

THE RHETORIC OF SLAVERY IN THE 21ST CENTURY

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Today, it is estimated as many as 27 million people around the world are victims of modern slavery, what we sometimes call trafficking in persons...I think labelling this for what it is, slavery, has brought it to another dimension...When I first used to talk about [trafficking] all those years ago, I think for a while people wondered whether I was talking about road safety - what we needed to do to improve transportation systems. But slavery, there is no mistaking what it is, what it means, what it does.¹

- Hillary Clinton

Introduction

Few words are as evocative and as emotive as slavery. At first thought, the word tends to conjure images of despairing people shackled on transatlantic ships, or performing back-breaking work in the heat of the American Deep South. It is a subject matter that has dominated Hollywood pictures and best seller lists in recent times, and many developed countries, most notably the United States, are still coming to terms with their involvement in the brutal practice of slavery.² Slavery of the past is a recurring theme in today's media: politicians vying for the democratic nomination in the US regularly call for reparations for the descendants of slaves,³ and many countries and institutions have ordered inquiries into how they exploited slave labour for economic or other gain.⁴ Slavery is recognised as a crime against humanity of the highest order, and traditional slavery has today been abolished in every country in the world, although it was not until 2007 that Mauritania finally outlawed slavery, making it the last country in the world to do so.⁵ In many ways, the slavery narrative seems confined to the darkest eras of world history.

However, the language of slavery is increasingly being used to describe the plight of exploited people across the world today. Research supports the surprising fact that there are more people enslaved today than at any other time in history.⁶ It has been calculated that approximately 13 million people were captured and sold as slaves between the 15th and 19th Centuries; this stands in contrast to the International Labour Organisation's most recent estimate that today there are more than 40.3 million people currently living in some form of modern slavery.⁷ Modern slavery takes many forms and covers many industries.

¹ 'Release of the 2012 Trafficking in Persons Report' (US Department of State, 19 June 2012), <<https://2009-2017.state.gov/secretary/20092013clinton/rm/2012/06/193368.htm>> accessed 25 August 2019.

² Ana Lucia Araujo, *Shadows of the Slave Past: Memory, Heritage and Slavery* (Routledge 2014).

³ Bhaskar Sunkara, 'To fight racism, we need to think beyond reparation' (The Guardian, 28 March 2019) <<https://www.theguardian.com/commentisfree/2019/mar/28/racism-reparations-democratic-candidates>> accessed 25 August 2019.

⁴ See, for example, Sally Weale, 'Cambridge university to study how it profited from colonial slavery' (The Guardian, 30 April 2019) <<https://www.theguardian.com/education/2019/apr/30/cambridge-university-study-how-it-profited-colonial-slavery>> accessed 25 August 2019.

⁵ Siddharth Kara, *Modern Slavery: A Global Perspective* (Columbia University Press 2017) 7.

⁶ Patterson & Zhuo however, refute this contention; see article Orlando Patterson & Xiaolin Zhuo, 'Modern Trafficking, Slavery and Other Forms of Servitude' (2018) 44 Annual Review of Sociology 407, 409.

⁷ 'Global Findings' (Global Slavery Index 2018) <<https://www.globalslaveryindex.org/2018/findings/global-findings/>> accessed 25 August 2019.

Slavery in the 21st Century is often divided into subcategories, such as sex trafficking, labour trafficking, organ trafficking, debt bondage, forced marriage and descent-based (or hereditary) slavery. Modern slavery has been referred to as having its roots in ‘social and economic marginalization, and driven by economic factors’, while being ‘pervasive, hidden – and all too often accepted’.⁸ Cockayne and co note that the ‘central characteristic of slavery is the exercise by one person over another of powers attaching to the right of ownership’, with ‘chattel slaves’ being ‘owned entirely by their slave-masters, their legal personhood entirely commodified’.⁸ Chattel slavery’ is so named as slaves were treated by their owners as mere possessions which they could sell or transfer to others. Thus for several centuries the ‘property paradigm’ was used to ‘understand the slave–master relationship in law’.⁹

In the modern context, it has been observed that the circumstances are crucial in order to identify whether the person is enslaved, such as the restriction on the person’s freedom of movement, the control of the individual’s personal belongings, and the relationship between the parties, and threats of violence are often involved.¹⁰ Modern slavery is in part driven by a demand for cheap labour:

High labour supply in some economies encourages a view of labour as ‘disposable’, leading some employers to think that investment in human capital is unnecessary, encouraging coercion and exploitation. Transnational companies rely on the disarticulation of the supply chain to insulate consumers, and themselves, from the role of slavery in the production of consumer goods.... Modern slavery is thought to generate some \$150 billion annually in profits to those relying upon it. Moreover, as poor and marginalized communities in developing countries with growing labour forces are integrated into global markets, the price of slaves may actually be falling.¹¹

That mass exploitation of vulnerable people exists in every corner of the globe today is disputed by few. From a situation in the 1980s where few non-experts were aware that forms of slavery still exist, we have moved on to a stage where most accept that slavery is a pressing global problem. The language and terminology appropriate for this crisis is, however, a topic of much debate. Organisations such as Anti-Slavery International and Free the Slaves view slavery as an overarching concept within which subcategories can be identified. Some view the use of the term slavery merely as a rhetorical addendum to emphasise the severity of other crimes, such as human trafficking, rather than as an independent category. Others entirely reject the use of the term slavery in a 21st Century context, except perhaps where it relates to those situations where traditional or chattel slavery is still on-going. However, while jurists and scholars go to great lengths to analyse the use of language, the media and some activists are rarely concerned with legal distinctions when using the term ‘modern slavery’. This paper sets out to explore the tension between the modern concept of slavery and its traditional definitions. It will first briefly consider slavery throughout the human experience and how traditional slavery differs from how it exists today. It will then look at the language used in international and

⁸ James Cockayne, Nick Grono, Kari Panaccione, ‘Introduction to Special Issue Slavery and the Limits of International Criminal Justice’ (2016) 14 (2) *Journal of International Criminal Justice* 253.

⁹ *ibid.*

¹⁰ Davis Weissbrodt and Anti-Slavery International, ‘Abolishing Slavery and its Contemporary Forms’ (HR/PUB/02/4, Office of the United Nations High Commissioner for Human Rights 2002) <<https://www.ohchr.org/documents/publications/slaveryen.pdf>> accessed 25 August 2019, 7.

¹¹ Cockayne (n 8).

domestic legislation that seeks to address this global crisis. In the final part, it will consider the arguments that are frequently presented both in favour of and against the rhetoric of slavery, and finally offer some concluding observations as to whether this is a positive development in international human rights law and the fight against exploitative relationships where one person is controlled by another.

Slavery Yesterday and Today

The History of Slavery: A Constant in the Human Experience

The practice of slavery spans the entirety of human history and has featured in some of the most primitive human societies as well as in the most civilised. The system of slavery is thought to date back to prehistoric hunting societies. Indeed, it is difficult to point out any period in history or any ancient civilisation in which slavery was not present in one form or another. Patterson notes that:

slavery was not only ubiquitous but turns out to have thrived most in precisely those areas and periods of the world where our conventional wisdom would lead us to expect it least. It was firmly established in all the great early centres of human civilisation and, far from declining, actually increased in significance with the growth of all the epochs and cultures that modern Western people consider watersheds in their historical development.¹²

The slavery regimes that permeated ancient Mesopotamia and Egypt, and later ancient Greece and Rome, were an essential part of the economy and way of life inherent in these societies. The latter two have been described as ‘genuine slave societies’, meaning that slavery was the foundation of their socio-economic structures.¹³ It is thought that slaves made up one third of the population in Ancient Greece and Rome. Slavery was a vital feature of many societies following the fall of the Roman Empire, such as the Visigothic Kingdom, late Old English Society, Merovingian France, and Viking Europe. Slavery was also of significant importance in Celtic Ireland. Celtic literature and legal codes are rife with references to slavery, and it is clear that slaves could be purchased, kidnapped in war, born into slavery or reduced to servitude if unable to pay a debt or a fine, reflecting the compensatory and non-punitive nature of the early Irish legal system. Male slaves tended to perform menial agricultural work while women did domestic work. There is nothing to suggest that female Celts did not own slaves. All Celtic slave-owners had absolute property rights over their slaves, and were entitled to compensation should anyone commit a crime against their ‘property’.¹⁴ In some Medieval societies, slavery gave way to serfdom. The freedom and social standing of serfs greatly varied, with some having a certain amount of rights and others trapped in a form of servitude akin to slavery. Slavery was subsequently widespread in late Medieval Spain and Russia.

Slavery was crucial in the Italian states of Tuscany, Genoa and Venice, and the large-scale plantation slave systems used in the Italian Mediterranean colonies are believed to have

¹² Orlando Patterson, *Slavery and Social Death* (Harvard University Press 1982) vii.

¹³ See Moses I Finley, *Ancient Slavery and Modern Ideology* (Markus Weiner Publishers 2017).

¹⁴ See Charlene M Eska, ‘Women and Slavery in the Early Irish Laws’ (2011) VIII *Studia Celtica Fennica* 29 <<https://journal.fi/scf/article/view/7439/5788>> accessed 25 August 2019.

influenced the capitalistic slave systems of the modern Americas.¹⁵ Slavery in the New World, particularly in the modern day United States, is perhaps the most documented period of slavery. After efforts to enslave American Indians failed, colonisers turned to Africa as the next source of slave labour. Approximately 9.7 million African slave labourers crossed the Atlantic during the colonial period. What is perhaps striking about slavery in North America is the racial element of slavery. Patterson observes that, throughout history, in approximately three-quarters of slave societies, masters and slaves were of the same race.¹⁶ The principal justification for slavery in the United States was formulated using arguments about race – medical professionals such as Samuel Cartwright and Josiah Nott wrote detailed accounts of how African Americans were not fully human and were suited not to education or the life of an intellect, but were instead built for toil and labour in the Deep South.¹⁷ The deeply ingrained association of slavery with race, particularly African people, of this era is a factor in some arguing against the use of that term today.

Slavery is, of course, not unique to Europe and the Americas. Slaves were also vital in fulfilling administrative, military and cultural roles across the Islamic world.¹⁸ In pre-colonial Africa, advanced political and cultural developments were often associated with slavery, and Patterson notes that Medieval Ghana, Songhay and Mali, as well as the city-states of the Hausas, Yorubas, and Ibibios, the Kingdoms of Dahomey and Ashanti, the Caliphate of Sokoto and the Sulphanate of Zanzibar all relied heavily on slave labour.¹⁹ Korea is one of the remarkable cases of dependence on slaves by all people in a particular society for a long period of time – slavery flourished there for over a millennium. It was believed that slaves were people from whom heaven had withdrawn its favour, and at one point, slaves constituted 30% of the Korean population.²⁰ Indeed, there were proportionately more slaves in Korea than in the Deep South during the 19th Century. In Korea, as in the vast majority of the Islamic and African examples given above, slaves and masters were of the same race. In further contrast to the transatlantic slave trade, slaves in many of these societies were not conceptualised as ‘things’ or objects of property.²¹

There are many examples throughout history, particularly in Asia, of systems of slavery that do not fit easily into traditional chattel slavery. In South Asia, the concept of slavery begins with the Sanskrit word *dasas*, which, although commonly translated as the word ‘slave’, in fact refers to a range of subservient conditions and classes of individuals who were analogous to Western slaves. They had few rights, if any, and some were placed into a lifetime of bondage in exchange for food and shelter, sold into slavery to discharge a debt or enslaved after military conquest. Similar systems of nuanced slavery based on caste or conquest were commonplace throughout the Ancient Muslim world, the South American empires and in Chinese and Japanese cultures.²²

¹⁵ Patterson (n 12) *vii*.

¹⁶ *ibid*.

¹⁷ For a comprehensive accounts of racial medicine from this era, see Christopher D Willoughby, ‘His Native, Hot Country’: Racial Science and Environment in Antebellum American Medical Thought’ (2017) 72(3) *Journal of the History of Medicine and Allied Sciences* 328.

¹⁸ Patterson (n 12).

¹⁹ *ibid*.

²⁰ See Han Woo-Keun, *History of Korea* (Eul-Yoo Publishing 1970); Takashi Hatada, *A History of Korea*, (ABC-Clio Press 1969); Ellen S Unruh, ‘Slavery in Medieval Korea’ (PhD Thesis, Columbia University 1978.)

²¹ See Nicholas Rinehart, ‘The Man that was a Thing: Reconsidering Human Commodification in Slavery’ (2016) *Journal of Social History* 1.

²² See Siddharth Kara, *Bonded Labour: Tackling the System of Slavery in South Asia* (Columbia University Press 2012), chapter 1.

The abolitionist movement began to take force in the 19th Century. Denmark-Norway was the first European country to abolish slavery in 1803, and was soon followed by Sweden and the Netherlands. In 1833, the British parliament passed the Slavery Abolition Act, which formally freed 800,000 African slaves across the British colonies. It also paid out the equivalent of £16 billion in compensation to their ‘owners’. This debt was not fully paid off until 2015.²³ This Act also outlawed slavery in Canada, where thousands of fugitive and emancipated slaves fled up until the early 1860s. Though the Declaration of the Rights of Man, written in 1789, proclaimed that ‘men are born free and remain free and equal in rights’, it was not until 1848 that France banned slavery in all of its colonies.²⁴ In the United States, Vermont was the first state to outlaw slavery in 1777, but many in the Deep South resisted up to the bloody American Civil War of the 1860s. There is a very important link between the abolition of slavery and the development of modern human rights law – in fact, the international slave trade tribunals can be viewed as the first international human rights courts.²⁵ Abolitionist movements are seen as among the most noble and virtuous crusades of all time, and it is clear that much inspiration is derived from them in modern day movements against slavery.

Slavery Through Time: A Comparative Analysis

Today, there are many well-documented cases of modern slavery all over the globe. By way of two brief examples: young girls from Nigeria are being brought to Europe in the hope of finding a better life, only to be subjected to forced prostitution with no means of escape. Many of these girls are placed under a ‘juju curse’ whereby they are psychologically manipulated and convinced that, should they attempt to leave the brothels they have been placed in, a wicked curse will be bestowed on any children they carry in the future.²⁶ There are also many reports of cases of workers from Nepal and India being lured to Qatar with the promise of fairly paid work, only to be forced to build football stadiums for no pay in brutal conditions.²⁷

Before analysing whether the use of the term ‘modern slavery’ is appropriate, it is necessary to compare the so-called ‘business of slavery’ as it exists today with that of the past. At first glance, what is striking is that slaves are far more profitable today than they were even in times where slavery was legal and encouraged by governments and not prohibited by law. Despite the prohibition of slavery, it is also easier and cheaper to transport people for use in slave labour than ever before. Kara, in carrying out an analysis of this issue, notes a number of key differences between old world slavery and slavery today.²⁸ First, the slave trade of the past involved lengthy, expensive journeys on which many slaves perished due to brutal and inhuman conditions. For example, during the American slave trade it is estimated that 20% to 25% of African slaves perished while being transported from the interior of the continent of Africa to the coast, and a further 10% to 15% lost their lives while being transported across the Atlantic to the Americas.²⁹

²³ Myrian François, ‘It’s not just Cambridge University – all of Britain benefited from slavery’ (The Guardian, 07 May 2019) <<https://www.theguardian.com/commentisfree/2019/may/07/cambridge-university-britain-slavery>> accessed 25 August 2019.

²⁴ ‘About Slavery: Slavery in History’ (Free The Slaves) <<https://www.freetheslaves.net/about-slavery/slavery-in-history/>> accessed 25 August 2019.

²⁵ See Jenny S Martinez, *The Slave Trade and the Origins of International Human Rights Law* (Oxford University Press 2011).

²⁶ See Kara, *Modern Slavery: A Global Perspective* (n 5) chapter 2.

²⁷ *ibid.*

²⁸ *ibid* 21-27.

²⁹ Adam Hochschild, *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire’s Slaves* (Houghton Mifflin 2005) chapter 2.

One of the few existing first-hand testimonies of a person subjected to enslavement is from Olaudah Equiano, who crossed the Atlantic in the 18th Century. His testimony is one of the few existing from a person enslaved at this time, and his story has been indispensable in understanding the brutality and inhumanity of slavery from his era. He describes his passage of the Atlantic Ocean as follows:

The stench of the hold...now that the whole ship's cargo were confined together...became absolutely pestilential. The closeness of the place, and the heat of the climate, added to the number in the ship, which was so crowded that each had scarcely room to turn himself, almost suffocated us. This produced copious respiration, so that the air soon became unfit for respiration, from a variety of loathsome smells, and brought on a sickness among the slaves, from which many died...This wretched situation was again aggravated by the galling of the chains, now become insupportable; and the filth of the necessary tubs [latrine buckets] into which the children often fell, and were almost suffocated. The shrieks of the women, and the groans of the dying, rendered the whole a scene of horror almost inconceivable.³⁰

This contrasts greatly with the ease of travel today, where people can move from one side of the globe to the other relatively quickly and often at low cost. While some people being trafficked for exploitation suffer harrowing journeys today (particularly when being smuggled), it is not thought that the mortality rate is in any way comparable today to the shocking figures of slave trades of the past.

Secondly, the number of industries in which slaves are exploited is much higher today. In previous centuries, slaves were generally limited to agriculture, domestic work, construction and some skilled trades. At present, many additional industries, including mining, manufacturing, beauty products, seafood and, most notably, commercial sex, use slaves. Thirdly, the average cost of a slave has altered dramatically. According to his research, Kara suggests that the average cost of a slave 200 years ago was between \$4,900 and \$5,500 in 2016 US dollars, with some slaves in the American South being sold for as much as \$30,000. Today, the average cost of a slave is estimated to be a mere \$550. The 90% reduction in the cost of a slave is attributed by Kara to three factors: (1) an increase in the number of people living in poverty and vulnerable conditions, (2) a sharp drop in transport costs, and (3) an increase in transport speed.

Closely linked to this is the fourth difference is the annual return on 'investment' in a slave. In the old world, Kara calculates this as being between 10% and 20%. However, in the modern world return can be anywhere from 170% for debt bondage slaves to over 1000% in the context of sex trafficking. These figures alone provide an explanation as to why modern slavery is so prevalent today – it is said that it is more profitable now than at any point in human history. A fifth point of difference is the fact that in the old world, slaves tended to be exploited for their lifetimes, whereas today, they are exploited for shorter periods of time. Today most individuals, especially those who are trafficked, are exploited for a few months or at most a few years. This change may be due to a number of reasons, such as the fact that the cost of acquiring a slave can be recouped much more quickly, the supply of slaves available is in some cases greater, and the concern that keeping a slave for

³⁰ *ibid*, 32.

too long risks their escape and possible detection and a subsequent investigation by the authorities.

Of course the threat of investigation underlines the most obvious difference between slavery today and yesteryear – in the past, slavery was legal, accepted and normal, and people could be bought and sold legally as though they were any other form of property. Although it is no longer legal to own a human being, there is still a very low level of risk associated with much of the slave exploitation taking place all over the world today. The issue of slavery being akin to property ownership is fundamental to the issue this paper seeks to consider. Definitions of slavery from the classical world up to a significant time after the abolitionist movements of the 19th Century are almost uniformly framed in terms of property and ownership. For example, Aristotle defined the slave as an ‘animate (un-souled) piece of property’ and Florentinus described slavery as ‘an institution of the common law of people by which a person is put into the ownership of somebody else, contrary to nature’.³¹ The language of property is still used in many international and domestic legal instruments, and will be considered below. This conflating of slavery with property may be overly simplistic. In fact, slaves of the past effectively had a double character of both a thing and a person; one commentator describes this duality as the fact that ‘the body of a slave is both treated juridically as one who can be held legally culpable for crimes but is also an object to be owned by others’.³² This paradox of sorts is best illustrated by the provisions of the US Fugitive Slave Act 1850, under which a runaway slave was liable, as a *person*, for the crime of stealing herself, a *thing*.³³ This issue of the classification of slaves as property is at the core of the tension between traditional conception of slavery and its modern definition, and will be discussed in more detail below.

Just as the nature of slavery itself differs from past societies to those of today, the contrast between old and new ‘abolitionist’ movements must also be noted. Historically, anti-slavery activists faced strong opposition from established political and economic powers, and often had to break the law to promote their cause and to assist slaves with escaping their masters and preventing fugitives from being returned. Today, new abolitionist organisations and political and business elites around the world are largely on the same page, and many governments in the Western world in particular have eagerly cooperated with NGOs and passed important legislation to try to combat this global problem.³⁴ This is perhaps also a factor in considering whether the rhetoric of slavery and abolitionism is appropriate, as, activists are no longer, at least ostensibly, grappling with political and legal systems that promote and encourage slavery, though some argue that they enable it to take place.

In this light, it is prudent to examine the language used in international conventions and legislation to see the extent to which the language of slavery is present in the law today.

³¹ David M Lewis, ‘Orlando Patterson, Property and Ancient Slavery: The Definitional Problem Revisited’ in John Bodel and Walter Schneider (eds), *On Human Bondage: After Slavery and Social Death* (Wiley-Blackwell 2016) 32.

³² Brenna Bhandar, ‘Property, Law, and Race: Modes of Abstraction’ (2014) 4 *University of California Irvine Law Rev* 211.

³³ See Fugitive Slave Act of 1850 9 Stat 462.

³⁴ Julia O’Connell Davidson, ‘“Things” Are Not What They Seem: On Persons, Things, Slaves, and the New Abolitionist Movement’ (2016) 69 *Current Legal Problems* 227, 228.

The definition of Slavery and its Application in Modern Legal Codes

International and European Legislation

There are numerous European and international agreements that deal with slavery, human trafficking and other forms of labour exploitation. The 1815 Declaration Relative to the Universal Abolition of the Slave Trade³⁵ was the first international instrument to condemn slavery.³⁶ It has been estimated that between 1815 and 1957, 300 international agreements were introduced with the goal of suppressing slavery.³⁷ Before the 1926 Slavery Convention,³⁸ which is still recognised as the leading instrument on this issue, various forms of slavery were set out in a list prepared by the Temporary Slavery Commission in 1924, which was later approved by the Council of the League of Nations. Along with enslavement, slave raiding, the slave trade and slave dealing, the list included the following:

1. (c) Slavery or serfdom (domestic or predial);
2. Practices restrictive of the liberty of the person, or tending to acquire control of the person in conditions analogous to slavery, as for example:
 - (a) Acquisition of girls by purchase disguised as payment of dowry, it being understood that this does not refer to normal marriage customs;
 - (b) Adoption of children, of either sex, with a view to their virtual enslavement, or the ultimate disposal of their persons;
 - (c) All forms of pledging or reducing to servitude of persons for debt or other reason ...[and]
4. System of compulsory labour, public or private, paid or unpaid.³⁹

Article 1 of the resulting 1926 Slavery Convention defined slavery.⁴⁰ This definition remains the foremost today and legal arguments pertaining to modern slavery are often framed around it. This definition has been considered at an international level on many occasions, notably by the Preparatory Committee on the Establishment of an International Criminal Court in 1996, which did not vote to alter or abandon this definition. In full, the first Article provides that:

- (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.
- (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

³⁵ Declaration of the Eight Courts Relative to the Universal Abolition of the Slave Trade (adopted 8 February 1815) 63 CTS 473.

³⁶ Davis Weissbrodt and Anti-Slavery International, 'Abolishing Slavery and its Contemporary Forms' (HR/PUB/02/4, Office of the United Nations High Commissioner for Human Rights 2002)

<<https://www.ohchr.org/documents/publications/slaveryen.pdf>> accessed 25 August 2019.

³⁷ *ibid.*

³⁸ Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention (adopted 25 September 1926, entered into force 09 March July 1927) (1926 Slavery Convention) 212 UNTS 17.

³⁹ Report of the Temporary Slavery Commission to the Council of the League of Nations (A.17.1924.VI.B), 1924, quoted in "The suppression of slavery" (Memorandum submitted by the Secretary-General to the Ad Hoc Committee on Slavery), United Nations document ST/SPA/4 (1951), para 22.

⁴⁰ 1926 Slavery Convention (n 38).

The Forced Labour Convention 1930⁴¹ subsequently defined forced labour as ‘all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily’. Following the founding of the United Nations, the Supplementary Convention on the Abolition of Slavery was drawn up and now has 124 state parties.⁴² This Supplementary Convention obliged States parties to abolish practices it described as constituting ‘servile status’:

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any person or group; or

(ii) The husband of a woman, his family, or his clan has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

The Global Slavery Index has examined the prevalence of modern slavery worldwide as well as government responses to the problem. In doing so, it specifically states that modern slavery ‘covers a set of specific legal concepts including forced labour, debt bondage, forced marriage, slavery and slavery-like practices, and human trafficking’.⁴³ It similarly regards modern slavery as an umbrella term which ‘focuses attention on commonalities across these legal concepts’, but that at its core it takes in situations involving exploitation of a person who ‘cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power’.⁴⁴

⁴¹ ILO Forced Labour Convention (No. 29) (adopted 28 June 1930, entered into force 01 May 1932) 39 UNTS 55.

⁴² Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 30 April 1956, entered into force 30 April 1957) 266 UNTS 3.

⁴³ ‘2018 Methodology: Overview’ (Global Slavery Index)

<<https://www.globalslaveryindex.org/2018/methodology/overview/>> accessed 25 August 2019.

⁴⁴ *ibid*: the US Department of State similarly refers to it as an umbrella term; see Christopher Ashley Ford, ‘What Are The Alternatives For American Policy In The Aftermath Of The JCPOA? Remarks: Bureau Of International Security And Nonproliferation’ (US Department of State, 11 June 2018) <<https://www.state.gov/j/tip/what/>> accessed 25 August 2019.

A further important international agreement concerning the definition of slavery is the Rome Statute of the International Criminal Court.⁴⁵ Article 7(2)(c) characterises ‘enslavement’ as a crime against humanity.⁴⁶ Before the founding of the ICC, the International Criminal Tribunal for the former Yugoslavia had taken an expansive view of enslavement. In the *Kunarac* case, the ICTY held that the elements of enslavement include ‘control and ownership’, and could comprise forced labour. It held that the ‘acquisition’ or ‘disposal’ of someone for monetary or other compensation is not a requirement for enslavement.⁴⁷ It also held that ‘the duration of the suspected exercise of powers attaching to the right of ownership is another factor that may be considered when determining whether someone was enslaved’.

The secondary legislation of the ICC, *The Elements of the Crimes*,⁴⁸ also deals with the question of what constitutes enslavement. This document lays out the criteria that ‘the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty’.⁴⁹ A footnote to this section clarifies that ‘such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery’.⁵⁰

In a recent decision, the Pre-Trial chamber of the International Criminal Court found that on multiple counts, the abducting of civilians from a camp and forcing them to carry goods was sufficient to constitute exercising ‘any or all of the powers attaching to the right of ownership over the abductees including by depriving them of their liberty and exacting forced labour, reducing them to a servile status’.⁵¹ This may signify a willingness on the part of the ICC to impose a broad definition of enslavement, in line with the approach of the ICTY.

The legislation of the European Union has tended to be framed in terms of trafficking. Article 8 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims provides:

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that the competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of any of the acts referred to in Article 2.⁵²

⁴⁵ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 01 July 2002) 2187 UNTS 3.

⁴⁶ For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: ... (c) Enslavement; ... (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; ...

⁴⁷ Prosecutor v Kunarac, Case No.IT-96-23 & IT-96-23/1-T, Judgment para 193-194 (February 22 2001).

⁴⁸ International Criminal Court, Elements of a Crime (International Criminal Court 2013) <<https://www.icc-cpi.int/resource-library/Documents/ElementsOfCrimesEng.pdf>> accessed 25 August 2019.

⁴⁹ *ibid*, Article 7(1)(c).

⁵⁰ Douglas Guilfoyle, *International Criminal Law* (OUP 2016) 252.

⁵¹ Prosecutor v Dominic Ongwen, Case No.ICC-02/04-01/15, Decision on the confirmation of charges against Dominic Ongwen para 48 (March 23 2016).

⁵² Council Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] L101/1.

Article 2(1) refers to the following types of conduct as being prohibited:

recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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.⁵³

There are further specific conventions addressing the issue of human trafficking, such as the Council of Europe Anti-Trafficking Convention.⁵⁴ GRETA is a body that was set up under Article 36 of the Convention to monitor states' implementation of the Convention. Other conventions specifically prohibit slavery and forced labour. Article 8 of the International Covenant on Civil and Political Rights⁵⁵ provides in part:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.

The EU Charter of Fundamental Rights⁵⁶ further provides under Article 5 that:

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

The European Convention on Human Rights,⁵⁷ adopted in the wake of the horrific crimes, including that of slavery, perpetrated during the Second World War, is today an important factor in the definition of slavery. Article 4 provides:

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "forced or compulsory labour" shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

⁵³ *ibid.*

⁵⁴ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 03 May 2005, entered into force 01 February 2008) CETS 197. Article 4 defines human trafficking as Article 4 of the Council of Europe Anti-Trafficking Convention provides that human trafficking means "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."

⁵⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁵⁶ Charter of Fundamental Rights of the European Union [2012] OJ C326/02.

⁵⁷ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.

A number of cases have come before the ECHR on this issue of how to define slavery. In the seminal case of *Siliadin v France*,⁵⁸ the Court did not find that the victim, who had served as a domestic worker in Paris for many years and had had her passport confiscated, ‘was held in slavery in the proper sense, in other words that [the perpetrators] exercised a genuine right of legal ownership over her, thus reducing her to the status of an “object”’.⁵⁹ However, the Court did find that France was in violation of Article 4 for forced labour and servitude, and was in breach of its positive obligations under the Convention.

The more recent case of *Chowdury v Greece*⁶⁰ involved a group of 42 Bangladeshi men who had worked at a strawberry farm in southern Greece, where they did not have work permits and worked up to 12 hours per day. They were supervised by armed guards and lived in poor living conditions. They did not receive agreed wages and were threatened that they would only receive wages if they continued to work. An armed guard opened fire on a group of workers who demanded wages in April 2013, with 30 of the group being seriously injured. Greek authorities had taken no action despite knowing about the conditions at the strawberry farms in the south of the country. The European Court held that restriction on freedom of movement was not an essential part of establishing that there was forced labour or human trafficking. The Court described the situation of these workers as a case of human trafficking for the purpose of forced labour as opposed to servitude, and found that there had been a violation of Article 4(2) due to the failure of the Greek authorities to fulfil their positive obligations to prevent human trafficking, to protect victims, to effectively investigate the offences committed, and to punish those responsible for human trafficking offences.⁶¹

Along with specific human rights conventions prohibiting slavery and forced labour, the International Court of Justice has identified protection from slavery as an obligation ‘erga omnes arising out of human rights law’.⁶² Slavery is also frequently referred to as a norm of *jus cogens*, a status that, as will be explored below, prompts some scholars to advocate against the use of the term in a contemporary context.

Slavery in Domestic Legislation in Ireland, the United Kingdom, France and Australia

Ireland

In Ireland, while there is no specific act dedicated to modern slavery, the Criminal Law (Human Trafficking) Act 2008 (‘2008 Act’) and the Criminal Law (Human Trafficking) (Amendment) Act 2013 (‘2013 Act’) govern this area. Forced labour is defined under section 1 of the 2013 Act as ‘work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily’, in line with the definition set out in the Forced Labour Convention.⁶³ Labour

⁵⁸ *Siliadin v France* App No 73316/01 (ECHR, 26 July 2005).

⁵⁹ *ibid*, para 122.

⁶⁰ *Chowdury v Greece* App No 21884/15 (ECHR 30 March 2017).

⁶¹ *ibid*, para 128.

⁶² *Barcelona Traction, Light and Power Co, Ltd (Belgium v Spain)*, Judgment of 5 February 1971, ICJ Reports 1970 at 32.

⁶³ ILO Forced Labour Convention (No. 29) (adopted 28 June 1930, entered into force 01 May 1932) 39 UNTS 55.

exploitation is defined in the same section as subjecting a person to forced labour, forcing a person to render services to another person, or 'enslavement of the person or subjecting him or her to servitude or a similar condition or state'. The 2008 Act as amended prohibits the trafficking of both adults and children, along with the trafficking of children for the purpose of sexual exploitation. Furthermore, the Criminal Law (Sexual Offences) Act 2017 amended the 2008 Act; and now provides, in part, at section 5 as follows:

A person who pays, gives, offers or promises to pay or give a person (including the trafficked person) money or any other form of remuneration or consideration for the purposes of the prostitution of a trafficked person shall be guilty of an offence.

Other legislation aims to minimise the risk of exploitation of workers with the provision of basic employment rights. The Payment of Wages Act 1991 sets out the legally acceptable modes of wage payment, provides a right to a written statement of wages and protection against unlawful deduction of wages. The National Minimum Wage Act 2000 allows orders to set and amend the national minimum wage for employees. The minimum wage since 1 January 2019 was set under the National Minimum Wage Order 2018,⁶⁴ and is currently €9.80. Entitlements to annual leave are set out under the Organisation of Working Time Act 1997. Under the Terms of Employment (Information) Act 1994, employees must be informed of the conditions of their employment, and it stipulates that this must be done by way of written contract. The Minimum Notice and Terms of Employment Act 1973 deals with notice - how much notice an employee must give their employer and specifies the circumstances in which notice is not required to be given. Employers also have a responsibility to deal with complaints of bullying and harassment made by employees, and employers have a duty to take reasonable care to protect employees. An employer owes a duty of care both at common law and by virtue of the Safety, Health and Welfare at Work Act 2005 to take reasonable care to prevent mental injury as a result of being harassed or bullied by other employees if they know or ought to know that such was occurring in the workplace.

Despite these legal protections, concerns remain. GRETA note that in Ireland, domestic and care workers are particularly vulnerable to exploitation.⁶⁵ In 2015, the Migrant Rights Centre Ireland examined this sector and in particular, looked at the situation of migrant workers. A subsequent report showed that poor working conditions, lack of regulation and concerns regarding the quality of care were a problem as well as au pairs being recruited into domestic work.⁶⁶ Other countries have already introduced regulations in this area, including Belgium, France, Ireland, Switzerland and the UK.

Persons who are trafficked into the State may also find themselves vulnerable to exploitation by their traffickers who can compel them to engage in unlawful activity as a means of paying off debt. The State has obligations under European law to take special measures to protect victims of human trafficking. The 2011 EU Directive on trafficking⁶⁷

⁶⁴ National Minimum Wage Order 2018, SI 2018/402.

⁶⁵ Group of Experts on Action against Trafficking in Human Beings, '7th report on GRETA'S general activities' (Council of Europe 2018) <<https://rm.coe.int/greta-2018-1-7gr-en/16807af20e>> accessed 25 August 2019, 49.

⁶⁶ 'Migrant Workers in the Home Care Sector: Preparing for the Elder Boom in Ireland' (Migrant Rights Centre Ireland) <<http://www.mrci.ie/wp-content/uploads/2015/09/Migrant-Workers-in-the-Home-Care-Sector-Preparing-for-the-Elder-Boom-in-Ireland.pdf>> accessed 25 August 2019.

⁶⁷ Council Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] L101/1.

was considered by the High Court in *Win Lin v Governor of Cloverhill*.⁶⁸ In that case, the accused, a Chinese national, maintained that he was the victim of human trafficking and should not have been prosecuted for certain drugs offences after being apprehended in a cannabis growhouse. Gardaí evidence that the accused had not been trafficked into the State was accepted in the High Court. The accused could not therefore rely on Article 8 of the 2011 Directive which provides that Member States shall ‘take the necessary measures to ensure that the competent national authorities are entitled not to prosecute or impose penalties’ on victims of human trafficking for criminal offences ‘which they have been compelled to commit as a direct consequence’ of the individual being trafficked. Hogan J held that Article 8 does not create an absolute right not to be prosecuted, but instead ‘at most ensures’ that public prosecutors in member states are ‘entitled to stipulate that no prosecution will take place’ where a victim of trafficking has been compelled to commit crimes as a direct result of being trafficked.⁶⁹

In terms of the scope of the protection offered, Hogan J stated:

What is critical, however, is that the accused must be a victim of trafficking and that there must be a real and substantial connection between the applicant’s status as a person who has been trafficked and the crimes which were actually committed. Had, for example, it been established that Mr. Lin had been trafficked into the State and that he had been coerced to work in the growhouse, then it is clear that serious consideration would have to have been given by the Director of Public Prosecutions as to whether there should have been a prosecution in the first place. Even if there had been, the decision of the English Court of Appeal ... in *R v L* [2013] EWCA Crim 991 shows that in those type of circumstances the courts are more than prepared to hold that the prosecution constituted an abuse of process.⁷⁰

In *Hussein v The Labour Court*,⁷¹ an employee and employer were both nationals of Pakistan. The applicant ran a restaurant in Dublin and recruited a man, the notice party, to come to work as a chef in the restaurant in 2002. The employee said that he had been exploited by the applicant when he arrived in Ireland, and ultimately resigned in 2009. In 2010, he brought the following three complaints to the Rights Commissioner:

1. that he had never received written terms and conditions of employment as required under section 3 of the Terms of Employment (Information) Act 1994,
2. that his employer failed to provide annual leave entitlements or any proper break, and required him to work in excess of 48 hours per week, in breach of the provisions of the Organisation of Working Time Act 1997 and
3. that the employer failed to pay him the national minimum wage as required under the National Minimum Wage Act 2000.

The employee stated, for example, that he was required to work seven days a week and was paid what amounted to pocket money in cash, with no holidays besides one month unpaid

⁶⁸ [2014] 1 IR 134 (HC).

⁶⁹ [2014] 1 IR 134 (HC) [55].

⁷⁰ *ibid* [57].

⁷¹ [2016] 1 IR 180 (SC).

in 2009. In 2011, the Rights Commissioner made a decision in favour of the notice party on all three claims and made monetary awards to the notice party against the applicant. This was not paid and the employee brought the matter before the Labour Court to enforce the award. The applicant was ordered to pay two sums totalling over €90,000 to the notice party. The Supreme Court found that the Labour Court had not erred in law in deciding to award the two sums to the former employee.

Another area of concern in recent times has been the reported abuses of migrant workers on Irish fishing vessels. In February 2016, the Atypical Working Scheme for Seafishers was launched. It provided that employees will be at minimum guaranteed the national minimum wage and statutory terms and conditions in accordance with national law, with employers also required to provide a legally binding contract of employment. In *International Transport Workers' Federation v Minister for Justice and Equality*,⁷² the High Court refused an application for an interlocutory mandatory injunction requiring the Minister to alter the Atypical Scheme pending the determination of the proceedings. The plaintiffs argued that by requiring an employee to remain in the employment of a particular employer or to be employed on a particular vessel, this scheme contributed:

“to a real and immediate risk of trafficking and/or severe labour exploitation” of migrant fishermen despite the availability, existence and ongoing pursuit of enforcement measures by or on behalf of the defendants to combat human trafficking and failures to comply with labour, health and safety laws.⁷³

The plaintiff also emphasised that the Gardaí were at the time of the proceedings investigating whether fifteen former participants in the Atypical Scheme had been trafficked. The Court noted the reported problems with the Atypical Working Scheme had been set out in a number of reports, including by GRETA and the Migrant Rights Centre.⁷⁴ In light of these concerns, the Irish Government made an immigration agreement with the International Transport Workers' Federation that non-EEA fishing workers will no longer be tied to employers and may now leave a boat to find other employment without fear of deportation. In addition, workers can no longer deduct the fee for permits from workers' wages, and the Government pledged to introduce reforms to improve regulations on pay, hours of work, minimum hours of rest and minimum safe numbers of crew. The Government also vowed to allow exploited workers to claim compensation as well as unpaid wages.⁷⁵

The efforts of the Irish Government to combat contemporary slavery practices have been criticised by the US State Department.⁷⁶ In 2018, the Trafficking in Persons Report downgraded Ireland to a Tier 2 ranking. This ranking is the same as that given to countries

⁷² [2018] IEHC 695.

⁷³ *ibid* [4].

⁷⁴ 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 Ireland (Greta(2017)28, Council of Europe 2017) <<https://rm.coe.int/greta-2017-28-fgr-irl-en/168074b426>> accessed 25 August 2019; Joint Oireachtas Committee on Business Enterprise and Innovation, *The situation of non-EEA crew in the Irish Fishing Fleet under the Atypical Worker Permission Scheme* (032 BEI 008,2017); Migrant Rights Centre Ireland 'Left High and Dry: The Exploitation of Migrant Workers in the Irish Fishing Industry' (Migrant Rights Centre Ireland 2017) <<https://www.mrci.ie/wp-content/uploads/2017/12/MRCI-FISHER-REPORT-Dec-2017-2KB.pdf>> accessed 25 August 2019.

⁷⁵ Felicity Lawrence and Ella McSweeney, 'Non-EEA Migrants on Irish trawlers gain new immigration rights' (The Guardian, 22 April 2019) <<https://www.theguardian.com/world/2019/apr/22/non-eea-migrants-on-irish-trawlers-gain-new-immigration-rights>> accessed 25 August 2019.

⁷⁶ Trafficking in Persons Report, June 2018, US Department of State at <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>, accessed 7 October 2019.

such as India, Nepal and Mexico, with Ireland the only country in Western Europe to not have been placed in Tier 1. The Report is highly critical of the prevalence of forced labour in the Irish Fishing Industry and of the state's prosecution of Vietnamese and Chinese men for cannabis cultivation despite evidence that they were victims of modern slavery. The recommendations of the Report are as follows:

Vigorously investigate, prosecute, and convict suspected offenders of both sex and labour trafficking using the trafficking law; train law enforcement and prosecutors on developing cases without reliance on victim testimony and train law enforcement, judges, and prosecutors on a victim-centred approach; improve victim identification and referral and issue a revised referral mechanism in coordination with NGOs, offering formal identification, a recovery and reflection period, and victim services to all victims without referral from police; increase efforts to identify and protect all victims, especially of labour trafficking and forced criminality; offer specialized accommodation to victims, particularly for women and traumatized victims; adopt a legal provision to exempt victims from inappropriate penalization for crimes committed as a direct result of their trafficking; increase legal assistance for trafficking victims, including for cooperation with investigations and court proceedings; establish a national hotline to report trafficking crimes and provide victim assistance and referral; explore new possibilities for victim compensation, particularly for those involved in sex trafficking; and establish an independent national rapporteur to help identify and address gaps in antitrafficking strategy and efforts.⁷⁷

Other countries have introduced legislation that explicitly aims to tackle modern slavery. These measures are regarded as relatively effective by the international community, and warrant an examination.

United Kingdom

As in Ireland, basic employment protections are provided for by legislation. The Employment Rights Act 1996 also deals with protection of wages, time off work, and pay. The minimum wage rate in the UK depends on the age of the employee. As of April 2019, minimum wage was set at £8.21 for those aged 25 and over, £7.70 for 21-24 year olds, £6.15 for 18-20 year olds, £4.35 for under 18s and £3.90 for apprentices.

As well as general employment legislation, the Modern Slavery Act 2015 was one of the first pieces of legislation in the world to attempt to specifically address the problem of slavery in the 21st century, and the first of its kind in Europe. Landau and Marshall consider that 'the global momentum around modern slavery was given a significant boost' by the adoption of this piece of legislation.⁷⁸ The use of the term 'modern slavery' in this Act is highly significant. Research conducted by the Home Office in 2014 estimated that there are between 10,000 to 13,000 potential victims of modern slavery in the UK.⁷⁹ GRETA also reported that in 2015, London police received 75 allegations of domestic servitude, 10 of

⁷⁷ Trafficking in Persons Report, <<https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>> at 235, accessed 7 October 2019.

⁷⁸ Ingrid Landau and Shelley Marshall, 'Should Australia be Embracing the Modern Slavery Model of Regulation' (2018) 46 Federal Law Review 313, 319.

⁷⁹ Kevin Bales, Olivia Hesketh and Bernard Silverman, 'Modern slavery in the UK: How many victims?' (2015) 12(3) *Significance* 16.

these relating to diplomatic households.⁸⁰ In 2018, the UK National Crime Agency reported that it had received referrals in relation to 6,993 potential victims of modern slavery.⁸¹

The Modern Slavery Act 2015 clarifies existing laws, consolidating the existing offences of slavery and human trafficking and increases the maximum sentence for the most serious offenders from 14 years to life imprisonment, and those with a previous conviction for a specific sexual or violent offence will face an automatic life sentence. The Act also provides for new orders: slavery and trafficking prevention orders and slavery and trafficking risk orders. It set up an office for the newly created Independent Anti-slavery Commissioner, among other provisions. The 2015 Act also requires businesses of a certain size to prepare a 'slavery and human trafficking statement' for each financial year, as part of the provisions under the Act relating to transparency in supply chains. This involves businesses setting out the steps that they have taken to ensure that slavery and human trafficking are not present in any of their supply chains or in any other part of the business. However, in 2018, the Home Office was critical of many businesses for failing to comply with their legal obligations under the Act:

The Home Office is writing directly to chief executives of 17,000 businesses telling them to open up about modern slavery in their supply chains, or risk being named as in breach of the law...At the moment, it is estimated that 60% of companies in scope have published a statement. Whilst there are many examples of good practice, some of these statements are poor in quality or fail to even meet the basic legal requirements.⁸²

France

While France is bound by EU Directives in this context, it has also introduced national legislation on the issues of slavery and trafficking. Article 225-4-1 of the Criminal Code criminalises human trafficking, defined as the act of recruiting, transporting, transferring, housing or receiving a person under certain circumstances for exploitation. Law no 2013-711 of 5 August 2013 also brings French law more in line with EU and international law obligations in relation to forced labour, servitude and labour exploitation. Article 225-14-1 of the Criminal Code defines forced labour as the act of forcing a person, through violence or threat, to carry out work without remuneration or for remuneration manifestly bearing no relation to the scale of the work carried out. Law no 2016-444 of 13 April 2016 sets up additional resources to provide social and professional support to victims of sex trafficking in France.

⁸⁰ 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 (Greta(2016)21, Council of Europe 2016) <<https://rm.coe.int/16806abdc>> accessed 25 August 2019, 27. Austria is another example of a country which has implemented safeguards against trafficking of private domestic staff in diplomatic households, see further European Commission, 'Together Against Trafficking in Human Beings: Austria – 3. Implementation of Anti-Trafficking Policy' (European Commission) <https://ec.europa.eu/anti-trafficking/member-states/austria-3-implementation-anti-trafficking-policy_en> accessed 25 August 2019.

⁸¹ National Crime Agency, 'National Referral Mechanism Statistics - End of Year Summary 2018' (National Crime Agency, 20 March 2019) <<https://nationalcrimeagency.gov.uk/who-we-are/publications/282-national-referral-mechanism-statistics-end-of-year-summary-2018/file>> accessed 25 August 2019.

⁸² 'Home Office tells business: open up on modern slavery or face further action' (GOV.UK, 18 October 2018) <<https://www.gov.uk/government/news/home-office-tells-business-open-up-on-modern-slavery-or-face-further-action>> accessed 25 August 2019.

Australia

Section 270 of the Australian Criminal Code Act 1995 criminalises any person who, whether within or outside Australia, intentionally:

- (a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or
- (b) engages in slave trading; or
- (c) enters into any commercial transaction involving a slave; or
- (d) exercises control or direction over, or provides finance for:
 - (i) any act of slave trading; or
 - (ii) any commercial transaction involving a slave; is guilty of an offence.⁸³

The maximum penalty is 25 years' imprisonment. Slavery is defined in the Act as 'the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person'.⁸⁴ Sexual servitude is also criminalised under the Act.⁸⁵

In *R v Tang*,⁸⁶ a woman was found guilty on five counts of possessing slaves and five counts of using slaves in relation to five Thai women used as sex workers in a brothel in 2002 and 2003. This case was the first criminal conviction for slavery under the Code. The women, who had worked in the sex industry in Thailand, had voluntarily travelled to Australia to work as sex workers. They were escorted during their flight and upon arrival were 'treated as being "owned" by those who procured [their] passage', with a sum of AU\$20,000 having been used to 'purchase' each woman. The women were informed that they had to pay back a debt of \$45,000 (an amount which included the purchase price of \$20,000, plus airfare and living expenses while working off the debt). In order to do this, they had to work six days a week and earned \$50 per customer. The trial judge noted that the women were vulnerable when they arrived in Australia as they did not speak English, had little money, did not know anyone, were not informed of the terms of their debt or what to expect in terms of their living conditions. They were required to keep hidden to avoid the immigration authorities, while their passports and return tickets were kept by the accused. The High Court however noted the trial judge's findings that the five women 'were well-provisioned, fed, and provided for', and 'not kept under lock and key', although they were 'effectively restricted to the premises'. When women paid off their debt, they were no longer restricted as their passports and tickets were returned, and they had control over their work hours. The Victorian Court of Appeal held that the judge's directions to the jury were inadequate, quashed the convictions and ordered that the accused be retried. The prosecution was given special leave to appeal to the High Court. The accused was given special leave to cross appeal on the meaning and constitutional validity of section 270.3(1)(a) of the Criminal Code. The High Court reversed the decision of the Court of Appeal, and dismissed the accused's appeal on the meaning and validity of the legislation. The matter was remitted to the Victorian Court of Appeal to consider the sentence appeal, and the accused's sentence was reduced to from 10 years to 9 years' imprisonment, with a non-parole period of 5 years.

⁸³ Section 270.3.

⁸⁴ Section 270.1.

⁸⁵ Section 270.6.

⁸⁶ [2008] HCA 39 (Austral.).

As in the UK, Australia introduced in recent times a dedicated modern slavery law, the Modern Slavery Act 2018. Modern slavery under Australian law now encompasses the offences in the Criminal Code, as well human trafficking and the worst forms of child labour.⁸⁷ Part 2 of the Act provides that certain entities must provide modern slavery statements to the Minister, with criteria set out under section 16.⁸⁸

The Merits of the Rhetoric of Slavery: Two Schools of Thought

The Case for the Language of “Slavery” in a contemporary context

Today, terms such as ‘modern slavery’, ‘modern-day slavery’, ‘slavery like practices’ or ‘contemporary forms of slavery’ have entered common parlance. The use of the phrase ‘modern slavery’ was initially suggested in the 1970s, but resistance to its use continued in favour of the term ‘trafficking’ until the end of the 1990s. Kevin Bales is one of the most avid supporters of the use of the term slavery in a contemporary context. His seminal text on modern slavery advocated the use of the language of slavery and is credited with enshrining the issue of slavery on human rights research agenda.⁸⁹ Today many governments and NGOs employ the language of slavery as their primary descriptor of exploitative practices. Although the use of the term is mostly found in the English speaking world, the concept has also been used in other languages – for example, in commemorating 150 years since the abolition of slavery in France, the *Comité Contre l’Esclavage Moderne* was established.⁹⁰ Landau and Marshall observe that ‘the term “modern slavery” is a recent one, and largely the result of an incremental expansion of the human trafficking concept’, thus it lacks a ‘precise legal definition’.⁹¹ They note that modern slavery in the 21st Century context has developed from the various responses to combat human trafficking through criminal law, and the broadening of the concept of human trafficking to include forced labour and other serious forms of labour exploitation, including sex trafficking.⁹² In this way, all of these issues came to fall under the umbrella definition of modern slavery.⁹³

Interestingly, the International Labour Office, regarded as the most authoritative body on the subject of modern slavery, used to opt for the term ‘forced labour’, occasionally employing ‘servitude’ as a synonym. However, the Office changed its position with the publication of its 2017 report entitled ‘Global Estimates of Modern Slavery: Forced Labour & Forced Marriage’⁹⁴ and began to promote the use of ‘modern slavery’ as the umbrella term for all forms of exploited labour occurring today, a position that has long been endorsed by the Walk Free Foundation.⁹⁵ As demonstrated above, this reflects the language

⁸⁷ See section 4.

⁸⁸ For example, the statement must ‘describe the risks of modern slavery practices in the operations and supply chains of the reporting entity’ and ‘describe the actions taken by the reporting entity ... to assess and address those risks, including due diligence and remediation processes’.

⁸⁹ Kevin Bales, *Disposable People: New Slavery in the Global Economy* (University of California Press 1999).

⁹⁰ ‘Actualités’ (Le Comité Contre L’Esclavage Moderne) <<http://www.esclavagemoderne.org/>> accessed 25 August 2019.

⁹¹ Ingrid Landau and Shelley Marshall, ‘Should Australia be Embracing the Modern Slavery Model of Regulation’ (2018) 46 Federal Law Review 313, 316.

⁹² *ibid*, 317-318.

⁹³ *ibid*, 318.

⁹⁴ International Labour Organisation and Walk Free Foundation, *Global estimates of modern slavery: forced labour and forced marriage* (International Labour Organisation and Walk Free Foundation 2017).

<https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf> accessed 25 August 2019.

⁹⁵ Orlando Patterson and Xiaolin Zhuo, ‘Modern Trafficking, Slavery and Other Forms of Servitude’ (2018) 44 Annual Review of Sociology 407, 409.

used in many legal instruments designed to combat slavery. Luis CdeBaca, the former US Ambassador-at-Large to Monitor and Combat Trafficking in persons has noted that ‘with contemporary slavery, more than a decade of governmental and trans-governmental initiatives have seeded the social conversation, which in turn has articulated an emerging consensus around the language of slavery’.⁹⁶ As we have seen in the analysis of domestic and international legislation above, the language of slavery has, to an extent, been embraced. It has been noted that a key factor in this was Obama’s endorsement of the term in 2012. Speaking at the Clinton Global Initiative, he remarked that:⁹⁷

I'm talking about the injustice, the outrage, of human trafficking, which must be called by its true name - modern slavery. Now, I do not use that word, ‘slavery’ lightly. It evokes obviously one of the most painful chapters in our nation's history. But around the world, there's no denying that awful reality...

There are many compelling benefits to the rhetoric of the use of the term slavery. In particular, advantages to comparing slavery to the trans-Atlantic slave trade have been noted. Appeals framed in the language of anti-slavery have helped to bestow the cause with the same elevated moral status as previous historical campaigns to end slavery in the Americas, and perhaps by drawing inspiration from anti-slavery campaigns of the 19th Century, it can be shown that a seemingly impossible feat is attainable with the right strategy. The use of the term slavery seems to have had the effect of attracting greater interest and investment in the fight to end slavery, with forced labour, sex trafficking and the other subcategories of slavery being among the very worst crimes imaginable.⁹⁸ Bravo submits that there is much to be gained from the analogy between the trans-Atlantic slave trade and modern slavery, if it is properly employed. She suggests that this comparison could lead to ‘a more comprehensive and potentially more effective framework for combating modern trafficking in human beings than do the legal and conceptual frameworks currently employed’, remarking that it encourages the important realisation that ‘the world and human-to-human exploitation may not have changed as much as we would like to believe since the era of the trade in Africans’.⁹⁹

Many scholars advocate the widespread adoption of the term modern slavery. Gould asserts that characterising exploitative practices as anything less emotive than ‘slavery’ deploys euphemisms that justify lesser responses, which is dangerous in a world where exploitation, particularly of migrants, has become normalised.¹⁰⁰ Chuang concedes that the rebranding of forced labour and trafficking as slavery has been highly effective in ‘motivating states to pass legislation, foundations to donate funds, and the broader populace to take up the “anti-slavery” cause’.¹⁰¹ Kara, one of the leading scholars

⁹⁶ JJ Gould, ‘Slavery’s Global Comeback’ (The Atlantic, 19 December 2012) <<https://www.theatlantic.com/international/archive/2012/12/slaverys-global-comeback/266354/>> accessed 25 August 2019.

⁹⁷ Office of the Press Secretary, ‘Remarks by the President to the Clinton Global Initiative’ (Obama White House, 25 September 2012) <<https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative#>> accessed 25 August 2019.

⁹⁸ Julia O’Connell Davidson, ‘“Things” Are Not What They Seem: On Persons, Things, Slaves, and the New Abolitionist Movement’ (2016) 69 *Current Legal Problems* 227.

⁹⁹ Karen E Bravo, ‘Exploring the Analogy between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade’ (2007) 25(2) *Boston University International Law Journal* 207, 294-295.

¹⁰⁰ Gould (n 96).

¹⁰¹ Janie A Chuang, ‘Exploitation Creep and the Unmaking of Human Trafficking Law’ (2014) 108 *American Journal of International Law* 609, 629.

specialising in this area, is a proponent of the use of the expression 'modern slavery'. He explains his reasoning for adopting this stance as follows:

In the contemporary era, one is attempting to assess a range of deeply exploitative and oftentimes dehumanising and alienating power relationships that can be as onerous as slavery from centuries ago. The activist in me feels, therefore, that terms like *modern slavery* and *contemporary slavery* can be responsibly used as umbrella terms that capture the range of practices predicated on achieving dominance and exploitation similar to those that occurred within the old-world system of chattel slavery.¹⁰²

It is clear however that many advocates of the use of the rhetoric of modern slavery do not take this position lightly and do not wish for it to be employed as a blanket term to cover all forms of exploitation, whatever their severity. Many organisations and activists emphasise that their references to slavery do not cover grinding chores or general workaday miseries. For example, Free the Slaves has stated that:

The difference between slavery and extremely exploitative labour can be a thin line. Sweatshop workers and migrant laborers are exploited by being paid very little, forced to work long hours and often abused at their workplace. Slaves are subjected to all these conditions, but additionally they have lost their free will — they cannot walk away. Most slaves are paid nothing at all, and the physical and psychological violence used against them is so complete that they cannot escape their slavery. Free the Slaves believes that all labour abuses and human rights abuses are wrong. Our mission, however, is ending slavery.¹⁰³

Kevin Bales has also stated that the term slavery should be reserved for the most egregious forms of exploitation:

And I want to be very clear. I'm talking about real slavery. This is not about lousy marriages, this is not about jobs that suck. This is about people who cannot walk away, people who are forced to work without pay, people who are operating 24/7 under a threat of violence and have no pay. It's real slavery in exactly the same way that slavery would be recognized throughout all of human history.¹⁰⁴

An alternative approach is to take the definition of slavery in Article 1 of the 1926 Slavery Convention and to interpret that as applying to cases of contemporary slavery. Instead of developing a new framework and implementing new legislation to tackle modern slavery, this approach favours prosecuting those responsible under existing frameworks and conventions in international law. Among the supporters of this hybrid approach are Jean Allain and Robin Hickey, who explain it in the following terms:

Courts should be alive to the import of Article 1 when determining whether slavery exists in a given case, and in its provisions they have a clear

¹⁰² Kara, *Modern Slavery: A Global Perspective* (n 5) 8.

¹⁰³ Free The Slaves, 'FAQs' (Free the Slaves) <<https://fessicsfavorites.files.wordpress.com/2011/04/free-the-slaves-faq.pdf>> accessed 25 August 2019.

¹⁰⁴ Kevin Bales, 'How to combat modern slavery' (TED) <https://www.ted.com/talks/kevin_bales_how_to_combat_modern_slavery/transcript> accessed 25 August 2019.

structure for how to proceed when making determinations of this kind. For the rest of us. Article 1 should serve as a reminder that, whilst formal slavery relations have long since been abolished, and in that sense 'legal slavery' is no longer possible, international law is not neutral on the matter, and neither are its provisions benign.¹⁰⁵

In brief, slavery is a very powerful word that has been very effective in encouraging governments and individuals to take steps to bring about the end of many different practices that affect millions of people around the world today. If using certain language has the power to help to fight to end human suffering and promote a more equal world, which is the ultimate aim of all activists, proponents and opponents of the term modern slavery alike, then it can be argued that its benefits outweigh other considerations. The term 'modern slavery' is one that is continuing to make significant gains in usage,¹⁰⁶ and removing it now from its entrenched position in international law and global politics will be exceedingly difficult and may harm the aims of the anti-slavery movement.

The case against the use of the term modern slavery

Despite an increased acceptance in its usage, many criticise the recent surge in the use of the language of slavery to describe modern instances of exploitation. A recurring argument in much of the literature advancing this position is that, although illegal in every jurisdiction, forms of chattel slavery – intergenerational systems that have persisted from the 19th Century and earlier where people are born into slavery – still exist in countries including Mauritania, Niger, South Sudan, Mali and the Côte d'Ivoire.¹⁰⁷ In fact, research suggests that the number of people subjected to this 'traditional' slavery is increasing, most notably in South Sudan.¹⁰⁸ It is thus argued that the use of the word slavery to refer to wrongs such as early marriage creates confusion and has the scope to derogate the struggles faced by those born into this form of slavery. Kara explains the general logic for the opposition to the use of the language of slavery as follows:

The second camp asserts that the use of the term *slavery* should be restricted to the historic institution of chattel slavery and those few modern instances that equally manifest the extreme levels of control, abuse, and economic exploitation that were inherent in the system of chattel slavery and legal human ownership.¹⁰⁹

A fervent critic of the use of the word slavery in a contemporary context is one of the foremost experts on slavery, Orlando Patterson. He argues that slavery requires several degrees of violent domination of people stripped from their homeland and cultural contexts in a way that dishonours them as human beings. As such only the most extreme instances of modern slavery can be compared. He suggests that it may be better to use specific terms, such as forced labour, bonded labour, or severe labour exploitation.¹¹⁰ Patterson thus considers that slavery is a heritable condition of social death (legal, civic and

¹⁰⁵ Jean Allain and Robin Hickey, 'Property and the Definition of Slavery' (2012) 61 *International and Comparative Law Quarterly* 915, 938.

¹⁰⁶ See Patterson and Zhuo (n 95), 414.

¹⁰⁷ US Department of State, 'Trafficking in Persons Report' (US Department of State, June 2014) <<https://2009-2017.state.gov/documents/organization/226844.pdf>> accessed 25 August 2019, *supra* note 13, at 258 (describing continuing de facto chattel slavery practices).

¹⁰⁸ Patterson and Zhuo (n 95), 414.

¹⁰⁹ Kara, *Modern Slavery: A Global Perspective* (n 5) 7.

¹¹⁰ See Orlando Patterson, *Slavery and Social Death* (Harvard University Press 1982).

symbolic) and degradation that imposes a permanent outsider status on its victims sanctioned by the state and reinforced by broader culture and society.¹¹¹ He argues that the definition of slavery contained in Article 1 of the Slavery Convention of 1926 was appropriate for ancient Roman and modern capitalistic slavery systems, but is not sufficient for a global consideration of slavery today. Inherent in this argument is that by designating instances of exploitation as ‘slavery’ today, we belittle the suffering of slaves of the past.

Chuang is another opponent of the use of the word slavery in this context. Her primary argument centres around the classification of slavery as a *jus cogens* norm. Norms of *jus cogens* are defined as ‘a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character’.¹¹² Chuang argues that given this status, the prohibition against slavery cannot be derogated by treaty, and that equating trafficking with slavery as a matter of law ‘risks both diluting the slavery norm and raising the trafficking threshold – with negative consequences for their target populations’.¹¹³ She considers that including trafficking and other crimes within the prohibition on slavery would have serious consequences on both the prosecution of slavery, and also on the rights of those accused, as a flexible or indeterminate definition of slavery may be in breach of the legal maxim *nullum crimen sine lege, nulla poena sine lege*. In drawing a comparison to genocide, Chuang further asserts that ‘the gravity of slavery, which is one of the most extreme human rights abuses, demands judicious use of that descriptor lest the situation and experiences of those subjected to actual slavery be diminished’.¹¹⁴

Patterson and Zhuo oppose the rise in the use of the language of slavery from a legal and sociological point of view,¹¹⁵ arguing that it amounts to a misapplication and dilution of the real meaning of slavery. They contend that it leads to classificatory confusion, as the ILO identify a subcategory of forced labour (itself a subcategory of the phenomenon of ‘modern slavery’) to be ‘work imposed in the context of slavery or vestiges of slavery’.¹¹⁶ The authors acknowledge the necessity of some form of umbrella term in this context, and propose the alternative of servitude. They propose the following definition of the term servitude: ‘that condition in which the work, service or relationships of another person are not freely offered, or, if voluntarily initiated, cannot be left or refused, and are maintained under the threat of physical or psychological coercion, violence or some other penalty’.¹¹⁷ Others argue that an umbrella term is not at all useful as it makes little analytical sense to consider diverse practices such as sexual exploitation, wartime abuses, child soldiery and forced marriage alongside each other. Miers notes that the UN Working Group on Contemporary Forms of Slavery, founded in 1975, ‘was using the term [slavery] to cover such a wide range of practices as to be virtually meaningless’ and later emphasises the need for a new definition, believing that only ‘a new clear definition in international law could

¹¹¹ Patterson and Zhuo (n 95), 411.

¹¹² Article 53 of the Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

¹¹³ Chuang (n 101), 632.

¹¹⁴ *ibid*, 634.

¹¹⁵ Patterson and Zhuo, (n 95) 410.

¹¹⁶ International Labour Organisation and Walk Free Foundation, *Global estimates of modern slavery: forced labour and forced marriage* (International Labour Organisation and Walk Free Foundation 2017)

<https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf> accessed 25 August 2019.

¹¹⁷ Patterson and Zhuo, (n 95) 410.

untangle the morass, set clear standards, and allow governments to prosecute offenders, and victims to seek redress through the courts'.¹¹⁸

Some argue that the word slavery is now used too widely and capriciously in contexts where it is not appropriate - this is a particular concern in relation to the controversial notion of white slavery, and more recently in the context of organ trafficking¹¹⁹ and prison labour.¹²⁰ Some have tried to employ the language of slavery with regard to other crimes – a designation that, in some cases, seems inappropriate. For example, Jane Kim has argued that the crime of rape should come under slavery, as 'at the time of their assault and perhaps forward are subject to the domination and degradation [of] another person'.¹²¹ Indeed, one commentator has rather facetiously pointed out that professional athletes, who are 'traded' on a 'transfer market' and alluded to being owned by a particular sports club, could conceivably come within some definitions of slavery.¹²²

Finally, a crucial reason often given for rejecting the use of the term 'modern slavery' is the property or ownership dilemma. Although it is accepted that many people are exploited in horrific circumstances today, some argue that very few cases amount to a proprietorial relationship between the individual exploited and the person perpetrating their exploitation. It is argued that, although occurring in contexts of exploitation and deception, many individuals involved in the subsections of modern slavery willingly enter into certain types of employment, albeit due to a lack of any other option due to their impoverishment. They have the ostensible status of an 'employee' and some have the ability to leave the employment, although doing so may mean destitution and in some cases certain death. Therefore, some consider that these individuals are not 'owned' as in the majority of slave societies of the past, and, though this practice is illegal and abhorrent, the designation of these individuals as 'slaves' is unjustified. Others reject this, and submit that it is still appropriate to think of modern slavery from a property perspective. Allain and Hickey carry out a comprehensive assessment of whether it is correct to speak of 'property' and 'ownership' with regard to modern-day slavery, and conclude the following:

...there is no very great gulf between legal and factual senses of ownership. Ownership is concerned with control. Where the objects of control are ordinary objects of property rights (bikes, cars, horses, coats) the great majority of the owner's exercises of control will nevertheless occur without the specific intervention of the law. Ultimately the owner can call on the law to affirm her position vis-à-vis the thing by taking legal proceedings against an interferer, but most of her actions will be factual exercises of a liberty to control, or invocations of powers to alter existing legal relations. All things considered, this position of power is not so far removed from contemporary cases involving the subjection of persons. In the modern world it remains possible to exercise exactly the same kinds of control in respect of a person, to behave as if exercising a power and create the factual consequences of so doing. Since such exercises of control remain objectionable, it makes sense to continue to refer to the language of

¹¹⁸ Susanne Miers, *Slavery in the Twentieth Century* (AltaMira Press 2003) 453.

¹¹⁹ Kara, *Modern Slavery: A Global Perspective* (n 5) 111-112.

¹²⁰ For a brief discussion on this, see Ed Pinkington, 'US inmates stage nationwide prison labor strike over 'modern slavery'' <<https://www.theguardian.com/us-news/2018/aug/20/prison-labor-protest-america-jailhouse-lawyers-speak>> accessed 25 August 2019.

¹²¹ Jane Kim, 'Taking Rape Seriously: Rape as Slavery' (2012) 35 *Harvard Journal of Law and Gender* 294.

¹²² Adelle Blackett, 'Slavery Is Not a Metaphor: Contemporary Slavery: Popular Rhetoric and Political Practice' (2018) 66(4) *The American Journal of Comparative Law* 927.

ownership in identifying slavery, as much of the greater part of ownership's import continues to have resonance in the slavery context.¹²³

Conclusion

Language is important. It is also very powerful. The precise terms that we use to label some of the most horrific human rights abuses taking place on earth today are imperative in raising general awareness and putting this issue at the top of the international agenda. In considering the language that we use when approaching this issue, the primary concern must be to encourage engagement with this pressing problem, with a view to bringing about meaningful change. In much the same way that 'global warming' stirs up a greater sense of urgency than 'anthropogenic forcing', the term slavery is more likely to inspire individuals and governments than the alternatives that we have mentioned throughout this paper. Though there are valid concerns at a doctrinal level in labelling certain practices as 'slavery', the benefits of the rhetoric of slavery appear to outweigh the potential difficulties identified by those who oppose the use of the term. These benefits have already become clear. For example, since the endorsement of the language of slavery in a modern context, there has been a significant increase in the amount of attention that major news outlets are giving to stories on various aspects of slavery. Media led campaigns such as the CNN Freedom Project have greatly contributed to making modern slavery a mainstream topic. Slavery is now on the agenda in many parliaments worldwide and, as we have seen, has led to the introduction of some important legislation.¹²⁴ There has also been what is referred to as a 'celebritisation' of the anti-slavery movement, with many influential public figures attempting to raise awareness and find solutions to the global modern slavery crisis.¹²⁵

There has never been a time in human history where slavery has not existed. It would be incorrect to suggest that the modern era has bucked this perennial trend. The notion of slavery is not fixed – it is complex and ever-changing. The idea of a slave and the state of being enslaved should not conjure just one static image: as we examined briefly above, slavery in Ancient Rome differed greatly from its presence in Celtic Ireland, and both differed fundamentally from slavery in North America. But all forms of slavery involve the degradation and abuse of human beings for economic or other gain, and all forms are dehumanising and exploitative. Though some decry the classification of organ trafficking as slavery, the accounts of people who have had organs removed and are subsequently paid little or nothing at all and left to die show perhaps better than any others that slavery allows those with power, rights and resources to consume poor, vulnerable and disadvantaged people with rarely any consequence. This is an aphorism of slavery no matter which period is under examination. It seems neither perverse nor absurd to compare the hardship to these people, or the countless other cases of modern slavery we could mention, to other examples of slavery throughout the ages.

While rhetoric and symbolism are of great importance, they must be used to underpin action and strategies. To echo the sentiments of Chang, in advocating the use of the term slavery we must hope 'to have a world in which identifying a practice as "slavery" yields

¹²³ Jean Allain and Robin Hickey, 'Property and the Definition of Slavery' (2012) 61 *International and Comparative Law Quarterly* 915, 929-930.

¹²⁴ For a comprehensive critique of Acts currently in existence to combat modern slavery, particularly that of the UK, see Virginia Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On' (2018) 81(6) *The Modern Law Review* 1017.

¹²⁵ The effectiveness and utility of this trend is questioned, however; see Dina Haynes, 'The Celebritization of Human Trafficking' (2013) 25 *The Annals of the American Academy of Political and Social Science* 653.

not only a powerful call to action, but a productive one'.¹²⁶ Great strides have been made, but further progress is needed. Perhaps it is time to reconsider the continuing utility of the definition provided in the 1926 Slavery Convention. It may now be time to propose a new international anti-slavery convention that is more in tune with the many permutations of slavery today to ensure effective prosecution of the those who perpetrate slavery. Indeed, more radical ideas have been suggested to tackle this global crisis, including a mandatory United Nations fund for slavery, international slavery courts and a transnational slavery intervention force.¹²⁷ Though the language we use carries weight, prosecutors and the global community should not be overly concerned with whether a crime meets certain set of criteria for slavery, but should instead look at the true nature of the relationship between the parties and the level of coercion and oppression involved.

Slaves are present in most areas of the global economy, and their struggles affect our lives in many ways – such as through the food we eat, the clothes we wear, and the technology that makes our lives easier. It is not certain whether it will be possible to achieve a world where no one is enslaved. It is, however, our collective moral duty to make every effort possible to attempt to rid the world of slavery. An important preliminary step is ensuring that we recognise instances of modern slavery as precisely that. Nothing will change just from using and advocating the acceptance of the term ‘modern slavery’, but very little can happen until we recognise these human rights abuses for what they truly are.

¹²⁶ Chuang (n 101), 649.

¹²⁷ Kara, *Modern Slavery: A Global Perspective* (n 5) 272-274.