

LAW5424: Human Trafficking, Modern Slavery and the Law

Reading Guide - Term 4 - 2017

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Welcome to this postgraduate Unit dealing with issues of human exploitation. The Unit runs on a semi-intense basis, with two distinct phases: the first, in October, is two days are meant to provide an overview of the legal issues which relates to human exploitation, as the issue plays out internationally. The second phase, which transpires in November, is a series of four days of student-led, 'Geneva' style seminars, where we will use the student's papers as our reading material and engage with the issues as developed through the students' research.

Days 1 and 2: 16 and 17 October (10am-3pm)

The first two days of this semi-intense Unit provide students with an introduction of the subject-matter, giving an overview of the area, the leading works, and the current debates and issues in regard to human exploitation.

- Sessions are 50 minutes;
- with lunch from 12noon - 1pm as between Sessions 1 & 2 and Sessions 3 & 4

Day 1: Contextualising Human Exploitation (16 October)

Session 1: Introduction and Contextualisation

Session 2: Historical Antecedence of Labour and Sexual Exploitation
(Understanding the International System)

Session 3: Understanding the Trafficking Regime: White Slave Traffic to Palermo
(Prostitution and Gender Politics)

Session 4: Understanding the Slavery Regime: Abolition to Prohibition
(Human Rights Regime)

Broaden

Day 2: Considering the Law of Human Exploitations (17 October)

Session 1: Understanding the Law of Forced Labour and Servitudes

Session 2: Current Developments in the Law of Slavery

Session 3: Current Developments in the Law of Human Trafficking

Session 4: The Dynamics at Play: Understanding 'New Abolition'

Days 3 to 6: ‘Geneva’ Seminars (6-7 and 9-10 Nov) – *See below, pages 10-13.*

INTRODUCTIONS TO EACH SESSION OF DAYS 1 & 2

Days 1: 16 October – Session 1

Introduction and Contextualisation

Introduction

This introductory session sets out the overall framework of the Unit: its content, its approach, and the requirements and logistical details; all by reference to the Unit Guide.

This session provides an opportunity to gauge the knowledge base of students, their interest and consider the contextual elements both in regard to issues of human exploitation, that is: forced labour, slavery, and trafficking; but also in regard to the law.

Questions to Consider:

- 1) What is human exploitation: what is slavery, forced labour, human trafficking; their differences and similarities?
- 2) What is this term of art ‘modern slavery’ and why is it relevant today?
- 3) What are the structural causes of human exploitation?

Readings:

- Familiarise yourself with the Unit Guide and this Readings Guide, with emphasis in carrying out the reading and understanding the requirements of the assignments.

Days 1: 16 October – Session 2

Historical Antecedence of Labour and Sexual Exploitation

Introduction

Today, considerations of human exploitation have been bundled together via the heading of ‘modern slavery’ and/or ‘human trafficking’ which, in law, and in fact, brings together two rather distinct histories. At its heart, this distinction is in regard to labour – via forced labour, certain servitudes, and slavery – and sex – via prostitution, trafficking, servile marriage, and the white slave traffic.

This session will consider the evolution of these two regimes internationally, thus providing an overall consideration of the law which regulates this space.

Questions to consider

- 1) Why is there a distinction between labour and sex within the regime of human exploitation?
- 2) Why was the emotive language of slavery used to address the exploitation of the prostitution of others during the late Nineteenth Century through the ‘white slave traffic’?
- 3) What role did European colonialism play in creating the structural underpinnings of regime of human exploitation?

Readings:

- Jean Alain, “Genealogies of Human Trafficking and Slavery”, Ryszard Piotrowicz, Conny Rijken, and Baerbel Uhl (eds.) *Routledge Handbook of Human Trafficking*, 2017, pp. 1-20.
- Jean Allain, “What We Know Today: A Contemporary Understanding of the Atlantic Slave Trade” in *The Law and Slavery: Prohibiting Human Exploitation*, 2015, pp. 1-37.
- Julia Martínez, “Mapping the Trafficking of Women across Colonial Southeast Asia, 1600s–1930s”, *Journal of Global Slavery* Vol. 1, (2016): 224-247.

Background Readings:

- Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History*,
- Hugh Thomas, *The Slave Trade: The History of the Atlantic Slave Trade*, 1997;
- Julia Laite, “Between Scylla and Charybdis: Women’s Labour Migration and Sex Trafficking in the Early Twentieth Century”, *Internationaal Instituut voor Sociale Geschiedenis* 2017, Vol. 62, pp. 37–65.
- Jean Allain, “Nineteenth Century Law of the Sea and the British Abolition of the Slave Trade”, *British Yearbook of International Law*, Vol. 78, 2008, pp. 342-388.
- Orlando Patterson, *Slavery and Social Death: A Comparative Study*, 1982;

Days 1: 16 October – Session 3

Understanding the Trafficking Regime: White Slave Traffic to Palermo (Prostitution and Gender Politics)

The issue of the prostitution of others has been central to the development of the regime of human trafficking. This Session considers the development of the trafficking regime as a means of understanding the creation and provisions of the UN Protocol to the Organised Crime Convention and the gender dynamics which have, and continue to, surround the issue.

This Session will also consider the text of the UN Protocol and the ASEAN Convention.

Questions to Consider:

- 1) Why did the issue of the ‘white slave traffic’ emerge during the Nineteenth Century?
- 2) What led to the re-emergence of trafficking as an international issue towards the end of the Twentieth Century?
- 3) What rights of the victims of human trafficking are protected by the Palermo Protocol? How does this compare to the European Convention related to human trafficking?

Readings:

- Jean Allain, “The White Slave Traffic in International Law”, *Journal of Trafficking and Human Exploitation*, Vol 1, 2017, pp. 1-40.
- Stephanie Limocelli, *The Politics of Trafficking: The First International Movement to Combat the Sexual Exploitation of Women*, Stanford University Press, 2014, pp. 1-74.
- Michelle Madden Dempsey, “What Counts as Trafficking for Sexual Exploitation? How Legal Methods Can Improve Empirical Research”, *Journal of Human Trafficking*, Vol. 3, 2017, pp. 61-80.

Background Readings:

- Jo Doezema, “Now You See Her, Now You Don't: Sex Workers at the UN Trafficking Protocol Negotiation”, *Social & Legal Studies*, Vol. 14, 2005.
- Catharine MacKinnon, “Pornography as Trafficking”, *Michigan Journal of International Law*, Vol. 26, 2005, pp. 993-1012.
- Jean Allain “No Effective Trafficking Definition Exists: Domestic Implementation of the Palermo Protocol”, *Albany Government Law Review*, Vol. 7, 2014, pp. 111-142.
- 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.
- 2015 The ASEAN Convention against Trafficking in Persons, Especially Women and Children.

Days 1: 16 October – Session 4

Understanding the Slavery Regime: Abolition to Prohibition (Human Rights Regime)

Having considered the evolution of the regime of the abolition of the slave trade at sea, this Session considers the dynamics at play during the Twentieth Century as between *abolition* in general international law and *prohibition* in international human right law.

This session will provide the opportunity to read the 1926 Slavery Convention.

Questions to Consider:

- 1) What is the distinction in law between *abolition* and *prohibition*?
- 2) What are the distinctions between *slavery*, *contemporary forms of slavery*, and *modern slavery*?
- 3) What are the causes of the splintering of the regime of slavery into a number of fragments during the Twentieth Century?

Readings:

- Jean Allain, “Slavery and the League of Nations: Ethiopia as a Civilised Nation”, *Journal of the History of International Law*, Vol. 8, 2006, pp. 213-244.
- Jean Allain, “The Definition of Slavery into the Twenty-First Century”, Jean Allain (ed.), *The Legal Understanding of Slavery: From the Historical to the Contemporary*, Oxford University Press, 2012, pp. 253-280.
- Jean Allain, Slavery and its Obligations *Erga Omnes*, under review with the *Australian Yearbook of International Law*, 2017, 21pp.

Background Readings:

- Suzanne Miers, *Slavery in the Twentieth Century: The Evolution of a Global Problem*, 2003.
- Joel Quirk, *The Anti-Slavery Project: From the Slave Trade to Human Trafficking*, 2011.
- Jenny Martinez, *The Slave Trade and the Origins of International Human Rights Law*, 2012.
- Jean Allain, “The International Legal Regime of Slavery and Human Exploitation and its Obfuscation by the Term of Art: ‘Slavery-Like Practice’”, *Cahiers de la recherche en droits fondamentaux*, Vol. 10, 2012, pp. 27-42.
- 1926 Slavery Convention.
- Article 8, 1966 International Covenant on Civil and Political Rights.

Days 2: 17 October – Session 1

The Law of Forced Labour and Servitudes

The International Labour Organisation has been the locus of the development of international Labour Standards including those in regard to forced or compulsory labour and the worst forms of child labour. This Session examines those Standards and considers the extent to which the parameters of forced labour can, in legal terms, be sketched out and identified.

This Session also considers the concept of ‘servitude’ and those ‘institutions and practice similar to slavery’ as found in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

Questions to Consider:

- 1) What are the distinctions to be made as between forced labour and servitude in law?
- 2) Has forced labour been prohibited? If not, when may it be legal to force labour?
- 3) Is the law on servitude as expressed through the 1956 Supplementary Convention effectively without legal merit? If so, what are the parameters of servitude in human rights law?

Readings:

- Jean Allain “What is Forced Labour?: A Practical Guide for Humanities and Social Science Research”, in Genevieve LeBaron (ed.), *Researching Forced Labour in the Global Economy: Methodological Challenges and Advances* (Proceedings of the British Academy), Oxford University Press, 2017, 12pp. (Forthcoming).
- Jean Allain, “On the Curious Disappearance of Human Servitude from General International Law”, *Journal of the History of International Law*, Vol. 11, 2009, pp. 303-332.
- Diane Frey, “Economic growth, full employment and decent work: the means and ends in SDG 8”, *The International Journal of Human Rights*, Vol. 13, 2017, pp. 1164-1184.
- Antonio De Lauri, “The Absence of Freedom: Debt, Bondage and Desire among Pakistani Brick Kiln Workers”, *Journal of Global Slavery*, Vol. 2, 2017, pp. 122 – 138

Background Readings:

- Karla, Skřivánková, (2010), *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation*, York: Joseph Rowntree Foundation.
- International Labour Organisation, *A Global Alliance Against Forced Labour*, 2005.
- Joyce Gutteridge “Supplementary Slavery Convention, 1956”, *International and Comparative Law Quarterly*, Vol. 6, 1957 pp. 449-470.
- 1930 Forced Labour Convention.
- 1956 Supplementary Convention Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.
- 1957 Abolition of Forced Labour Convention.
- 2014 Protocol to the 1930 Forced Labour Convention.

Days 2: 17 October – Session 2

Current Developments in the Law of Slavery

Throughout the Twentieth Century slavery, in law, was in a state of desuetude, considered dead-letter. However, over the last 15 years, through archival research and legal analysis, it has been demonstrated that the legal concept of slavery is applicable *de facto*, and thus exists today beyond, formal, legal, ownership. In 2016, those scholarly considerations, given voice through the *Bellagio-Harvard Guidelines on the Legal Parameters of Slavery* were accepted into international law via a judgment of the Inter-American Court of Human Rights. This Session will consider the evolution of the legal conception of slavery and its parameters in law.

Questions to Consider:

- 1) What is the distinction between *de jure* and *de facto* slavery?
- 2) What constitutes the exercise of those ‘powers attaching to the right of ownership’?
- 3) What distinction are to be made as between slavery during the transoceanic slave trade and slavery today?

Readings:

- Jean Allain and Robin Hickey, “Property Law and the Definition of Slavery”, *International and Comparative Law Quarterly*, Vol. 61, 2012, pp. 915-938.
- Jean Allain, “Contemporary Slavery and its Definition in Law”, Annie Bunting and Joel Quirk (eds.), *Contemporary Slavery: Popular Rhetoric and Political Practice*, University of British Columbia Press, 2017, pp. 37-66.
- High Court of Australia, *The Queen v Tang*, [2008] HCA 39, 28 August 2008.
- Excerpts from *Case of the Workers of Fazenda Brasil Verde vs Brazil*, Inter-American Court of Human Rights, 20 October 2016.

Background Readings:

- Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking*, 2013.
- Jean Allain, *The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention*, 2008.
- *Bellagio-Harvard Guidelines on the Legal Parameters of Slavery*, 2012.

Days 2: 17 October – Session 3

Current Developments in the Law of Human Trafficking

Having develop an overall understanding of slavery and trafficking, this Session brings to the fore current issues which need clarification and legal considerations. The Session allows students to address the current ‘state of play’ of these regimes and to highlight those issues which would best assist in giving clarity and understanding to the law.

Questions to Consider:

- 1) To what extent has the trafficking regime effectively about border control?
- 2) To what extent are women protected or victimised by the trafficking regime?
- 3) What are the structural issues which fail to be addressed by the law of trafficking?

Readings:

- Ashley Feasley, “Eliminating Corporate Exploitation: Examining Accountability Regimes as Means to Eradicate Forced Labor from Supply Chains”, *Journal of Human Trafficking*, Vol. 2, 2016. Pp. 15-31.
- Marija Jovanovic, “The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Quest for Rationale and Practical Guidance”, *Journal of Trafficking and Human Exploitation*, Vol. 1, 2017, pp. 41-76.
- Sealing Cheng and Eunjung Kim; The Paradoxes of Neoliberalism: Migrant Korean Sex Workers in the United States and “Sex Trafficking”, *Social Politics: International Studies in Gender, State & Society*, Vol. 21, 2014, pp. 355–381.

Background Readings:

- Ryszard Piotrowicz, Conny Rijken, Baerbel Heide Uhl (eds.), *Routledge Handbook of Human Trafficking*, 2017.
- Kamala Kempadoo, Jyoti Sanghera, Bandana Pattanaik, *Trafficking and Prostitution Reconsidered: new perspectives on migration, sex work, and human rights*, 2005.
- UNHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2010.

Days 2: 17 October – Session 4

The Dynamics at Play: Understanding ‘New Abolition’

Considerations in this Session falls to the various dynamics at play in seeking to conceptualise and define the agendas around the terms of art of such as ‘modern slavery’ and trafficking. How does such conceptualisations assist or hinder vulnerable people, be they: migrants, refugees, sex workers, or victims? What is the role of the State in causing vulnerabilities which can lead to exploitation; and what are the obligations which States have undertaken to address such exploitation?

Students will be called upon to suggest topics to pursue in writing their own research papers.

Questions to Consider:

- 1) What is the relationship between ‘modern slavery’ and neo-liberalism?
- 2) What place does the law have to play in addressing issues of human exploitation?
- 3) What can business bring to the issue of human exploitation?

Readings:

- Janie Chuang, “Giving as Governance: Philanthrocapitalism and Modern-Day Slavery Abolitionism”, *UCLA Law Review*, Vol. 62, 2015, pp. 1516-1557.
- Annie Bunting and Joel Quirk, Contemporary Slavery as More Than Rhetorical Strategy?: The Politics and Ideology of a New Political Cause Annie Bunting and Joel Quirk (eds.), *Contemporary Slavery: Popular Rhetoric and Political Practice*, University of British Columbia Press, 2017, pp. 1-36.
- United Nations, Human Rights Council, “*They came to destroy*”: *ISIS Crimes against the Yazidis*, UN Doc. A/HRC/32/CRP.2, 15 June 2016.

Background Readings:

- Annie Bunting and Joel Quirk (eds.), *Contemporary Slavery: Popular Rhetoric and Political Practice*, University of British Columbia Press, 2017.
- Kevin Bales, *Blood and Earth: Modern Slavery, Ecocide, and the Secret to Saving the World*, 2016.
- Jean Allain, *The Law and Slavery: Prohibiting Human Exploitation*, Martinus, 2015.

Days 3 to 6: 6-7 and 9-10 November (10am-3pm)

These four days are devoted a series of student-led ‘Geneva’ seminars, wherein the class considers each of the student’s Research Assignments as presented, and takes the led from the student who will be preparing the Research Assignment Review.

Day 3: Historical and Contemporary Inquires (6 November)

Session 1: Historical Enslavement and Contemporary Victims

Should contemporary descendants of the historical transoceanic slave trades be considered victims in law? Consider the debates at Durban around the legality of the historical slave trades and current calls for restorative justice.

Bartolomé de las Casas left at tortured legacy, the defender of indigenous inhabitants of the Western Hemisphere, he advocated importing enslaved Africans to reverse the genocide. Consider the debates at Valladolid, and the manner in which the Spanish School of International Law justified conquest.

Session 2: The Legal Basis of Human Trafficking

In law, is human trafficking a criminal/human rights/labour/or migration issue? What are the legal advantages or disadvantages to viewing trafficking from one of these perspectives?

Consider the distinction as between the ASEAN Convention and the European Convention regarding human trafficking, and the manner in which these deal with issues of victims.

Session 3: Towards a Modern Slavery Act

In regard to the Inquiry into establishing a Modern Slavery Act in Australia, consider what the submission understand as ‘Modern Slavery’, and engage with some of the most interesting legal or policy proposals.

Consider the issue of slavery and supply chains and the approach taken by those submitting to both the Inquiry into establishing a Modern Slavery Act in Australia, and the Modern Slavery in Supply Chains Reporting Requirement – Public Consultation.

Session 4: Sex work vs Prostitution

What, if any, legal distinction are drawn between sex work and prostitution? What issues of agency and legal rights are at play, and what part does the exploitation of prostitution play in such considerations?

Day 4: Exploitation in Asia (7 November)

Session 1: Thai Fishing Industry

In 2017, the International Labour Organisation made recommendations in regard to the Thai fishing industry. Consider these recommendations from a legal perspective, while giving an overview of the issues at play in the Thai fishing industry and that of, more generally, exploitation at sea.

Session 2: Children

Does the ‘best interest of the child’ add any legal value to issues of protecting children from slavery and/or human trafficking? Consider this issue from the perspective of sexual exploitation in the Mekong Region.

When do child marriages constitute instances of slavery or a practice similar to slavery (Articles 1(c) or 1(d))? In legal terms, what may be done to address the issue? Consider the issue within the context of a country of South East Asia.

Session 3: Debt Bondage

Consider a case of debt bondage as a mean of investigating what criteria should be used to establish the line where debt bondage constitutes a violation of the 1956 Supplementary Convention. Consider the issue within the context of a specific country of the Indian sub-continent.

Session 4: The Bali Process

In the Mediterranean Sea there has been conflation between the concepts of asylum, refuge(es), migration, smuggling, and trafficking. Consider these legal regimes and the place which international human rights law might play in assisting those at sea in the Asia region.

Day 5: Legal Rights (9 November)

Session 1: The International Rights of Trafficking Victims

What international human rights does a victim of slavery or trafficking have – beyond that which is specific to slavery and/or human trafficking – as human beings? Consider the case of both citizens and non-citizens.

Session 2: Discrimination and Exploitation

What factors (such as nationality, religion, ethnicity, caste, etc.) make particular groups more susceptible to exploitation; and what types of laws may assist in addressing such discrimination? Consider one specific instances of such discrimination as it relates to exploitation.

Session 3: Victims as Criminals?

Should victims of slavery or human trafficking be held criminally responsible for illegal activities which they committed while being exploited?

In examining the UNODC's Human Trafficking Case Law Database, what jurisprudential 'meat' can be added to the 'bare-bones' of the first element (the 'means' element) of the Palermo Protocol's Trafficking definition?

Session 4: The Faustian bargain

Should assistance to victims of human trafficking be made conditional on their willingness to act as a witness? Consider the approach of Palermo verses that of the European Union and Council of Europe.

Day 6 Policy versus Law (10 November):

Sessions 1 and 2: UN Special Rapporteurs

Consider the work of the UN Special Rapporteur on Contemporary Forms of Slavery over the last five years to determine the extent to which their reports accord with the legal parameters of the issues under study. What is most insightful legal element of their work?

Consider the work of the UN Special Rapporteur on Trafficking in persons, especially Women and Children over the last five years to determine the extent to which their reports accord with the legal parameters of the issues under study. What is most insightful legal element of their work?

Consider the work of the Special Rapporteur on the Sale of Children over the last five years to determine the extent to which their reports accord with the legal parameters of the issues under study. What is most insightful legal element of their work?

Session 3: Best Practice Domestically

Consider the action plans and legislation from various countries so as to set out the best practice in addressing issue of slavery and human trafficking.

Session 4: Positive Obligations

What positive obligations exist in regard to the international human right which prohibits of slavery? Do such obligations mirror those originally set out *Rantsev v. Cyprus and Russia* specific to trafficking? What positive obligations in regard to the prohibition of slavery exist beyond the Council of Europe?