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# Genealogies of Slavery

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## Abstract

This chapter addresses the concept of slavery, exploring its character and significance as a dark page in history, but also as a specifically criminological and zemiological problem, in the context of international law and human rights. By tracing the ambiguities of slavery in international law and international development, the harms associated with slavery are considered. Harms include both those statutorily proscribed, and those that are not, but that can still be regarded as socially destructive. Traditionally, antislavery has been considered within the parameters of abolition and criminalization. In this context recently, anti-trafficking has emerged as a key issue in contemporary anti-slavery work. While valuable, anti-trafficking is shown to have significant limitations. It advances criminalization and stigmatization of the most vulnerable and further perpetuates harm. At the same time, it identifies structural conditions like poverty, vulnerability, and “unfreedom” of movement only to put them aside. Linked to exploitation, violence and zemia, the chapter brings to the fore some crucial questions concerning the prospects of systemic theory in the investigation of slavery, that highlight the root causes of slavery, primarily poverty and inequality. Therefore, the chapter counterposes an alternative approach in which the orienting target is not abolition of slavery but advancing structural changes against social harm.

## Introduction

A common understanding of slavery defines slavery as the practice or system of ‘simply’ owning slaves. This is often implied to mean that slavery is either a form of ownership over people or a form of exploitation over the conditions one works. Although, both these claims fail to fully grasp slavery, the language of slavery figures increasingly often in Western modern judicial reasoning, academic analysis, and media discourse. The underpinnings of slavery often relate to either *crime* or *harm*.

When considered through the lens of criminalization and crime, slavery was abolished internationally with the Anti-Slavery Convention 1926. Since the 1990s, however, slavery has been redefined through references to human trafficking. Conversely, trafficking is mentioned in contemporary rules on slavery (Gallagher 2010). For instance, references to slavery are included in Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* supplementing the *United Nations Convention against Transnational Organized Crime* (Palermo Protocol 2000), and *vice versa*, trafficking contributes to the definition of enslavement in Article 7(2)(c) of the *Rome Statute of the International Criminal Court* (ICC Statute).<sup>1</sup> This ambivalent connection between slavery and trafficking has been diffused in national legislations, and globally propagated as a particularly “heinous” type of crime (see e.g. The Voice Of America 2017).

Yet, an understanding of slavery through the lens of harm allows us to go beyond the binary concept of criminal *versus* non-criminal acts and extends beyond strictly legal definitions. For the proponents of this approach, it makes little sense to address slavery by utilizing criminalization and crime control approaches, while leaving intact a wide range of physical, economic, social, psychological, and cultural conditions that underpin human detriment and suffering. This is because crime control strategies may exacerbate harms without resolving the underlying social, cultural, and economic conditions that perpetuate inequality and crime (Webber 2004; Tombs 2018; Hillyard and Tombs 2004). Though the term is often omitted, this approach is attuned to zemiology with social harm at its core.

Originating from the Ancient Greek word *zemia*, zemiology carries numerous connotations. Existing literature defines zemiology as the “study of harm” (Hillyard and Tombs 2004), while *zemia* also denotes, among other things, the study of loss or damage and injury as well as the study of various forms of punishment, when deviant and/or legal transgressions occur (Boukli

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<sup>1</sup> November 15, 2000, GA Res. 55/25, Annex II, UNGAOR, 55<sup>th</sup> Sess., UN Doc. A/45/49 (Vol. I) (2001), entered into force Dec. 25, 2003; The Rome Statute of the International Criminal Court, 2187 UNTS 90, July 17, 1998, entered into force July 1, 2002.

and Kotzé 2018: 2-3). Critical scholars have therefore utilized zemiology to talk about structural violence, systemic conditions, and social injury. For them capital accumulation depends on labor exploitation, made possible by the inequalities that arise from social divisions in their classist, racist, sexist, and ablist manifestations (see Fraser 2003; Fraser and Gordon 1994). The typical example of the subject of capitalism, for instance, is the rational utility maximiser who is free from social and natural restraints or external interferences and who “is sleepless, tireless, hyper-able, flexible and mobile, continuously enhancing one’s capacity to produce and consume” (Mladenov 2016: 1232). In turn, while capitalist exploitation and structural harms are the “inevitable consequence” of *laissez-faire* capitalism (Pemberton 2015), the typical focus of crime control agencies is on interpersonal violence and on individual responsibility. Against the grain of this normative position, zemiologists highlight the limitations of using criminalization as a means of addressing harms and shed light on exploitative structural features of capitalism. Applying this to slavery, the zemiological lens opens up the possibility of dealing with slavery, exploitation, and suffering as harms, conflicts, and injuries deserving mediation, arbitration, and structural remedies, rather than a mere crime control fix.

The 21<sup>st</sup> century has seen re-energized anti-slavery actions, and this development is also reflected in academic discussion of slavery. Slavery, using broad brushstrokes, has been described in four ways: firstly, as direct violation of international anti-slavery laws and directly linked to ownership and to chattel slavery (see Gallagher 2010; [Chapter 3 Rhetorical uses of the concept of slavery in the United States 1865-1914](#)); secondly, as modern slavery and a direct violation of international anti-trafficking laws linked to transnational human trafficking and organized crime (see Segrave et al. 2009); thirdly, as “modern slavery” or “modern-day slavery” that marks the rise of contemporary abolition; finally, as an alarming attempt to depoliticize issues such as imperialism (see Kempadoo 2016), racism, and sexism, through sweeping measures that aim to criminalize migration and sex work (see Bernstein 2010). To this fourth point, critics have added that contemporary efforts to use the emotive term “modern slavery” rely on “rebranding human trafficking” using the less “legalistic” concept of modern slavery (Dottridge 2017; Beutin 2017). Ultimately, slavery is being directly linked to ownership and using the terms modern slavery, slavery, as well as human trafficking interchangeably has stirred much controversy.

This chapter highlights the uneasy relationship between slavery and human trafficking within international law and international development from a zemiological standpoint. Following Julia O’Connell Davidson (2015), the analysis shows that both international law and international development

institutions inevitably take approaches that blur, rather than clarify, the lines between slavery and human trafficking. In doing so, anti-trafficking and anti-slavery have formed a united front pursuing anti-immigration policies and border control measures cracking down on “illegal migration” in order to arguably protect trafficking/modern slavery survivors. There is much discussion of inequality, injustice, discrimination, exclusion, poverty, and abuse in the context of this topic (see e.g. European Commission n.d.; Anti-Slavery Commissioner 2016). There is also a great deal of talk about victims and survivors of slavery and/or human trafficking, vulnerable groups, marginalized communities, victims of special interest, and disempowered populations. However, this discourse is silent when it comes to the beneficiaries of increasing inequality, injustice and suffering on a global scale. It merely recognises victims and perpetrators of particular *crimes*, but remains visionless when confronted with the systemic matrix of human *exploitation*, a reality that sustains a world increasingly saturated with inequality and injustice. That just one percent of the global population owns more wealth than the other ninety nine percent is much more than a slogan (Hardoon 2017).

The entry point towards investigating the above contradiction takes a genealogical perspective focused on discourses of slavery. Exploring the uneasy relationship of slavery and human trafficking in institutional discourse offers new insights into contemporary crimes and harms. By turning to international law and international development the liminality and ruptures of slavery and trafficking are being considered in decisions of the European Court of Human Rights (ECtHR) and in the Sustainable Development Goals (SDGs) of the United Nations Development Goals. The concluding section suggests an alternative approach, the main target of which is advancing structural change against harm. This builds on several themes addressed in this Handbook (see sections [Legacies of Slavery and Human Trafficking](#) and [Human Trafficking and Response Mechanisms](#)) and adds a comprehensive evaluation of the multiple harms involved without having to make a choice as to which harm is greater. Importantly, it means we do not need to choose between those harms we recognise and those we challenge but can instead think about different ways of addressing multiple harms, beyond recourse to criminalization and border control.

## Genealogy

Genealogy can take various different meanings. In its history, “genealogy” is etymologically linked with the Greek word *geneālogía*, which stands for *tracing descent* and is indicative of tracing connections. For instance, in the everyday

usage of the word, a genealogical tree charts the relationships and descent of an individual, their genes, and familial or group connections. Methodologically, family historians and genealogists have investigated past evidence in order to chart genealogical trees (see e.g. Osborn 2017). By deploying systematic efforts including searches in online catalogues, archives, collections, and databases, records emerge and are then carefully pieced together to gradually unearth family histories.

Influenced by this attachment to *genealogía*, in ethnography, the genealogical method is a procedure initiated by late nineteenth and early twentieth century ethnographers to identify social connections and lines of kinship. For instance, W.H.R. Rivers (1910) used genealogy to enhance the analysis of social organization by collecting systems of relationship and kinship through oral accounts of pedigrees. This method of collating oral accounts of pedigrees came to furnish the basis of the method, which was often used to discern a family tree from its mythical attendants. For contemporary ethnographers, however, the combination of genealogy and ethnography moves away from excavation work and deprivileges the supposed linear evolution of history as well as the idea that our past is broken down in small puzzle pieces. By extension, it also opposes the idea that as genealogists, we may be tasked to join these pieces back together. To the contrary, contemporary genealogy is oriented around disruptions, discontinuity, and critique (Mahon 1997), with a focus on bodies and their discursive reproductions. For instance, instead of piecing together the scientific knowledges about slavery and modern slavery, genealogy adopts a more nuanced approach: it reveals the contingent historical conditions of the expansion of immigration detention that make it possible to use anti-trafficking laws to obstruct humanitarian work (see Townsend 2017).

In critical theory, the genealogical approach has been used to confront ideas or practices that present themselves as universal and natural. This function of genealogy is closely linked to critique. Originating in the first generation of the Frankfurt School with critical theorists like Mark Horkheimer (1895-1973), Theodor Adorno (1903-1969), and Herbert Marcuse (1898-1979), genealogy is an attempt to recognize that things, values, and events are constituted historically, discursively, and practically. Where critique is seen as an assessment of the current state of affairs, it is also linked to an examination of what is to be done to reach a desired state. In practical terms, it involves the use of dialectic, reason, and ethics as means to study the conditions under which people live (Budd 2008). In the field of epistemology, also grounded in critique, genealogy has come to be used as an investigative method, which offers an intrinsic critique of the present. Particularly in the works of Friedrich Nietzsche and

Michel Foucault, genealogy provides the tools for uncovering the relationship between knowledge, power, and the formation of subjectivities. For example, Foucault would ask, what type of citizens are being created by anti-immigration policies.

The genealogies of Nietzsche and Foucault assume that society is composed of contesting forces. Nietzsche refers to these contesting forces as will to power. Some of these forces represent an affirmative will to power, while others a nihilistic will to power (Nietzsche 1967). Similarly, Foucault refers to these contesting social forces as power. This power is not necessarily the coercive sorts of laws that prohibit certain acts but a more constructive power – in that it constructs objects, subjects, and knowledge. For instance, Foucault’s bio-power refers to the disciplinary effects embedded in social institutions like workplaces, schools, and armies, and in the “productive” policies that aim to organize and control health, race, gender, size, age, and other parameters concerning the utility of the population. Bio-power also requires forces that resist it. Resistance does not halt bio-power; resisting forces require bio-power in order to be what they are (Evans 2012; Foucault 1978).

While some may assume that genealogy is a rather historical methodology, others have described genealogy as a kind of “abstractive practice” (Liz 2017). As an abstractive practice the task is less to glue together the continuity of a certain practice, and more to identify instances of a particular practice in order to make a wider judgement about the classification of these practices. For instance, in *Discipline and Punish*, Foucault presents the distinctively modern scientific-legal complex, from which the power to punish derives its bases, its justifications and rules. Specifically, Foucault orients our attention to the contingent and discontinuous nature of history, and he focuses on the technique of punishment by imprisonment in terms of the four main categories of archaeological analysis distinguished in *The Archaeology of Knowledge*. These are: (i) prisoners as a new class of *objects*; (ii) the formation of *concepts*, such as the concept of the criminal character; (iii) *modes of authority* of the judge, of the parole board, and of the criminologist; (iv) *enunciative modalities* or other *lines of strategies* (such as different ways of using solitude and work in the treatment of prisoners) (Foucault 1972 (2007): 44 – 78; Foucault 1977 (1995); Dean 1994). To these, Foucault adds (v) contradictions and oppositions not as secret principles to be revealed or appearances to overcome but as objects to be described. These categories are not mere linguistic expressions but underlie the power that changes the world (Gutting 2005: 45).

Foucault clarifies the orientation of genealogy by saying that it is a “history of the present” (Foucault 1977 (1995): 31). This history of the present

in *Discipline and Punish* enables attention to the prison system, with all the political investments of the body, and its far-reaching technologies of power over the body in a closed architecture. So the focus is less on how past events unfolded and more on how in its present form, punishment belongs to a political technology of the body.

As such, Foucault saw genealogy as a way to engage with “effects” beyond the mere description of transformations that take place (Deleuze 2004: 24). In this sense, a Foucauldian genealogy has often been described as a historical causal explanation that is “material, multiple, and corporeal” (Gutting 2005: 47). Foucault’s genealogies deconstruct, by showing their real origin, official meanings and evaluations involved in a society’s self-understanding. Therefore, to provide a genealogy is “to identify the accidents, the minute deviations – or, conversely, the complete reversals – the errors, the false appraisals, and the faulty calculations that give birth to those things that continue to exist and have value to us” (Foucault 1977 (1995): 146). The ultimate objective is not to introduce the question of origin. Genealogical critique will avoid the question of origin, of say the origins of slavery. Instead, genealogy reveals the contingency of that which is said to be necessary.

Finally, Foucault’s genealogy evokes an intimate tie between knowledge, power, and resistance (see e.g. Foucault 1980, 1981). This is crucial for our analysis of slavery, as Foucault’s basic insights sustain that changes in thought are not due to thought itself but due to the social forces that control and shape the behaviour of individuals. In this sense, the 21<sup>st</sup> century outcry for a “second” abolition of slavery in the context of international law and development emerges as a field of knowledge, a new object of inquiry, and a set of technologies and strategies. Further, for many the genealogical project is immediately bound to freedom, as it is unfolded in four different theses in Foucault’s thought: a) freedom and liberation are not the same thing and, hence, they are not tautological; b) freedom is a matter of concrete struggles for situated values, for instance, in anti-trafficking struggles freedom is linked to movement free of exploitation; c) freedom is a historical contingency, and therefore, historically defined; d) there is not a necessary end point in the struggle for freedom (see Tamboukou 1999). Therefore, at the heart of genealogies of slavery lies the question of how freedom is being defined.

To engage with genealogies of slavery, in what follows we discern emerging narratives of ambiguity and rupture in international law and international development, specifically in the ways that slavery, trafficking, and modern slavery become intertwined. Within the emerging rather ambiguous liminal space between slavery and human trafficking in case law, policy, and academic literature, it would be misleading to assume that slavery had to mean



more or less the same, whenever and wherever it was used. It would also be inaccurate to assume that harm has been central in discussions of slavery.

## Case Law and Slavery Discourses

To trace the evolution of slavery in legal discourse through three distinct general periods, from Classical antiquity, through to colonial transatlantic slavery trades, and finally, contemporary modern slavery, is part of a larger forthcoming project. Here we only focus on contemporary modern slavery, in order to map out a couple of different yet overlapping genealogies. The first is the rise of statistical representations of slavery generated by IGOs, NGOs, and the US Department of Justice (TIP reports), which hailed with force in the late 1990s, and fuelled narratives of grand scale victimization for illegalized migrants abused by precarious industries (e.g. ILO n.d.).

The second genealogy culminates with the emergence of new anti-trafficking legal frameworks, in the form of international law, such as the previously discussed Palermo Protocol (2000) and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (European Trafficking Convention). The Palermo Protocol is the first human trafficking treaty that integrates the “three Ps” approach (prevention, prosecution, protection) as key aspects in the fight against slavery and human trafficking. However, it still reflects the predominance of a criminalization approach that principally focuses on prosecution, with the majority of provisions on victim protection not being mandatory (e.g. Boukli 2016; Milano 2017). In turn the European Trafficking Convention as well as the 2011 European Union Anti-Trafficking Directive adopt a more holistic “four Ps” approach (prevention, prosecution, protection, partnerships) aiming to balance often conflicting values and objectives.

The third genealogy then takes the form of the existing rather scarce case law on human trafficking and slavery. At the outset, the possibility of a judgement on a trafficking case using anti-slavery arguments was not clear, since the European Convention of Human Rights (ECHR) does not include an express prohibition of human trafficking. As pointed out by critics, the European Court of Human Rights (ECtHR) finally decided to adjudicate trafficking cases through the application of its “living instrument” doctrine (see Milano 2017: 703). Particularly, below the focus turns to the ECtHR’s judgements of *Siliadin v. France* (2005), *Rantsev v. Cyprus and Russia* (2010), and *LE v. Greece* (2016). These are particularly important judgements because when considering the judgements of the ECtHR’s sister regional tribunals – the Inter-American or the African human rights courts – only the former has established state

responsibility on the basis of human trafficking in a single case (see *Hacienda Brasil Verde Workers v. Brazil*), while slavery, servitude or forced labour cases have been examined and adjudicated. As such, it is fair to say that 1) human trafficking is too rarely exposed to judicial scrutiny in relation to the gravity and dimensions of the phenomenon, as evidenced by the fact that trafficking cases have been scarcely dealt with in the legal system; 2) cases of slavery have been more readily adjudicated as opposed to human trafficking; 3) even when human trafficking cases are adjudicated the main focus is on states' obligations in relation to private actors' abuses. Simultaneously, UN treaty bodies have never found a state responsible for violating the prohibition of human trafficking and the positive obligations it entails. From what follows, it becomes evident that through the ECHR and recent jurisprudence of the ECtHR particularly on ECHR Article 4, a rupture with previous judgements occurs in the liminal space where slavery and trafficking meet.<sup>2</sup>

### ***Siliadin v. France*, no. 73316/01, ECtHR 2005-VII**

Starting with the ECtHR decision *Siliadin v. France* (2005), France was unanimously found in breach of the prohibition of slavery, servitude, forced and compulsory labour under the ECHR, Article 4 "Prohibition of slavery and forced labour". This constituted the first judgement delivered by the ECtHR relating to both slavery and potentially human trafficking, and the events of the case indeed attest to these elements. Ms Siliadin was 15 years old when was brought from Togo to France to study. This was part of the initial agreement between Ms Siliadin's father and Ms D, the person who took her to France. Ms Siliadin was forced instead to employment as domestic servant in Ms D's private household. Her passport was confiscated, she worked 15 hours per day without a day off and without any payment for several years. Simultaneously, her plans to study did not come to fruition.

Before the ECtHR, Ms Siliadin maintained that France was in breach of Article 4 of the ECHR for not having effective criminal legislation to prevent and combat slavery, servitude, and forced labour. While the above facts arguably fit

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<sup>2</sup> ECHR Article 4 provides that "[n]o one shall be held in slavery or servitude" and that "[n]o one shall be required to perform forced or compulsory labour". It is also established case law of the ECtHR that the positive obligations under ECHR Article 4 are absolute. ECHR Article 4(3) excludes from the ambit of the prohibition on forced or compulsory labor situations where the labor is carried out in the course of a prison sentence or conditional release, military service, any service "in case of an emergency or calamity threatening the life or well-being of the community", or "any work or service which forms part of normal civic obligations" (Art. 4(3)).

a human trafficking case, the ECtHR took a different view (see Piotrowicz 2012; Milano 2017). Importantly, the ECtHR examined what conduct is prohibited under Article 4 of the ECHR, as well as what the scope of State's positive obligations in relation to the conduct is. Regarding the former, Article 4 of the ECHR shows that in the event of an employment situation leading to grave abuse, slavery or servitude, forced or compulsory labor, individuals can make a complaint. Following the definitions included in the 1930 Forced Labor Convention, the 1926 Slavery Convention, and the 1956 Supplementary Convention on the Abolition of Slavery, the ECtHR distinguished between slavery, servitude, and forced labor, and proceeded to examine whether this case fell within one of these categories.

Specifically, following the 1926 Slavery Convention "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". This corresponds to the "classic" meaning of slavery as it was practised for centuries. However, the ECtHR concluded that while the applicant/Ms Siliadin was clearly deprived of her personal autonomy, the evidence did not suggest that she was held in slavery in this "classic" sense. As a genuine right of legal ownership was not exercised over her thus reducing her to the status of an "object" (*Siliadin*, para 122). Instead, the ECtHR reached the decision that Ms Siliadin was subjected to servitude and forced labor. In terms of the term "servitude", the ECtHR concluded that "servitude" means an obligation to provide one's services that is imposed by the use of coercion and is loosely linked to the concept of "slavery" described above. To determine this point, the Court considered that the applicant was a minor, an irregularized migrant, afraid of being arrested by the police and therefore vulnerable, isolated, and with no means of living elsewhere than in the home of her employers.

While this decision was celebrated for its significance in proving the ECHR as a living instrument with an increasing relevance to labor rights (see e.g. Mantouvalou 2006), it also drew some criticism with regard to the understanding of slavery. The criticism was based on the applicability of Article 4, arguing that the better approach would be to understand the prohibition of slavery as both *de jure* and *de facto*, and therefore also making this judgement on the basis of slavery possible today (see e.g. Milano 2017). The decision was further criticised on the adjudication of State's positive obligations in relation to the conduct, as the ECtHR focused solely on the positive obligation to enact criminal law provisions. Arguably, this stance shows a preoccupation with slavery as a situation pertaining to a person's legal status. As far as the substantive harms inflicted on the victim, such a stance fails to address issues

such as victim protection, prevention, and restitution, as well as wider amends such as *decriminalization* of irregularized and exploited children, for the purposes of accessing education and services.

### ***Rantsev v. Cyprus and Russia, no. 25965/04, ECtHR 2010***

Following on from this, in *Rantsev v. Cyprus and Russia* (2010), the focus shifts from domestic servitude to labour exploitation and human trafficking. The Court was confronted with the issues of irregularized non-citizens in Cyprus being employed under “artiste” visas and work permits. This was the first judgement, in which the ECtHR focused explicitly on human trafficking. In this case, the applicant, Mr Rantsev – the father of a Russian national, brought a complaint against Cyprus and Russia in the ECtHR in relation to the death of his 20-year-old daughter, Ms Oxana Rantseva. Ms Rantseva was a Russian national who entered Cyprus under an artiste visa and work permit to work in a cabaret, an arrangement that was “well known and commonly acknowledged” to be associated with sexual exploitation of foreign women coming to Cyprus mainly from the former states of the Soviet Union (*Rantsev*, paras 83-85). Upon attempting to escape, she was found by the manager of the cabaret, Mr M.A., who took her to a police station in order to process her deportation. Upon arrival, Mr M.A. explained that Ms Rantseva had only recently arrived in Cyprus and had left her employment without warning and had also moved out of the accommodation provided to her. Mr M.A. then handed her passport and other documents to the police officers. The police failed to investigate Ms Rantseva’s possible subjection to trafficking for sexual exploitation, but only checked whether her name was on a list of persons wanted by the police. On finding that she was not, they asked the cabaret manager to return and collect her. Subsequently, Mr M.A. took Ms Rantseva to the apartment of an employee of his. A few hours later she was found dead on the street below the apartment, having fallen from the second floor of the building in “ambiguous and unexplained”, “strange circumstances” (*Rantsev*, paras 41, 51, 62, 234).

As part of his complaint, Mr Rantsev argued that an effective investigation into the circumstances surrounding the death of his daughter should have included the persons or methods involved in the recruitment of Ms Rantseva. Particularly, he claimed that Cyprus and Russia had violated their obligations under Article 2 of the ECHR to conduct an effective investigation into the circumstances of the victim’s death. He pointed to alleged contradictions between the autopsies of the Cypriot and the Russian authorities and his requests to Cyprus through the relevant Russian authorities, for further

investigation of apparent anomalies, were not followed up by the authorities. Part of his complaint also built on the fact that he was not informed of the progress of the case or of other remedies available to him.

In considering the case, the Court found that the adoption of the Palermo Protocol as well as of the European Trafficking Convention has demonstrated the increasing prevalence of human trafficking at international level and the need for measures to combat it. Further, the International Criminal Tribunal for the Former Yugoslavia's judgement in *Kunarac* was brought to appraise the concept of slavery, in an effort to depart from the restrictive interpretation of slavery adopted in *Siliadin v. France*. In considering this context, the ECtHR established the incompatibility of human trafficking with the values of the ECHR and with the wider international legal norms. While this was a decisive step, it is important to consider how approaching trafficking through slavery as a juridical concept entails an ambivalence towards addressing effectively the substantive harms inflicted.

Firstly, the ECtHR examined what conduct is prohibited under Article 4 of the ECHR and concluded that human trafficking falls within the realm of Article 4 of the ECHR, without offering any further guidance as to how this is the case. Rather vaguely, trafficking was described as based on the exercise of powers attached to "ownership", which applies to chattel slavery and "to a different degree" to trafficking, as a contemporary form of slavery (see *Rantsev*, para 142). This however has been described as an "arbitrary limitation" (see Milano 2017: 706), since the Palermo Protocol and the European Trafficking Convention define human trafficking as a set of acts that include various forms of exploitation separate from and perhaps also including slavery.

Secondly, the ECtHR considered again what the scope of State's positive obligations in relation to the conduct is. In this respect, the ECtHR ruled that the complaints about the states' obligation under Articles 2, 4 and 5 were admissible. In explaining these obligations, the ECtHR implicitly referred to the "three Ps" approach (prevention, prosecution, protection), by asserting that States should be taking steps to identify people at real and immediate risk of being trafficked. Accordingly, the Court considered the procedural elements in investigations of potential trafficking and found that Cyprus was in breach of its obligations: Cyprus failed to adapt a framework that prevented the risk of human trafficking and handed Ms Rantseva back to her traffickers, failed to enact criminal law provisions, and failed to enact an effective investigation into Ms Rantseva's death. In its decision the Court held that there has been a violation of Article 4 by Cyprus by not affording to Ms Rantseva practical and

effective protection against trafficking and exploitation in general and by not taking the necessary measures to protect her. Simultaneously, the Court determined that there was no need to examine separately the alleged breach of Article 4 concerning the failure of Cypriot authorities to conduct an investigation. Therefore, effectively, the Court conflated the lines between protection and investigation (see also *Stoyanova*, this volume).

Thirdly, the ECtHR also found a procedural violation of Article 4 by Russia, awarding 2,000 euros for non-pecuniary damages sustained by Mr Rantsev due to the conduct of the Russian authorities, but ruled that he was not entitled to other claims such as travel expenses, translations, or funeral costs, to obtain the necessary funds for which Mr Rantsev had sold his home in Russia. Hence, the above three aspects of the Court's decision arguably illustrate considerable limitations in acknowledging and addressing a range of substantive harms involved in human trafficking.

### ***L.E. v. Greece*, no. 71545/12, ECtHR 2016**

Finally, in *L.E. v. Greece*, the ECtHR makes a second attempt at distinguishing slavery and human trafficking. To summarize the facts, Ms L.E., a Nigerian woman born in 1982, entered Greece in June 2004 accompanied by Mr K.A. He had allegedly promised her that he would take her to Greece to work in bars and nightclubs in exchange for a pledge to pay him 40,000 euros. Upon arrival in Greece, Mr K.A. confiscated her passport and forced her into prostitution for approximately two years. Eventually Ms L.E. contacted *Nea Zoi*, a non-governmental organization, which provides support to trafficked women. In July 2004 Ms L.E. had applied for asylum but did not take a place that was reserved for her at a reception center for asylum seekers in June 2005. Subsequently, she was arrested for prostitution and immigration law violations. In that instance she was acquitted by the court, but she was arrested again in March 2006, then convicted at first instance and acquitted on appeal. In April 2006 an expulsion order was issued against her by the police, but this was suspended. In November 2006, Ms L.E. was again arrested for prostitution, tried and acquitted, but she was subsequently detained awaiting deportation, as she did not have a residence permit in Greece. While in police detention, Ms L.E. lodged a criminal complaint against Mr K.A. and his partner Ms D.J., claiming that she was a victim of human trafficking and accused them of forcing her and two other Nigerian women into prostitution. The prosecutor dismissed her complaint, and her claim that she had been a victim of human trafficking. Ms L.E. applied for a re-

examination of her complaint in January 2007 and this time the prosecutor brought criminal proceedings against Mr K.A. and Ms D.J. for the offence of human trafficking. Ms D.J. was subsequently arrested and remanded in custody, but in 2012 a court held that she was not an accomplice but another victim of K.A. The Greek authorities renewed Ms L.E.'s residence permit until 2014.

The ECtHR was asked to consider the issues also presented in *Rantsev*, namely, the applicability and relevance of Article 4 to trafficking, as well as the scope of positive obligations arising by the general principles derived from Article 4. The ECtHR, however, merely reaffirmed that human trafficking falls under Article 4 of the ECHR without elaborating on the relation between slavery and human trafficking. As regards the positive obligations, the Court accepted that Articles 2, 3, and 4, enshrine the fundamental values of the democratic societies making up the Council of Europe and that, therefore, the scope of positive obligations should be expanded to grant further protections. Greece's national legal framework (Article 351 of the Greek Criminal Code in line with the Palermo Protocol and the European Trafficking Convention), was found capable of providing Ms L.E. with practical and effective protection. Nevertheless, the Court's approach towards the assessment of the effectiveness of Greece's legal and administrative framework relating to human trafficking has been criticized as very superficial and lacking in rigor (Stoyanova 2016). The Court failed to acknowledge that Ms L.E. had been arrested several times prior to receiving any form of protection from the Greek authorities. On the other hand, the Court's reaffirmation of the positive obligations of states under Article 4 of the ECHR, and more specifically its view that a lack of promptness, several delays, as well as other procedural failings constitute a violation of Article 4 has been welcomed as a positive development given the scarcity of relevant case law. The ECtHR also held that in this case there had been violations of Article 6§1 (due to failing to meet the "reasonable time" requirement) and Article 13 (for complaints about the length of proceedings). As a result, Greece was to pay Ms L.E. €12,000 for non-pecuniary damages and €3,000 for costs and expenses.

When considering such cases, it is hard to escape the feeling that formal justice processes are just tinkering around the edges: the harms suffered by the victims remain substantively unaddressed. These cases also offer an urgent reminder that what we define as slavery encompasses other acts that have been normalized and naturalized, such as the everyday workings of the capitalist system. While there exists a sizeable arsenal of punitive measures, beyond these there is a lack of alternative solutions. When it comes to right entitlements it is mostly in *Siliadin v. France* (para 49) where the Court refers to rights for domestic workers guaranteeing: the recognition of "domestic work in private

households as ‘real work’, that is, to which full employment rights and social protection apply, including the minimum wage (where it exists), sickness and maternity pay as well as pension rights”; “the right to a legally enforceable contract of employment setting out minimum wages, maximum hours and responsibilities”; “the right to health insurance”; “the right for migrant domestic workers to an immigration status independent of any employer”; “the right to change employer and travel within the host country and between all countries of the European Union and the right to the recognition of qualifications, training and experience obtained in the home country”. However, overall there is a lack of continuity in addressing right entitlements and in putting them into action.

### **SDGs and Slavery Discourses**

In the field of international development, spearheaded by the United Nations, consecutive frameworks, namely the Millennium Development Goals (MDGs) (2000-2015) and the Sustainable Development Goals (SDGs) (2015-2030), have attempted to consolidate the agendas of development, climate change, equality, employment, and sustainability since the late 1990s. Soon after their conception in 2000, the MDGs became arguably the “yardstick” of development progress and a new development “paradigm” (Gabay 2012; Tiwari 2015: 314). Drawing attention to development that included both economic drivers but also non-economic dimensions, such as health, education, and gender, the MDGs signalled a new aspirational era, through the echoing commitment to reduce poverty and address human deprivations. Perhaps unsurprisingly, the MDGs were described by the UN secretary-general as “the most successful global anti-poverty push in history” (UN 2013).

Against the backdrop of success, the MDGs were superseded by the post-2015 SDGs agenda. The latter was being conceived amidst acute financial uncertainties spanning over the last ten years, predictions of spiralling inequalities, and poverty. For critics, the SDGs themselves attest to the timid accomplishments of the MDGs era, while incorporating the core themes of poverty, education, health, and the remaining unmet targets in the post-2015 development discourse (see e.g. Tiwari 2015). The SDGs were adopted at the UN Sustainable Development Summit of 25 September 2015 by the High-level Political Forum on Sustainable Development in the Resolution adopted by the General Assembly on 25 September 2015, 70/1 Transforming our world: the 2030 Agenda for Sustainable Development (A/Res/70/1). In principle, the SDGs offer a systematic agenda for global development between 2015 and 2030 grounded upon 17 Sustainable Development Goals.

While prior to the SDGs there were piecemeal references to slavery and trafficking in international development and a lack of referencing of either



slavery or trafficking in the MDGs (UN 2015 The Millennium Development Goals Report), the 2030 Agenda created an ambiguous, liminal space for the co-existence of slavery and trafficking under the same goal. This complimentary or arguably metonymic use of slavery *for* trafficking and *vice versa* has been intimated in various places. References to human trafficking are scattered throughout the 2030 Agenda, for instance, Goal 5.2 sustains that states should “[e]liminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation”. Further, Goal 16.2 sets out that states should “[e]nd abuse, exploitation, trafficking and all forms of violence against and torture of children”. In its Declaration (para 27) human trafficking is linked to forced labour, since states should “eradicate forced labour and human trafficking and end child labour in all its forms”. While, redistribution of resources and sharing of wealth should also be part of addressing slavery and human trafficking: “[s]ustained, inclusive and sustainable economic growth is essential for prosperity. This will only be possible if wealth is shared and income inequality is addressed” (para 27).

Explicit references to the link between slavery and human trafficking as well as between slavery, human trafficking, forced labour, and child labour have been made via Goal 8. According to this, [states must] “[p]romote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”. Further, specifically through Goal 8.7, states should:

“[t]ake immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms”.

In this sense, the link between slavery and human trafficking has culminated in “transfers of meaning” (Nunberg 1995). Whereby, the discursive use of slavery presupposes a co-dependency with human trafficking. If the word “slavery” is then used in a transferred sense, it is possible to use the word to refer to disjointed sorts of things. This is not the same as the limited possibilities of substitution; the mechanisms are not trying to substitute “slavery” with “human trafficking” but to construe a new field of knowledge and study of inquiry, according to which slavery is transferred upon human trafficking and *vice versa*. This would serve a dual target: to either *interdefine* slavery and human trafficking by imposing some apparent sortal crossings between the two, and/or to present that solutions to the one *are* densely metonymous to the solutions to the other.

In parallel with the legal cases examined earlier, arguably, the language of state responsibility has transpired in the SDGs’ attempts to predicate transfer. However, concerns have been raised about the actual push for state

responsibility and accountability (e.g. Barry 2003; Young 2006). Particularly, in the repeated references to “consideration for national circumstances” and in vague obligations for non-governmental actors, a causal sense of responsibility is missing or at best “is hidden between the lines in paragraphs on poverty, debt and environmental issues” (Bexell and Jönsson 2017: 18). As such, critics have maintained that as with the MDGs, the SDGs have been masking root causes of the problems, while neglecting how power relations may impede accountability and real change.

### ***The UK, slavery and the SDGs***

As discussed above, the MDGs were inclusive of many key development issues, but not of human trafficking nor slavery. This changed with the SDG negotiations in 2015, and now slavery and human trafficking are mentioned in a number of the SDGs, most notably in 8.7. This significant change did not just happen on its own. There were protracted international negotiations as to what would be included and excluded from the final agreed version of the SDGs. A number of reasons could be attributed to this inclusion. Arguably that slavery is on the increase, and that an effective coalition of interested parties has come together to influence its inclusion in the development agenda. Key players have been NGOs, the ILO, as well as some governments, such as the UK government.

Within the UK, discussions around linking modern slavery to poverty and inequality commenced in 2007, when the UK government, the International Labour Organisation, as well as the NGO Anti-Slavery International (ASI) held a high-level cross sector conference with the aim to connect the issues of “poverty, development and the elimination of slavery” (McQuade 2015). According to ASI, the decisive moment in forcing the idea of slavery onto the sustainable development agenda occurred in late 2013, at a conference called by Pope Francis in the Vatican. Adrian McQuade (2015), the director of ASI, recalls that this conference felt like a “last cast of the die” to get the issue of slavery onto the international development agenda:

“with the endorsement of the Pope something of a critical mass started to form around the issue with the British Government, particularly its Anti-Slavery Commissioner Kevin Hyland, Jeffrey Sachs, an adviser to the UN Secretary-General Ban Ki-moon, and others endorsing the idea”.

Formally, the Modern Slavery Bill in the UK was first debated in June 2014. In its second reading the then Home Secretary, Theresa May MP, clearly articulated its vision along the lines of “more arrests and more prosecutions”: “tackling modern slavery will require ... a determined and focused law

enforcement response” (House of Commons [8 July 2014, column 166]). Eventually, the parliament passed the Modern Slavery Act in 2015. The Act is focused on the criminalization of modern slavery and human trafficking, and the establishment of the Anti-Slavery Commissioner whose role focuses on prevention of modern slavery offenses and identification of victims. These developments have been linked directly to the final stages of the SDG negotiations, as it was the work of the UK Government [in addition to the efforts of the UK, South Africa and Argentina], the Vatican’s Pontifical Academy of Social Sciences, the “Santa Marta Group: Church and Law Enforcement Combatting Modern Slavery”, and some of G77 governments, that “Ending modern slavery and human trafficking” was accepted as an amendment and added into SDG 8 (Anti-Slavery Commissioner n.d.; Anti-Slavery Commissioner 2016).

While the UK government responded to and worked with interest groups to include human trafficking and anti-slavery targets in the SDGs, these goals and targets are up for interpretation by governments, and the SDGs are not legally binding instruments. So, while the UK government’s interpretation of the SDGs has been in line with enacting legislation and setting up the Anti-Slavery Commissioner, these measures do not focus on the causes of slavery and the links to poverty (the original reason for linking slavery to the SDGs), but on the criminalization of human trafficking and the blending of human trafficking with slavery.

## **Conclusion**

From our investigation two key points become evident. Firstly, in recent decisions of the ECtHR and in the SDGs, the discursive use of slavery presupposes a contiguity with human trafficking. The word “slavery” is then used in a transferred sense and, hence, it is possible to use the word to refer to disjointed meanings. This is not the same as the limited possibilities of substitution; the mechanisms are not trying to substitute “slavery” with “human trafficking” but to construe a new field of knowledge and study of inquiry, according to which slavery is transferred upon human trafficking and *vice versa*.

Secondly, while one may assume that merging slavery and human trafficking may shed light on structural causes, such as poverty, income inequality, injustice, discrimination, exclusion, (un)freedom of movement, (un)freedom from want, and a variety of harms related to unequal access to services that underpin both human trafficking and slavery, this is not the case. As the existent case law is concerned, the spotlight is on crime, crime control, and criminalization. Simultaneously, the available solutions of decriminalizing irregularized migrants and offering access to an indiscriminate regime of rights

are being cast aside. As far as development is concerned, there is an undeniable gap between the purported targets and the measures used to achieve these targets.

As a result of the above, this chapter puts forward a different set of recommendations (see also Boukli and Renz 2018). It counter-poses a zemiological approach, which focuses on the harms rather than the crimes. This would involve prioritizing the communities and the people involved in human trafficking rather than focusing on formal mechanisms that ostracize and criminalize survivors. This would also involve an evidence-based discussion of trafficking that may actually reduce harm by pointing to areas that require better legal protection to prevent victimization, better access to resources, and better support mechanisms to survive and overcome harm. The orienting target is not abolition as a legal/judicial model of anti-slavery, but advancing structural changes against harm.

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