

CRITICAL ALLIES: ON CONTEMPORARY ENSLAVEMENT AND STATELESSNESS

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When I began reading about and researching contemporary enslavement some twenty years ago, I did so primarily as a political theorist rooted in Africana Studies, a field animated, among other core problems, by grappling with how the African diaspora has resisted institutions of racialised slavery and colonisation. I had always gravitated toward the Marxist camps of Black Studies, which rooted analyses of colonialism in those of racial capitalism, and to those that coalesced around the framework of Global Southern feminisms, which insisted that one could not understand race and class separately from gender. I was therefore very surprised to learn that many of my most valued colleagues were profoundly sceptical of — if they did not outright reject — work on contemporary enslavement or ‘modern slavery’.¹

Similarly, while none of my colleagues whose work is rooted in Indigenous thought and politics would diminish the significance of what is at stake in documented instances of statelessness, nor the value of the complex and difficult labour of counteracting it, few saw such efforts as immediately relevant to the political issues that they prioritise.

If we step back to consider both contemporary enslavement and statelessness through a more capacious lens, we can see why neither should be understood as the siloed purview of human rights or international law — why they are instead directly pertinent to scholars motivated by the many legacies and continued challenges of racialised enslavement and settler colonialism.

What first drew me to the writings of scholars like Kevin Bales and Moisés Naím was how convincingly they demonstrated that to be *contemporary*, enslavement today mirrors the political economic conditions and norms in which it thrives. For example, while there is enslaved labour involved in the mass production of agricultural goods, contemporary enslavement *writ large* is not concentrated in one sector of the economy but involved with multiple interacting

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¹ I avoid calling contemporary enslavement *modern slavery* for two primary reasons. First, while scholars rooted in different disciplines debate when Euromodernity begins, none would question that the trans-Atlantic slave trade was quintessentially modern, propelling the development of global capitalism. Second, slavery refers to what people engaged in slave trading hope to achieve with those they ensnare. Despite conditions of enslavement that make it near impossible, enslaved people resist becoming or remaining slaves.

pockets of global supply chains.² Similarly, with the exponential growth of the human population and the resulting cheapening of human life, purchasing an enslaved person is no longer a major investment. Particular individuals are as readily bought and discarded as other consumer products that were once cherished and maintained.³ *Even to see enslavement in contemporary global circumstances, one therefore had to adjust one's expectations and the indices one would be looking to detect.* At the same time, what is remarkably consistent is who is most vulnerable to facing enslavement and what distinguishes their enslavement from other forms of exploited labour.

Still, for many critics, researchers and activists working on contemporary enslavement were playing fast and loose with that designation. It was not clear what measures defined its parameters; if the word 'slavery' was not simply being used as a metaphor to demand all-too-scant political attention to some and not others. Furthermore, could any of these cases of forced labour be *slavery* if they operated separately from a legal institution that was widely seen as socially permissible? These, and other such challenges, deserve serious consideration, especially because they are raised by scholars who have richly contributed to the diagnosis of historical and contemporary varieties of unfreedom. Thinking through them will sharpen the thinking that informs research and policymaking efforts.

For starters, although many historians of slavery are averse to universal definitions because its forms and meanings have been so varied, Joel Quirk has rightly pointed out that differences among slave systems did not hamper the cross-cultural trade in enslaved people.⁴ Similarly, Bales echoes key dimensions of Moses I Finley, David Brion Davis and Orlando Patterson's earlier discussions when he offers that:

*Slavery is the control of one person (the slave) by another (the slaveholder or slaveholders). This control transfers agency, freedom of movement, access to the body, and labor and its product and benefits to the slaveholder. The control is supported and exercised through violence and its threat. The aim of this control is primarily economic exploitation but may include sexual use or psychological benefit.*⁵

² See Moisés Naím, *Illicit: How Smugglers, Traffickers, and Copycats Are Hijacking the Global Economy* (Anchor Books 2005); Kevin Bales, *Disposable People: New Slavery in the Global Economy* (University of California Press 2000) ('*Disposable People*'); Kevin Bales, *Understanding Global Slavery: A Reader* (University of California Press 2005); Kevin Bales and Zoe Trodd, *To Plead Our Own Cause: Personal Stories by Today's Slaves* (Cornell University Press 2008); Kevin Bales and Ron Soodalter, *The Slave Next Door: Human Trafficking and Slavery in America Today* (University of California Press 2009); Kevin Bales, Zoe Trodd and Alex Kent Williamson, *Modern Slavery: The Secret World of 27 Million People* (One World Publications 2009). See also Felicity Lawrence, 'How Did We Let Modern Slavery Become Part of Our Everyday Lives?', *The Guardian* (online, 2 April 2018) <<https://www.theguardian.com/commentisfree/2018/apr/02/modern-slavery-daily-life-exploitation-goods-services>>.

³ Bales, *Disposable People* (n 2); E Benjamin Skinner, *A Crime So Monstrous: Face-to-Face with Modern Day Slavery* (Free Press 2008) 1–41.

⁴ Joel Quirk, *Unfinished Business: A Comparative Survey of Historical and Contemporary Slavery* (UNESCO Publishing 2009).

⁵ Kevin Bales, 'Professor Kevin Bales's Response to Professor Orlando Patterson' in Jean Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press 2012) 293, 301.

He adds that enslavement can refer to a relationship between two or more people, or to a social system.⁶

Many activities, including enslavement, continue despite their illegality. Slavery's illicit nature therefore describes the *political situation* of the contemporary slave. While ownership is openly asserted only rarely, the letter of the law proves an inconstant and elusive source of clarity. International conventions with broad support often produce such consensus by leaving sufficient ambiguity for each signatory to do their own interpretive work. In addition, labour and migration law frequently set the contours of what must be successfully circumvented, with penalties for failure included in the calculation. An example is the easy masking of literal enslavement in perfunctory compliance with contractual labour language.

There are crucial differences between enslavement and other fundamentally exploitative labour regimes (I am thinking foremost of guestworker programs, which were popularly seen at the turn of the twentieth century as 'slavery, poorly disguised',⁷ but also of varieties of systems of indenture); however, the substantive differences rely on institutions, regulations and norms — that, for instance, make a pledge against a debt payable and therefore temporary — that have increasingly eroded.⁸

There is no question that there are difficulties and debates over precise counting and the generation of defensible numbers;⁹ however, the aim of defining and elaborating contemporary enslavement is to develop more and better-informed guesses about who will be at risk and what constitutes meaningful relief. Those most implicated should be at the centre of interpreting the term's applicability to them. Many quickly recognise their condition as one that moves beyond forced labour to literal enslavement. In so doing, some are fully aware of the larger legal and rights terrain they are navigating.

For many who do regard themselves as slaves, this condition, as with debt-bound children in India, begins with immobility.¹⁰ For others, it is often their limited capacity to migrate that makes the movement they will choose illegal. This illegality proves lucrative for some. For the migrants themselves, if, on arrival,

6 *ibid.*

7 Cindy Hahamovitch, *No Man's Land: Jamaican Guestworkers in America and the Global History of Deportable Labor* (Princeton University Press 2011) 13.

8 On guestworkers, see *ibid.*; Immanuel Ness, *Guestworkers and Resistance to US Corporate Despotism* (University of Illinois Press 2011).

9 For an example of debating numbers of the enslaved, see Kevin Bales, 'Slavery in its Contemporary Manifestations' in Jean Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press 2012) 229; Orlando Patterson, 'Trafficking, Gender and Slavery: Past and Present' in Jean Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press 2012) 262. For a wider contextualisation of the challenges of rigorous counting, see Joel Quirk, *Unfinished Business: A Comparative Survey of Historical and Contemporary Slavery* (UNESCO Publishing 2009); Bales, *Understanding Global Slavery* (n 2). On the problems of accurately counting trafficked people and trafficked sex workers, see John Salt and Jennifer Hogarth, 'Migrant Trafficking and Human Smuggling in Europe: A Review of the Evidence' in Frank Laczko and David M Thompson, *Migrant Trafficking and Human Smuggling in Europe: A Review of the Evidence with Case Studies from Hungary, Poland and Ukraine* (International Organization for Migration 2000) 11; Ronald Weitzer, 'The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade' (2007) 35(3) *Politics and Society* 447; Laura María Agustín, *Sex at the Margins: Migration, Labour Markets, and the Rescue Industry* (Zed Books 2007); Kamala Kempadoo (ed), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights* (Paradigm 2005).

10 Amartya Sen, *Development as Freedom* (Anchor Books 1999) 113–15.

they retain the physical capacity to move, they usually lack the legal, and often social, rights to do so.¹¹

There are clear patterns in who must find their way around rather than through borders and who can only enter as labourers through systems in which their situation is deliberately made precarious. There are states willing to extract the labour of people whose inclusion they remain determined to bar. These migrants belong to groups whose exploitation is normalised to the point of regularised invisibility, justified as inevitably preferable to whatever other alternatives might be available to them.

More generally, it is essential to recognise that enslavement, historically and in the present, is not a radical exception. Indeed, it is such a constant feature of human history that it is its eradication or relative transformation that requires explanation. While contemporary abolitionists distinguish what is transpiring now from the 'old slavery', the trans-Atlantic slave trade was quintessentially modern. Before it, the enslaved were always foreigners or the conquered, but they were also multiracial and multinational. Indeed, what divided pre-trans-Atlantic models was whether the places practicing enslavement were full-fledged empires, seeking to offset the costs of perpetual war in ways that made slavery central to their political economy, or whether their battles were local and sporadic, producing slaves that played at best auxiliary roles in the conquering society.

This longer view offers models of when who became a slave really was more contingent; how the foreignness of the slave was defined and made meaningful; the difference the labour of slaves made to the conception of their status; and how enslavement became fundamentally racialised and remade to foster capitalist forms of economy and then hybridised to reflect neoliberal, globalised ones.

Such a lens makes clear that slavery today remains racialised in ways inaugurated in the trans-Atlantic world through colonisation and enslavement. What has changed is that discrete forms of racialisation internal to parts of Africa, the Americas, Asia, the Middle East and Europe, and centred around bodies of water beyond the Atlantic have come together into the most global convergence we have yet seen. Under these circumstances, some members of a denigrated group may not be recognised as such beyond national or regional borders where those differences are salient. For others, they seem to bear marks of misfortune the world over. This is particularly the case for African-descended and Indigenous peoples.¹²

As a human institution — that is thoroughly corrosive of human relations — enslavement inevitably reflects and expresses geopolitical economic circumstances that are anchored in accretions of historical relations that birthed the shape of the present. Just as it would be a mistake to treat enslavement today as a complete break from the past, it would be a major intellectual and political error to conclude that slavery could not continue after its decisive trans-Atlantic moment.

With statelessness, many who do not work in this area associate it primarily with the conditions of World War II that inspired the creation of the 1954 *Convention relating to the Status of Stateless Persons* and the contemporary

¹¹ See Gargi Battacharya, *Traffick: The Illicit Movement of People and Things* (Pluto 2005).

¹² See Jonathan Todres, 'Law, Otherness, and Human Trafficking' (2009) 49(3) *Santa Clara Law Review* 1; Sarah Deer, *The Beginning and End of Rape: Confronting Sexual Violence in Native America* (University of Minnesota Press 2015) ch 5.

situation of Syrian refugees.¹³ In other words, they think of those pushed outside the states where they had resided with nowhere to go. While no one would not decry such circumstances, they resonate differently for those for whom states have been primarily colonial or predatory. The mobilised responses seem not to raise questions about the nature and desirability of existing states. Similarly, they do not ask about people who are displaced in place — those who were made stateless but who have never crossed a border¹⁴ or about those who have technical legal standing but who appear, in their political situation, to resemble the stateless more than they do fellow citizens.¹⁵

In an effort to connect without conflating the distinctive forms that statelessness has taken, I therefore argue for thinking of it as having at least three primary modes.¹⁶ In one, semi-autonomous groupings or nations are forcefully incorporated into centralising, homogenising states. They become in their own view, and in many cases remain, *nations without states*, even when they possess formal citizenship in rich, industrialised countries.¹⁷

As Vine Deloria Jr observed, this process was duplicated as Euromodern states consolidated themselves through imperial endeavour.¹⁸ As in earlier iterations of this mode, settler colonial states only interacted with existing governing structures they encountered as was necessary, denying their distinct legitimate and international standing. Depending on exigent political needs, as they sought to absorb these previously autonomous territories into themselves, they sometimes withheld membership and, in other moments, forcibly incorporated people as individuals separate from the nations through which they understood themselves.

In the second, familiar mode, people are pushed outside of the only political home they know and into a world carved up into states each of which claims monopoly to determine its terms of entry and exclusion. In most such cases, the stateless, who are disproportionately racial, ethnic and colonised minorities facing state repression, are made into non-citizens by the country of their birth. Neither beginning nor ending in the mid-twentieth century, this mode of generating stateless people is also evident in the many cases of relegating people to *legal elsewhere*s or to spaces within states where it is accepted that a patterned, divergent set of rules apply. This has been evident in the United States in plantation slavery, Japanese internment, legalised residential segregation, and particular dimensions of mass incarceration independent of and for deportation.

In the third mode, the very category of citizenship and expectations linked to it are so significantly diminished that, if one previously could roughly envision

¹³ *Convention Relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960).

¹⁴ For rich discussion of this phenomenon see Kristy Belton, *Statelessness in the Caribbean: The Paradox of Belonging in a Postnational World* (University of Pennsylvania Press 2017).

¹⁵ For more on this point, see Jane Anna Gordon, *Statelessness and Contemporary Enslavement* (Routledge 2020); Margaret Somers, *Genealogies of Citizenship: Markets, Statelessness, and the Right to Have Rights* (Cambridge University Press 2008).

¹⁶ There are, in addition, forms of statelessness produced by legal or administrative ‘gaps’. In some cases, these arise due to unforeseen circumstances, but they can also result from failures of international coordination. At the same time, while there are instances when statelessness does not occur by deliberate political design, in the vast majority of cases, the stateless are made into non-citizens in and by the country of their birth.

¹⁷ On this point, see James Minahan (ed), *Nations without States: A Historical Dictionary of Contemporary National Movements* (Greenwood Press 1995).

¹⁸ See Vine Deloria Jr, *Custer Died for Your Sins: An Indian Manifesto* (University of Oklahoma Press 1969).

political membership as occupying a spectrum — with full membership of a powerful Western State, on the one hand, and statelessness, on the other — in this mode, all groups, even the enfranchised, become marked by *degrees of statelessness* through which the concrete value of political membership is eroded.

However flawed and embattled, citizenship in states, while influenced by relations determined and enshrined by the market, was not simply to duplicate them. There was a sense that a nation worth its muster did not allow tragedies that could be averted to befall its own, even if ‘tragedies’ and ‘its own’ could prove quite elastic. Even more humble citizens, through political inclusion, had, through a passport, access to a world beyond their immediate borders; a right to rights that loaned institutional and national power that far exceeded their own personal domestic social location. What is vital about the widespread retreat from models of citizenship that sought to give concrete, material value to political belonging is that it also encouraged the neglecting of alternatives to existing States and discouraged attention to and support for the growth of other forms of institution that do and can more effectively nurture distinctively political forms of membership. In their absence, the only state to which many citizens belong does not seem to offer much.

Considering these modes of creating stateless people together illustrates that, like enslavement, statelessness is not a radical exception. Instead, both phenomena are two discrete but predictable outcomes of similar processes of the racialised debasement of citizenship. Few lamentable circumstances have not befallen communities facing protracted statelessness. Among the lamentable circumstances is literal enslavement. And for members of ethnic and racial communities long enslaved, the conditions that follow their legal emancipation can often be compared with that of the stateless since the government of the states where they reside frequently refuse to treat them as belonging, and there is no other political unit they might claim as their own.