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The Challenges and Perils of Reframing Trafficking as ‘Modern-Day Slavery’

Janie A Chuang

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In the last five years, we have seen a rebranding of global anti-trafficking efforts as ‘modern-day slavery’ abolitionism. The United States of America (US) Department of State and powerful philanthropists are key proponents of the slavery makeover, prompting other governments, international organisations, and non-governmental organisations alike to adopt the ‘modern-day slavery’ frame. The slavery frame has helped ignite outrage and galvanise political support for modern anti-slavery campaigns. It has also helped expand the anti-trafficking spotlight beyond the sex sector to expose the extreme exploitation that men, women, and children suffer in the non-sexual labour sectors of our global economy. These benefits come at a cost, however, both with respect to legal doctrine and practice, and, perhaps more significantly, to how we understand and respond to the problem of extreme exploitation for profit.

One does not have to be a legal purist to appreciate the risks that come with building a global movement around a broadly-defined, made-up concept of ‘modern-day slavery’. Each of modern-day slavery’s purported component practices—slavery, trafficking and forced labour—is separately defined under international law, subject to separate legal frameworks and overseen by separate international institutions. Conflating trafficking and forced labour with the far more narrowly defined (and extreme) practice of ‘slavery’—however rhetorically effective—is not only legally inaccurate, but it also risks undermining effective application of the relevant legal regimes. Legal definitions matter when it comes to providing a common basis for governments worldwide to collect and share data, to facilitate extradition of criminal suspects, and to pursue policy coordination with other governments. They also matter when it comes to individuals directly affected by the legal regimes designed to identify perpetrators and provide redress to victims of slavery, trafficking and forced labour practices.

For example, conflating trafficking (and forced labour) with slavery risks implicitly *raising* the threshold for what counts as trafficking. In the US, for example, we have already seen how strategic use of slavery imagery by defense counsel in trafficking prosecutions can raise jurors’ expectations of more extreme harms than anti-trafficking norms actually require. That not only undermines prosecutorial efforts, but it renders accountability and redress for victims even more elusive than they already are. Similarly, diluting the slavery norm risks undermining its *jus cogens*¹ status, which in turn could compromise the international community’s ability to prosecute alleged perpetrators of slavery—a practice that, albeit rare, still exists in parts of the world. A flexible or indeterminate interpretation of what counts as slavery also risks violating the principle that crimes and punishments should be clearly defined in the law (*nullum crimen sine lege, nulla poena sine lege*), thus compromising the rights of the accused.

Perhaps equally, if not more, concerning is how the slavery makeover can limit how we understand and respond to modern-day exploitation for profit. As sociologist O’Connell Davidson has explained, slavery rhetoric and imagery can serve as a ‘discourse of depoliticization.’² Typically, slavery imagery is used to distill the complex phenomenon of trafficking into a simple narrative of crime perpetrated by evil individuals and organisations, and suffered by victims who (like 18th-century transatlantic slaves) must have been kidnapped or otherwise brought to the destination countries against their will. Depicting slavery as the product of individual

¹ *Jus cogens*, or peremptory norms, are overriding, fundamental principles of international law, from which no derogation is permitted.

² J O’Connell Davidson, ‘New Slavery, Old Binaries: Human trafficking and the borders of ‘freedom’,’ *Global Networks*, vol. 10, issue 2, 2010.

deviant behavior, modern-day slavery abolitionism creates a simple moral imperative with enormous popular appeal. And in so doing it depoliticises and absolves—behind a humanitarian agenda—the state for its role in creating the structures that permit, if not encourage, coercive exploitation of workers, especially migrants. The resulting prescriptions thus narrowly focus on punishing the enslavers and rescuing innocent victims. They further suggest that governments, corporations and individuals can eradicate slavery simply by engaging in more ethical consumption of goods and services.

Any commitment to addressing the *structural* contributors to the problem thus becomes extraneous to the anti-slavery project. States need not, for example, consider the relationship between tightened border controls and the growth in the market for clandestine migration services. They need not question the wisdom of guestworker programmes that fail to guard against employers and recruiters using the threat of retaliatory termination and deportation to chill worker complaints and worker organising. Instead, states can continue their heavy focus on penalisation and rescue strategies, despite their disappointing results. Meanwhile, the growing ranks of ‘philanthrocapitalists’ can apply their considerable skill at accumulating wealth to fixing the world’s slavery problem.³ We can maintain faith in the infallibility of their good intentions rather than question the merits of a system that enabled such wealth while also creating the vast global inequalities that feed coercive exploitation of the world’s poor.

To be sure, crime control and corporate social responsibility measures are crucial tools in the fight against modern exploitation. But far more is required to attack the roots of the problem. It may be inevitable that forced labour and trafficking are discussed in terms of ‘modern-day slavery’—but if so, we must be far better attuned to both what the slavery analogy reveals and what it obscures. The recent renaissance in slavery scholarship holds exciting potential for comparing the political economies of the slavery practices of the past and the trafficking/forced labour practices of the present.⁴ That scholarship has underscored, for example, how states that had condemned chattel slavery in the US nonetheless profited from the interstate commercial trading system created and fueled by the slave trade. Understanding modern practices against that historical backdrop might help surface how the prosperity of today’s wealthiest countries is similarly pinned to the pain of extremely exploited migrant workers—even as these countries lead the ‘anti-slavery’ charge. Or how the very exploitation we condemn as immoral actually drives our globalised economy—enabling wealthy countries to extract profits from migrants’ cheap labour and poorer countries to extract revenue from their remittances.

A far more nuanced depiction of ‘modern-day slavery’ would expose these and other deeply uncomfortable truths about how our societies and economies are structured. But confronting those truths also opens up a host of new possibilities that seek to prevent exploitation by targeting structural vulnerability. Such alternative strategies should include reforming certain aspects of current labour and migration frameworks that invite and reward the exploitation of world’s poor. These might include, for example, developing interstate mechanisms to better manage foreign labour recruitment, and strengthening domestic labour protections to empower workers to meaningfully resist coercive exploitation. Pursuing such strategies would be a departure from the penalisation and rescue models that have long dominated and defined the anti-trafficking field. But this is necessary if the modern-day slavery movement is to deliver on its promise of freedom.

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³ J Chuang, ‘Exploitation Creep and the Unmaking of Human Trafficking Law’, *American Journal of International Law*, vol. 108, no. 4, 2014; J Chuang, ‘Giving as Governance? Philanthrocapitalism and Modern-Day Slavery Abolitionism’, *UCLA Law Review*, 2015 (forthcoming).

⁴ E E Baptist, *The Half Has Never Been Told: Slavery and the making of American Capitalism*, Basic Books, New York City, 2014.