸ K. Brickell, L. Parsons, N. Natarajan and S. Chann. "Blood Bricks: Untold Stories of Modern Slavery and Climate Change from Cambodia." Royal Holloway University of London, 2018; Blood Bricks. "The climate change-modern slavery nexus: Why study Cambodia?" *Royal Holloway University*, accessed May 18, 2018, <https://www.projectbloodbricks.org/blog/2017/7/19/blood-bricks-on-the-intersection-of-climate-change-and-modern-slavery>.

⁴⁹ *Ibid.*; *Ibid.*

⁵⁰ Brittany L. Card and Isaac L. Baker. "GRID: A Methodology Integrating Witness Testimony and Satellite Imagery Analysis for Documenting Alleged Mass Atrocities." *Genocide Studies and Prevention: An International Journal* 8, no. 3 (2014):49-61.

⁵¹ The Enough Project and Satellite Sentinel Project. "Architects of Atrocity." Washington DC, 2013.

⁵² For example Forensic Architecture <https://www.forensic-architecture.org/>.

vulnerability to enslavement.⁵³ Poverty can often lead to enslavement, which can be impacted by disasters, conflict and population growth.⁵⁴ Many of these risks overlap with the work of humanitarian agencies.

Combining multiple data acquisition methods is something academics should consider for the study of modern slavery going forward. Remote sensing techniques are producing an increasing volume of data, which can be used alongside a myriad of other sources – including survivor testimony, supply chain analysis, and survey data - to refine global estimates of modern slavery. Additional benefits from satellite imagery may include locational analysis of industries known to use an enslaved workforce. By combining data sources the exact locations of modern slavery activity may be identified. Despite the field being in its infancy, using satellite imagery to track slave-based industries within academia is an important step in the effort to end slavery by the 2030 deadline, noted earlier.⁵⁵

Satellites and Slavery in the Media

Journalists have a major role in increasing the awareness of global social issues, and modern slavery is no exception. Larger press organisations, such as Thomson Reuters and the Associated Press (AP), have also been enhancing their reporting with the use of satellite imagery to capture instances of slavery, exposing criminality and corruption.

The AP Pulitzer Prize-winning investigative report into the state of seafood supply chains within South East Asia included geospatial analysis to bring to light the working practices enslaved people were forced to endure.⁵⁶ The articles noted how labourers were trafficked to work in the Thai fishing industry and could be trapped on numerous boats in the Indian Ocean processing catches on board before being moved.⁵⁷ The investigation also found evidence of mass graves where

⁵³ Kevin Bales. *Understanding Global Slavery: A Reader*. Berkeley, CA: University of California Press, 2005.

⁵⁴ Kaye and McQuade. "Poverty, Development and the Elimination of Slavery." London, 2007; Kevin Bales "How to combat modern slavery." *TED*, accessed September 9, 2018, https://www.ted.com/talks/kevin_bales_how_to_combat_modern_slavery/.

⁵⁵ United Nations General Assembly. "Transforming our World: The 2030 Agenda for Sustainable Development." Geneva, 2015.

⁵⁶ Details of the award-winning AP investigation are available via <https://www.ap.org/explore/seafood-from-slaves/>.

⁵⁷ Robin McDowell, Martha Mendoza, and Margie Mason. "AP tracks slave boats to Papua New Guinea." *AP*, accessed March 15, 2018, <https://www.ap.org/explore/seafood-from-slaves/ap-tracks-slave-boats-to-papua-new-guinea.html>; Margie Mason, and Martha Mendoza. "AP Investigation Prompts New Round of Slave Rescues." *AP*, accessed March 15, 2018, <https://www.ap.org/explore/seafood-from-slaves/ap-investigation-prompts-new-round-of-slave-rescues.html>.

enslaved workers had been buried, and captured the movement of fishing vessels across the ocean using satellite imagery.⁵⁸

The investigation conducted by the AP raised the concept that you ‘cannot hide from space’. Some forms of slavery, such as domestic servitude and carpet weaving, are not viable for investigation through the use of satellite imagery as the nature of the enslavement occurs indoors; this is the major limiting factor of remote sensing and demonstrates why a number of methodologies are required. Where industries can be viewed by remote sensing methods, which includes a significant number, the method can be beneficial, this includes the global fishing industry. As a result of the investigation, the Thai fishing industry came under intense scrutiny for its labour practices, and awareness of exploitation in these supply chains caused changes to law internationally.⁵⁹ It is clear that the global fishing industry is one with serious labour practice issues, and the exploitation evident in the workforce is being investigated in detail by a number of sectors including NGOs, academia and the media.⁶⁰ It is feasible that geospatial technology can be included in other studies of supply chain transparency in visible industries, contributing evidence to support reforms to worker’s rights and industry practices. Industries believed to use exploitative labour practices include: quarries, mines, charcoal camps, cotton and agriculture among others. So far these industries have not been explored using remote sensing techniques.⁶¹

Satellites and Slavery as used by NGOs

A number of NGOs have begun to embrace satellite technology and imagery to demonstrate evidence of human rights violations. However, the use of geospatial imagery by the human rights NGO community has been criticised for the distance it can create from the complex realities on the ground.⁶² Thus when analysing modern slavery from space, it is important to build a network of in situ contacts,

⁵⁸ Robin McDowell, Margie Mason, and Martha Mendoza. "AP Investigation: Slaves May Have Caught the Fish You Bought." *AP*, accessed March 15, 2018, <https://www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html>; Annalee Newitz. "It took less than a minute of satellite time to catch these thieves red-handed." *ARS Technica*, accessed May 4, 2018, <https://arstechnica.com/tech-policy/2017/02/to-catch-a-thief-with-satellite-data/>.

⁵⁹ Martha Mendoza. "Obama bans US imports of slave-produced goods." *AP*, accessed March 15, 2018, <https://www.ap.org/explore/seafood-from-slaves/Obama-bans-US-imports-of-slave-produced-goods.html>.

⁶⁰ McGoogan and Rashid. "Satellites reveal 'child slave camps' in UNESCO-protected park in Bangladesh."

⁶¹ Bales. *Blood and Earth: Modern Slavery, Ecocide and the Secret to Saving the World*.

⁶² Chris Perkins, and Martin Dodge. "Satellite imagery and the spectacle of secret spaces." *Geoforum* 40, no. 4 (2009):546-560.

crucially anti-slavery NGOs, so that evidence from satellite imagery can impact upon direct-action and influence the implementation of policy.

Amnesty International (AI) has been one of the most prolific at using these resources, creating a visual evidence base that supports survivor and witness testimony, enabling satellite imagery to be given as evidence in court; the most recent investigation with this aim assesses Myanmar Military action within Rakhine State.⁶³ A number of high-profile campaigns have capitalised on the vast amount of data available from geospatial technology and the organisation now employs its own team of analysts. Specific attention to slavery has been hidden within other human rights abuses but this does not mean that the work that AI has carried out using this technology is not beneficial. Their work has looked closely at the village of Baga, in Nigeria, after the atrocities committed by Boko Haram; assessing the scale of the destruction was vital to establish the story of the hundreds of women and girls who were kidnapped and enslaved by their captors.⁶⁴ Additionally, there have been extensive investigations by AI into North Korea's well-documented human rights abuses in labour camps and detention centres.⁶⁵ AI used satellite imagery to assess the size of the camps and identify features that indicate whether there are increased activities occurring in these locations, noting that camps were often in working order and expanding activities.⁶⁶

The utilisation of geospatial technology in these cases has proved invaluable for raising awareness of NGO campaigns, but there are only limited technical analyses, often relying on the identification of features and comparison of images before and after an event. This information is still beneficial for an organisations' purposes, but utilising more technical details could help to provide new data that may have previously been overlooked, such as producing more detailed temporal analyses which may identify features in the lead up to a human rights abuse in order to predict when an abuse may be likely to occur in the future. In addition, combining witness testimony, imagery from the ground, satellite imagery and legal frameworks can add value to an investigation. It is important to look at these data

⁶³ Amnesty International. "‘We Will Destroy Everything’: Military Responsibility for Crimes against Humanity in Rakhine State, Myanmar." London, 2018.

⁶⁴ "Nigeria: Satellite images show horrific scale of Boko Haram attack on Baga." Amnesty International, accessed March 13, 2018, <https://www.amnesty.org/en/latest/news/2015/01/nigeria-satellite-images-show-horrific-scale-boko-haram-attack-baga/>; Christoph Koettl. "The story behind the Nigeria satellite images." Amnesty International, accessed March 13, 2018, <https://www.amnesty.org/en/latest/news/2015/01/the-story-behind-the-nigeria-satellite-images/>.

⁶⁵ Amnesty International. "New Satellite Images Show Blurring of Political Prison Camp and Villages in North Korea." London, 2013; ---. "North Korea: New Satellite Images Show Continued Investment in the Infrastructure of Repression." London, 2013.

⁶⁶ "North Korea prison camps very much in working order." Amnesty International, accessed March 13, 2018, <https://www.amnesty.org/en/latest/news/2016/11/north-korea-prison-camps-very-much-in-working-order/>.

holistically; this will be vital when applying satellite data to a complex human rights issue such as modern slavery. Work by Human Rights Watch, a non-profit organisation which investigates human rights abuses, is being revolutionised by new partnerships with emerging EO companies.⁶⁷ Commercial satellite providers, such as Planet, are moving from larger scale singular and expensive satellites to the launch and operation of multiple small satellites. These constellations of satellites collect a vast amount of data for global coverage at a reduced cost compared to other commercial operators, and can be flexible in their applications.⁶⁸ Recognising the need for data in the human rights sector, Planet has the intention of creating a new kind of global observatory whereby philanthropists provide the funds, Planet and other companies provide the data and scientists and researchers come together to tackle modern slavery in a collaborative manner.⁶⁹ It is often the cost of the equipment, data, and expertise required to analyse imagery that can be prohibitive to the humanitarian sector; this is increasingly being considered by EO companies, who often have an emphasis on providing free data for humanitarian purposes.⁷⁰ Other organisations, such as DigitalGlobe, use the power of people to sift through vast amounts of information to help with specific issues (known as crowdsourcing). For the frequently unsafe and unmapped areas where humanitarian organisations work, remote sensing offers cross-national, time series data.⁷¹

Crowdsourcing

Crowdsourcing the analysis of satellite imagery has three key benefits in these circumstances. First, the datasets are ‘Big Data’, characterised by their volume, variety, and rapid rate of capture, which the remote sensing community is

⁶⁷ “New Satellite Imagery Partnership.” Human Rights Watch, accessed March 13, 2018, <https://www.hrw.org/news/2017/11/30/new-satellite-imagery-partnership>.

⁶⁸ Adrienne Harebottle. “Earth Observation to Capture the Mainstream Market.” *Via Satellite*, accessed March 15, 2018, <http://interactive.satellitetoday.com/via/may-june-2017/earth-observation-to-capture-the-mainstream-market/>; Andrew Zolli. “Planet announces new, flexible emergency and disaster management.” *Planet Labs*, accessed March 15, 2018, <http://www.planet.com/pulse/planet-emergency-and-disaster-management-solution/>.

⁶⁹ Andrew Zolli. “Trust Conference Day 2 Keynote – Andrew Zolli.” *Thomson Reuters Foundation*, accessed December 6, 2018, <http://www.trustconference.com/videos/i/?id=d966ddc7-3909-4a02-9d16-0743b0946a79&confYear=2018>.

⁷⁰ Susan R. Wolfenbarger. “Remote Sensing as a Tool for Human Rights Fact-Finding,” in *The Transformation of Human Rights Fact-Finding* ed. Philip Alston and Sarah Knuckney. Oxford: Oxford University Press, 2016:463-478.

⁷¹ Patrick Meier. *Digital Humanitarians*. Boca Raton, USA: CRC Press, 2015.

increasingly unequipped to manage alone.⁷² Remote sensing data is varied and can be multi-source, multi-temporal, and multi-resolution. Second, satellite imagery analysis needs validation, because poor data comes with economic and ethical costs. Estimates of the prevalence and impact of modern slavery inform policy and, when derived from satellite data, mis-estimations could impact the resources made available to tackle slavery on the ground; data accuracy is important so as not to further endanger vulnerable people.⁷³ Crowdsourced data can be validated in a variety of ways, according to how the data will be used.⁷⁴ Third, and finally, human analysts are more creative and flexible in their assessment of satellite images than computers, and online volunteers can increase the efficiency of data processing and analysis at less cost.⁷⁵

The crowdsourcing of data for the humanitarian sector has been embraced both in the field, such as OpenStreetMap, CrisisMappers and Digital Humanitarians, and online, for instance, MicroMappers and Tomnod.⁷⁶ Industries known to employ practices of modern slavery have been analysed, as previously noted in the South Asian brick manufacturing industry.⁷⁷ The humanitarian crowdsourcing project Tomnod and the Global Fund to End Slavery, also employed these techniques to track instances of fishing activity on Lake Volta, Ghana; an area where there is a prevalent use of child labour.⁷⁸ The study employed the crowd to look for instances of buildings on the lake shore where vulnerable children may be being housed, boats on the lake, and fish cages in the water. Overall, the study recorded 244,006 instances of fishing paraphernalia and buildings across the lake

⁷² Mingmin Chi *et al.* "Big Data for Remote Sensing: Challenges and Opportunities." *Proceedings of the IEEE* 104, 11 (2016):2207-2219.

⁷³ G.M. Foody. "Citizen Science in support of remote sensing research." *IEEE International Geoscience and Remote Sensing Symposium (IGARSS)* (2015):5387-5390; ———. "Valuing map validation: The need for rigorous land cover map accuracy assessment in economic valuations of ecosystem services." *Ecological Economics* 111 (2015): 13-28.

⁷⁴ Hansi Senaratne *et al.* "A review of volunteered geographic information quality assessment methods." *International Journal of Geographical Information Science* 31, no. 1 (2017):139-167; Andrea Wiggins, Greg Newman, Robert D. Stevenson and Kevin Crowston. "Mechanisms for Data Quality and Validation in Citizen Science." *IEEE Seventh International Conference on e-Science Workshops* (2011):14-19.

⁷⁵ Mordechai Haklay, Suvodeep Mazumdar, and Jessica Wardlaw. "Citizen Science for Observing and Understanding the Earth." In *Earth Observation Open Science and Innovation* ed. Pierre-Philippe Mathieu and Christoph Aubrecht. ISSI Scientific Report Series, vol 15. Cham, Switzerland: Springer, 2018:69-88.

⁷⁶ Steffen Fritz, Cidália Costa Fonte and Linda See. "The Role of Citizen Science in Earth Observation." *Remote Sensing* 9, no. 4 (2017):357.

⁷⁷ Boyd *et al.* "Slavery from Space: Demonstrating the role for satellite remote sensing to inform evidence-based action related to UN SDG number 8."

⁷⁸ International Justice Mission. "Child Trafficking into Forced Labor on Lake Volta, Ghana: A Mixed-Methods Assessment." Washington DC, 2016.

and its banks.⁷⁹ Mapping Lake Volta was invaluable for the NGOs that contributed to the project, allowing resources to be targeted more effectively and helping support children subjected to enslavement.

Conclusion

Remote sensing for human rights analysis is developing at a rapid rate due to the frequent and widespread collection of satellite imagery. Efforts to apply remote sensing principles have commonly been used to provide resources to humanitarian crises, information regarding remote locations and conflict zones, as well as the management of disasters, as the examples here illustrate. The success of these studies have demonstrated that it is entirely feasible to apply these methods to the study of modern slavery; findings from the employment of remotely sensed data to end modern slavery are already being used by NGOs to inform interventions on the ground, and indeed it is hoped that these resources would lead to long-term monitoring and legislative change supporting survivor rights.⁸⁰ Focus on the use of remotely sensed data specifically for the study of modern slavery has begun, but there is much more that needs to be explored, including a range of data sources and industries.

At present remotely sensed data cannot account for the precise locations where modern slavery practices are occurring, but insights can be provided into industries which can then be used as a resource by those locally undertaking direct action. Remote sensing can never replace the data that is collected in situ by people regarding such an important social issue as modern slavery, however, satellite imagery can be used to support these methods and provide data on a scale that may not be feasible on the ground. Therefore, multiple methods of data collection are needed to successfully advance the fourth anti-slavery movement and eradicate slavery in line with the SDGs 2030 target and for humanity to benefit from the freedom dividend it would provide.⁸¹ The use of satellite data could revolutionise the way we think about the hidden crime of modern slavery – as you cannot hide from space.

⁷⁹ Tomnod and World Freedom Fund. “Global Fund to End Slavery at Lake Volta, Ghana: Tomnod Project Report.” 2015:11-13.

⁸⁰ Rights Lab. “Data Programme.”

⁸¹ Kevin Bales. *Disposable People: New Slavery in the Global Economy*. Berkeley, CA: University of California Press, 2012: Preface; Landman. “Out of the Shadows: Trans-disciplinary Research on Modern Slavery.”

Figures



Figure 1: An example of brick kilns located in Punjab, India – note the distinctive red colour which contrasts with the fields surrounding the structures. 4-band PlanetScope Scene projected in true colour with 3m resolution. Imagery captured September 2018. Copyright 2018 Planet Labs.⁸²

⁸² Planet Labs. “Planet Application Program Interface: In Space for Life on Earth.” *Planet*, accessed December 6, 2018, <https://api.planet.com>.



Figure 2: An example of a fish-processing camp in the Sundarbans Reserve Forest, Bangladesh. Captured by RapidEye-1 in December 2017, 5m resolution projected in true colour, copyright 2018 Planet Labs.⁸³ The inset DigitalGlobe Worldview image is from November 2014 shows details of the camp including boats and structures, downloaded from Google Earth Pro.

⁸³ Ibid.

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Collaborating to Identify, Recover and Support Victims of Modern Slavery

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Abstract

This article presents findings from a series of case studies into the impact of multi-agency anti-slavery partnerships in the UK. The research draws upon empirical evidence from a number of geographic regions as the basis of a comparative analysis involving the full spectrum of statutory and non-statutory organisations that undertake anti-slavery work. The article focuses, in particular, on the role of partnerships in victim identification and support, while simultaneously discussing issues and drawing upon existing discourse associated with policy, legislation and the macro conditions that impose barriers on such efforts.

Key words: Human trafficking; modern slavery; victim identification; victim support; multi-agency partnerships.

Collaborating to Identify, Recover and Support Victims of Modern Slavery

Introduction

Human trafficking, and now modern slavery have, in recent years, been pushed up the UK's national agenda.¹ Alongside the introduction of the Modern Slavery Act in 2015, multi-agency anti-slavery partnerships are increasingly being advocated for nationally as a means to ensure a more consistent and effective response to modern slavery. The UK Government, Independent Anti-Slavery Commissioner and a host of Non-Government Organisations (NGOs) have all called for a more collaborative and joined-up multi-agency approach.² The Modern Slavery Act targeted measures aimed at improving efforts to identify, recover and support victims. Alongside these provisions, the UK's Independent Anti-Slavery Commissioner has signposted anti-slavery partnerships as a vital element of effective victim support and has established the development of best practice for them as a strategic priority. Despite the fact there is currently no statutory obligation mandating the formation of regional anti-slavery partnerships, there is some consensus that partnerships have a vital role to play in the identification and plugging of training and awareness gaps. As a result, partnerships are increasingly seen as a key aspect of a more coordinated and collective response to modern slavery.³

In this paper, evidence surrounding the successes and failures of the UK's efforts to combat trafficking and modern slavery, since the Modern Slavery Act's introduction in 2015, is reviewed. In particular, focus is placed on the role of anti-slavery partnerships in the identification, recovery and support of victims; drawing upon empirical data gleaned through a collection of interviews, focus-groups and other evidence acquired from four UK police regions. The paper centres on a

¹ Baroness Butler-Sloss, Frank Field, and John Randall, "Establishing Britain as a World Leader in the Fight against Modern Slavery," *Modern Slavery Bill Evidence Review* (Kent: Langford, 2013), <https://www.bl.uk/britishlibrary/~media/bl/global/social-welfare/pdfs/non-secure/e/s/t/establishing-britain-as-a-world-leader-in-the-fight-against-modern-slavery-report-of-the-modern-slavery-bill-evidence-review.pdf>.

² HM Government, "Modern Slavery Strategy," 2014, <https://www.gov.uk/government/publications/modern-slavery-strategy>; Independent Anti-Slavery Commissioner, "Independent Anti-Slavery Commissioner: Annual Report 2016," 2016, <https://www.gov.uk/government/publications/independent-anti-slavery-commissioner-annual-report-2016>

³ Home Office, "Modern Slavery: How the UK Is Leading the Fight," 2014, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/328096/Modern_slavery_booklet_v12_WEB_2_.pdf; Alison Gardner, Claire Brickell, and Tatiana Gren-Jardan, "Collaborating for Freedom: Anti-Slavery Partnerships in the UK," *University of Nottingham / Independent Anti-Slavery Commissioner*, 2018, https://www.antislaverycommissioner.co.uk/media/1186/collaborating-for-freedom_anti-slavery-partnerships-in-the-uk.pdf

number of themes associated with the role of, and issues associated with; immigration enforcement, education and training, and the current role of NGOs in filling gaps in some of the provisions established as part of the Modern Slavery Act 2015. Namely, the accommodation of victims outside of the National Referral Mechanism's (NRM's) requirements.

The Modern Slavery Act 2015

Despite being consistently heralded as “world leading” by the UK government, the Modern Slavery Act 2015 has received widespread criticism for not going far enough in many of its provisions.⁴ NGOs and interest groups have heavily criticized the Act for underpinning systematic failures in the government's duty to protect and support victims once they have been identified.⁵ While the House of Commons Work and Pensions Committee have also cited failings in the Act's ability to provide a pathway for victim recovery.⁶ In response, a new private members bill, currently being discussed in the House of Commons, seeks to extend the period of victim care to twelve months after a successful referral.⁷ NGOs have also called for additional provisions that would see victims given a full year's leave to remain in the UK. However, this proposal has been received with scepticism by the government who cite concerns over immigration, and the potential for such a measure to be abused. The result of which would create an incentive for individuals to pose as slavery victims in order to gain legal status in the UK.⁸ However, without legal residence in the UK, and the necessary support needed to access justice, compensation, healthcare, welfare and education services, victims remain at significant risk of re-trafficking and further exploitation post referral.⁹

⁴ Theresa May, “My Government Will Lead the Way in Defeating Modern Slavery,” *The Sunday Telegraph*, June 30, 2016, <https://www.telegraph.co.uk/news/2016/07/30/we-will-lead-the-way-in-defeating-modern-slavery/>; Home Office, “2017 UK Annual Report on Modern Slavery,” no. October (2017), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/652366/2017_uk_annual_report_on_modern_slavery.pdf

⁵ House of Commons Work and Pensions Committee, “Victims of Modern Slavery: Twelfth Report of Session 2016-2017,” 2017, <https://publications.parliament.uk/pa/cm201617/cmselect/cmworpen/803/803.pdf>

⁶ Samantha Ferrell-Schweppenstedde, “Day 46,” *Human Trafficking Foundation*, 2016, <https://snowdropproject.co.uk/wp-content/uploads/2018/02/Day-46.pdf>

⁷ Lord McColl of Dulwich, “Modern Slavery (Victim Support) Bill,” *House of Lords*, 2017, <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0004/18004.pdf>

⁸ Frank Field, “Protection for Victims of Modern Slavery,” *Letter from Frank Field MP, Chair of the Work and Pensions Select Committee to Theresa May, UK Prime Minister*, 2017, <https://www.parliament.uk/documents/commons-committees/work-and-pensions/Correspondence/Letter-from-the-Chair-to-the-Prime-Minister-relating-to-modern-slavery-13-December-2017.pdf>

⁹ Kate Roberts, “Life after Trafficking: A Gap in the UK's Modern Slavery Efforts,” *Anti-Trafficking Review*, no. 10 (2018): 164–68, doi:10.14197.

Currently, within the NRM, individuals who are identified as potential victims of modern slavery are entitled to a minimum of forty-five days of support and accommodation while their victim status is assessed. If successful, victims are then entitled to a further fourteen days of support, including accommodation, counselling, and advocacy.¹⁰ This brevity poses a significant problem. Many victims, particularly those who are not British nationals, likely have limited knowledge of state welfare systems and have little in the way of personal support structures. With no family or support, victims are often left destitute, putting them at risk of poverty, and making them vulnerable to re-trafficking and further exploitation.¹¹ This period is scheduled for extension to a further forty-five days following the revisions announced by the Home Office at the end of 2017.¹²

Multi-Agency Partnerships

Multi-agency partnerships are not an especially new concept when it comes to providing safeguarding and support for vulnerable individuals in the UK. In fact, the statutory requirement for the formation of multi-agency partnerships was implemented as far back as 1989 with the introduction of the Children Act. The Children Act 1989, as the title suggests, stipulated the need for inter-agency collaboration between public organisations in relation to issues concerning the safeguarding of children and young people.¹³ Since then, multilateral cooperation between the public, private and third sectors has been increasingly advocated in connection with a number of social issues. These include, community safety, social inclusion, neighbourhood regeneration, and, more recently, Child Sexual Exploitation (CSE), as well as in response to major incidents and disasters.¹⁴ Despite successes in some areas, multi-agency partnerships have suffered endemic issues with information sharing; fragmented and duplicated needs assessment

¹⁰ Home Office, “National Referral Mechanism Guidance: Adult (England and Wales),” n.d., <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales#access-to-support>

¹¹ Gary Craig, “The UK’s Modern Slavery Legislation: An Early Assessment of Progress,” *Social Inclusion* 5, no. 2 (2017): 16, doi:10.17645/si.v5i2.833.

¹² Sarah Newton, “Modern Slavery Victims to Receive Longer Period of Support,” 2017, <https://www.gov.uk/government/news/modern-slavery-victims-to-receive-longer-period-of-support>

¹³ Legislation.gov.uk, “Children Act 1989,” 1989, <https://www.legislation.gov.uk/ukpga/1989/41/contents>. REF

¹⁴ Rita Cheminais, *Effective Multi-Agency Partnerships: Putting Every Child Matters into Practice* (London: Sage, 2009), doi:10.4135/9781446288269; Home Office, “National Referral Mechanism Pilots: Slavery Safeguarding Lead Guidance,” 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475716/2015-10-30_SSL_guidance_v1_0.pdf; Jyoti Laxmi Mishra, David K. Allen, and Alan D. Pearman, “Information Sharing during Multi-Agency Major Incidents,” *Proceedings of the Association for Information Science and Technology* 48, no. 1 (2011): 1–10, doi:10.1002/meet.2011.14504801039.

processes, poor levels of coordination and service integration, absences in responsibility among participating agencies, and unclear channels of accountability.¹⁵

Perhaps one of the highest profile applications of multi-agency working comes from the field of child protection, and the use of Multi-Agency Safeguarding Hubs (MASH) and Local Safeguarding Children Boards (LSCBs). Unlike anti-slavery partnerships, LSCBs do have a number of statutory objectives, set by the Children Act 2004. These include coordinating the activity of all bodies represented on the LCSB related to the protection and welfare of children, and to ensure the effectiveness of these bodies for those purposes.¹⁶ The remit of anti-slavery partnerships has gone far beyond safeguarding functions in many areas of the UK however. In fact, recent findings by Gardner, Brickell and Gren-Jardan have identified the most common activities that these partnerships engaged in were not related to safeguarding activities at all.¹⁷ Instead, intelligence acquisition, training and awareness raising feature as the most common activities. Survivor support and victim identification/referral place sixth and seventh on the list respectively. There are a number of common themes between both LCSBs and anti-slavery partnerships. Both establish the importance and role of agencies such as housing, health, the social care services and immigration enforcement, the voluntary and private sectors, and, of course, the police, in the protection of those individuals who are considered at risk.¹⁸ Moreover, across all their applications, multi-agency partnerships seek to combine the skills, responsibilities and expertise of practitioners from a number of different agencies. The partnerships bring these individuals, and the agencies they represent, together to share aims, information, tasks and responsibilities to tackle problems.¹⁹

Anti-slavery partnerships

Increasingly, multi-agency partnerships have been signposted as vital components of the UK's response to modern slavery. The Home Office Modern

¹⁵ Cheminais, *Effective Multi-Agency Partnerships: Putting Every Child Matters into Practice*.

¹⁶ Legislation.gov.uk, "Children Act 2004," 2004, <https://www.legislation.gov.uk/ukpga/2004/31/contents>

¹⁷ Gardner, Brickell, and Gren-Jardan, "Collaborating for Freedom: Anti-Slavery Partnerships in the UK."

¹⁸ HM Government, "Working Together to Safeguard Children," 2015, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/592101/Working_Together_to_Safeguard_Children_20170213.pdf; The UK Border Agency was superseded by UK Visas and Immigration (UKVI), UK Immigration Enforcement and UK Border Force in 2013. For the purposes of this article they are discussed collectively under the moniker of "UK Immigration Enforcement" unless a specific agency is being referenced.

¹⁹ Cheminais, *Effective Multi-Agency Partnerships: Putting Every Child Matters into Practice*.

Slavery Strategy cites partnerships as essential in increasing frontline professionals' awareness of indicators and warning signs, improving the coordination of international activity, and enhancing working relationships with the private sector.²⁰ Furthermore, the UK's former Independent Anti-Slavery Commissioner, Kevin Hyland, who resigned in 2018, set the development of a strategic plan for partnerships as a top priority, targeting five key areas including:

- the development of regional partnership models to promote best practice,
- the development of partnerships with groups representing 'vulnerable' or hard-to-reach communities (such as homeless charities and diaspora community organisations),
- improving data collection and information sharing with international partners,
- raising awareness among the public,
- the development of academic partnerships to promote the use of research to plug key policy and evidence gaps.²¹

A year after the implementation of the Modern Slavery Act 2015 the government commissioned an independent review into its effectiveness, in terms of criminal justice, by barrister Caroline Haughey. The resulting report, as well as citing the potential significance of partnerships' contribution at a local level, provided a number of associated recommendations. First, the report advocated for the collection and synthesis of data and intelligence from different partners, building on pre-existing relationships that exist in some regions between police, local authorities and other partners, including the voluntary sector, in relation to CSE.²² Building on this, the report also cited the specific need for enhanced cooperation between police and other statutory agencies, as well improved levels of NGO coordination in order to increase the quantity and quality of victim referrals.

Since 2014, modern slavery has been identified nationally as a significant adult social care risk, placing the issue firmly within the remit of Safeguarding

²⁰ HM Government, "Modern Slavery Strategy."

²¹ Kevin Hyland, "Independent Anti-Slavery Commissioner: Letter of Resignation," 2018, <https://www.gov.uk/government/publications/independent-anti-slavery-commissioner-letter-of-resignation>; Independent Anti-Slavery Commissioner, "Strategic Plan 2015-2017," 2015, https://www.antislaverycommissioner.co.uk/media/1075/iasc_strategicplan_2015.pdf

²² Caroline Haughey, "The Modern Slavery Act Review: One Year On," 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/542047/2016_07_31_Haughey_Review_of_Modern_Slavery_Act_-_final_1.0.pdf

Adult Boards.²³ The active participation of Local Adult Safeguarding Boards (LSABs) in anti-slavery partnerships has been cited as a key vector through which these agencies can work alongside others, such as the police. Partnerships have been used to put in place local processes and action plans, and roll-out training and awareness campaigns, ensuring that frontline professionals are sufficiently aware of the indicators of issues such as forced and child labour, and domestic servitude.²⁴ The need for collaboration between partners is further necessitated by the role played by organisations such as the Salvation Army, the NGO organisation that holds the central UK government contract for housing modern slavery victims within the NRM. In social care settings, partnerships have been cited as beneficial in helping to identify improvements in joint-working, practice and in the development of local policy, procedure, guidance and training. This reinforces the notion that safeguarding is “everyone’s business” and highlights a number of benefits potentially attributable to anti-slavery partnerships.²⁵

Despite the positives attributed to partnership working, existing work has identified serious deficiencies in the evidence and tools being used to monitor their effectiveness.²⁶ Many of the means currently used to evaluate partnerships are, in many cases, anecdotal and in some cases non-existent. Consequently, the requirement for significant improvements to data collection and analysis has been identified in order to ensure there is a more complete, evidence-based picture to attribute, tangibly, the successes and impacts of partnership working in response to modern slavery.

Methodology

This study, relating to the role and activities of multi-agency anti-slavery partnerships, was conducted using four UK police force areas, herein referred to as regions, as case studies. This was done under the premise that police were one of the key primary drivers of modern slavery partnership work across the UK. Existing work by Gardner, Brickell and Gren-Jardan has highlighted that an overwhelming majority of existing partnerships are both chaired and coordinated

²³ Legislation.gov.uk, *Care Act 2014*, 2014, <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>.

²⁴ Gary Craig et al., “Contemporary Slavery in the UK,” *Joseph Rowntree Foundation* (York, 2007), <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/2016-contemporary-slavery-uk.pdf>

²⁵ Department of Health and Social Care, “Statutory Guidance to Support Local Authorities Implement the Care Act 2014,” 2016, <https://www.gov.uk/guidance/care-and-support-statutory-guidance>; Adi Cooper and Claire Bruin, “Adult Safeguarding and the Care Act (2014) – the Impacts on Partnerships and Practice,” *The Journal of Adult Protection* 19, no. 4 (2017): 209–19, doi:10.1108/JAP-03-2017-0009.

²⁶ Ruth van Dyke, “Monitoring and Evaluation of Partnerships in England and Wales,” *Anti-Trafficking Review*, no. 8 (2017): 131–46, doi:10.14197/atr.20121788.

by police.²⁷ The research draws upon interviews with members of the police conducted in each of the four regions; sixteen of which were completed in total. This data is supported by that from a focus group conducted with members of a regional multi-agency partnership in region one. A number of NGOs, local authority safeguarding teams, and UK Immigration Enforcement were all represented in the focus group. All data was collected between 2015 and 2018. For the purposes of this paper, regions have been pseudonymised to ‘region one, two, three and four’, and individual participants anonymised so that the information provided could be presented candidly. Additional context and exposition that could be used to identify specific regions or individuals has also been removed. The empirical evidence is supplemented by the analysis of more than one hundred documents and other artefacts, including intelligence products, terms of reference reports, meeting minutes and action plans. All information was collected and used with the permission of the participating agencies.²⁸

The semi-structured interviews were conducted with officers of various ranks, from Detective Chief Inspectors (DCIs) through to Detective Constables (DCs). Semi-structured interviews were used in order to provide a consistent set of topics for each interview, while still allowing for emerging topical issues to be followed with each participant. Participants were selected on the basis that they work directly on modern slavery and were engaged in some capacity with partnership work, at the time of the study. As an exploratory study, the interviews were designed to elicit the personal viewpoints and experiences of the participants working in response to modern slavery. Additional emphasis was placed on their role and the challenges and successes they encountered as part of working in partnership and its impact upon the identification, recovery and ongoing support of modern slavery victims. A narrative approach was taken in the data collection and analysis.²⁹

Results & Discussion

The case studies indicated that the form, structure and maturity of the partnerships analysed were distinctly different from region to region. For instance, regions one and two were recognised as early adopters of partnership working. Region one had formal partnership action plans and terms of reference in place at a

²⁷ Gardner, Brickell, and Gren-Jardan, “Collaborating for Freedom: Anti-Slavery Partnerships in the UK.”

²⁸ All research was carried out in line with university research ethics guidelines and has full approval from the Sheffield Hallam University Research Ethics Committee (UREC).

²⁹ David M Boje, *Narrative Methods for Organizational & Communication Research* (London: Sage, 2001), doi: 10.4135/9781849209496.

regional level, as well as among individual policing districts. In regions two and four, two groups met regularly; an operational group and a strategic group. While all four areas cited buy-in from other partners as ‘excellent’, region four’s partnership structure was not police-led, and this was cited as a key benefit in attracting participation from other agencies.

Where it is police chaired, it's police-led, all the comments tend to be kept from the police and actually it's quite a struggle to get buy-in from the, often, very strapped organisations. So, in our county the anti-slavery partnership is chaired by the county council chief exec, which is good [...] He doesn't necessarily drive that work, the fact he chairs it causes people to turn up, so I've got an audience to get the work to be done.³⁰

In this instance, the role of the Council chief executive as meeting chair was seen as an important factor in bringing organisations to the table, and an effective measure in preventing the meetings from becoming police centric. In region four specifically, the lack of formality of the meeting was also cited as a distinct positive, giving the group flexibility to discuss individual issues on an ad-hoc basis.³¹ Meanwhile a strategic group, consisting of higher-level statutory organisation representatives, maintained a more formal remit and structure.³² In regions one and three, partnerships were both chaired and steered by police. In Region four, partnership work was recognised as being primarily police driven, but meetings were not chaired or steered by police. Across all regions there was a perception that the models they had adopted, or were in the process of adopting, were regionally appropriate, and gave police, and wider partners, the required flexibility needed to manage local issues effectively.³³ The results of the empirical study revealed a number of core and omnipresent themes associated with victim identification, referral and support which are explored in the following subsections.

Training and Awareness

Wider research into anti-slavery partnerships in the UK has established that training and awareness related activities were the second and third most common activities undertaken by partnerships nationwide. Conversely, the same research identified ‘learning’ and ‘awareness’ as the two most common self-identified areas

³⁰ Interview with a police Detective Chief Inspector, Region 4, 9th March 2018.

³¹ Interview with a police Detective Chief Inspector, Region 4, 9th March 2018.

³² Interview with a police Detective Inspector, Region 3, 7th March 2018.

³³ Interview with a police Detective Sergeant, Region 1, 7th September 2015.

of good practice.³⁴ In the regions consulted as part of *this* study, training was an equally prominent priority across the partnerships. Training generally focused on police and frontline staff from other public bodies such as healthcare, the fire service and local authorities. This training had two main intentions; improving individuals' ability to identify indicators of modern slavery, as well as educating them about the formal processes for reporting, and where appropriate, preparing initial NRM referrals with victims.³⁵ Moreover, in one of the four regions, specific emphasis was also placed on increasing intelligence throughput from partners. The potential impact of training on these two areas; victim identification and intelligence throughput, are discussed in subsequent sections. In regions three and four, training and awareness raising activity was primarily facilitated by the police, while in regions one and two it was partly facilitated or led by another statutory organisation.³⁶ In region one an NGO was contracted to provide training across the region to both the police and partners.³⁷ All four areas also cited general awareness-raising activity, around modern slavery within local communities, as a key activity where positive steps had been taken.

A number of positives were cited that built on the work of charities, particularly those working in specialist areas, such as sexworker support. These included further developing existing trust relationships within the community to raise awareness of modern slavery, promoting reporting, and encouraging potential victims to come forward.³⁸ Training and awareness raising work frequently aimed to improve frontline workers' abilities to recognise and identify victims, an issue that was cited as a continued challenge.³⁹ Generally however, it was believed that more could be done with the general public, to encourage and raise awareness of issues particularly within potentially vulnerable communities. Due in part to resourcing, and as a result of fractured, or a complete lack of, existing relationships with certain communities, these initiatives were either not in place, or were unsuccessful:

³⁴ Gardner, Brickell, and Gren-Jardan, "Collaborating for Freedom: Anti-Slavery Partnerships in the UK."

³⁵ Region 1 modern slavery partnership yearly review for 2015; Interview with a statutory organisation representative, Region 2, 19th February 2018; Interview with a police Detective Inspector, Region 3, 4th January 2017; Interview with a police Detective Chief Inspector, Region 4, 9th March, 2018.

³⁶ Interview with a police Detective Inspector, Region 3, 4th January 2017; Interview with a police Detective Chief Inspector, Region 4, 9th March, 2018.

³⁷ Interview with a Police Detective Sergeant, Region 1, 18th June, 2015.

³⁸ Comments from a sexworker support NGO representative, focus group, Region 1, 24th January 2017.

³⁹ Region 1 modern slavery partnership yearly review for 2015.

Do you think we delve deep enough into the communities we're involved in, to be able to get that intelligence in... from a law enforcement point of view? I sort of say that it's the victims, witnesses, suspects, it's members of the public that will provide us with the information about the people that are committing these offences.⁴⁰

Bringing them [communities] all together for greater understanding. Because I think, I think probably they are sort of at the end of the queue when it comes to training aren't they, but they're the people that are actually out in those communities seeing things that perhaps we're not seeing, so I think we need to be out there pushing them up the queue. And to make sure that they are highlighting it.⁴¹

Another issue surrounded the questions as to whether possible connections between other safeguarding issues, such as child neglect, were in the consciousness of safeguarding leads in local authorities:

So when you're looking at early help for children and neglect, whether or not the links are being made within social care to actually consider that the parent or the carer within that family unit might be a victim of trafficking. And I don't think that's even on the radar.⁴²

This on one hand emphasises the disparate nature and potential reach, in terms of impact, that modern slavery has on its victims. On the other, it also highlights the challenge of delivering training to frontline professionals on the multitude of possible situations and potential indicators that they may encounter. This raises a linked issue. Are training and awareness campaigns currently too focused on issues that are considered 'low hanging fruit'? These issues include widely recognised problems such as labour exploitation in nail-bars and hand-car washes, pop-up brothels where forced prostitution is believed to be commonplace, and forced criminality through cannabis cultivation.⁴³ Can training and awareness schemes evolve to be more effective in unpicking the true nature and scope of the exploitative behaviour that effectively allows victims to be controlled by their employer or trafficker? Those provisioning training should seek to raise awareness

⁴⁰ Comments from UK Immigration Enforcement, focus group, Region 1, 24th January 2017.

⁴¹ Comments from a local authority safeguarding lead, focus group, Region 1, 24th January 2017.

⁴² Comments from a local authority safeguarding lead, focus group, Region 1, 24th January 2017.

⁴³ Interview with a police Detective Inspector, Region 3, 7th March 2018.

of how these issues manifest as visible victim indicators, so that connections can be made between modern slavery, and emergent issues such as county lines.

Information and intelligence sharing

Information and intelligence sharing were also highlighted as core issues across participating regions, and also as an area where anti-slavery partnerships were seen, in some areas, to be having a distinctly positive impact. Region one had implemented regionwide initiatives to encourage and facilitate the sharing of what became referenced as ‘soft intelligence’. This intelligence, primarily from frontline workers, including representatives from local authorities and NGO’s, contained information concerning potential instances of modern slavery.⁴⁴ Issues around potential residential over-occupancy were specifically cited as one area where soft-intelligence submissions had helped to successfully identify a number of modern slavery victims.⁴⁵

Such provisions included local email inboxes and a dedicated phone line with answering machine that was monitored daily, alongside increased promotion of the national modern slavery helpline. Separate provisions were also being made to work alongside banks to flag fraudulent financial activity that may be occurring as a result of slavery.⁴⁶ These efforts contributed to a rise in intelligence throughput within region one between 2014 and 2015 of more than 55% in the first year of the partnership’s implementation.⁴⁷ Naturally, such initiatives were seen to follow the positive work taking place in terms of training, and increasing frontline staff’s awareness of modern slavery; informing them of the indicators and instilling the confidence needed to support any suspicions. In region four, a pro forma was created to allow partners to submit information directly to the Force Intelligence Bureau, however little increase in throughput was noted.⁴⁸ These measures were implemented over and above initiatives taking place across the UK in support of the Government Agency Intelligence Network (GAIN) which is being used to promote the sharing of intelligence, where possible, across government agencies by police Regional Organised Crime Unit’s (ROCU’s).⁴⁹

⁴⁴ Region 1 modern slavery partnership yearly review for 2015.

⁴⁵ Interview with a Police Detective Sergeant, Region 1, 7th September 2015.

⁴⁶ Interview with a police Detective Sergeant, Region 1, 7th September 2015.

⁴⁷ Figures held for 2015 only take into account the period ending 31st October 2015 so the true percentage increase will be larger than stated here; Region 1 modern slavery partnership yearly review for 2015.

⁴⁸ Interview with a police Detective Chief Inspector. Region 4, 9th March 2018.

⁴⁹ Open Rights Group, “ROCU’s and GAIN,” *Open Rights Group Wiki*, accessed May 24, 2018, https://wiki.openrightsgroup.org/wiki/ROCU_s_and_GAIN

Intelligence was not necessarily considered to be a ‘one-way-street’ in this context however. Police were observed to be actively making efforts to share localised intelligence profiles with organisations attending local forums. This was in addition to helping raise awareness of local issues and improving the appreciation of modern slavery indicators by the agencies participating in the partnerships. Further driving intelligence throughput.⁵⁰ As an additional benefit this was observed to provide a tangible sense of inclusion and sense of collaboration, rather than the partnerships acting purely as an additional intelligence resource, or police informants.⁵¹

Victim referral and immigration enforcement

Human trafficking, people smuggling, and illegal immigration have long been entangled, and in many cases confused as synonymous.⁵² While all three are clearly distinct, and an individual’s legal status, or lack thereof, is by no means a prerequisite for exploitation, there is no doubt that the precarious situations of those living in the UK without legal status, and thus access to state health, welfare and support services, makes them a severely at-risk group when it comes to modern slavery.⁵³ In fact, the status of those seeking asylum in the UK has been framed by Lewis et al. under the heading of ‘hyperprecarity’, with the UK’s immigration policy considered to be a structuring and sustaining factor that contributes to the country’s forced and exploitative labour issues.⁵⁴ Though the issues discussed in this paper focus more human behaviour and organisational process, the challenges faced by modern slavery victims are inextricably intertwined with those relating to immigration and labour policy. The UK’s current drive against modern slavery is set against a legislative backdrop that includes a largely exclusionary immigration policy and an environment of labour market deregulation that exacerbate the

⁵⁰ Comments from a local authority safeguarding lead, focus group, Region 1, 24th January 2017.

⁵¹ Comments from a local authority safeguarding lead, focus group, Region 1, 24th January 2017.

⁵² Andrew Geddes, “Chronicle of a Crisis Foretold: The Politics of Irregular Migration, Human Trafficking and People Smuggling in the UK,” *British Journal of Politics and International Relations* 7, no. 3 (2005): 324–39, doi:10.1111/j.1467-856X.2005.00192.x.

⁵³ Peter Dwyer et al., “Forced Labour and UK Immigration Policy: Status Matters,” *Joseph Rowntree Foundation* (York, 2011), <https://www.jrf.org.uk/report/forced-labour-and-uk-immigration-policy-status-matters>

⁵⁴ Hannah Lewis et al., *Precarious Lives: Forced Labour, Exploitation and Asylum* (Bristol: Policy Press, 2015), <https://policy.bristoluniversitypress.co.uk/precarious-lives-1>; Hannah Lewis and Louise Waite, “Asylum, Immigration Restrictions and Exploitation: Hyper-Precairety as a Lens for Understanding and Tackling Forced Labour,” *Anti-Trafficking Review*, no. 5 (2015): 49–67, doi:10.14197/atr.20121554.

precarity of refugees and asylum seekers, making them vulnerable to exploitation at the hands of traffickers and slave masters.⁵⁵

This conflicting landscape provides fertile ground for a number of challenges linked to the successful identification, support and recovery of victims. From the primary evidence elicited in this study, it is impossible to make any estimations as to the extent of the scale and proliferation of the following problems. Instead, the viewpoints presented should be viewed, anecdotally, as possible challenges that arose across three of the four regions studied. For as long as the NRM fails to offer long-term leave to remain as a standard support provision, there remains a vector through which there is potential for victims to be wrongfully deported from the UK when they do not have legal status.

Earlier reviews of the NRM which took place in 2014 found that Home Office Visas and Immigration (UKVI) returned around twenty percent less successful NRM decisions than the UK Human Trafficking Centre (UKHTC). While UKHTC primarily dealt with referrals from police, and commonly featured EU-nationals as victims, non-European Union/ European Economic Area (EU/ EEA) victims were more likely to be referred through UKVI. This indicates a worrying trend that may be preventing non-EU/EEA victims from being successfully identified and referred.⁵⁶

Exacerbating this problem further, individuals from outside the EU who present to immigration authorities may potentially claim to be victims of trafficking in order to try and claim asylum. This self-identification should result in an initial referral through the NRM by immigration authorities so that a more thorough assessment can be made. However, there was anecdotal information received from regions one and four that illustrated how these individuals had, in some instances, been dealt with as any other person seeking asylum, raising concerns that adequate measures were not in place to identify them as potential victims. Thus, if no other legal basis for their residence in the UK was identified, they were eventually processed as illegal immigrants.

Every time that we bring somebody in, in this force area, we might have some concerns that they've been trafficked but if they're illegally here and they go in the direction of immigration enforcement I've got to have some confidence that throughout that process they are given a genuine opportunity to disclose [as a victim] throughout. So, am I absolutely

⁵⁵ Lewis et al., *Precarious Lives: Forced Labour, Exploitation and Asylum*.

⁵⁶ Christine Beddoe, "The National Referral Mechanism: A Five-Year Review," *The Anti Trafficking Monitoring Group*, 2014, <http://webarchive.nationalarchives.gov.uk/20141202113524/https://nrm.homeoffice.gov.uk/wp-content/uploads/2014/08/ATMG.pdf>

confident that they do that? ... Not yet, no I'm not and that worries me a little bit.⁵⁷

In region two, there was a genuine belief that if gaps in the process involving Immigration Enforcement were rectified, it would result in the numbers of non-EU/EEA victims identified and referred being “sky high.”⁵⁸ It was also identified as a known issue that was being worked on by the police in collaboration with Immigration Enforcement in that area. Moreover, in a recent case covered in the media, a Ghanaian victim was successfully and rightfully accepted as a victim of trafficking, but subsequently deported by the Home Office anyway.⁵⁹ A court eventually found the decision not to grant leave to remain to be in breach of the UK's commitment to the 2005 Council of Europe Convention on Human Trafficking.⁶⁰ Thus illustrating a level of discriminative bias in the actions of immigration enforcement towards some modern slavery victims; specifically, those without legal status in the UK.

These factors present a number of issues. Not least of them is that a potentially vulnerable individual is plunged back into precarity in their home countries, where they become prime targets for re-trafficking, further exploitation or worse.⁶¹ Further, from a policing viewpoint, it was noted in an interview with a police officer from region one that without an initial referral through the NRM, an identified individual is never actually captured as a potential victim. The intelligence picture therefore remains incomplete and any trends involving trafficked or enslaved individuals from outside the EU potentially goes unreported.⁶² Moreover, in many cases no crime is ever recorded in instances where no victim has been referred, despite Home Office counting rules requiring crime to be regarded as independent to victim referral.⁶³ However, NRM figures from 2016 do rank victims from Vietnam (519), China (241) and Nigeria (243)

⁵⁷ Interview with a police Detective Chief Inspector, Region 4, 9th March 2018.

⁵⁸ Interview with a police Detective Chief Inspector, Region 2, 8th February 2018.

⁵⁹ Anna Sereni, “A Legal Win That's Left Victims in Limbo,” *Anti-Slavery*, 2018.

⁶⁰ Council of Europe, “Council of Europe Convention on Action against Trafficking in Human Beings,” *Council of Europe Treaty Series* 197 (2005), <https://rm.coe.int/168008371d>.

⁶¹ Lewis et al., *Precarious Lives: Forced Labour, Exploitation and Asylum*.

⁶² Interview with a police Detective Sergeant, Region 1, May 5th 2016.

⁶³ UK Home Office, “Home Office Counting Rules for Recorded Crime,” 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721595/count-general-jul-2018.pdf; Gary Craig, “Modern Slavery in the United Kingdom: An Incoherent Response,” in *Social Policy Review 30: Analysis and Debate in Social Policy*, ed. Catherine Needham, Elke Heins, and James Rees (Bristol: Policy Press, 2018), 27–46, <https://policypress.co.uk/resources/kara-creative/social-policy-review-30#book-detail-tabs-stison-block-content-1-1-tab2>

amongst some of the highest numbers of referrals for that year, though these could be skewed given the level national attention towards Vietnamese owned nail-bars as a possible venue of exploitation.⁶⁴

This issue is further compounded by the fact that victims are often reluctant to come forward in the first instance. The reasons for these absences in self-referral are often contextual in relation to the circumstances of the individual, and the conditions under which they are enslaved and exploited.⁶⁵ These issues include things such as endemic problems with the UK's tier-5 visa system which effectively binds foreign domestic workers to their employers, preventing them from leaving exploitative employment.⁶⁶ Furthermore, victims are often unwilling to come forward due to culturally ingrained mistrust of the authorities and statutory organisations. This is particularly true of migrant communities. Victims also fear what might happen should their exploiters find them trying to escape enslavement.⁶⁷ Moreover, in some cases, victims are not aware that they are victims of specific crimes at all; again providing a significant barrier to self-referral. This was noted especially in interviews relating to labour exploitation cases with Eastern European victims, and in cases of exploitative and forced sex-work.⁶⁸ It should be noted, however, that steps have been taken to providing training for immigration enforcement on modern slavery across the regions studied.⁶⁹ This was one of the many positives taken from the integration of immigration enforcement into partnership arrangements across all four regions. Despite this, concerns were still present that their primary function remains immigration enforcement. Thus, concerns still remain that victims are not being identified by enforcement officers, and therefore there is still a significant risk of wrongful deportation. There was also explicit reference made in regions two, three and four to suggest that operations with immigration enforcement were now

⁶⁴ National Crime Agency, "National Referral Mechanism Statistics - End of Year Summary 2017"; See for example Gentleman, "Slavery Report Sounds Alarm over Vietnamese Nail Bar Workers."

⁶⁵ Anette Brunovskis and Rebecca Surtees, "Out of Sight? Approaches and Challenges in the Identification of Trafficked Persons," *The Fafo/NEXUS Institute Project: Improving Services to Trafficked Persons* (Oslo: Allkopi AS, 2012), https://nexushumantrafficking.files.wordpress.com/2015/03/out-of-sight_identification_nexus.pdf

⁶⁶ Thanos Maroukis, "Keeping Up Appearances: The British Public Policy Response to the Trafficking of Domestic Workers in a Changing Regime of Social Protection," *Journal of Immigrant and Refugee Studies* 15, no. 2 (April 3, 2017): 155–70, doi:10.1080/15562948.2017.1304602.

⁶⁷ Interview with a police Detective Inspector, Region 4, 9th March 2018.

⁶⁸ Interview with a police Detective Chief Inspector, Region 4, 9th March 2018; Comments from a sexworker support NGO representative, focus group, Region 1, 24th January 2017.

⁶⁹ Comments from UK Immigration Enforcement, focus group, Region 1, 24th January 2017; Interview with a police Detective Inspector, Region 3, 7th March 2018; Interview with a police Detective Chief Inspector, Region 2, 8th February 2018; Interview with a police Detective Inspector, Region 4, 9th March 2018.

increasingly collaborative.⁷⁰ Police, Her Majesty's Revenue and Customs (HMRC), the fire service and other statutory organisations were stated as all being regularly present when visits and inspections were made to business premises believed to be harbouring victims.

Police in regions one and four also recounted that the aforementioned challenges associated with immigration enforcement were damaging the police's reputation among migrant communities.⁷¹ With the agencies that we engage with in particularly with District X, and the drop-in to District X day shelter and agencies like that who see destitute people, they've seen a quite a robust increase in incidents of immigration and they seem to be concerned about the people who access their services, about immigration and the impact its having on in terms of victims coming forward, its instilling that fear.⁷²

They [victims] don't see the police or immigration enforcement as anything other than 'an authority', they don't differentiate [...] So that's part of the trafficking... the traffickers control and that is to say, 'actually law enforcement are going to go and arrest you and put you in prison so I wouldn't tell them or talk to them at all [...] all they [victims] see is a uniform, and unfortunately sometimes behind that uniform is somebody that does genuinely take them away.'⁷³

In region one, it was directly cited that in past interactions with victims, they largely did not distinguish between police and immigration enforcement. It was discussed that perceptions of immigration enforcement create issues for police as they try to build a profile as a 'supportive' victim-focused agency that is there, first and foremost, to assist and protect victims.⁷⁴ Terminology indicating 'victim-centred' or 'victim-focused' was used extensively by police across all four areas studied.⁷⁵

⁷⁰ Interview with a police Detective Chief Inspector, Region 2, 8th February 2018; Interview with a police Detective Chief Inspector, Region 4, 9th March 2018; Interview with a police Detective Inspector, Region 3, 7th March 2018

⁷¹ Comments from a sexworker support NGO representative, focus group, Region 1, 24th January 2017; Interview with a police Detective Chief Inspector, Region 4, 9th March 2018.

⁷² Comments from an NGO representative, focus group, Region 1, 24th January 2017

⁷³ Interview with a police Detective Chief Inspector, Region 4, 9th March 2018.

⁷⁴ Comments from a sexworker support NGO representative, focus group, Region 1, 24th January 2017.

⁷⁵ Region 1 Police Human Trafficking Action Plan 2015; Region 2 Modern Slavery Strategy 2017; Interview with a Police Detective Inspector, Region 3, 4th January 2017; Interview with a Police Detective Chief Inspector, Region 4, 9th March 2018.

These issues serve to further illustrate the importance of collaborative multi-agency work. Tacit factors, including the perceptions held by those that are considered vulnerable; such as migrant communities, are vital in building trust between statutory organisations and those they serve. If individuals are not making a discretion between different statutory bodies, it is the responsibility of those bodies to ensure a coordinated approach is taken to build trust with those communities and to implement a truly victim-focused strategy.

Victim accommodation

Another aspect of the positive work being done across the partnerships studied relates to the gaps within the support provisions offered through the NRM. Currently, many victims, in areas where there are active NGOs with capacity, actually remain in accommodation much longer than they are legally entitled to under the NRM. This is due to the work of charities who, in Haughey's words, are "picking up the slack" to ensure victims are provided with additional support and accommodation outside of the NRM. More often than not, these are not government funded.⁷⁶ Unfortunately, although a positive, this also serves to further highlight deficiencies in statutory support to re-integrate and support victims. This was noted specifically in region one, where provision was being made by multiple charities to ensure the availability of additional accommodation post NRM, and in some cases prior to victims submitting an initial referral.⁷⁷ However, this is purely dependant on the availability of NGOs, and the capacity of those NGOs. In region three and four, there were few NGOs operating in this space, and thus the only provision for support and accommodation was through the Salvation Army, the NGO which holds the government contract for victim accommodation. These regions were more rural than others included in the study.

One of my problems is, who do I go to? ...because I can't go to charity X [they do not operate in the region]. So... So, who do I turn to? I don't know. Region X have got charity Y, you got the charity Z in region Y [...] In region Z you've got a number of charities you can refer to. We don't have that. [...] So, I struggle personally, if I come across a victim or a potential victim, where do I refer that person to. You know it's... it's easier if they go into the NRM, because obviously then I can look after the five-day period through the council support and then when the decision comes in the

⁷⁶ Haughey, "The Modern Slavery Act Review: One Year On."; Interview with a statutory organisation representative, Region 2, 19th February 2018.

⁷⁷ Haughey, 26.; Minutes of a local modern-slavery partnership meeting, Region 1, 1st February 2016; Region 1 modern slavery partnership internal yearly review 2015, 16th February 2016.

Salvation Army steps in. But if I've got a victim or a potential victim that doesn't want to engage what do I give them or where do I refer them to, and I haven't got the answer to that.⁷⁸

Though, as was cited earlier in this article, positive work is in progress to extend the post referral accommodation period in the NRM, the work being done in the meantime by NGOs should not go unrecognised. This also connects back to other issues associated with the NRM and the UK's exclusionary immigration policy. The positive work of the partnerships is helping to mitigate against gaps in the support and victim identification infrastructure; namely the lack of victim assistance and ongoing support. However, it is clear that wider reform is still needed to reduce the current reliance on the exceptional work and goodwill of non-statutory organisations and NGOs.

Conclusions / Recommendations

In this paper, a number of positives and challenges with regards to victim identification, recovery and support have been established that are, in some way, driven or at least supported by collaboration through multi-agency anti-slavery partnerships. The paper draws upon information gleaned from case studies conducted across four regions in the UK. This is supported by insights from existing and other ongoing work as well as additional information from media coverage, police and government strategy documents and other works. A number of issues have been established related to the investigation and prevention of modern slavery, and in particular, identification, referral and safeguarding. A number of benefits of multi-agency partnerships have been established and presented. In particular, awareness raising and training among frontline workers, and within the police forces themselves, have been noted as key positives. While the NRM itself continues to be scrutinised for not offering long term support for victims, NGOs have proven invaluable in some regions in providing extended victim support services, including accommodation, above and beyond the requirements of the NRM.

These impacts are by no means exhaustive. Subsequent work is required to supplement that being conducted in collaboration with the Independent Anti-slavery Commissioner and Home Office modern slavery police transformation programme. Work should continue to refine guidance provided by existing toolkits

⁷⁸ Interview with a police Detective Inspector, 7th March 2018.

advising on effective partnership working practices, building the evidence-base and taking lessons-learned from partnerships operating across the country.⁷⁹

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⁷⁹ In 2018 the University of Nottingham, in collaboration with the Independent Anti-Slavery Commissioner, launched an online resource providing guidance for anti-slavery partnerships; University of Nottingham, “Anti-Slavery Partnerships Toolkit,” 2018, <https://iasctoolkit.nottingham.ac.uk>

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