

# New slavery, old binaries: human trafficking and the borders of ‘freedom’

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**Abstract** *This article explores dominant discourse on ‘trafficking as modern slavery’ in relation to the many legal and social fetters that have historically been and are today imposed upon individuals who are socially imagined as ‘free’. It argues that discourse on ‘trafficking as modern slavery’ revitalizes the liberal understandings of freedom and restriction that have historically allowed vigorous moral condemnation of slavery to coexist with the continued imposition of extensive, forcible restrictions on individuals deemed to be ‘free’. In place of efforts to build political alliances between different groups of migrants, as well as between migrants and non-migrants, who share a common interest in transforming existing social and political relations, ‘trafficking as modern slavery’ discourse inspires and legitimates efforts to divide a small number of ‘deserving victims’ from the masses that remain ‘undeserving’ of rights and freedoms.*

**Keywords** HUMAN TRAFFICKING, MODERN SLAVERY, FREEDOM, MOBILITY, STATE

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For almost a decade now, politicians, journalists, NGO workers and even some academics have been telling us that human trafficking is a vastly profitable global criminal business that claims millions of victims at any given moment in time, and that represents one of the most serious human rights problem in the contemporary world. ‘Trafficking’ is commonly described as a modern slave trade, and anti-trafficking campaigners call on us to restate our opposition to slavery and reaffirm our commitment to the defence of human rights and freedom.<sup>1</sup> These are rousing and apparently politically progressive calls. Yet, as a number of critical scholars and activists have noted, the figure of the ‘trafficking victim’, especially of the ‘trafficked sex slave’ has actually been worked to most effect in the service of extremely conservative moral agendas on prostitution, gender and sexuality and in support of more restrictive immigration policies and tighter border controls (Agustin 2007; Chapkis 2005; Doezema 1999; Kapur 2005; Kempadoo and Doezema 1998; Weitzer 2007).

Are the observable interconnections between anti-trafficking and anti-immigration

policy inevitable, or could discourse on 'trafficking as modern slavery' potentially be marshalled in pursuit of more emancipatory political ends? There are anti-slavery activists involved in 'anti-trafficking' work who see no tension between fighting 'trafficking' and supporting migrants' rights. Kaye (2003: 3), for example, argues that 'trafficking, smuggling and migration are separate but interrelated issues'. While 'trafficking' is 'fundamentally different' from smuggling and migration, it can nonetheless be addressed from within a broader migration framework in order to develop policies that can help both to reduce 'trafficking' and prevent the human and labour rights violations to which migrant workers are so often subject.

I take issue with the idea that 'trafficking' can be clearly marked off from other violations of human and labour rights, and argue that discourse on 'trafficking as modern slavery' closes down, rather than opens up, possibilities for effective political struggle against the restrictions, exploitation and injustices that many groups of migrants experience. It is, as other critics have noted, a discourse of depoliticization (Anderson and Andrijasevic 2008; Aradau 2008; Jacobsen and Stenvoll 2008).

The article begins with an interrogation of the binary opposition between slavery and freedom that is central to the conceptual framework used to structure, explain and give meaning to the highly unequal social relations of liberal democratic societies, as well as to discourse on 'human trafficking'. Through an exploration of the many legal and social fetters that have historically been and are today imposed on individuals who are socially imagined as 'free', I aim to show that 'freedom' and 'slavery' are constructed, not essential, categories. Likewise, I argue, 'trafficked persons' do not exist as prior categories. The differences between trafficking, smuggling and migration are not fundamental, but constructed through reference to the imagined line between 'freedom' and 'restriction' and to political judgements about what count as 'appropriate' and 'inappropriate' forms of exploitation and force.

If the borders of 'freedom' were visible as social constructs, there would be potential for political mobilization against legally and socially tolerated fetters, as well as against those that are not. Discourse on 'trafficking as modern slavery' defuses this potential by revitalizing the liberal understandings of freedom and restriction that have historically allowed vigorous moral condemnation of slavery to coexist with the continued imposition of extensive, forcible restrictions on individuals deemed to be 'free'. In place of efforts to build political alliances between different groups of migrants, as well as between migrants and non-migrants who share a common interest in transforming existing social and political relations, 'trafficking as modern slavery' discourse inspires and legitimates efforts to divide a small number of 'deserving victims' from the masses that remain 'undeserving' of rights and freedoms.

### **Slavery, freedom and mobility**

In liberal thought, modern society has its roots in a social contract that guarantees people both political and economic freedom, and liberal thinkers more generally celebrate contract as the principle basis for human association in modern, free societies (MacInnes 1998: 5). This story of freedom through contract, which 'makes

sense of economic and political arrangements in liberal capitalist democracies, locates slavery firmly in the traditional, pre/non-capitalist world, and constructs a clear opposition between slavery and freedom. Thus, as Laura Brace (2004: 160–1) observes, liberal thinkers have long been concerned to ‘draw bright lines between slavery as a wrong or a logical impossibility and individual autonomy as a good and a right’. This is no easy task. The distinguishing feature of slavery is widely held to be that it treats human beings as property. Yet, the League of Nations’ definition of slavery as ‘the status or conditions of a person over whom any or all of the powers attaching to the right of ownership are exercised’ does not completely differentiate the master–slave relation from every other social relationship. This is because some of the powers attaching to the right of ownership are also often exercised over spouses, employees and children (Brace 2004; O’Connell Davidson 2005; Patterson 1982).

Slavery frequently – though not necessarily (see Patterson 1982) – entails economic exploitation, yet this does not help us to demarcate it cleanly from ‘freedom’. Slavery has always stood at one pole of a continuum of exploitation, shading off into servitude and other forms of exploitation, rather than existing as a wholly distinct, isolated phenomenon (Lott 1998). Nor is it possible to draw the line between slavery and ‘free’ wage labour through reference to the voluntariness with which the labour is performed. As Steinfeld (2001: 14) observes, when we speak of labour compulsion – whether slavery or modern free wage labour – we are normally ‘talking about situations in which the compelled party is offered a choice between disagreeable alternatives and chooses the lesser evil’. The slave’s labour is not usually elicited ‘through overpowering physical force’, but rather ‘by forcing slaves to choose between very unpleasant alternatives, such as death, torture and endless confinement on the one hand, or back-breaking physical labor on the other’ (Steinfeld 2001: 14). Likewise, the labour of free wage workers is exacted by offering them a choice, for example, between starvation and undertaking difficult and dangerous work they would not otherwise agree to perform. Thus, as Steinfeld concludes, ‘In the cases of both the slave and the free wage worker, the parties may be said to have been coerced into performing the labor or to have freely chosen the lesser evil’ (Steinfeld 2001: 15).

Some people assume that one can distinguish slave from non-slave by reference to the absolute nature of the slave’s subjection to another person’s will. In reality, however, as slavery scholars are increasingly emphasizing, elements of freedom historically existed within the juridical category of slavery that sometimes matched the freedoms enjoyed by non-slaves (Craven and Hay 1994). In slave societies of the Caribbean, America and Brazil, for instance, some slaves at some times were in a position to engage in autonomous trading, to work for wages, and/or to engage in a range of different types of resistance (see, for example, Beckles 1989; Cohen 1987; Geary 2004; Lott 1998). By the same token, it is important to remember the very real legal restraints historically imposed on non-slave workers, for as Craven and Hay (1994: 71) note:

slavery was just one of many legal statuses defining employment relations in the common law world. Apprentices, journeymen, labourers, indentured

servants, 'industrial' immigrants, slaves and masters were the main categories, but within each there was a plethora of legal definitions at common law and in legislation, setting the limits of freedom that 'free' servants (and masters) enjoyed.

A key aspect of freedom that was differentially limited by such laws was mobility. Seventeenth-century English law locked most workers into lengthy relationships with their masters on pain of imprisonment should they attempt to leave, and the 'early law of the American colonies followed the basic pattern of this English law' (Steinfeld 1991: 4). Not until the early nineteenth century was indentured servitude viewed in America as an illegitimate restriction on individual freedom (Steinfeld 1991), and still harsher systems of indenture were the key means by which labour shortages in the post-slavery Caribbean were resolved right through the nineteenth and into the twentieth century (Cohen 1987; Miles 1987; Roopnarine, 2007).

The Masters and Servants' Act, which covered factory workers as well as agricultural and domestic workers, and which made worker absence and desertion (as well as insubordination, unsatisfactory work and damaging property) punishable by imprisonment 'usually for three months, with perpetual reimprisonment possible if the servant refused to go back to work', was not repealed in England until 1875 and in Canada till 1877 (Craven and Hay 1994: 88). Masters and Servants legislation was also applied in the colonies, where it continued to provide whipping, as well as imprisonment, as the punishment for formally 'free' servants guilty of absence or misbehaviour well into the twentieth century (Craven and Hay 1994: 88). It is also worth noting that violence was routinely used in the British army and navy as a tool of labour discipline, and it was not until 1881 that flogging was abolished in the army except as a prison punishment (Gibson 1978: 168). More generally, the use of forced labour persisted in many colonies in the twentieth century. Indeed, the employment contracts imposed on supposedly 'free' workers in the colonies were often but 'a fig leaf concealing actual slavery', or 'enslavement ... masked by a legal transaction: the agreement between the slave owner, designated in the contract as the hirer, and the slave, designated in the contract as the seller of labour' (Nzula et al. 1979: 82; see also Cohen 2006).

The fact that well into a period generally thought of as the heyday of modern industrial capitalism, workers were disciplined and legally prevented from leaving their employer on pain of imprisonment, servitude and/or flogging should give pause for thought about any model of history that posits a clear or complete transition from traditional to modern society. 'Freedom of action', especially when it involved the freedom to *move* – from one place to another, from one household to another, from one employer to another – continued to be viewed as extremely threatening in an advancing capitalist economy, both to the economic interests of the propertied classes, and to the social fabric of the wider political community. This is also well illustrated by a consideration of vagrancy legislation.

Nicholas Rogers (1994: 104) points out that in England 'as many as twenty-eight statutes were passed on the subject of vagrancy' between 1700 and 1824. Some of

these statutes added significantly to the range of behaviours deemed to constitute crimes of vagrancy:

Over and above the old categories of wilful idleness, begging, pedlary and the tramp, vagrancy was applied to 'endgatherers', that is, to those who travelled the country collecting oddments of wool or cloth (1744), to those *suspected* of committing a felony (1752) ... to Thameside pilferers (1799), night poachers (1800), spoilers of wood (1805) and, finally, to the very amorphous category of 'suspected persons' (1802). In addition, the 1744 act brought the 'idle and disorderly' ... under the jurisdiction of the vagrant laws.

(Rogers 1994: 105)

Punishment for such crimes included hard labour in a house of correction, and male 'vagrants' could 'also find themselves forcibly recruited into the navy in wartime' (Rogers 1994: 107). Rogers notes that in some cases, vagrancy laws were being adapted to address crises in social relations that were emerging as a result of agrarian and industrial capitalist development, but they were also routinely used in London 'to rid ratepayers of troublesome dependencies and to regulate the ebb and flow of seasonal and surplus labour in London' (Rogers 1994: 106). Following the abolition of slavery, vagrancy laws were also used in colonial settings to prevent former slaves from migrating and keep them 'dependent on the plantation owners' (Cohen 1987: 8).

Given contemporary anxieties about the relationship between female migration and prostitution, it is interesting to note that historically too, prostitute women were regarded as crystallizing 'the many dangers of mobility and its challenges to a fixed legal and social order', and subject to a range of controls upon their freedom of movement (Levine 2003: 186). In England, as well as in the colonies, prostitute women who were detained in reform institutions were subject to extremely close control and often to labour exploitation (Bartley 2000).

In short, the 'freedom' enjoyed by non-slaves of the poor and labouring classes in the capitalist metropolis until the mid to late nineteenth century, and by their counterparts in the colonies into the twentieth century, does not look very much like what we are generally taught to think of as 'liberty' or 'autonomy'. Those socially imagined as 'free', as well as those socially imagined and legally defined as slaves, have been flogged, sometimes to death (see Gibson 1978; Nzula et al. 1979). They were also confined and half-starved, forced to labour without remuneration and/or under the threat of perpetual imprisonment, prevented from moving freely from one employer to another and from one place to another, and so on.

### **Trafficking and new slavery**

Until recently, there was no international agreement on the proper legal definition of trafficking. However, in November 2000, the UN Convention against Transnational Organized Crime was adopted by the UN General Assembly, and with it two new

protocols – one on smuggling migrants and one on trafficking people. Where smuggling is held to refer to situations in which the migrant gives full and informed consent to movement, trafficking is defined (UN 2000) as:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

This definition does not actually allow us to distinguish clearly the experience of Victims of Trafficking (VoTs) from that of other groups of migrants. To begin with, the protocol frames 'trafficking' as a subset of 'illegal' immigration and as a phenomenon quite distinct from 'smuggling', and yet people whom states would regard as 'smuggled' or as 'immigration offenders' can also end up in the situations of exploitation listed in the protocol. Meanwhile, workers who move through perfectly legal channels to work legally in the formal economy are also sometimes subject to extensive rights violations, including confinement, passport confiscation, non-payment of wages, and physical violence or its threat (Anderson 2000; Anderson and Rogaly 2005; Calavita 2004; Human Rights Watch 2006; ILO 2005).

A second set of problems arises from the fact that 'trafficking', like slavery, is a concept that requires us to think in terms of 'inappropriate' exploitation and of 'force'. And, as Moravcsik (1998: 173) points out in relation to slavery, these are slippery notions: 'What constitutes inappropriate economic exploitation depends partly on what alternatives were or could have been envisaged within a given situation ... [and similarly] what counts as force ... and what restrictions any society might have to invoke under certain circumstances are left to be determined in context.'

'Trafficking' is an umbrella term for a process that can lead to a variety of outcomes. In theory, it intersects with an array of other markets, institutions and practices (labour markets, prostitution, marriage, benefit fraud, organ trading, child adoption, independent child migration to name but a few), some of which may be socially tolerated and legally regulated, others of which may be illegal, stigmatized and/or socially contested. To ring fence 'trafficking' would therefore require us to make a judgement about what constitutes appropriate and inappropriate exploitation, and what counts as force, in a huge number of vastly different contexts. Throw in the fact that social norms pertaining to these markets, institutions and practices differ from country to country, and the task looks even more hopeless.

That there is no easy opposition in the real world between migrants who enjoy total choice over all aspects of their lives, on the one hand, and individuals who have been kidnapped and transported in shackles to settings where they are imprisoned, starved and forced to labour under the lash of a whip on the other, compounds these

problems. Instead, people's experience of exploitation, abuse, powerlessness and restriction ranges along a continuum. This means that those seeking to operationalize the concept of 'trafficking' have to make a judgement about the point on that spectrum at which 'appropriate' exploitation/force ends and 'inappropriate' exploitation/force begins (Anderson and O'Connell Davidson 2003).

The enormity of these problems can be illustrated by looking at one of the possible outcomes of 'trafficking' listed in the protocol, namely slavery. In a world where slavery is nowhere legally recognized, so that nobody is actually formally assigned the legal status of slave, what is slavery and who is a slave? Anti-slavery activists who have played an important role in promulgating the 'trafficking as modern slavery' discourse, hold that new slavery can be distinguished from other forms of oppression and labour exploitation that are widespread in the contemporary world through reference to its three essential elements. First, is its involuntary nature, in the sense that the slave cannot 'walk away from the situation they're in and someone's controlling their free will' (Bales 2007). Second, is 'severe economic exploitation' (Craig et al. 2007: 12), which Bales (2007) describes as the absence of a wage, or payment of wages in a form that either covers only the most basic necessities for daily survival, or that can be clawed back by the employer. Third, there is violence or the prospect of violence. And, as if to underline Moravcsik's (1998) point that what counts as force has to be determined in context,

very often relationships of enslavement do not actually involve physical violence. However, the nature of the relationship – the nature of working and housing conditions, the withdrawal of important papers such as passports or ID documents, deceit and the abuse of power, the use of what are essentially thugs to maintain control – may make the threat of violence a real one and render the possibility of flight a remote one.

(Craig et al. 2007: 12; see also Weissbrodt and Anti-Slavery International 2002: 7)

Craig et al. (2007: 12) hold that 'It is ... important to be able to distinguish what are poor – or even appalling – working conditions ... from slavery', and that slavery 'needs to be distinguished from the situation of people being forced into dangerous or difficult work by economic circumstances or other impersonal forces' (Craig et al. 2007: 13; see also Bales 2000). Even if we agreed that this was indeed an important distinction to make, would the essential ingredients of 'slavery' identified by anti-slavery activists really allow us to make it? Debt-bonded brothel prostitution in Southeast Asia is very often taken as a clear example of modern slavery, and yet bonded brothel work in this region does not *always* involve either violence or the complete absence of payment (Feingold 1998; Lim 1998). Significant numbers of the women and girls whom anti-trafficking groups 'rescue' from brothels escape from the shelters to which they are taken and return to work in the brothels (Marshall and Thatun 2005; Phongpaichit 1999; Soderlund 2005). This suggests that economic and/or other impersonal forces can lead people to consent to 'severe economic

exploitation' and to an employment relationship that entails close restrictions on their freedom of choice and movement.

Domestic work is another sector into which many people are held to be 'trafficked into modern slavery'. Writing of the UK, Gary Craig (2007: 20) describes people being brought into the country, often by wealthy foreigners or diplomats:

and put to work as domestic slaves, working long hours for little or no pay, at the beck and call of family members and often required to perform sexual as well as physical tasks. These workers generally have their passports removed so that any attempt at escape or complaint may lead to deportation of the victim and denial by the perpetrator.

Anti-slavery activists generally support the idea that such employment relations constitute 'slavery' by referring to the all too numerous cases in which migrant domestic workers have been subjected to extensive physical and sexual violence as well as labour exploitation and physical confinement (for example Bales 2000). But what about the situation of migrant domestic workers who work long hours for little pay, at the beck and call of family members, and who are prevented from quitting their employment by a range of non-economic constraints, but who are not actually beaten, raped and tortured?

In 2001, Bridget Anderson and I conducted some interviews with Western expatriates in Bangkok about their practices and attitudes as employers of live-in migrant domestic workers. They were perfectly nice, respectable people, but their responses to questions about the hours they required their employees to work were shocking. A British expatriate couple told us that their maid did not have fixed hours of work, stating that it is in the nature of domestic work that there are no fixed hours, domestic workers 'have to be on call'. The wife then commented that she did know some people who paid their domestic workers overtime if they worked beyond the agreed end to the day, but, she reflected, 'with our maids, it's like we're masters to their time'. An American woman who had lived for some years in Indonesia where she had had eight domestic workers in her employ struggled to answer our question about their hours of work: 'They were there in the morning when we got up, and they were still there when we went to bed. I don't really know what hours they worked. It wasn't like that. It was like their time was our time. It was like they were slaves.' A Dutch woman explained to us how it was much better in Singapore (where she had previously lived) than in Bangkok, because in Singapore it was possible to employ Filipino women who were often very well educated and spoke good English, and yet were never 'too assertive' or difficult in any way:

because they are so dependent on you. In Singapore, the system is wonderfully organized from an employer's perspective. The employer holds the Filipino maid's passport, and the maid has to pay to leave. The employer pays the government, it's all official, but the maid is totally dependent on the employer ... they can't just quit.



Were our interviewees slaveholders, or were they employers offering free workers poor, or even appalling, working conditions? Certainly, had they wished to, they were structurally positioned to beat, starve, sexually harass and cheat their workers with impunity, in addition to exploiting their labour. If this makes their domestic workers slaves, then vast numbers of middle-class and elite nationals and expatriates around the world (including many of those who are active in formulating and implementing anti-trafficking measures) must be slaveholders. In many places it is the norm for such groups to have live-in domestic workers, and the employment relations described by our interviewees are not atypical. Yet, if we say that their maids were not slaves because these employers kindly refrained from beating or cheating them despite the huge asymmetries of power that existed between them, then slavery ceases to be identifiable through reference to whether or not 'the element of choice and control of their life' has been taken from individuals 'either by circumstance or direct action, and passed to a third party, either an individual or a State' (Weissbrodt and Anti-Slavery International 2002: 7). It comes to hinge instead on whether individual third parties exercise the immense powers they have secured 'justly' or tyrannically.

As noted above, slavery is only one of the possible outcomes of 'trafficking' listed in the UN Trafficking Protocol. A person does not have to be held in 'slavery' (whatever that may be) to qualify as a VoT, but they do have to have been transported 'for purposes of exploitation'. Neither the protocol nor the national legislation on trafficking that has flowed from it provide clear guidelines on the type and degree of exploitation (or indeed, the degree of deceit, the type and degree of force, or the type of threats) that must be present for a person to qualify as a VoT (Anderson and O'Connell Davidson 2003). Without agreement on what constitutes 'exploitation' or on minimum labour standards across sectors and cross-nationally, how is it possible to distinguish the migrant who is merely experiencing 'appalling working conditions' from the *real* VoT?

The definitional problems associated with the term 'trafficking' help to explain the chasm between the vast numbers of VoTs who exist at the level of rhetoric and the very small number of people who are actually identified and assisted as such in any given country. For example, the Bush administration, which spent more than \$150 million on efforts to identify and assist 50,000 VoTs estimated to be forced annually into modern slavery in the United States, identified just 1362 victims of human trafficking between 2000 and 2007 (Markon 2007).

Anti-trafficking campaigns and policy measures, as well as front line actors involved in identifying and assisting VoTs, tend to focus almost exclusively on one context – female prostitution (a market that many people view as inherently exploitative), and to take involuntariness and violence as the crucial, distinguishing features of 'trafficking'. Thus, to stand any hope of being identified and assisted as a VoT by the authorities in most countries, a female migrant working in the sex trade needs to demonstrate that she did not originally consent to work in prostitution, and that she has undergone great physical suffering (see Aradau 2008; Harrington 2005; O'Connell Davidson 2006; Pearson 2002). In practice, the restriction of a person's choices and freedom of movement through violence, or its threat, is taken as the real

and unique evil of 'trafficking'. Exploitation, which is so hard to define, is left to one side.

Is it really possible to distinguish between trafficked/unfree and non-trafficked/free migrants by asking whether restrictions on their choices and mobility are enforced by violence or its threat? Again, it is instructive to think about the legal and social fetters imposed on individuals who are socially imagined as 'free'.

### **Back to the future**

In Britain today, employment law no longer assigns different legal statuses to workers that differentially limit their freedom to choose whether to move from place to place, from employer to employer, or from one type of employment to another. However, immigration law does assign different legal statuses that set varying limits on the freedoms that migrants enjoy in the UK. Non-citizens holding work permits cannot move freely in the labour market, and 'People entering to work in specific sectors who do not fall under the work permit scheme are limited in different ways' (Anderson 2007: 9). Similar restrictions on mobility are enshrined in immigration law in other countries, and they have enormous implications for employment relations, in effect strengthening the hand of employers by making it more difficult and costly for workers to withdraw their labour.

Unless they have independent means or are entitled to adequate welfare benefits, those assigned an immigration status that makes it illegal for them to work, typically also face restricted mobility in the labour market (Anderson 2007). The range and number of jobs available to them are more limited than those available to other groups of workers, and the lack of employment opportunities, especially for those who have indebted themselves to migrate, is a powerful motive to consent to poor conditions and wages. Fear of deportation is an equally powerful motive not to complain about ill-treatment or abuse, and the ILO (2005) global report on forced labour lists many examples in which employers used the threat of deportation as a form of non-economic compulsion to exact labour from undocumented migrant workers.

In the past, poor laws and vagrancy laws immobilized the poor, the unemployed and unemployable, and criminalized those who managed to move from their birthplace in an attempt to eke out a living on the margins of the legally regulated economy. Today, immigration law criminalizes the movement of contemporary global 'vagabonds' (Bauman 1998), and the methods states currently employ in the attempt to prevent such movement are not much less brutal than those used historically. Between 1993 and 2006, the organization UNITED for Intercultural Action documented more than 6700 deaths of refugees and migrants attributable 'to border militarization, asylum laws, detention policies, deportations and carrier sanctions' (UNITED 2007), and UNITED's figures are undoubtedly underestimates.

Kevin Bales (2000: 250), an influential anti-slavery activist, has observed:

Say the words 'slave trade' and most people picture wooden ships leaving Africa for the New World, but the trade has been evolving and changing. The

modern version uses false passports and airline tickets. It packs slaves into trucks and bribes border guards. It covers its tracks with false work contracts and fraudulent visas.

The solution, according to Bales (2000: 251), is for governments to make the 'new slave trade' into such a dangerous and risky business that the modern-day slavers will discontinue it:

At airports and border crossings around the world there should be officials searching for slaves. Investigators should be tracing the flow of slaves and confiscating cars, trucks, boats and aircraft. Sting operations should be trying to buy slaves and busting the dealers. Almost all of the skills of existing law enforcement can be brought to bear against slavery.

Yet, ironically, the very border controls Bales advocates have encouraged a situation in which large numbers of people who want and/or urgently need to migrate from Africa to Europe have little choice but to make extraordinarily perilous sea journeys in flimsy wooden boats, often involving several days spent without adequate food or water, in blazing heat, on dangerous seas. Indeed, most of the refugee and migrant deaths documented by UNITED occurred between Africa and Spain in the Strait of Gibraltar, around Malta and on the way to Italy.

Those who survive such journeys, or manage to travel more safely (often by using false passports and airline tickets, and/or fraudulent visas) are still at risk in the destination country, not only or always from the mafia thugs who feature in dominant discourse on 'trafficking', but also from the state actors who enforce immigration policy. Hundreds of thousands of undocumented migrants are in detention centres around the world, often in appalling, overcrowded and dangerous conditions (IRR 2006; Vertaak 2005). There have been numerous reports of violence against migrants in detention centres perpetrated by police, armed guards and detention centre personnel (Amnesty International 2005). A 2002 report describes the experience of Moroccan migrant children held in residential centres in Spain. They were denied medical care, beaten with batons and electrical cables, and placed in 'punishment cells' for up to a week without adequate bedding and sometimes without access to a toilet (Human Rights Watch 2002).

Cases of families separated in UK detention centres and of breastfeeding mothers detained separately from their babies have been reported (Refugee Council 2003). Section 9 of the UK 2004 Immigration and Asylum Act allows the state to refuse all social support to families who fail in their asylum claims, which then means that children can be taken away from their parents and put into care without consent on the grounds that the parents cannot provide for them. The threat of separation is used to force parents to comply with removal directions (Cunningham and Tomlinson 2005). Deportation proceedings by definition imply forcing people to move against their will, and it is quite common for violence to be perpetrated against migrants during such proceedings (Binberg Pierce & Partners et al. 2008).

The list could go on, but for the purposes of this article, the point is this. States use razor wire and guns to prevent people from moving where they wish to move. They detain them against their will. They use the threat of separation from their loved ones to make them comply with demands to move and they forcibly transport them from one territory to another. When states do these things their actions are not described as 'trafficking' or 'modern slavery', but are generally either applauded or accepted as integral to the legitimacy of the modern nation-state that claims a monopoly over the control of mobility, as well as a monopoly on violence.

Bales's work is also interesting in this regard. Conjuring with another of the binary oppositions that serves as a key pillar of liberal thought (civilized/barbaric), he states that:

It is the hallmark of a civilized society that the government has a monopoly over armed violence. That is not to say that violence does not occur in advanced democracies, but when it does the force of the state is brought to bear and attempts are made to lock up the violent person. ... In Europe and North America the police fight organized crime; in Thailand the police *are* organized crime. The same holds true for many parts of Africa and Asia: the state's monopoly on violence, the monopoly that should protect citizens, has been turned against them.

(Bales 2000: 29, original emphasis)

He does not comment on the fact that in Europe and North America, as elsewhere in the world, the state's monopoly over the control over mobility, in conjunction with its monopoly over armed violence, is turned not just against organized criminals or violent people. It is also routinely used against migrants<sup>2</sup> – at least those who are poor, or who belong to a category of 'suspected persons', which is just as amorphous as that criminalized under English vagrancy laws of 1802.

In short, anti-trafficking discourse calls on us to condemn as 'modern slavery' the application of coercive pressures on migrants without state sanction, but simultaneously to endorse the application of ever more coercive pressures on migrants by states, often in the name of protecting them from 'modern slavery'. The changes to government policy regarding unaccompanied child asylum seekers who are denied the right to stay in the UK well illustrate the Orwellian nature of the double-speak. Until recently, such children were allowed to remain in the UK until they reached the age of 18. But in February 2008, immigration minister Liam Byrne described that policy as a 'green light' to organized gangs of child traffickers who knew children would not be sent home once they were in the country, and announced that failed child asylum seekers will now be deported before they reach 18 (BBC News 2008b).

### **The work of the slave as a cultural figure**

To paraphrase a question Bonnie Honig (2001: 3) poses about foreignness, what sort of work does slavery do in cultural politics? In liberal democratic societies, the

freedom–slavery binary maps onto other fundamental dualisms (such as subject–object, civilized–barbaric, modern–traditional, reason–emotion), all of which are central to the ways in which political community, rights and personhood are imagined. As a cultural figure, the slave is typically represented as the mirror image of the freeborn, and used symbolically to embody a more general fear of objectification, engulfment, infantilization, exclusion and dishonour (Brace 2004). This is one sense in which the slave – as an oppositional category – serves as a device that tells liberal subjects who they are by showing them who they are not. And as Adam Lively (1999) demonstrates in his analysis of eighteenth and nineteenth century abolitionists' representations of race and slavery, the figure of the slave can also work to reveal the moral virtue of the modern, civilized, liberal subject. As objects and eternal victims, one can pity slaves more unreservedly than we can those whom we see as authoring and controlling their own destiny. By thinking about slaves' shackles and pain, liberal subjects could discover themselves as both reasonable and compassionate, possessing not just sense, but also 'sensibility ... exemplified by the ability to suffer along with the suffering of others' (Lively 1999: 75).

Represented as the ultimate, suffering, premodern Other against which civility can be measured, the figure of the slave has been put to work in the service of a variety of political ends. It has been used to celebrate the rights and freedoms bestowed on the abstract, juridical subject of capitalist democracies, and so to shore up an ideology that conceals and legitimates the highly unequal social relations of liberal democratic societies. It has also been employed in the service of struggles for political change, the most obvious examples being the Marxist use of the simile of slavery to expose and challenge the restrictions that attend on 'free' wage-labour, and the analogy of woman to slave that was central to one strand of feminist thought from Wollstonecraft through the nineteenth century and beyond. Yet, even employed as a simile, slavery can be dangerous. The emancipatory potential of this strand of feminism was severely limited by its reproduction of the freedom–slavery binary, as well as, increasingly through the nineteenth century, its acceptance of the concept of a biologically based racial hierarchy (Brace 2000; Midgely 1998: 165).

There is no doubt that many of those who currently contribute to the 'trafficking as modern slavery' discourse (including anti-slavery activists) hope to work the figure of the 'trafficked modern slave' towards progressive political ends. In particular, many believe that this figure embodies and so can reveal the enormity of the gap between the rights and freedoms formally afforded universally to all human beings, and the lived experience of those denied, or prevented from accessing, these rights and freedoms. But because they insist that 'trafficking' differs fundamentally from related rights violations and that 'modern slaves' can be distinguished from those who are forced to work in appalling conditions by economic circumstances or other impersonal forces, I believe their desire to combat injustice and suffering is inevitably suborned to a process of depoliticization that serves a more conservative and statist agenda.

For Wendy Brown (2006: 15), depoliticization involves 'construing inequality, subordination, marginalization, and social conflict, which all require political

analysis and political solutions, as personal and individual, on the one hand, or as natural, religious, or cultural on the other'. Dominant discourse on 'trafficking' detaches the restriction and economic exploitation experienced by some groups of migrants from its basis in the global political and economic inequalities that simultaneously generate migratory pressures and set in place barriers to migration, and from the immigration regimes that make some legal as well as some irregular migrants vulnerable to abuse and exploitation. State-sponsored violence against migrants, and the forcible restrictions placed on migrants' freedom of movement and choices by immigration regimes, is invisible in discourse on trafficking. Our attention focuses instead on the individual morality of 'traffickers' and other 'exploiters', and on the 'uncivilized' and 'corrupt' cultures that tolerate slavery (see Jacobsen and Stenvoll 2008).

'Trafficking' discourse also contributes to a more general tendency to imagine the global population of migrants as divisible into a series of distinct and hierarchically ordered subcategories in terms of their needs and entitlement to rights and protection and their capacity for agency and political participation – VoTs, unaccompanied child migrants, asylum-seekers, legal migrant workers, illegal immigrants, and so on. Within this, the threshold of victimhood is set extremely high. Though the rights and protections offered to those who manage to reach that threshold are paltry,<sup>3</sup> their suffering is understood to disqualify them as political subjects – 'Victims cannot engage in the realm of the political. Others need to act on their behalf' (Anderson and Andrijasevic 2008: 143). If Jacques Rancière (2004) is right to argue that the gap between the abstract rights that human beings are declared to have and the acknowledgement of those rights – or the gap between the founding principles and real practices of liberal democratic states – is a political space, then 'trafficking' discourse depoliticizes by closing that space down. Just as discourse on the 'war on terror' invokes the notion of absolute, infinite victims of absolute, infinite evil to justify a 'fight without limits against this evil' (Rancière 2002: 5), so the figure of the 'trafficked' person as absolute victim justifies states' claims to the unlimited right to fight against the absolute evil of modern slavery. Framed in these terms, there can be no contradiction between the founding principles of liberal democratic states and any means they employ to defend them.

## **Conclusion**

Talk of 'trafficking as modern slavery' generates an illusion of political consensus, for nobody is in favour of slavery. Indeed, 'the fight against slavery is one of the very few human rights imperatives that attracts no principled dissent' (Hathaway 2008: 7–8). Yet, if 'modern slavery' does not exist as a legal status or a prior category, but must be defined instead through reference to judgements about where, on a continuum and in different contexts, 'appropriate' exploitation ends and 'inappropriate' exploitation begins, then it is in reality a hugely contentious and highly political concept. Likewise, if the line between restriction and freedom is acknowledged as a social construct, then what counts as force and what restrictions

liberal democratic states can reasonably impose (and upon whom) are all thrown into question. When this line becomes visible, the gap between the founding principles and real practices of liberal democratic states also comes into view. A political space, in Rancière's terms, opens up and with it the potential for political alliances between those (both migrant and non-migrant) who share an interest in transforming existing social and legal constructions of 'freedom' and 'restriction'. Because discourse on 'trafficking as modern slavery' defuses this potential, deconstructing it is an urgent political task.

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### Notes

1. The head of the UN Office on Drugs and Crime opened the United Nations conference on trafficking in Vienna, 2008 by saying: 'Two hundred years after the end of the trans-Atlantic slave trade, we have the obligation to fight a crime that has no place in the twenty-first century. Let's call it what it is: modern slavery' (BBC News 2008a).
2. Including asylum-seekers and people who would be deemed to be 'Victims of Trafficking' under international and/or national laws.
3. For example, the right to a temporary residence permit in place of summary deportation, which will provide 30 days 'reflection delay' to 'recover sufficiently from the trauma of their experience to be willing and able to talk about' and to decide whether or not they want to testify against their 'trafficker' (Pearson 2002: 41).

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