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## REVIEW ESSAY / NOTE CRITIQUE

# Slavery and Unfree Labour: The Politics of Naming, Framing, and Blaming

**Judy Fudge**

Annie Bunting and Joel Quirk, eds., *Contemporary Slavery: Popular Rhetoric and Political Practice* (Vancouver: UBC Press, 2017)

Julia O'Connell Davidson, *Modern Slavery: The Margins of Freedom* (Houndmills, Basingstoke: Palgrave Macmillan, 2015)

David Van Arsdale, *The Poverty of Work: Selling Servant, Slave and Temporary Labor on the Free Market* (Leiden, Netherlands: Brill, 2016)

ACCORDING TO THE 2017 GLOBAL SLAVERY INDEX, “On any given day in 2016, an estimated 40.3 million people were victims of modern slavery.”<sup>1</sup> Produced by the Walk Free Foundation and International Labour Organization (ILO), in partnership with the International Organization for Migration, the Global Slavery Index provides a country-by-country map of the estimated prevalence of modern slavery combined with information about the steps each government has taken to combat it. Acknowledging that definitions vary, the Global Slavery Index uses the term “modern slavery” to refer

to situations where one person has taken away another person’s freedom – their freedom to control their body, their freedom to choose to refuse certain work or to stop working – so that they can be exploited. Freedom is taken away by threats, violence, coercion, abuse of power and deception. The net result is that a person cannot refuse or leave the situation.<sup>2</sup>

Coined to harness the moral outrage now directed at the transatlantic slave

1. The Global Slavery Index 2016, accessed 24 February 2018, <https://www.globalslaveryindex.org/findings/>.

2. The Global Slavery Index, 2017 Global Estimates, accessed 24 February 2018, <https://www.alliance87.org/2017ge/modernslavery#!section=0>.

trade, “modern slavery” is a portmanteau that covers a range of practices, including the chattel slavery of the transatlantic slave trade, forced labour, human trafficking for labour exploitation or prostitution, and forced marriage, all of which are outlawed in international, transnational, and national human rights and criminal law instruments.<sup>3</sup> The chief of staff of the Organisation for Economic Co-operation and Development, George Ramos, claimed that in 2015 the number of modern slaves in the world was “nearly four times the total number of Africans sold in the Americas during the four centuries of the transatlantic slave trade.”<sup>4</sup>

In contrast to the United Kingdom and Australia, where there is a robust political debate about modern slavery and strong bipartisan support for legislation to tackle it,<sup>5</sup> in Canada the political resonance has been much fainter, confined to an incongruous combination of socially conservative politicians in the West, mainly in British Columbia, and migrant rights activists.<sup>6</sup> Part of the reason Canada was given a mediocre score (a BB) by the Global Slavery Index for its response to modern slavery was its failure to make slavery a stand-alone crime.<sup>7</sup> However, there is some indication that modern slavery discourse may be gaining ground in Canada. Canadian companies with revenue of at least £36 million in the United Kingdom are required under the UK’s Modern Slavery Act, 2015 to publish a statement of the steps they take to ensure that slavery and human trafficking are not taking place in their supply chains or in any part of their business.<sup>8</sup> Moreover, “modern slavery” is used in news headlines to characterize young women trafficked into prostitution and the exploitation of “foreign workers” who are not paid their wages.<sup>9</sup>

3. Judy Fudge, “Modern Slavery, Unfree Labour and the Labour Market: The Social Dynamics of Legal Characterization,” *Social and Legal Studies* 27, 4 (2018): 414–434.

4. Gabriela Ramos, “Abolish Modern Slavery!” *OECD Insights*, 29 June 2017, <http://oecdinsights.org/2017/06/29/abolish-modern-slavery/>.

5. See Fudge, “Modern Slavery”; Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia*, n.d., accessed 28 February 2018, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/ModernSlavery](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery).

6. Judy Fudge, “Migrant Domestic Workers in British Columbia, Canada: Unfreedom, Trafficking and Domestic Servitude,” in Johanna Howe & Rosemary Owens, eds., *Temporary Labour Migration in a Globalised World: The Regulatory Challenges* (Oxford: Hart, 2016), 151–172.

7. The Global Slavery Index, accessed 24 February 2018, <https://www.globalslaveryindex.org/country/canada/>.

8. See for example Air Canada, Modern Slavery and Human Trafficking Statement, 31 July 2017, <https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/en/Air-Canada-Modern-Slavery-Act-Statement-2016.pdf>.

9. Glen Stone, “Canada’s Shameful, Modern-Day Slave Trade,” *Toronto Sun*, 10 February 2012, <http://torontosun.com/2012/02/10/canadas-shameful-modern-day-slave-trade/wcm/2e410af6-9dc4-4ef7-bc3e-821a5970ed41>; Chris Glover, “It’s Slavery in the Modern World: Foreign

Although the term “modern slavery” has permeated neither Canadian political debate nor academic discussion,<sup>10</sup> there is significant literature on unfree labour, mainly with respect to temporary migration.<sup>11</sup> Unlike modern slavery, which functions as both a political rhetoric and a legally defined crime, unfree labour is an analytic category. Sociologists, political economists, and socio-legal scholars have developed the concept of unfree labour to refer to relations of production where direct political/legal compulsion is used to acquire and exploit labour power, as in the case of migrant workers who, because of immigration controls, are not free to circulate in the labour markets of the host countries in which they are working.<sup>12</sup> This understanding of unfree labour has its origins in Marx’s central idea that the working class was formed as peasants were detached from the land.<sup>13</sup> This often-violent dispossession resulted in a double sense of freedom; workers were free of the land, in the sense that they no longer had customary rights to work it and subsist on it, and they were also free of the demands imposed by lords and masters who exercised direct proprietorial rights over their labour. The freedom to circulate in the labour market and to sell their labour power to a number of different employers was the hallmark of the “free” labour of wage earners. But, in his dialectical understanding of labour power as a commodity, Marx highlighted the fundamental tension at the heart of capitalist social relations: that workers are free insofar as they have the capacity to sell their labour as a commodity and unfree insofar as they are compelled to do so in order to sustain themselves.

By contrast, liberals and the “new abolitionists” – a term used to characterize major nongovernmental organizations (NGOs) such as Walk Free,

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Workers Say They Were Hungry, Abused at Toronto Temple,” *CBC News*, 17 January 2018, <http://www.cbc.ca/news/canada/toronto/hindu-priest-abuse-allegations-1.4485863>.

10. Benjamin Perrin, *Invisible Chains: Canada’s Underground World of Human Trafficking* (Toronto: Viking, 2010).

11. Vic Satzewich, *Racism and the Incorporation of Foreign Labour: Farm Labour Migration to Canada* (New York: Routledge, 1990); Tanya Basok, *Tortillas and Tomatoes: Transmigrant Mexican Harvesters in Canada* (Montréal and Kingston: McGill-Queen’s University Press, 2002); Abigail Bakan & Daiva Stasiulis, “The Political Economy of Migrant Live-in Caregivers: A Case of Unfree Labour,” in Pattie Lenard & Christine Straehle, eds., *Legislated Inequality: Temporary Labour Migration in Canada* (Montréal and Kingston: McGill-Queen’s University Press, 2012); Judy Fudge & Kendra Strauss, eds., *Temporary Work, Agencies, and Unfree Labour: Insecurity in the New World of Work* (London and New York: Routledge, 2013); Judy Fudge, “Making Claims for Migrant Workers: Human Rights and Citizenship,” *Citizenship Studies* 18, 1 (2014): 29–45; Aziz Choudry & Adrian A. Smith, eds., *Unfree Labour? Struggles of Migrant and Immigrant Workers in Canada* (Oakland: PM Press, 2016).

12. Robert Miles, *Capitalism and Unfree Labour: Anomaly or Necessity?* (London: Tavistock, 1987); Robin Cohen, *Migration and Its Enemies: Global Capital, Migrant Labour and the Nation-State* (Aldershot, England: Ashgate, 2006); Nandita Sharma, *Home Economics: Nationalism and the Making of Migrant Workers in Canada* (Toronto: University of Toronto Press, 2006).

13. Karl Marx, *Capital: Critique of Political Economy* (Harmondsworth: Penguin, 1990).

Anti-Slavery International, Free the Slaves, Not for Sale, and their philanthro-capitalist funders – regard unfree labour as comprising situations in which workers’ freedom to choose to refuse certain work or to stop working is taken away by threats, violence, coercion, abuse of power, and deception.<sup>14</sup> Thus, for them, modern slavery is the pre-eminent form of unfree labour.

The meaning of modern slavery and the political work it performs, as well as its relationship to “old” forms of slavery, especially chattel slavery, are at the heart of two of the books discussed in this essay. Moreover, one of these books also probes the relationship between slavery, in all its varieties, and unfree labour, which leads nicely to the third book discussed in this essay. The third book focuses on employment agencies and describes how, as they moved from England to North America during the colonial period, they sold workers into indentured servitude and slavery as well as free wage labour. In what follows, I briefly describe each book and then concentrate on the light they shed on the current campaigns against modern slavery and the analytic heft of the concepts of “modern slavery” and “unfree labour.” I will conclude with some thoughts about the danger of embracing the rhetoric of modern slavery in the Canadian context.

For the title of their important edited collection, Annie Bunting and Joel Quirk choose the term “contemporary slavery” – not the more popular “modern slavery” – so as to distinguish their approach from the new abolitionist crusade that, they argue, has privileged activism over analysis and rhetoric over substance. They explain that the problem with the new abolitionists is that they hype the problem, producing contentious facts about the scale of modern slavery and creating a hierarchy of harms and suffering in which “slavery” is promoted as a unique and exceptional evil that stands apart from other ‘lesser’ challenges.”<sup>15</sup> Thus, Bunting and Quirk’s concern is to explore the political cause of contemporary slavery, its rhetoric, and its practice, and they divide the twelve chapters of their book into three equal parts under these headings. Their helpful introduction sets out their approach, which is a pluralistic framework that focuses on specific practices and legal harms (such as prostitution and sexual exploitation, wartime captivity and abuses, forced marriage, child labour, and forced labour) instead of the expansionist framework employed by the Global Slavery Index and the United Nations (UN) Special Rapporteur on Contemporary Forms of Slavery that folds these different practices under the umbrella term “modern slavery.” Their approach is doubly pluralistic; not only are they careful to disaggregate contemporary slavery into different forms and themes, but they place each theme alongside

14. Janie A. Chuang, “Giving as Governance? Philanthrocapitalism and Modern-Day Slavery Abolitionism,” *UCLA Law Review* 62 (2015): 1516–1556.

15. Annie Bunting and Joel Quirk, “Contemporary Slavery as More than Rhetorical Strategy? The Politics and Ideology of a New Political Cause,” in Annie Bunting and Joel Quirk, eds., *Contemporary Slavery: Popular Rhetoric and Political Practice* (Vancouver: UBC Press, 2017), 9.

the “more established bodies of research,” such as the limits of law reform and rights advocacy, the peril of human rights indicators, and feminist critiques of human rights protection.<sup>16</sup>

Bunting and Quirk’s overall project is to uncouple the political rhetoric of antislavery and anti-trafficking in order to detach “political agendas and political stakeholders from the empty rhetoric of ‘bipartisanship.’”<sup>17</sup> They are concerned to understand how the antislavery rhetoric and the political economy of activism (who gets funded and by whom) aligns with other ideological, political, and economic agendas and the consequences of these alignments. In doing so, they carefully tread the often-fraught line between those who adopt an expansionist approach, such as Gulnara Shahinian, who was the first UN Special Rapporteur on contemporary forms of slavery, and legal purists, such as Jean Allain, who insists on a definition of slavery that centres on property.

A key theme uniting the different chapters of *Contemporary Slavery* – many of which focus on different slave-like practices (Benjamin N. Lawrence on forced marriage, Bunting on wartime enslavement, Rhoda E. Howard-Hassman on state enslavement in North Korea, and Jonathon Blagbrough on child domestic labour) – is the epistemological incommensurability of the different actors and groups deploying modern slavery discourse. In an excellent chapter, Fuyuki Kurasawa illustrates the key processes and mechanisms through which “antislavery advocacy groups produce [modern slavery] as a moral evil, against which public opinion can be mobilized.”<sup>18</sup> Specifically, he shows how the histories and iconographies of the transatlantic slave trade and American plantation slavery have been harnessed by new abolitionists to “gain socio-political traction in Western public spheres.”<sup>19</sup> Through a contextual reading of the debate about the key issues in the South African anti-trafficking campaign, Darshan Vigeswaran emphasizes the epistemological differences between social scientists and human rights scholars, on the one hand, and government policy analysts, NGOs, and community organizations, on the other. He claims that academics failed to influence the anti-trafficking debate because of financial incentives, legitimization games, and sunken costs. But instead of counselling despair, Vigeswaran urges academics to map out the contextual factors that influence the positions that local actors adopt and, explicitly, to engage with these factors when developing their research. Lawrence highlights the divergences between the requirements of legal processes for asylum applicants and the language of victims when it comes to forced marriages.

16. Bunting and Quirk, “Contemporary Slavery,” 23.

17. Bunting and Quirk, “Contemporary Slavery,” 22.

18. Fuyuki Kurasawa, “Show and Tell: Contemporary Anti-Slavery Advocacy as Symbolic Work,” in Bunting and Quirk, eds., *Contemporary Slavery*, 158.

19. Kurasawa, “Show and Tell,” 159.

He uses forced marriage “as an example of the dangers of homogenizing language and simplistic categories such as the collapsing of ‘forced marriage’ and ‘servile marriage’ into the Walk Free Foundation’s Global Slavery Index.”<sup>20</sup> In her chapter on the testimonials of women survivors of wartime enslavement in international criminal trials, Truth and Reconciliation Commissions, and other proceedings in postconflict situations, Bunting shows how the need for specific kinds of narratives overbears the complexity and nuance in the accounts of survivors. While she is mindful of the “dangers of appropriating and consuming the suffering of women,” she argues that the narratives of survivors are critical and highlights the need for a better politics of representation.<sup>21</sup> Moving to the level of institutional responses to modern slavery in the postconflict context, Roy L. Brooks argues that the existing reparative framework (based on retributive and compensatory models of justice) tends to collide with the higher mission of restorative justice (based more on atonement and forgiveness). He claims that in the postconflict period, the interests of states often swamp the well-being of victims and questions of redistributive justice are rarely raised.

What these chapters illustrate is that the term “modern slavery” breaks down the minute it is employed in the analytic as opposed to moral register.<sup>22</sup> Despite criticism of attempts to provide a uniform definition of modern slavery, Allain, recognized as the leading international law scholar on the law of slavery, argues for a legal definition of slavery that is based on a property paradigm. Relying on the work of a research network of scholars of slavery and property law, which he was key in establishing (and which includes the collection’s two co-editors), he emphasizes the continuing relevance of the definition of “slavery” in the 1926 League of Nations Convention against Slavery: “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership is exercised.”<sup>23</sup> Moving beyond *de jure* to *de facto* possession, because slavery as a legal institution has been banned, Allain argues – using the conventional positivist legal methodology of interpreting the legal text in light of the preparatory documents and subsequently judicial interpretations – that control tantamount to possession is the

20. Benjamin N. Lawrence, “Asylum Courts and the ‘Forced Marriage Paradox’: Gender-Based Harm and Contemporary Slavery in Forced Conjugal Associations,” in Bunting and Quirk, eds., *Contemporary Slavery*, 98.

21. Annie Bunting, “Narrating Wartime Enslavement, Forced Marriage, and Modern Slavery,” in Bunting and Quirk, eds., *Contemporary Slavery*, 132.

22. I have adapted Kerry Rittich’s comments regarding the meaning of “exploitation” in the definition of human trafficking. See Rittich, “Representing, Counting, Valuing: Managing Definitional Uncertainty in the Law of Trafficking,” in Prabha Kotisaran, ed., *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery* (Cambridge: Cambridge University Press, 2017), 246–248.

23. League of Nations (1926) Convention to Suppress the Slave Trade and Slavery, 25 September 1926, 60 League of Nations Treaty Series 253, Registered No. 1414, Article 1(1).



hallmark of the legal crime of slavery. He claims that the powers to buy, sell, use, profit, transfer, consume, and exhaust individuals are the indicators of control tantamount to possession and, thus, slavery. This definition was incorporated into the 2012 Harvard-Bellagio Guidelines on the Legal Parameters of Slavery, which was adopted by the research network. Allain is careful to distinguish slavery from forced labour (as defined in ILO Convention No. 29, 1930) and slavery-like practices, as set out in the 1956 Supplementary Convention, because the prohibition on slavery has been sufficiently incorporated into the customary international law as to be fairly characterized as a *jus cogens* international law of human rights, which means it has binding effect on all states regardless of whether or not they have ratified the 1926 Convention.<sup>24</sup> By contrast, Quirk, a political scientist, demonstrates the essential ambiguity in the definition of trafficking contained in the influential Trafficking Protocol, which was one of the three supplements to the 2000 UN Convention against Transnational Organized Crime. That definition “comprises over a hundred words and a series of qualifying clauses revolving around transit (for example, recruitment, transportation, transfer), technique (for example, force, coercion, abduction), and terms of exploitation (for instance, sexual exploitation, forced labour, slavery).”<sup>25</sup> In this way, Quirk argues, trafficking has become a powerful lodestone for competing agendas and interests and, thus, functions more as a political than a legal concept.

A second overarching theme of the collection is the politics (and economics) of antislavery practice. Andrew Crane brings a management perspective to bear on the question of modern slavery, one that is increasingly popular in light of the UK's Modern Slavery Act and the California Transparency in Supply Chains Act. Crane argues that modern slavery should not be seen as a deviant exception, but rather as a management practice associated with supply chain management, value capture, accounting opacity, “amoralization” practices, and public and private corruption. Turning from business practices that result in various forms of modern slavery, Rhoda E. Howard-Hausmann explores state slavery in contemporary dictatorial states, using North Korea as her prime example. She questions why the late Kim Jong-Il was not – and why his son Kim Jong-Un has not yet been – referred to the International Criminal Court (ICC) on suspicions of crimes against humanity, including slavery. She claims it is unlikely that the UN Security Committee would vote to refer North Korea to the ICC and concludes that this shows that the international human rights system does not make strong demands on the international system as a whole. The response to the interventions of human rights NGOs to “free the slaves” by local elites who are former slave holders is the subject of Austin

24. Jean Allain, “Contemporary Slavery and Its Definition in Law,” in Bunting and Quirk, eds., *Contemporary Slavery*.

25. Joel Quirk, “When Human Trafficking Means Everything and Nothing,” in Bunting and Quirk, eds., *Contemporary Slavery*, 85–86.



Choi-Fitzpatrick's chapter. Based upon his analysis of his semistructured interviews with slave holders in India, Choi-Fitzpatrick argues for the need both to go beyond a simplistic law and enforcement lens when it comes to understanding the resistance of modern slave holders to human rights campaigns and to critically engage with social and economic conditions in which former slaves must interact with their former abusers. In the final chapter, Jonathan Blagbrough considers child domestic workers and argues that it is crucial to adopt both a labour and a gender lens for understanding why these children are vulnerable to exploitation. He emphasizes the importance of talking to the children themselves and raises the bigger question about societal attitudes toward girls and how these attitudes contribute to channelling them into exploitive domestic work.

An important and valuable contribution of Bunting and Quirk's collection is its focus on epistemology and politics of the new abolitionists' campaign to eradicate modern slavery. Their pluralist framework, which stresses the importance of paying attention to the specificities of different regimes of exploitation and their local context, is a welcome corrective to the universalizing discourse of evil slave drivers and poor victims. Their choice of contributors and their subjects also underlines the sheer diversity of practices that fall under the rubric of modern slavery. The editors make a convincing case that "the global cause of combatting modern slavery can best be understood as an unstable amalgamation of a wide range of diverse practices that go well beyond both legal definition and historical experiences of slavery."<sup>26</sup> Yet, even some of the volume's contributors resist their call to move away from a "contemporary slavery studies" framework and focus more on related literatures and specific practices.<sup>27</sup>

Like Bunting and Quirk, Julia O'Connell Davidson is also concerned about the rhetoric of modern slavery and the practices of new abolitionists. Her concern is not with its expansionist tendency, however, but rather with the "highly selective lens through which to view restraints on human freedom."<sup>28</sup> The questions that interest her are these: "What leads the new abolitionists to identify some, but not other, forms of injustice, violence and exploitation as 'slavery', and what traditions of thought, conceptual schema, and collective memories frame their vision?"<sup>29</sup>

To answer these questions, O'Connell Davidson draws on two sets of literatures. The first is the rich scholarship in history, philosophy, political theory, English literature, law, anthropology, sociology, and cultural studies on

26. Bunting and Quirk, "Contemporary Slavery," 6.

27. Austin Choi-Fitzpatrick, "Letting Go: How Elites Manage Challenges to Contemporary Slavery," in Bunting and Quirk, eds., *Contemporary Slavery*, 297.

28. Julia O'Connell Davidson, *Modern Slavery: The Margins of Freedom* (Houndmills, Basingstoke: Palgrave Macmillan, 2015), 2.

29. O'Connell Davidson, *Modern Slavery*, 3.

transatlantic slavery, the original abolitionist movement, and slave emancipation and its aftermath. Her reading of this literature challenges the hegemonic ideas and beliefs that liberal societies have about slavery. The substantial and growing body of ethnographic and interview research on the specific practices included under the term “modern slavery” is the second body of literature O’Connell Davidson relies on, and it too complicates our understanding of these practices. She structures her chapters by bringing these two sets of literature into dialogue with each other in order to challenge the modernist binaries, which are inscribed in the new abolitionist approach, between past/present, status/contract, hierarchy/equality, traditional/rational, tyranny/freedom, and slavery/free wage labour. She highlights the overlap in the experiences between chattel slaves and other categories of dependents (servants, wives, children) and contrasts these accounts with contemporary practices that new abolitionists identify as modern slavery: for example, bonded labour and the worst forms of child labour (Chapter 3), forced labour (Chapter 6), forced marriage (Chapter 7), and sex trafficking (Chapter 8). These chapters demonstrate not only a great deal of erudition, but a careful and critical attention to how these different practices overlap with class, caste, race, nationality, and gender in ways that “constitute an overwhelming obstacle to differentiating between ‘slave’ and ‘non-slave’ in the contemporary world.”<sup>30</sup>

Individually and cumulatively these chapters challenge the salience of both the expansive definition of modern slavery proposed by new abolitionists and the more circumspect legal definition that focuses on possession. In the introduction, O’Connell Davidson traces the current interest in slavery back to threats around transnational organized crime and concerns around controlling immigration. By framing the fight against modern slavery as a fight for fundamental human rights, she claims that governments concerned with border controls have formed new alliances with NGOs, which are the new abolitionists. O’Connell Davidson emphasizes how the fight against human trafficking, which initially focused on sexual exploitation but has now expanded to labour exploitation, has morphed into the bigger fight against modern slavery. In the 2000s, a string of antislavery NGOs – the above mentioned Free the Slaves, Not for Sale, End Slavery Now, and the Walk Free Foundation, to name some of the most prominent – joined the long-established Anti-Slavery International in their human rights crusade. O’Connell Davidson centres her analysis on Kevin Bales, co-founder of Free the Slaves and a consultant with the Walk Free Foundation on the Global Slavery Index. Currently professor of contemporary slavery at the Wilberforce Institute for the Study of Slavery and Emancipation, University of Hull, Bales has been at the vanguard of the modern antislavery crusade, and the new abolitionists, as O’Connell recounts in Chapter 2, have embraced his definition of modern slavery.

30. O’Connell Davidson, *Modern Slavery*, 54.

In Chapter 2, O'Connell Davidson interrogates the meaning of slavery and why it is considered so uniquely wrong. She begins by tracing social-contract theorists' approach to slavery, which hinges on the notion of consent. Contrasting slavery with contractual servitude, she argues that lack of consent cannot support slavery's unique moral wrongness. Thus, prior to the abolition of chattel slavery, antislavery campaigners fixed on the treatment of human beings as property as the distinctive wrongness of slavery. Labelling this property-based definition legalistic, O'Connell Davidson argues that the rise of indenture, servitude, and other violent new systems of coerced labour after the abolition of slavery in the British Empire in 1833 led to the politically charged question of whether the term "slavery" could apply beyond legally recognized chattel slavery. She shows how the League of Nations and the ILO manoeuvred through these political minefields by initiating discussions on two conventions in the 1920s that are the key legal instruments in the crusade against modern slavery today. The first is the League of Nations 1926 Slavery Convention definition of slavery as "the status of a person over whom any or all of the powers attaching to the right of ownership are exercised," which continues, as the discussion above illustrates, to be the legal benchmark of slavery. The second is the ILO's Forced Labour Convention of 1929, which defines forced labour as "all work or service which is exacted from any person under menace of penalty and for which said person has not offered himself voluntarily." It was not until 1956 that the next international instrument pertaining to slavery was adopted. The UN's Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery accepted the 1926 definition of slavery, but placed a positive obligation on states to abolish servile conditions of debt bondage, serfdom, servile marriage, and child trafficking. The international legal architecture on slavery and forced labour created both a dilemma and an opportunity for the new abolitionists: How could slavery be defined once it was loosened from its institutional mooring of chattel slavery without billowing out of control? Here O'Connell Davidson focuses on the work of Bales, as he sought to distinguish between old and new forms of slavery while keeping the latter within liberal bounds. According to him, three things characterize slavery: "control based on the potential or actual threat of violence; a lack of remuneration beyond subsistence; and the appropriation of the labor or other qualities of the slave for economic gain."<sup>31</sup> This, in turn, becomes part of the controlled expansion of the legalist definition of slavery from *de jure* property, which has limited traction with the abolition of chattel slavery, to *de facto* property, emphasizing control tantamount to possession, which is at the heart of Jean Allain's and the Harvard-Bellagio Guidelines' definition.

O'Connell Davidson argues that this legalist definition, which regards freedom as the release from physical bondage and coercive control, reflects

31. Quoted in O'Connell Davidson, *Modern Slavery*, 37.

a very thin and paltry version of freedom – one that does not appreciate the collective and social conditions of positive freedom and autonomy. She considers that freedom is a concept just as elusive as slavery. She notes that even the most abject slaves can exercise free will and agency, and she distinguishes between contractual consent, on the one hand, and the collective social relations of freedom, on the other. At the heart of this book is a normative vision of freedom that challenges neoliberalism, austerity, and restrictive immigration controls – policies and politics, O’Connell Davidson argues, that are perfectly compatible with campaigns against modern slavery.

In Chapter 3, on slavery and wage labour; Chapter 4, on race and nation; and Chapter 5, on trafficking as modern slavery, in particular, O’Connell Davidson provokes a more serious discussion and analysis of the systems of domination that restrict rights and freedoms in today’s world. Her discussion of the “freeing up” of wage labour, which draws upon Marx’s double freedom of the ideal-typical proletarian – which, as discussed above, means freedom both from extra-economic systems of control and from any means of subsistence other than wage labour – is a tour de force in illustrating how systems of domination, and not possession, are critical for appreciating the meaning of “unfreedom.” Her juxtaposition of historical work on the complex interplay of free and unfree forms of labour in the transition to industrial capitalism against contemporary ethnographic research on forms of modern slavery (debt bondage and forced labour) clearly illustrates how individual choice and agency can exist within a system of domination. In Chapter 4, O’Connell Davidson eloquently shows how slavery and race grew into interlocking categories under transatlantic slavery and that race has always been at the heart of restrictive immigration laws designed to create and preserve the “nation.” Here she quotes future prime minister Wilfrid Laurier, who participated in a debate in the 1880s on restrictive immigration laws by asserting that “the People of Canada want to have a white country.”<sup>32</sup> She persuasively argues that race is a system of domination and that by “whitewashing” race from modern slavery, new abolitionists can rule out racialized systems of exclusion such as prisons and carceral immigration controls from campaigns to end modern slavery. This discussion leads into Chapter 5, where O’Connell Davidson demonstrates how the fight against modern slavery and human trafficking has been harnessed to tougher immigration controls, punitive detention, and deportation as part of a broader attempt by states to control human mobility.

In her concluding chapter, O’Connell Davidson draws parallels between the old and new abolitionists to show how the emancipation of slaves or the rescue of contemporary victims does not lead to freedom and autonomy. Her book deftly shows how new abolitionist talk serves political agendas that are morally conservative, neoliberal, and/or antimigration. She offers no panacea

32. O’Connell Davidson, *Modern Slavery*, 106, quoting Radhika Mongia, “Race, Nationality, Mobility: A History of the Passport” *Public Culture* 11 (1999): 550.

for ending domination, instead reminding us that “to practice freedom, we have to somehow keep hold of the hope inspired by liberalism’s statement of human liberty and equality, but attenuate it with both a recognition that liberalism itself is no guarantee of either equality or freedom, and that the ideal independent liberal subject is a fiction.”<sup>33</sup> Her realism is a bracing antidote to the new abolitionists’ rhetoric of evil slavers, poor slaves, and heroic rescuers.

In *The Poverty of Work: Selling Servant, Slave and Temporary Labor on the Free Market*, David Van Arsdale draws parallels between the early intelligence offices in Europe, which were the progenitors of the employment agencies that spread first throughout London and then to the North American colonies, and contemporary employment agencies in the United States. In this way his structure is similar to O’Connell Davidson’s: he juxtaposes the history of these agencies and their role in segmenting workers on the basis of different statuses (slave, indentured, servant, or free labourers) against the contemporary practices of these critical actors in constructing neoliberal labour markets. But instead of drawing upon ethnographic research conducted by others, Van Arsdale is both a participant observer, working for a range of employment agencies, and ethnographic researcher. His participant-observer methodology vividly conveys the insecure nature of working for corporate and non-corporate employment agencies. Together with his comprehensive historiography, these features of Van Arsdale’s book make it a significant and original contribution to the growing literature on temporary employment agencies and their impact on work arrangements and the broader labour market.<sup>34</sup>

The first chapter sets the scene by quoting Alan Greenspan, the former US Federal Reserve chairman, on the benefits of flexible labour markets, which he equates with job creation, instead of “working people’s” mistaken view that flexibility leads to job insecurity. Van Arsdale uses Greenspan as a foil to demonstrate how flexible labour – workers who are subcontracted, employed on zero-hours (or causal) contracts, or in contingent and temporary jobs – experience job and income insecurity. Employers shed employment-related risk by relying on temporary employment agencies, which act as the employer of record, charging the end user a fee, while paying their employees the minimum wage, which functions as a ceiling and not a floor. Corporate employment agencies, especially those associated with the International

33. O’Connell Davidson, *Modern Slavery*, 208.

34. See David Van Arsdale, *The Poverty of Work: Selling Servant, Slave and Temporary Labor on the Free Market* (Leiden, Netherlands: Brill, 2016), 139 referring to Huiyan H Fu, *Temporary Agency Work and Globalisation: Beyond Flexibility and Inequality* (Farnham: Gower, 2016); Fudge & Strauss, eds., *Temporary Work*; Rebecca Smith & Claire McKenna, *Tempted Out: How the Domestic Outsourcing of Blue-Collar Jobs Harms America’s Workers*, National Employment Law Project, 2014, accessed 28 February 2018, <http://www.nelp.org/content/uploads/2015/03/Tempted-Out.pdf>; Jamie Peck, Nik Theodore & Kevin Ward, “Constructing Markets for Temporary Labour: Employment Liberalization and the Internationalization of the Staffing Industry,” *Global Networks* 5, 1 (January 2005): 3–26.

Confederation of Private Employment Services (Ciett), are large global businesses with a rapidly growing workforce and substantial profits. By contrast, non-corporate employment agencies operate in the interstices of legality in local, often ethnic, labour markets, frequently driving value from charging fees to workers. Van Arsdale argues that the corporate employment agencies are both the drivers and beneficiaries of the deregulation of labour markets.

Since one of his main goals is to convey the experience of working for both corporate and non-corporate employment agencies, in Chapter 2 Van Arsdale summarizes his participant-observation research. This chapter is a nice blend of individual-driven narrative and quantitative data that reveals the human costs of these forms of triangular or mediated employment relationships. He also notes that this kind of flexibility plays out differently for professional workers or workers with in-demand skills, who have the power to negotiate the sale of their labour, than for the legions of workers sent to warehouses, manufacturing sites, and food processing enterprises. He concludes that "employment agencies have historically freed employers from commitments and obligations to their employees – conditions having produced indentured servitude, slavery, the bound labour of children, and widespread exploitation of immigrants and the poor."<sup>35</sup> This observation provides the segue to Chapter 3, which explores the emergence of employment agencies, initially called intelligence offices, with the transition from feudalism to investment capitalism. Van Arsdale wants to retrieve the deep history of US employment agencies in part because he believes that if the lineage of the contemporary market actors had been traced back to colonial slave and servant brokers, the abolition of bound labour in the Thirteenth Amendment to the US Constitution would have been extended to employment agencies and a series of significant US Supreme Court decisions striking down states' attempts to regulate agencies may not have been successful.<sup>36</sup> By associating employment agencies with slavery and formally unfree labour such as indenture, Van Arsdale seeks to emphasize the moral turpitude of, as well as the economic harm caused by, these labour market intermediaries.

In Chapter 3, Van Arsdale traces the history of employment agencies to attempts by European monarchs from the early 17th century to communicate employment information to the servant and working classes. These intelligence offices or exchange bureaus were privatized in England in the late-17th century in order to address the demand for labour; Van Arsdale delves into the example of the intelligence office for seamen, who were in high demand as crew on the rapidly growing fleet of English slave ships. The intelligence office helped to segment the crew based upon skill and status, with the indigent, unemployed, and migrants performing the dangerous jobs of general sailors. He shows how intelligence offices expanded in London with rapid

35. Van Arsdale, *Poverty of Work*, 56.

36. Van Arsdale, *Poverty of Work*, 58–59.



urban migration. The cutthroat competition among agencies raised a public debate over whether they swindled and victimized their labourers or provided employment opportunities for vagrants and indigents – a debate that continues to resonate today.

Variants of these English forebears made their way to colonial North America, where, as Van Arsdale recounts in Chapter 4, they performed new tasks, which included acting as brokers for slave and indentured labour. This chapter is a corrective to previous scholarship that regarded for-profit employment agencies as the product of 19th-century immigration or the start of the 20th-century temporary-help industry. In tracing the historical antecedents of contemporary employment agencies, Van Arsdale shows how in the American South, intelligence offices continued trading slaves until the end of the Civil War and were active in the practice of renting or leasing slaves. What distinguished them from their English counterparts was their use of race in classifying labourers. With the rise of abolitionist laws and the restrictions on labour supply imposed by the Naturalization Act of 1847, intelligence agencies diversified. Benevolent offices, run either by municipalities and states or under the authority of special interest groups, emerged to counter the exploitation of labourers hired through intelligence offices. So, too, did emigrant depot intelligence offices, which were designed to reduce the supply of immigrant servants to privately operated intelligence offices. Van Arsdale describes how private intelligence offices not only placed women migrants as servants, but also sent women into brothels, leading to a public outcry over “white slavery” and the Mann Act of 1910 (the common name for the White-Slave Traffic Act), which prohibited interstate or foreign commerce transport of “any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose.” He argues that the Thirteenth Amendment, which outlawed the trading in bound labour, and the Mann Act, the early progenitor of the 2000 Protocol against Human Trafficking, “served to protect intelligence offices from a more elaborate inquiry into their relationship to slavery.”<sup>37</sup> In response to these laws, intelligence offices changed their name to employment agencies and expanded their operations to include workers of all kinds.

However, this change in nomenclature did not end the public debate over the legitimacy of employment agencies, which continued to be associated with exploitative labour practices during the second half of the 19th century and into the 20th century. Municipal and state governments, along with trade unions, challenged the legitimacy of private employment agencies, many of which charged fees to workers for procuring them jobs. The legal right of agencies to sell jobs was contested in the years before World War I; on the right, employment agencies were seen as legitimate labour market agents providing a service for the unemployed, whereas on the left they were regarded as flesh peddlers who charged fees to the poor. A Washington State referendum

37. Van Arsdale, *Poverty of Work*, 121.



prohibiting employment agencies from charging fees to workers resulted in legislation outlawing the practice. However, by a five-to-four majority, in 1917 the Supreme Court struck down the legislation as a breach of the due process rights of liberty and property guaranteed in the Fourteenth Amendment. In a 1928 decision, the Supreme Court ruled that a state could not fix the fees of an employment agency, but ten years later the court reversed itself, deciding that the states had the power to regulate fees. Van Arsdale attributes the failure to understand the origins of employment agencies in intelligence offices as resulting in the neglect of their role in indentured servitude and slavery, a legacy that, if appreciated, would have undermined their legitimacy and supported restrictive regulation.

An organizing device of this and subsequent chapters is Harriet Beecher Stowe's question in *Uncle Tom's Cabin*:

But who, sir, makes the [slave] trader? Who is most to blame? The enlightened, cultivated, intelligent man, who supports the system of which the trader is the inevitable result, or the poor trader himself? You make the public sentiment that calls for his trade, that debauches and depraves him, till he feels no shame in it; and in what are you better than he?<sup>38</sup>

This question of who is to blame for slave trading also animates Van Arsdale's final chapter, in which he considers solutions to prevent employment agencies from reproducing "deprived" employment, which is the term he uses to characterize the work arrangements of impoverished labourers, including slaves and indentured servants, that result from triangular employment relationships.<sup>39</sup>

Rather than seeing these agencies as simply intermediaries for their customers, as Beecher Stowe did, Van Arsdale emphasizes their connection to the larger political economy – banks, business, investment, trade, and brokering. He challenges the conventional and binary tropes that depict employment agencies as either the benevolent proprietor or the immoral swindler, depicting them instead as powerful labour market actors that produce a range of deprived labour statuses that incorporate race, gender, and class.

Having set the historical stage, Van Arsdale returns to the contemporary labour trade in Chapter 5. He confirms the findings of other researchers that employment agency work is insecure by design and that employment agencies are active in constituting a flexible labour market that provides poor and insecure jobs.<sup>40</sup> In doing so, he charts the change in the United States from a manufacturing to a service economy, the decline of unions, deteriorating wages for workers in the bottom half of the labour market, and how low wages and flexible work have resulted in an increasing share of the US national income to capital. He argues that the growth of employment agencies and temporary work belies the claim that a job is a route out of poverty.

38. Quoted in Van Arsdale, *Poverty of Work*, 90.

39. Van Arsdale, *Poverty of Work*, 167–168.

40. Van Arsdale, *Poverty of Work*, 139.

Van Arsdale begins his concluding chapter by contrasting a quote from Georg Lukács about the “‘free’ worker who is freely able to take his labour-power to market and offer it for sale as a ‘commodity’ belonging to him” with the Walk Free Foundation’s estimate that in 2014 there were 36 million people enslaved in bound labour relations across the globe.<sup>41</sup> Van Arsdale notes that Walk Free’s figure does not include temporary workers “sold” by corporate and non-corporate agencies because it is the economy, and not the agency, that binds the worker. Like O’Connell Davidson, Van Arsdale questions the formal conception of freedom that legitimates “free” wage work in liberal economies. He returns to Beecher Stowe’s concern to identify moral culpability in the context of triangular labour relations, although he refashions the question: “Why do employment agencies tend to manufacture deprived workers in free markets of labor trade? How does the for-profit employment agency manufacture poverty?”<sup>42</sup> By emphasizing both employment agencies’ continuity with slave traders and their power in the contemporary labour market, he finds employment agencies morally culpable for producing deprived labour. His solution for preventing the deprived employment created by employment agencies comprises two legislative proposals and three actions by community and labour organizations. While each suggestion is a step toward alleviating the insecurity caused by employment agencies, the question Van Arsdale raises, however, is one of how “concerned citizens with an appreciation for labour” can achieve them.<sup>43</sup> Mobilizing public outrage against employment agencies by emphasizing their historical link with slavery may simply empower new abolitionists, which, as O’Connell Davidson has shown, is completely compatible with neoliberal labour policies, rather than directing ire at employment practices that flourish when labour law protections are stripped, trade unions are fettered, and coercive immigration controls are increased.

Is the concept of “unfree labour” a more useful analytic tool than modern slavery for understanding what is going on in contemporary labour markets? For Marxists, the term “unfree” refers to relations of production where direct political/legal compulsion is used to acquire and exploit labour power.<sup>44</sup> It was associated with pre-capitalist forms of economic organization, such as feudalism or chattel slavery, and understood as peripheral to the capitalist world economy. A key concern has been how to understand the coexistence of unfree labour with the expansion of capitalism.<sup>45</sup> Scholars who are interested in the relationship between migration and the expansion of capitalism emphasize

41. Van Arsdale, *Poverty of Work*, 163.

42. Van Arsdale, *Poverty of Work*, 167.

43. Van Arsdale, *Poverty of Work*, 185.

44. Satzewich, *Racism and Foreign Labour*, 42.

45. Tom Brass, *Labour Regime Change in the Twenty-First Century: Unfreedom, Capitalism and Primitive Accumulation* (Leiden, Netherlands: Brill, 2011).

the extent to which the state structures different modes of migrant labour incorporation through immigration controls that restrict the ability of migrant workers to freely circulate in the labour market.<sup>46</sup> This approach draws upon an understanding of freedom that is rooted in the idea of the formal legal freedom to circulate in the labour market. By contrast, migration scholars interested in the legal dimension of citizenship consider the absence of political rights as a significant form of unfreedom.<sup>47</sup> Researchers who embrace a feminist political economy approach have begun to talk about a continuum of unfreedom, which recognizes both different modalities (legal, economic, political) of unfreedom as well as different degrees.<sup>48</sup> More orthodox Marxists have been dismissive of such an approach because it does not explicitly advocate a revolutionary transformation of capitalism.<sup>49</sup> The danger is that unless it is defined with some precision, the concept of unfree labour will simply function as a normative rather than an analytic concept and, as with modern slavery, what counts as unfree labour will depend upon the eye of the beholder. It may be time to discard unfree and free labour as general concepts and concentrate instead on different modalities of freedom and unfreedom at different points in the labour relationship – entry, performance, and exit – in their social and historical context.<sup>50</sup>

The appeal of using the idiom of modern slavery is self-evident. The term “modern slavery” resonates with older forms of slavery such as chattel slavery in the United States, which was depicted so vividly in the celebrated 2013 movie *Twelve Years a Slave*. It also echoes with the campaigns against the “white slave trade,” the term used to describe forced prostitution at the turn of the 20th century in the United States, where the White-Slave Traffic Act, the original anti-trafficking law, was passed in 1910. Thus, modern slavery also evokes images of women and children who are victims of sexual exploitation.

It is its overdetermination that gives the cause of modern slavery its impetus; it encompasses a broad range of exploitive practices, from traditional understandings of slavery and forced labour to human trafficking and prostitution.

46. Miles, *Capitalism and Unfree Labour*; Cohen, *Migration and Its Enemies*; Satzewich, *Racism and Foreign Labour*.

47. Catherine Dauvergne & Sarah Marsden, “The Ideology of Temporary Labour Migration in the Post-Global Era,” *Citizenship Studies* 18 (2014): 224–242.

48. Kendra Strauss & Judy Fudge, “Temporary Work, Agencies and Unfree Labour: Insecurity in the New Work of Work,” in Fudge & Strauss, eds., *Temporary Work*, 1–25; Genevieve LeBaron, “Unfree Labor Beyond Binaries: Insecurity, Social Hierarchy, and Labor Market Restructuring,” *International Journal of Feminist Politics* 17 (2015): 1–19.

49. Tom Brass, “Modern Capitalism and Unfree Labor: The Unsayings of Marxism,” *Science & Society* 78 (July 2014): 288–311.

50. See, for example, Robert J. Steinfeld & Stanley L. Engerman, “Labor – Free or Coerced? A Historical Reassessment of Differences and Similarities,” in Tom Brass & Marcel van der Linden, eds., *Free and Unfree Labour: The Debate Continues* (Berne: Peter Lang, 1999), 107–126.

As such, it is a cause around which disparate groups, individuals, and states can mobilize. Anti-Slavery International, Liberty, Walk Free, the Pope, and the UK Conservative government all support the eradication of modern slavery. No one is “for” modern slavery.

Moreover, the goal of many advocacy groups is to stretch the meaning of modern slavery to include an even broader range of exploitative practices, especially those where employment and migration intersect. Increasingly, labour exploitation is a focus for antislavery advocates, fuelled in part by the ILO’s work to publicize the extent of forced labour. The aim is also to expand the arsenal for combatting modern slavery to include criminal law, human rights, labour standards, and business regulation approaches.

In light of the growing consensus around the modern slavery paradigm, Bunting and Quirk and O’Connell Davidson raise an important caution about the downside of this approach: it can both divert attention to exceptional exploitation and boost the coercive power of the state against vulnerable populations. Despite the best efforts of migrant rights advocates in both Canada and the United Kingdom, the governments of both countries did not use the trafficking or modern slavery framework to dismantle the immigration controls that make migrant workers vulnerable to labour exploitation; instead, trafficking became part of the justification for controlling national borders more tightly through the use of increased police and criminal powers.<sup>51</sup> Nor has a focus on labour trafficking and modern slavery in Canada and the UK shifted the respective governments from criminal law to consider labour law as a way of rooting out the causes of labour exploitation.<sup>52</sup> In a political climate where regulating labour markets is seen as bad for business and enforcing labour standards is regarded as a form of red tape, violations of labour standards become normalized, and egregious forms of labour exploitation become the exclusive focus of official concern. In a political economy in which policing borders and combatting crime are key government priorities, criminal law and border control approaches to trafficking are amplified at the expense of labour law and migrant rights. Thus, activists and academics both in Canada and beyond need to be vigilant about the political interests that may benefit from the adoption of the modern slavery frame.<sup>53</sup>

51. Fudge, “Migrant Domestic Workers”; Judy Fudge & Kendra Strauss, “Migrants, Unfree Labour, and the Legal Construction of Domestic Servitude: Migrant Domestic Workers in the UK,” in Kotisaran, ed., *Revisiting the Law*, 524–555.

52. Fudge, “Modern Slavery,” 3.

53. Genevieve LeBaron and Andreas Rühmkorf, “Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance” *Global Policy* 8 (May 2017): 15–28.