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Trafficking in Human Beings: Modern Slavery is a doctrinal study of the contemporary legal and institutional responses to human trafficking manifest in international protection standards for victims. The first chapter considers the definition of trafficking in persons; the second and third chapters the response to trafficking by the United Nations and other intergovernmental organizations such as the UN High Commissioners for Refugees and the International Labour Organization. The final two chapters investigate the regional response to trafficking in Europe by examining the work of the Council of Europe and the European Union.

The thesis of *Trafficking in Human Beings* fundamentally fails to hold and shifts throughout. The author first states that trafficking is a 'slavery-like practice', then goes on to argue that trafficking in persons is a 'new form of slavery'; later that trafficking equates to the slave trade; and finally moves to say that trafficking in persons amounts to slavery when it meets the definitional criteria of slavery. As a result, the thesis finally settles on the premise which is tantamount to saying that corporal punishment is torture (when it amounts to torture) or driving a car is terrorism (when it is packed with explosives and used in a terrorist attack).

In her introduction, Scarpa spells out the thesis of *Trafficking in Human Beings: Modern Slavery*:

While slavery and the slave trade were abolished long ago, new and more subtle forms of slavery-like practices are alarmingly on the rise in many parts of the world. Among them, in the last decades the international community has focused its attention on trafficking in persons, which must be one of the most worrying phenomena of the XXI century. This book reviews this crime in all its complexity and discusses the many and varied international responses to it since it first appeared as an issue of international concern. Many

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efforts have been made to fight against trafficking in persons; however, some gaps need to be filled and improvements to the international protection standards of trafficking victims need to be made [at 1].

In more simplified terms, Scarpa's first chapter starts: '[t]his chapter aims to review trafficking in persons as a slavery-like practice of our time' (at 3). The notion of 'slavery-like practice' is not defined by Scarpa, nor does it have much currency internationally, as it is not used in any substantive way, bar one instance where, during the 1990s, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities had a 'Special Rapporteur on Systematic Rape, Sexual Slavery and Slavery-like Practices'. Where Scarpa picks up the term is from Weissbrodt and Anti-Slavery International's 2002 'Abolishing Slavery and its Contemporary Forms', a study prepared for the former UN Working Group on Contemporary Forms of Slavery, which uses the term 'slavery-like practices' to consider not only forms of servitude, but also sex tourism, mail-order brides, apartheid, colonialism, and incest.¹

Instead of providing a definition of the term, Scarpa gives examples of 'slavery-like practices', juxtaposing them with 'traditional or chattel slavery' saying that in 'the last decades, ... the existence of a variety of new slavery-like practices has been proved [sic] as well; among the latter there are: forced labour, the bonded labour/debt bondage practice, forced prostitution and sex slavery, the worst forms of child labour, trafficking in persons, and early and forced marriage' (at 4). It is not clear why Scarpa has chosen these types of exploitation as, though she cites Weissbrodt, she fails to mention the other forms which are discussed in his study, nor does she go on to consider each of these so-called 'slavery-like practices'. Instead, she is content to turn to 'trafficking in persons', not as a new 'slavery-like practice', but now as a 'new form of slavery' (at 4).

¹ UN, Office of the UN High Commissioner for Human Rights, Weissbrodt and Anti-Slavery International, 'Abolishing Slavery and its Contemporary Forms', UN Doc. HR/PUB/02/4, 2002.

Her approach, rather than clarifying, confuses. In law, slavery is defined by the 1926 Slavery Convention as the 'status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.² That definition remains the contemporary definition of slavery, having been reproduced in substance most recently in the 1998 Rome Statute of the International Criminal Court. Beyond slavery, there is in law the term, 'institutions or practices similar to slavery', established by the 1956 Supplementary Convention, which sets out four servile statuses: debt bondage, serfdom, as well as specific types of servile marriage and child exploitation.³ Despite this, Scarpa turns to what she now calls 'new forms of slavery' and identifies trafficking in persons as one such form which has been placed at the 'top of the international agenda'. Yet 'trafficking in persons' cannot, in law, be a new form of slavery. That would require the snake to swallow its own tail. This is so, as the definition of trafficking in persons, as found in the 2000 UN Palermo Protocol and repeated in the 2005 Council of Europe trafficking convention, reads as follows:

'Trafficking in persons' shall mean 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.

² See Allain, 'The Definition of Slavery in International Law', 52 *Howard LJ* (2009), at 239.

³ For a consideration of the Slavery Conventions see J. Allain *The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention* (2008).

These conventions thus include slavery as an example of exploitation to be suppressed. Trafficking in persons cannot be a new form of slavery, as slavery is but one example of eight component parts (examples of exploitation) of one of three elements (the means, the method and the purpose) of the definition of trafficking.

If trafficking in persons is indeed a new form of slavery in law, then the other examples of exploitation must also be deemed to be swallowed up by the definition of slavery. Not quite – however – as the definition of trafficking in persons requires ‘the recruitment, transportation, [etc.] by means of the threat or use of force or other forms of coercion [etc.] for the purpose of exploitation’. Thus, according to Scarpa, if all the criteria of the definition of trafficking in persons are met, and the purpose of exploitation is to remove organs or forced labour, this is, in fact and law, slavery. This, of course, cannot be. For Scarpa, trafficking in persons is slavery, but this is a faulty argument to premise the thesis upon; it is a non-starter as a foundation and, as a result, the rest of the book does not hold up. It also begs the question: why trafficking as a new form of slavery? Why not trafficking as a new form of forced labour or a new form of servitude?

Despite this, Scarpa continues, this time moving to determine that trafficking in persons is the ‘new slave trade’ (at 12). As she does not elaborate on this new designation, but leaves the statement to stand on its own, this may be an opportune time to consider a further weakness which this book manifests. Where considerations of the slave trade are concerned, Scarpa’s research is revealed to be lacking. She writes that ‘between 1839 and 1890 more than 300 international agreements were adopted to abolish the slave trade but they were all ineffective’ (at 43). This is a thoroughly inaccurate statement. Putting aside the fact that 80,000 slaves were freed on the basis of mixed commissions emanating from these agreements and that the last recorded slave voyage across the Atlantic took place in 1867, it should be understood that such bilateral treaties were not ineffective, but instead so effective that states were, by 1890, willing to move beyond a web of bilat-

eral arrangements to sign the universal 1890 General Act of the Brussels Conference.⁴

Beyond Scarpa’s research, her analysis is wanting as, in the following sentence, she notes that the General Act limited the right to visit to vessels of less than 500 tons; Scarpa states that ‘therefore, no action was possible against ... those vessels of more than 500 tons’. This, however, is a moot point as, by 1890, with the Atlantic slave trade dead; where slaving persisted – on the East Coast of Africa through to the Persian Gulf – it was recognized to be carried out exclusively by small artisan dhows. Therefore, the implication which Scarpa seeks to draw – that European states were seeking to exclude their own large ships from being visited – simply does not hold water. Scarpa follows this assertion with a statement which is counter-temporal, as she notes that in some cases the right to visit had the ‘unwanted effect’ that slaves were thrown overboard to ‘avoid any accusation of slave trading’. Far from being an issue in the aftermath of the Brussels Conference, the issue of avoiding capture by unshipping slaves was settled by 1818, with the introduction into bilateral treaties of so-called ‘equipment clauses’, which led to forfeiture where the outfitting of a ship included, for instance, shackles or an over-abundance of water and food; as these were deemed *prima facie* evidence of involvement in the slave trade.⁵

Returning once more to the shifting thesis of *Trafficking in Human Beings*, Scarpa again moves the goal posts, not in the direction of firming up her thesis, but of undermining it still further. In the second chapter of her book, she discusses the *Kunarac* judgment of the International Criminal Tribunal for the former Yugoslavia, and its *indicia* of ‘enslavement’. Having done so, Scarpa now modifies her earlier statement that trafficking in

⁴ Why Scarpa uses 1839 as her starting date is unclear, as the first bilateral treaty relating to the slave trade dates from 1810 and is between the UK and Portugal. See Allain, ‘Nineteenth Century Law of the Sea and the British Abolition of the Slave Trade’, 78 *British Yrbk Int’lL* (2008) 358.

⁵ *Ibid.*, at 358.

persons is a new form of slavery, to say that ‘trafficking in persons may be included in the definition of slavery given by the Slavery Convention if the elements listed by the ICTY ... are met’ (at 80). More succinctly, she repeats the assertion: ‘trafficking in persons can be considered, under certain circumstances, as a form of slavery’ (at 81 and 82).

The fundamental flaw with the argument is that for trafficking in persons to exist one of the following methods has to be present: ‘recruitment, transportation, transfer, harbouring or receipt of persons’, and that one of the following means must be used: ‘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’; and, these methods and means must take place for the purpose of exploitation; of which one of the eight types enumerated is ‘slavery’. As a result, slavery need not take place, only trafficking for the purposes of slavery. Now, it is conceded that where the elements of the definition of trafficking in persons overlap with the definition of slavery, then the act of trafficking will breach a *jus cogens* norm, but not because it is manifestly an act of trafficking in persons, but because it is slavery. By Scarpa’s logic, there would be a *jus cogens* norm prohibiting the use of one’s military (if that military is used for an act of aggression) or sailing (when piracy ensues). Put in these terms, little value can be made from arguing, as Scarpa does, that trafficking in persons is considered a *jus cogens* norm, when trafficking amounts to slavery.

Later, Scarpa makes the same argument in discussing the 2005 European Court of Human Rights case of *Siliadin v France*. Acknowledging that Article 4 of the European Convention on Human Rights (ECHR) deals with slavery, servitude, and forced labour, Scarpa states that ‘it is evident that trafficking in persons can be considered, depending on the specific circumstances, as falling within either slavery or servitude (or even forced labour). Consequently, protection for trafficking victims is indeed guaranteed by the ECHR,

as demonstrated by *Siliadin v France*’ (at 141). Again, here, the protection from trafficking will transpire not on the basis of trafficking having taken place but on the basis of slavery, servitude, or forced labour manifesting itself, plus all the elements of trafficking having been present.

Beyond those limitations *Trafficking in Human Beings: Modern Slavery* is, in large part, descriptive. This is true for the last three chapters of the book which consider the approaches to dealing with trafficking within the context of international and regional (read: European) mechanisms. For instance, in a formalistic manner, Chapter 3 examines the UN human rights treaties and their monitoring bodies, the special procedures, the Statute of the International Criminal Court, and the work of the International Labour Organization, repeating the various provisions and pronouncements without developing an underlying theme, failing to make or sustain an argument. As a conclusion to this Chapter, Scarpa writes, with regard to the institutions considered: ‘[s]ome of them are very important because they allow for the enhancement of the standards of protection of trafficking victims. Others are currently not able to provide a fundamental contribution but they may become more relevant in the future’ (at 134).

Scarpa is often prone to giving advice to states throughout the pages of *Trafficking in Human Beings: Modern Slavery*. Without having undertaken any empirical work on trafficking, Scarpa feels well placed to make recommendations with regard to, for instance, the US Department of State Trafficking in Persons Report, that ‘future reports explain how the estimates has been calculated, which data are taken into consideration from every region of the world’ (at 11). Despite the high standards Scarpa seeks to hold others to, she is willing to base her own consideration of trafficking in human organs on the following: ‘there are rumours that all around the world an illegal trade in human organs is flourishing’ (at 34). Likewise, while willing to be prescriptive with others’ work, Scarpa is less so with her own; where early and forced marriage is concerned, she recommends that ‘specific prevention

policies should be adopted in the next few years' without offering any suggestions (at 27).

The issue of trafficking in persons, like any human exploitation, is a serious human rights issue. The international community deems that it has a special obligation to suppress such acts, like others touching on the integrity of the body such as torture and disappearance. Yet, to date, the scholarship on slavery and trafficking has not been worthy of the task. The waters have been so muddied with regard to the issue of slavery and human exploitation that only a sustained effort can seek to turn the tide towards a serious and solid study of the legal areas surrounding issues of trafficking in persons. Silvia Scarpa's *Trafficking in Human Beings: Modern Slavery* does not move knowledge in the domain of trafficking or slavery forward; quite the opposite.

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