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“No One Shall Be Held in Slavery or Servitude”: A Critical Analysis of International Slavery Agreements and Concepts of Slavery¹

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Most historians of slavery do not know how lucky they are. The majority of scholars concerned with slavery focus on the eighteenth and nineteenth centuries, the legal slave trade of the period, and its aftermath. For these scholars, the historical period can be clearly demarcated by the legislative moments when the slave trade or slavery itself was abolished within states or empires. The scholar of contemporary slavery enjoys no such clarity. Slavery as a social and economic relationship has never ceased to exist during recorded history, but the form that it takes and its definition have evolved and changed. Not surprisingly, legal definitions have often failed to keep up with this evolution. At present a renewed interest in slavery is highlighting the discrepancy and confusion of the many definitions of slavery that are used by international bodies, national governments, and scholars.

This paper traces the development of slavery definitions in international agreements from 1815 to the present to show how the concept of slavery has become increasingly confused. Through this process, we aim to generate a more dynamic and universal definition of contemporary slavery from theoretical models and substantive examples. We also interrogate practices defined as slavery in relationship to our definition in order to separate slavery from other, similar human rights abuses, in the expectation that a clearer definition of contemporary slavery will allow for more effective study and legislation against it.

Overview of Slavery Definitions in International Law²

Freedom from slavery has been defined in international law as a fundamental human right. In spite of this, however, and in spite of the fact that slavery has been subject to some of the strongest sanctions of the international community, none of the more than 300 laws and agreements written since 1815 to combat it has been totally effective.

Early abolitionists in the late eighteenth century took as their first goal not the abolition of slavery as an institution, but the ending of the international slave trade. The 1815 Declaration³ Relative to the Universal Abolition of the Slave Trade⁴ (the “1815 Declaration”) was the first international instrument⁵ to condemn it, and one of the abolitionist movement’s first clear achievements. The early attempts to redress slavery established duties to prohibit, prevent, prosecute, and punish anyone participating in the slave trade. The goal was to eliminate slavery by imposing an obligation on each state to make it a crime. In the aftermath of the Napoleonic wars a large number of agreements were made, both multilaterally and bilaterally, containing provisions prohibiting slavery and the slave trade in times of war and peace.

With the establishment of the League of Nations in the aftermath of World War I, international attention focused on the elimination of slavery and slavery-related practices under the League’s leadership,⁶ though quarrels among the colonial powers often slowed its efforts. The League’s work on the elimination of all forms of slavery helped to convince the world that the rights of individuals constituted a legitimate part of international law. Until that time, international law mostly dealt with the relationships between sovereign nations.

The UN took over the League’s role after World War II, and slavery was firmly established as a violation of basic internationally recognized human rights. Early work of the UN included updating slavery conventions made by the League of Nations. It is now a well-established principle that the “prohibition against slavery and slavery related practices have achieved the level of customary international law and have attained ‘*jus cogens*’ status.”⁷

Customary international law is the general practice of states, which over time becomes binding law. The Statute of the International Court of Justice (ICJ) identifies “international custom as evidence of a general practice accepted as law.”⁸ *Jus cogens* rules are the highest norms of international law and function as very strong rules of customary international law, somewhat similar to an international constitutional law.⁹ The International Law Commission in a report to the General Assembly of the United Nations acknowledged that the “prohibition against slavery is one of the oldest and best settled rules of *Jus Cogens*.”¹⁰ The right not to be enslaved is an absolute right recognized and upheld by international law, and no state can derogate from its obligations in this regard. The Human Rights Committee in its General Comment No. 24 likewise confirmed that “A state may not reserve the right to engage in slavery, to torture, to subject people to cruel, inhuman and degrading treatment or punishment.”¹¹

The practice of slavery has therefore been universally accepted as a crime against humanity. Furthermore, freedom from enslavement is considered a basic and fundamental human right, so “that all nations have standing to bring offending states before the Court of Justice.”¹² Slavery, slave-related practices, and forced labor¹³ in international law constitute:

- “(a) a ‘war-crime’ when committed by a belligerent against the nationals of another belligerent
- (b) a ‘crime against humanity’ when committed by public officials against any person irrespective of circumstances and diversity of nationality
- (c) a common international crime when committed by public officials or private persons against any person.”¹⁴

Furthermore, the International Court of Justice ruled that protection from slavery is one of two examples of “obligations *erga omnes* arising out of human rights law.”¹⁵ These *erga omnes* obligations are owed by a state to the international community as a whole. It has been clearly and categorically established that slavery is an international criminal offense irrespective of whether a government has ratified the relevant agreements.

Historical Analysis of the Evolution of Slavery Definitions in International Agreements

The definition of slavery has been controversial since the beginning of the abolition process, and the international community’s inability to clarify a definition has not helped in working towards the eradication of slavery. The process of defining slavery has caused controversy in two ways: first, there are arguments about which practices should be categorized as slavery and thus designated for elimination, and secondly, because definitions have often been accompanied by obligations on states to carry out particular actions, there has been confusion about how to best accomplish the eradication of different forms of slavery. This last question has been especially problematic since the relevant conventions have treated slavery as an institution that can be outlawed, but its actual eradication requires social and economic remedies in addition to legal ones.

If any part of the United Nations or other international body is going to be effective in addressing slavery, it would be helpful to develop an international consensus on what practices constitute slavery. If slavery is defined in a way that includes phenomena across the breadth of social injustice or human rights violations, its meaning becomes diluted and useless, leading to a diffusion of the work against slavery and causing the resources dedicated to eliminating slavery to be spread thinly across many areas, some of which may be less clearly linked to the core types of human bondage. Slavery as defined in the international instruments must, therefore, be reviewed in an effort to identify and clarify the categories of practices included within its current definition.

Slavery Convention of 1926: A First Definition of Slavery

The first definition of slavery that appears in an international agreement is the Slavery, Forced Labor and Similar Institutions and Practices Convention¹⁶ of 1926 (the “Slavery Convention of 1926”) agreed upon by the League of Nations.¹⁷ This convention was adopted on the basis of recommendations made by the Temporary Slavery Commission established by the League of Nations in 1922. Article 1(1) sets out the definition of slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”¹⁸ The Slavery Convention of 1926 prohibits all aspects of the slave trade, defined as “includ[ing] all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”¹⁹

While Article 1 of the Slavery Convention of 1926 may appear relatively restrictive in its definition of slavery, Article 2 requires states²⁰ “To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms.”²¹ Recognizing that one of these forms was closely linked to the forced labor practices which were common under colonial administrations in the 1920s (in the Belgian Congo, for example, indigenous populations were forced to work in the production of cash crops such as rubber, with extreme cruelty, torture, the loss of all personal freedom, and the enforcement of the work requirements through violence characterizing their “forced labor”), the Slavery Convention specified that “forced labor may only be exacted for public purposes” and required states “to prevent compulsory or forced labor from developing into conditions analogous to slavery.”²²

The various forms of slavery had been officially listed and partially defined in a work prepared by the Temporary Slavery Commission in 1924. It was subsequently approved by the Council of the League of Nations, which, in addition to enslavement, slave raiding, the slave trade, and slave dealing, included:

- “1. (c) Slavery or serfdom²³ (domestic or predial);
2. Practices restrictive of the liberty of the person, or tending to acquire control of the person in conditions analogous to slavery, as for example:
 - (a) Acquisition of girls by purchase disguised as payment of dowry, it being understood that this does not refer to normal marriage customs;
 - (b) Adoption of children, of either sex, with a view to their virtual enslavement, or the ultimate disposal of their persons;
 - (c) All forms of pledging or reducing to servitude²⁴ of persons for debt or other reason....
4. System of compulsory labor, public or private, paid or unpaid” .²⁵

It should be noted that these are essentially pragmatic definitions based on examples of existing practices rather than an attempt to find the common attributes of the different manifestations of slavery as a relationship. Much of the subsequent confusion concerning what is and what is not slavery springs from this separation of the practical and the conceptual. Seeking to reflect the realities of current criminal activity, political interest, and public concern, the League set out definitions designed for legal enforcement, but did so through a process of negotiation and compromise. The diplomats engaged in this process were also mindful of national interests. The result is a definition highly reflective of its historical context, listing examples of slavery designed by diplomats for legal enforcement. As that definition has been adopted by scholars and activists, and applied to changing forms of slavery, it has failed to provide necessary analytical clarity.

The references to “*any* or all of the powers of ownership” and “abolition of slavery in *all* its forms” in the first two articles of the Slavery Convention had the effect of covering not only domestic slavery but also the other forms of slavery referred to in the Report of the Temporary Slavery Commission.²⁶ The same League of Nations Assembly resolution which approved the Slavery Convention confirmed the League’s interest “in securing the progressive abolition of slavery and conditions analogous thereto,” establishing the foundations for international interest in “conditions analogous” to slavery, and commented on forced labor, suggesting “it should not be resorted to unless it is impossible to obtain voluntary labor.”²⁷ This in turn set the scene for consideration of forced labor by the International Labor Organization (ILO) and the adoption of a convention on forced or compulsory labor in 1930—four years later.

While the Slavery Convention outlawed slavery and associated practices, it did not establish procedures for determining the existence of slavery in the countries signing the convention, nor did it create an international body that could evaluate and pursue allegations of violations. Despite these omissions, the League, through international pressure and publicity, did convince governments such as Burma (1928) and Nepal (1926)²⁸ to abolish slavery within their borders. It should be noted that in some countries, as in Burma, these laws actually compensated the slave-owners for their loss while making no provision for restitution to the freed slaves. From 1931 the League established committees of experts to consider information about slavery, but the work of the second of these, the Advisory Committee of Experts on Slavery, was ended by the outbreak of World War II.

In the 1920s and 1930s there was increased public concern in Europe and North America about the issue of “white slavery,” and a series of international conventions was adopted concerning the traffic of women for prostitution. These abuses were not mentioned in the 1926 Slavery Convention or dealt with by the various committees of experts on slavery, although the first of the

international conventions on traffic in women referred in its title to the “white slave trade.” The title demonstrates the difficulty faced in the 1920s in separating contemporary forms of slavery from historical forms. The experience of the seventeenth to nineteenth centuries had fixed in the Western mind the idea that slavery was an institution in which *black* people were *owned* as property. (This is an idea, of course, which still has currency and resilience.) For that reason, trafficking in women was given a racialized definition as the *white* slave trade and relationships characterized by violent control and economic exploitation but without benefit of legal ownership were termed “similar institutions and practices.” However, it is precisely these characteristics—violence, control, and economic exploitation—which are central to understanding contemporary slavery.

Universal Declaration of 1948: Servitude Identified

Following the establishment of the UN, the General Assembly in 1948 adopted the Universal Declaration of Human Rights (the “Universal Declaration”), Article 4 of which states that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”²⁹ This provision confirmed the international community’s opposition to “servitude” and to all forms of slavery. The newly established UN also reviewed the existing League of Nations conventions to determine which might be continued within the UN framework. In 1949, an *Ad Hoc* Committee of Experts on Slavery stated that there was “not sufficient reason for discarding or amending the definition contained in Article 1(1) of the Slavery Convention 1926.”³⁰ This Committee did, however, point out that the definition in the Slavery Convention of 1926 did not cover the full range of practices related to slavery and that equally repugnant forms of servitude, such as the extensive forms of debt bondage present in the Indian subcontinent, should be prohibited. It also stated that a passive commitment to abolition was inadequate and that national authorities should take “positive measures of international assistance in eliminating the economic and social causes of slavery.”³¹ The Committee, therefore, recommended that a supplementary convention be drafted to cover practices analogous to slavery, including many of the practices outlined in the Slavery Convention of 1926, such as serfdom, debt bondage, and forced labor.

Supplementary Convention of 1956: Servile Status Defined

The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956 (the “Supplementary Convention”) extended and broadened the definition of slavery put forward in the 1926 Convention. The provisions of Article 1 oblige states to abolish certain institutions and practices analogous to slavery which are referred to collectively as “servile status.”³² These include:

- “(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;
- (b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labor on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;
- (c) Any institution or practice whereby:
- (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any person or group; or
 - (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
 - (iii) A woman on the death of her husband is liable to be inherited by another person;
- (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labor.”

Article 1 of the Supplementary Convention consequently clarified that states should seek “the complete abolition or abandonment” of the various forms of slavery and slavery-like practices, “where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926.”

Sections (c) and (d) of the Supplementary Convention concern unfree forms of marriage and child labor. These are indicative of two important themes in the construction of definitions of slavery. First, they demonstrate the tendency of international bodies to widen the definition of slavery as time passes. By designating these as institutions which are analogous, or similar in certain respects, to slavery, they opened the door to other relationships, situations, and institutions being lumped together as “forms” of slavery. In time, these would include phenomena as diverse as prostitution, incest, and the sale of human organs. Second, with the inclusion of unfree forms of marriage and child labor, and to a lesser extent debt bondage, a new area of ambiguity was introduced. This ambiguity hinges on the concept of consent and the location

of consent within cultural boundaries. This is best seen in section (d) on child labor. Depending on how the word “exploitation” is defined, this could describe the apprenticeship of a 17-year-old to a skilled craftworker.

The Supplementary Convention of 1956 augments but does not replace the definition of slavery in the Slavery Convention of 1926. Although there have been concerns that slavery may need redefinition in the light of changing social and economic conditions, the combined definition in these two conventions has remained in place. The UN has made occasional restatements; for example, in 1983 slavery was said to be “any form of dealing with human beings leading to the forced exploitation of their labor.”³³ In spite of those restatements or additions, the definition of slavery in the international legal context has not essentially been altered since 1926, although slavery has been repeatedly prohibited in numerous later international conventions.

Covenants of 1966: Unfree Labor

It took nearly 20 years for the obligations set out in the Universal Declaration to be given international legal effect by the introduction of two binding covenants.³⁴ The International Covenant on Economic, Social and Cultural Rights (the “Economic, Social and Cultural Covenant”) and the International Covenant on Civil and Political Rights (the “Civil and Political Covenant”) were adopted in 1966. The latter Covenant has been more widely ratified than the Economic, Social and Cultural Covenant and has a mechanism whereby an individual whose rights have been violated can make a claim directly to the Human Rights Committee in accordance with the Optional Protocol.³⁵

The two covenants contain provisions relating to slavery and its prohibition. Article 6 of the Economic, Social and Cultural Covenant recognizes the right to work “which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.”³⁶ Article 7 and 8 of this Covenant set out certain conditions and rights that must be upheld and protected by governments, such as fair wages, equal pay for work of equal value, and the right to form and join trade unions.

The 1966 Civil and Political Covenant directly prohibits slavery and servitude in Article 8 in words similar to those of the Universal Declaration of Human Rights. This provision comprises one of the inalienable rights (even in times of public emergency) under the Covenant in accordance with Article 4(2), indicating the importance attached to the abolition of slavery. The only difference from the terms of the Universal Declaration is that the prohibition against servitude in the Civil and Political Covenant is set out in a separate section.³⁷ Article 8 also contains a provision, which prohibits the use of forced labor subject to certain limited exceptions.³⁸

The International Bill of Human Rights

The Universal Declaration; the Economic, Social and Cultural Covenant; the Civil and Political Covenant; and the Optional Protocol to the Civil and Political Covenant have together become known as the "International Bill of Human Rights," as they set out the fundamental human rights which must be protected and upheld under international law. The International Bill of Human Rights does not contain definitions of slavery, servitude, or forced labor. When applying these generally applicable provisions of the International Bill of Human Rights, the international community would have to look to the definitions that exist in other international instruments.

The Rome Final Act: Trafficking

The most recent reference to slavery in an international instrument is in the Rome Final Act³⁹ (July 17, 1998), which established the International Criminal Court. Enslavement is deemed a crime against humanity that falls under the jurisdiction of the Court. It is defined as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children."⁴⁰ This definition is largely the same as the first definition adopted by the League of Nations over 60 years ago, with the addition of a specific reference to *trafficking*.

Summarizing the Definitions Held in the Slavery Conventions

In Table 1 we list and summarize the definitions of slavery and slavery-like practices as they appear in the international instruments since 1926.

The review in Table 1 of the main slavery conventions illustrates the way in which views of slavery in international conventions evolved and became confused over time. While in 1926 the notion that a person exercised rights of ownership over another received the direct definition of slavery, the example of forced labor from colonial settings was added as a practice that could become analogous to slavery. In 1948 and 1956 the ideas and practices related to "servitude" and "servile status" were added. Both terms are defined in *The Oxford English Dictionary* (1991) using the words "slave" or "slavery." However, international legislators consciously avoided defining them in those terms. In 1966, the issue of unfree labor was addressed. By 1998, the definition of slavery had returned to its original 1926 version with the addition of the practice of trafficking in persons. In the next section, we examine the main characteristics of slavery in order to elucidate it and provide the basis for the generation of our own definition of contemporary slavery.

Table 1

Summary of the Evolution of Slavery Conventions

<i>Slavery Convention</i>	<i>Definition/Declaration Regarding Slavery</i>
Slavery Convention (1926)	<p>Slavery defined: Is the "status or condition of a person over whom all of the powers attaching to the right of ownership are exercised"</p> <p>Forced Labor added: States should "prevent compulsory or forced labor from developing into conditions analogous to slavery."</p>
Universal Declaration (1948)	<p>Servitude added: "No one shall be held in slavery or servitude; slavery and the slave trade should be abolished in all their forms"</p>
Supplementary Convention (1956)	<p>Servile Status added: Practices referred to as servile status should be abolished:</p> <ul style="list-style-type: none"> a) debt bondage b) serfdom c) unfree marriages d) the exploitation of young people for their labor
Economic, Social and Cultural	<p>Freedom to choose work added: recognizes "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts."</p>
Rome Final Act (1998)	<p>Trafficking added: Slavery defined as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children."</p>

Analyzing the Main Characteristics of Slavery in International Agreements

Defining Ownership and the Loss of Free Will

A common theme in all of the agreements concerning the abolition of slavery and slavery-like practices is the concept of ownership. The fundamental characteristic of many of these practices is that they curtail freedom of movement and ability to make decisions, as well as many other fundamental free-

doms. That is, many of these practices deprive victims of the exercise of their free will. It is understandable that the concept of ownership pursuant to which the enslaved individual loses all control over his or her own life and labor was considered a central issue in identifying slavery by the international community. The wording of the Slavery Convention of 1926 is ambiguous as to whether this concept of control must be absolute in nature, whether the enslaved person has totally lost the ability to exercise free will. It can be argued that the use of the phrase "any or all of the powers attaching to the right of ownership"⁴¹ was intended to give a more expansive and comprehensive definition of slavery which would include not just the forms of slavery involved in the African slave trade but also many "slavery-like" practices. An international treaty must be interpreted in accordance with its ordinary meaning and in the light of its object and purpose, taking into account, among other factors, relevant rules of international law applicable in the relations between the parties.⁴² It is clear that the aim of the Slavery Convention of 1926 was to eliminate all forms of slavery, however they arose, given their severe and often irreversible effects on individuals.

The concept of ownership has resulted in slaves sometimes being described as "chattels." Traditional slavery is often referred to as "chattel slavery" because the owners of such slaves had the right to treat slaves as possessions, like livestock or furniture, and to sell or transfer them to others. Slavery as a form of legal ownership of a person is extremely rare today. For that reason the criterion of ownership may obscure some of the other characteristics of slavery, which are associated with the complete control to which a victim of slavery is subjected by another person, and which are implied by the Slavery Convention's wording: "any or all of the powers attaching to the right of ownership."

It is clear that the nature of the relationship between the slaveholder and the slave, as well as the conditions within which the slave is held, are crucial to understanding and identifying what actually constitutes slavery. In this regard there are certain elements that must be considered, including:

- (a) whether or not an individual has freedom of movement and choice of work, and, if not, what restrictions are placed on this freedom;
- (b) whether or not an individual has control over his or her own productive capacity and his or her personal belongings and wages;
- (c) whether or not an individual has given informed consent and understands the nature of the relationship between himself or herself and the other person(s) involved.

The economic exploitation and loss of free will that are inherent in slavery are often accomplished through the threat of violence and accompanied by

ongoing abuse, and for that reason violence also becomes a key identifying attribute of slavery. The bonded laborer whose family has been enslaved for generations against a falsely accounted debt, the child kidnapped and locked into a workshop, or the woman forced into prostitution have all lost the element of choice and control of their lives. This loss is normally enforced, whether the entity taking it is an individual or a state, through violence.

Defining Unfree Labor and Violence or the Threat of Violence

As the use of intimidation, coercion, or force is frequently cited as a reason for categorizing particular forms of exploitation as slavery, the question of whether economic imperatives—a need for money or income—constitute a form of “force” is pertinent. The question is raised in various contexts, but chiefly in relation to traffic in women and prostitution. Some argue that certain women and men enter into prostitution voluntarily and should not therefore be categorized as victims of slavery. Others argue that the women and men concerned only do so because of a lack of alternative sources of income, and that it is these economic considerations, particularly institutionalized discrimination against women, resulting in a lack of income-earning opportunities, which “force” them to resort to prostitution. Evidently, this type of “force” is very different from the threats of physical violence by pimps or others to which many prostitutes are subjected. Also difficult to categorize is the pressure of discrimination to which women practicing prostitution (whether they have entered into prostitution voluntarily or involuntarily) are subjected, and which keeps them from leaving prostitution. Although such pressure is again of a different type from the coercion that may have led them into prostitution in the first place, it is a very real “force” which prevents them from changing their occupation.

It is not only in relation to prostitution that these questions are raised. For example, some bonded laborers could potentially escape their bonded status by leaving the community in which the person responsible for their bondage (their employer) has influence. No physical forms of constraint or barriers prevent them from leaving. Economic and social considerations, however, along with a lack of awareness of what might happen to them and their families, mean that they do not leave. Thus, slavery can be seen as a social phenomenon, an understanding of which could be facilitated by the application of social scientific concepts and theories.

Slavery and Social Science

The Capitalist Mode of Production

Two types of social theory that can be useful in illuminating slavery are those that deal with economic and cultural aspects of social relations. Eco-

nomic explanations, both from a Marxist and neoclassical perspective, examine the development of capitalism in rural areas of the Third World, where slavery is more prevalent, to argue that the process of developing a capitalist mode of production is a process of liberation—liberation from the land and liberation from an employer. The worker becomes free to sell his or her own labor power as a commodity. Political transformations generally accompany the creation of a working class with pressures for better wages and working conditions. People who are enslaved are not free to sell their own labor power as a commodity; they are economically exploited by their holders, and held under conditions of violence. Slave labor as it is sometimes used in rural areas in the developing world stalls the political transformations that generally accompany the proletarianization of the workforce and reimposes authority over a workforce where a proletariat already exists.

Slave labor can perform the same role attributed to technology in the class struggle, used by capital to cheapen or discipline free wage labor or to even serve as a substitute for it. In precisely the situations where a political consciousness begins to develop, capital can shift the balance of power by restricting labor mobility using slave labor.⁴³ This can include importing enslaved workers such as bonded laborers, or converting free workers into enslaved workers. In this sense, the labor power of the enslaved person becomes the property of the slaveholder. It is a commodity over which the slaveholder has complete control. A free laborer can enter or withdraw from the labor market at any time, but a slave cannot; he or she cannot sell his or her own labor power and thereby commodify it. This is true whether the period of enslavement is of a fixed or temporary duration or indefinite.⁴⁴ This socio-economic explanation of slavery can help to inform certain aspects of slavery as a social relationship, but not other socio-cultural factors.

Slavery and Alienation

The slaveholder holds the labor power of the slave, but the slave is also owned or controlled in a much more basic way by the slaveholder; the slave's own life is held by the slaveholder. This has led some to focus on the cultural aspects of the social relationship of slavery. Orlando Patterson defines a slave's status as a form of "social death," a term which encapsulates the radical way in which the life of the slave is held. When a person becomes a slave, he says, that person becomes "naturally alienated"—that is, he/she effectively loses any cultural, social, and personal history and future, and slave status is created or socialized only in relationship to the slaveholder.⁴⁵ This exists for as long as a person is a slave, whether their enslavement lasts for a few weeks or a lifetime. The idea of social death and natal alienation can be described with reference to the situations of actual slaves. A Mauritanian slave has stated that: "My master separated me from the father of my children and forbade us to marry;

he cut me off from any contact with the world outside his house."⁴⁶ The enslavement of a person in the charcoal industry in Brazil has been described as "from this moment the worker is dead as a citizen and born as a slave."⁴⁷

The concept of "social death" highlights the totality of the process of enslavement and the status of the slave, but it begs certain questions. The impact of enslavement on the life of the slave shares certain characteristics with inmates of total institutions. Elie Wiesel,⁴⁸ for example, discusses the re-socialization of inmates of Nazi concentration camps, the dissolution of their personalities, the fading from memory of their previous lives, the invention of a new being tailored to the demands and context of the camp. Like slavery, this was a state marked by the loss of autonomy, a lack of free will, and subjugation to extreme and violent control. But could the inmates be said to truly be socially "dead"?

Slavery is, after all, a social and economic relationship between two people. It may be one marked by an extreme imbalance in power, by regular and ongoing exploitation, and by the potential for violence, but it remains a relationship understood and recognized (if not agreed to) by both parties. From historical instances of slavery come extensive accounts of the interdependence of slaves and masters and of the sometimes rich and caring relationships that grew up between them.⁴⁹ In Mauritania in 1997, David Hecht found an Afro-Mauritanian walking hand in hand with a White Moor dressed in matching robes. They told him that they were master and slave as well as best friends.⁵⁰ It may be that the concept of "social death" works best when "social life" is defined as being in a state of autonomy and free will, but autonomy varies enormously in human relationships. Slavery may occupy one end of the continuum, a relationship marked by the least amount of autonomy, but it remains a social relationship.

There are two other factors that raise questions about the concept of "social death." The first is the difference in psychological and social adjustments to enslavement by people of different ages. One of the authors has interviewed a number of slaves. Those who have been enslaved from a very early age often show an acceptance of slavery and a willingness to define themselves in relation to their masters. They tend to have a clear idea of their location in the social universe, as "belonging" to a certain family or individual slaveholder. Yet that state holds within itself a social and personal history, one which slaves will easily recount when asked. For example, this was the reply given by a bonded laborer in India when he was asked how long his family had lived in their village:

We have always lived here. I do not know about before my grandfather, but he said we have always lived here. My grandfather was *halvaha* [a bonded ploughman] to the landlord, and later my father was also his *halvaha*. They were both bonded by debt, my father by his father's debt, I don't know about my grandfather's debt. It's a

regular thing. Kohl people like us have always been bonded to Brahmins like my master. That's the way it has always been around here.⁵¹

People who are enslaved as adults, on the other hand, carry with them memory of their former state. This memory often becomes the emblem of their desire for freedom. Having known some form of freedom, they are unlikely to accept a view of themselves as "socially dead," but to see themselves as abused, coerced, and controlled against their will. Given these self-definitions, we would assert that neither those enslaved as children nor those enslaved as adults cease to be social beings.

The second factor that raises questions about "social death" concerns the length of time a person is enslaved. Contemporary slavery is marked by temporary enslavement. Given that a social life exists before and after the period of enslavement, that family ties may be disrupted but are rarely lost or forgotten, it is difficult to support a diagnosis of "natal alienation" in spite of Patterson's assertion that temporary slaves are equally "socially dead." This form of "alienation" might be characteristic of slavery as the complete legal ownership of one person by another with the concomitant transformation of the slave into portable property. But enslavement does not require ownership, only control, usually achieved through violence or its threat. Slavery existed as a social and economic relationship before it was legally defined and has continued after the abolition of its legal state. Generating a universal definition of this relationship, one that is sufficiently dynamic to apply to a variety of historical and geographical settings, is the challenge.

Defining Slavery

Building on our discussion of definitions of slavery in international agreements and social scientific theory, we now propose to define slavery as *a state marked by the loss of free will where a person is forced through violence or the threat of violence to give up the ability to sell freely his or her own labor power*. In this definition, slavery has three key dimensions: control by another person, the appropriation of labor power, and the use or threat of violence. Applying this definition to many practices, we can see that while a number of them have the elements of slavery and are often defined as such, they do not have all three aspects and therefore in our definition are not slavery. Table 2 identifies practices that have been officially defined in international agreements as forms of slavery, and assesses them on the basis of the criteria of our definition.

The Three Dimensions of Slavery

Table 2 reviews the phenomena that previously have been termed slavery and assesses them based on the three variables of our definition. In "white

Table 2

Practices Defined as Forms of Slavery in International Conventions

Practice/Criteria √ = Yes × = No	<i>Loss of free will</i> (√ /×)	<i>Appropriation of labor power</i> (√ /×)	<i>Violence or threat of violence</i> (√ /×)
“White Slavery”	√	√	√
Forced Labor	√	√	√
Debt Bondage	√	√	√
Child Prostitution	√	√	√
Forced Prostitution	√	√	√
Sexual Slavery	√	√	√
Migrant Workers	√/×	√/×	√/×
Prostitution	√/×	√/×	√/×
Forced Marriage	√/×	√/×	√
Apartheid	√/×	×	√
Incest	√/×	×	√
Organ Harvesting	√/×	×	√/×
Caste	×	×	√
Prison Labor	×	√/×	√

slavery,” forced labor, debt bondage, child prostitution, forced prostitution, and sexual slavery, all three aspects of our definition are present. The cases of migrant workers, prostitution, and forced marriage can be manifested as slavery under certain conditions. Apartheid, incest, organ harvesting, migrant workers, and caste have all been defined as slavery-like practices, but we would not define them as slavery since the theft of labor power in particular does not occur to the same degree when compared with the practices we have identified as consistent with slavery.

The case of prison labor is unique, because prisoners have had their free will and labor power appropriated by the state for committing crimes. Prison labor is a particularly thorny question, as the accusation of the enslavement is primarily dependent on the legitimacy of the regime and the fairness of the justice system that imprisons. When people are held against their will without any form of due process and threatened or coerced with violence, and their labor power is taken (all attributes of the current situation in Burma according to the ILO), then it is reasonable to assess the imprisonment as a form of

state-sponsored slavery. When an inmate of a British prison is voluntarily enrolled in a work project for which he or she is remunerated, this can hardly be described as slavery. The last column, violence or the threat of violence, can be present in all the practices that have been labeled as slavery. This may explain some of the confusion of the definitions of slavery in international agreements. Furthermore, in defining slavery it is important to recognize that there may be some instances where some or all of our three dimensions of slavery may exist in practices we do not define as slavery. Our aim in this paper is to separate the practices where all three dimensions of slavery are always present. These include examples such as debt bondage, forced prostitution, and sexual slavery.

Debt Bondage

In the 1956 Supplementary Convention, debt bondage is defined as the “status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”⁵² The 1956 Convention places debt bondage within the category of practices likely to result in a “servile status”⁵³ and obliges governments to pass laws to abolish it. One of the key areas of misunderstanding in both international instruments and popular conception centers on the part of the definition that reads “the value of those services...is not applied towards the liquidation of the debt.” The confusion arises because this definition explains that the labor power is not applied to the debt, but it does not explain how that labor power is actually used within the lender-debtor relationship.

There are in fact two distinct forms of debt bondage, both meeting this criterion but in different ways. In many cases of debt bondage the labor power (and indeed the very life of the debtor) becomes collateral for the debt. This establishes the trap of bondage; since all the labor power of the debtor is the collateral property of the lender until the debt is repaid, the debtor is unable to ever earn enough to repay the debt by his or her own labor. This arrangement is a hallmark of the debt bondage of the Indian subcontinent. In other areas the work of the debtor may ostensibly be applied to the debt, but through false accounting or extortionate interest, repayment remains forever out of reach. In the first form, the very nature of the agreement which transforms labor power into collateral practically disqualifies the debtor from ever repaying the debt. In the second form it is a violation of the agreement, when “the value of those services as reasonably assessed is not applied towards the liquidation of the debt,” that traps the debtor.

The definition of debt bondage in the Supplementary Convention also highlights the important fact that the pledging of a person’s services to repay a debt becomes abusive if the terms and conditions of such an arrangement are

unregulated. This criterion distinguishes between an acceptable arrangement whereby an individual is working to pay off a debt incurred and the enslavement of debt bondage. In the former, it is legitimate for a worker to accept credit for whatever reason and to repay this amount by working, so long as the repayment terms are fixed and the capital sum borrowed is only subject to reasonable interest rates. None of these safeguards exists in a debt bondage situation. In 1924, the Temporary Slavery Commission pointed out that although the contract is made with the consent of the debtor, "it often happens that the creditor so arranges that his debtor gets more and more into debt, with the result that what was in the beginning only one apparently equitable contract is transformed finally into enslavement for life."⁵⁴ The bonded laborer is often at the mercy of his or her employer or creditor and the terms of the loan or advance are either not stipulated or not followed.

The dominant position of the employer or creditor in such instances increases the risk and opportunity of abuse, for example allowing the creditor to adjust interest rates or simply to add interest without informing the bonded laborer, imposing high charges for food or tools, and making additional advances on wages, resulting in increased debt. Ultimately, these conditions mean that the debtor is unable to repay the loan and remains bonded for an indefinite period, potentially throughout his or her life. In some instances, individuals are compelled to place a child or another member of the family in bondage to repay a debt or to obtain a loan, as they are unable to complete all of the work to be done. This situation perpetuates the cycle of debt from one generation to the next. The practice of placing a child or other family member in bondage is sometimes identified as "pawning" or "pledging," while the situation of families which remain in debt bondage from one generation to the next is generally referred to as "chronic bondage."

The evidence of debt bondage received by the Working Group on Contemporary Forms of Slavery has mainly concerned rural areas. Indeed, the problem of bonded labor is viewed internationally as "an economic malady"⁵⁵ linked to rural unemployment. The International Commission of Jurists Seminar on "Rural Development and Human Rights in South Asia" held in India during December 1982 concluded that "landless and bonded laborers are among the weakest and most exploited sectors of the rural communities in South Asia."⁵⁶

Debt bondage is not exclusive to rural or agricultural laborers, however; it also occurs in such industries as construction, quarrying, and brick making. The debt which results in the enslavement of the victim can be incurred in many different ways, notably including travel costs, subsistence, and housing, or through the activities of a recruitment agency.⁵⁷ The definition of debt bondage in the Supplementary Convention is sufficiently wide to cover many migrant workers who either borrow money or unwittingly incur costs which employers or agents subsequently tell them that they must repay. This predicament can affect both migrant workers who leave their own country to

seek work abroad and workers who leave their community to seek work elsewhere within their own country.

It has been observed that the connection between trafficking and forced labor practices "is nowhere more clear than in the practice of debt-bondage."⁵⁸ The victims are enticed, procured, or kidnapped to their new workplace by the agent or trafficker and must, on arrival, repay the travel and subsistence costs incurred. Often women are pushed into prostitution in order to repay this money. The threat of violence and their total dependence on the agent in the new environment in many instances forces the worker into the sex industry.

Debt bondage or bonded labor today affects millions of adults and children in their own countries and migrant workers throughout the world. It has been suggested that one of the reasons why these practices continue is the economic pressure to retain competitive export prices.⁵⁹ As a result, bonded labor systems continue to exist quite openly in many developing countries despite legislation prohibiting them. They also flourish more clandestinely in industrialized countries, affecting migrant workers in general and illegal migrants in particular. These cases are consistent with the Marxist analysis of the role of unfree labor in the process of capitalist development discussed earlier.

In view of the prevalence of bonded labor among the landless in rural areas, governments may in some instances have to reform the existing land tenure systems in order to comply with their obligations under the Supplementary Convention to prevent debt bondage. The UN's Food and Agricultural Organization (FAO) has for many years been assisting in the reform of feudal and semi-feudal structures of land tenure and the abolition of debt bondage through the development of credit institutions.

Although the practice of debt bondage has in the past been associated mostly with landless laborers, it is now an international phenomenon affecting many migrant workers. The marked increase in international travel for employment opportunities and in the number of refugees has increased the risk of migrant workers being forced to work to repay an agency fee of an undetermined amount, i.e. becoming victims of debt bondage.

Forced or Enforced Prostitution

The treaties introduced in the first half of the twentieth century do not refer explicitly to the term "forced prostitution," but they did refer explicitly to the use of violence and threats. For example, the 1910 White Slavery Convention made it a crime for "any person who, to gratify the passions of others, has by fraud or by the use of violence, threats, abuse of authority, or any other means of constraint, hired, abducted or enticed a woman...for immoral purpose."⁶⁰ The use of some form of coercion or force was anticipated, whereas later treaties, including the Suppression of Traffic Convention, are not confined to forced prostitution.

This transition reflects the change in attitudes towards prostitution, a matter that has remained polarized in recent times. On the one hand, there are those who believe that there can never be such thing as consensual prostitution and that the exploitation of individuals through prostitution in all its forms should be eliminated and the perpetrators punished.⁶¹ On the other is the view that only coerced or non-consensual prostitution should be controlled and prevented by international standards and the criminal law.⁶² Advocates of the first view argue that all prostitution is forced, pointing out that women are “forced” to become prostitutes because of lack of money or other financial pressures.⁶³ In so doing, they are attributing an inclusive meaning to the term “forced” in relation to threats of violence, intimidation, or coercion linked to other forms of slavery—although it is clear that a lack of alternative sources of income does constitute a form of coercion, especially when the lack of alternatives for certain individuals is due to society-wide constraints imposed upon women.

Forced prostitution is usually defined as a person (normally a woman) being coerced through violence or intimidation to engage in sexual acts in return for money or some other payment. It was proposed by the Council of Europe that forced prostitution be defined as the “act, for financial gain, of inducing a person by any form of constraint to supply sexual services to another person.”⁶⁴ Constraint would include the more obvious forms of violence, such as beatings, rape, torture, and threats. It was suggested, however, that “any form of constraint” should be interpreted more widely to include the act of obtaining sexual services from a person “by taking advantage of his/her vulnerability resulting either from his/her precarious or illegal situation, or of his/her position of economic dependence.”⁶⁵

As in our definition of slavery, prostitutes are controlled by various methods to ensure their acquiescence. It is this loss of free will brought about through violence and intimidation that places forced prostitution clearly within our definition of slavery as well as the definitions in the UN slavery conventions, including the Suppression of Traffic Convention. Forced prostitution has been described by one intergovernmental organization as “the ownership of women and children by pimps, brothel owners and sometimes even customers for the purpose of financial gain, sexual gratification and/or power and domination.”⁶⁶

There has been a great deal of interest by legal writers and scholars in the concept of forced prostitution and in particular, the element of control held by pimps over prostitutes. It has been claimed by one such commentator that:

Pimps control prostitutes through: (1) physical abuse; (2) physical control of prostitutes’ children; with threats to keep the children as hostages if prostitutes leave; (3) serious threats of physical harm, including murder; (4) keeping prostitutes in a continuous state of poverty and indebtedness; and (5) ensuring that they have no freedom to move outside unaccompanied.⁶⁷

An individual is deemed to be a pimp if he or she “draws another into prostitution and thereafter dictates the daily activities, supervises the manner of operation...expropriates and spends virtually all earnings and otherwise commands influence over that person’s life.”⁶⁸ In fact, in certain circumstances the control may be so complete “that he will have little difficulty actually selling his ‘possession’ to another pimp.”⁶⁹ Since the end of the Cold War there has been a dramatic increase in illegal migration, and these migrants are especially vulnerable to this kind of enslavement. Those involved in smuggling illegal migrants will take control by retaining passports, using violence, and convincing the victim that they have even more to fear from law enforcement authorities in the destination country. In combination, these tactics lead to the power needed to subject someone to forced prostitution.

It is clear that all of the key elements necessary for a practice to fall within the slavery definition are present in forced prostitution. In the United States, for example, it has been pointed out that “forced prostitution like slavery implicates all of the core concerns of the Thirteenth Amendment—physical abuse, lack of free will, forced labor and social stratification.”⁷⁰ Forced prostitution can therefore be deemed a form of slavery for the purposes of the prohibition against slavery in the U.S. Constitution. It also falls under the definition of slavery, servitude, and forced labor as set out at the international level. The observer for the Commission on the Status of Women acknowledged this principle as early as 1978, when he told the Sub-Commission that the Commission considered forced prostitution to be a form of slavery.⁷¹

The United Nations General Assembly adopted the Declaration on the Elimination of Violence Against Women in 1993 to increase the coverage already provided in the Convention on the Elimination of All Forms of Discrimination Against Women. In this Declaration, Article 2 provides that violence against women shall be understood to include “trafficking in women and forced prostitution.”⁷² This reference to “forced” in relation to prostitution in the Declaration on the Elimination of Violence Against Women is exceptional in UN standards. In international humanitarian law, however, the prohibition has always been against combatants resorting to force, with a consistent reference to *enforced* prostitution, rather than simply to prostitution *per se*.

International humanitarian law is the law of armed conflict, both international and internal. The laws relating to armed conflict were codified after World War II in the four Geneva Conventions of 1949.⁷³ These Conventions deal with the treatment of the wounded and sick in armed forces in the field, at sea, and the treatment of prisoners. The Fourth Geneva Convention deals with the protection of civilian persons in time of war.⁷⁴ According to this convention, “Women shall be especially protected against any attack on their honour, in particular against rape, *enforced* prostitution, or any form of indecent assault”⁷⁵ (emphasis added). It is unclear whether the use of the term “enforced prostitution” in this instance can be distinguished in any way from “forced prostitu-

tion," although this difference in terminology has persisted in international humanitarian law documents. In Additional Protocol I (to the Geneva Conventions relating to the victims of armed conflict), for example, Article 75 lists fundamental prohibitions, one of which outlaws "outrages of personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault."⁷⁶

Sexual Slavery

The concept of sexual slavery is less clearly defined than forced prostitution. It is normally treated as a separate and distinct form of sexual exploitation, with the implication that there does not have to be any direct financial gain in sexual slavery. Since the slave is forced to provide a service that has economic value, it might be seen to represent the theft of the labor power of the enslaved, but it is better conceptualized as an extended form of rape. Sexual slavery involves the absolute control or power of one person over another. It is the sexual exploitation of individuals through the use or threat of force, sometimes occurring in times of war, armed conflict, or belligerent occupation, which clearly places it under the rubric of rape. Sexual slavery violates the fundamental guarantees of basic human rights in the International Bill of Human Rights.

Kathleen Barry has suggested that sexual slavery occurs in a very wide set of conditions, suggesting that female "Sexual slavery is present in all situations where women or girls cannot change the immediate conditions of their existence; where regardless of how they got into those conditions they cannot get out; and where they are subject to sexual violence and exploitation."⁷⁷ In this definition, the key element of this form of slavery is the complete control over the victim. This concept of sexual slavery has been recognized by some national courts. In the United States, a clear example was the *United States v Sanga*.⁷⁸ In that case a man forced a woman to work as a domestic maid for over two years and forced her to have sex with him. The U.S. Court of Appeals for the 9th Circuit unanimously held that she was a "virtual slave" contrary to the provision of the Thirteenth Amendment to the U.S. Constitution, which prohibits slavery and involuntary servitude.

The use of sexual slavery in any form during times of armed conflict—rape camps such as those seen in the conflict in the Balkans, "comfort stations" as established by the Japanese in the Second World War, or other forms of sexual abuse—constitutes a grave breach of international law and human rights. Armed conflict increases sexual violence against women, and the UN has instituted specific protective and punitive measures. A study prepared for submission to the World Congress on the Commercial Sexual Exploitation of Children held in Stockholm in August 1996 highlighted the link between the violence of war and the sexual exploitation of women and children. Either or

both parties to a conflict may use this violence against women and girls as part of a more general tactic of intimidation.

Although the fundamental basis of the laws of war has not changed, namely the balance between military necessity and humanity, human rights law has become more relevant during armed conflicts. This principle was first recognized in the International Conference on Human Rights in Teheran in 1968, which confirmed that "peace is the underlying condition for the full observance of human rights and war is their negation."⁷⁹ Humanitarian law is therefore seen as an effective method of protecting non-combatants from the consequences of war.

The Geneva Conventions prohibit all parties in a conflict from perpetrating "outrages upon personal dignity, in particular humiliating and degrading treatment."⁸⁰ "Sexual slavery" is not specifically mentioned, but this provision in Common Article 3 has been interpreted to include this type of violation.⁸¹ In addition, Article 147 of the Fourth Geneva Convention, which deals with "grave breaches," prohibits "torture or inhuman treatment...wilfully causing great suffering or serious injury to body or health."⁸² There is no immunity under international law for "grave breaches" of the convention. Additional Protocol I and II both contain prohibitions against any form of indecent assault, especially of women and children.

International humanitarian law has acknowledged the vulnerable position of women and children to abuse in times of war and has attempted to redress this problem. While this is not a new problem, "sexual slavery" is a recent addition to the issues considered in international documents. The UN has discussed sexual slavery in research and reports about abuses in modern warfare.⁸³ For example, in the final report by the Sub-Commission's Special Rapporteur on Sexual Slavery in Times of War, she points out that detaining women in "rape camps or comfort stations; forced temporary 'marriages' to soldiers are both in fact and law forms of slavery contrary to the international standards."⁸⁴ In response to the Secretary-General's Report on the abuse of women in the Former Yugoslavia, the General Assembly "strongly condemned the abhorrent practice of rape and abuse of women and children in the area of armed conflict in the former Yugoslavia and reaffirmed that rape in the conduct of armed conflict constituted a war crime."⁸⁵

As has been shown, both forced (or enforced) prostitution and "sexual slavery" have been repeatedly named as slavery. By our definition as well, virtually all forms of these two phenomena can be thought of as slavery. It is not enough to say that prostitution represents a special case because it may exist on a continuum from consensual to forced prostitution; many forms of debt bondage also exist along such a continuum. Given this fact, the question arises of why these two particular forms of slavery were picked out for differentiation. We would argue that this differentiation has occurred for two reasons, one historical and negative, one contemporary and positive. Historically, we

believe that there has been a reluctance to deal with prostitution within the legal discourse on slavery. The willingness to define most prostitution as consensual, the stigmatization of prostitutes, and the marked ambivalence of (primarily male-directed) law enforcement towards prostitution led to its separation from “real” slavery and its toleration in many countries. Past instruments, such as the 1910 White Slavery Convention, were attempts to establish a line between unacceptable forms of forced prostitution (especially of white women) and those forms of prostitution that the framers considered normal, acceptable, or inevitable.

More recent and more positive is the position, exemplified by the World Congress on the Commercial Sexual Exploitation of Children in 1996, that forced prostitution is a special case within slavery because its effects on the slave have certain key differences. One key difference is what might be thought of as the transferability of skills. The enslaved agricultural worker can, upon liberation, apply his or her skills as an independent farmer given the right opportunity. This, in fact, is very often the case when modern bonded laborers are freed. However, the enslaved prostitute who is freed is extremely unlikely to want to remain a prostitute (though some feel pressed to do so given the stigma attached to prostitution in many cultures). Secondly, it could be argued that the rehabilitation needs of enslaved prostitutes are generally more profound than that of other freed slaves. All slavery can be a harrowing and traumatizing experience, but the repeated sexual violation amounting to rape that characterizes forced prostitution brings tremendous psychological damage and requires intensive rebuilding of self-esteem and self-worth.

Our assertion then is this: that forced prostitution and sexual slavery be firmly located as forms of slavery and not be devalued or obfuscated by virtue of the sexual or gendered nature of the exploitation, and further, that these forms of slavery be recognized as needing special consideration. Regrettably, there is no developed field of study or practice that concerns the rehabilitation of freed slaves. But different kinds of slaves need different kinds of rehabilitation upon liberation; children, the sexually brutalized, and the tortured are needful of special care. As the refinement of international instruments and national laws continue, the definition of slavery in all its forms needs to be linked to a recognition of the rehabilitation needs of freed slaves.

Conclusion

No international agreement has been completely effective in reducing slavery. This stems in part from the evolution of slavery agreements and the inclination on the part of the authors of conventions to include other practices as part of the slavery definition, resulting in a confusion of the practices and definitions of slavery. What has been missing is a classification that is dynamic and yet sufficiently universal to identify slavery no matter how it evolves. We

have attempted to build on theories and examples to clarify the identification of slavery by focusing on an irreducible core of three elements. Assessing the presence of all three can then be applied to a variety of social relationships: first, the complete control of one person by another; second, appropriation of labor power; and third, the enforcement of these conditions by threats or acts of violence. Many practices identified in international agreements have some but not all of these three aspects; all three are present in traditional forms of slavery, bonded labor, forced prostitution, and sexual slavery. Effective research and legislation against slavery is important, as it affects an estimated 27 million people worldwide, and as slavery is on the increase now that many developing countries are forced to compete for income in a global economy.⁸⁶ Finally it is important to remember that slavery, like all social and economic relationships, evolves over time. Any definition that is based on a historical form of slavery will soon lose its power to capture new forms of slavery within its aegis. Our understanding and our definition of slavery must become as dynamic as the phenomenon itself.

Notes

1. This article draws upon a report made to the United Nations Working Group on Contemporary Forms of Slavery, prepared by Anti-Slavery International and Professor David Weisbrodt. (See Report of the Working Group on Contemporary Forms of Slavery on Its Twenty-Third Session, UN Doc. E/CN.4/Sub.2/1998/14, para. 22 (1998). Michael Dottridge, Director of Anti-Slavery International, was a lead author of that report. Norah Gallagher also provided important research, along with Matthew Ambrecht, Marcela Kostihova, and Mary Thacker. Production of the report was supported in part by Kevin Bales. Caroline Tendall aided the editing of this article.
2. An international law is "a body of rules established by custom or treaty and agreed as binding by nations in their relations with one another" (J. Hawkins and R. Allen, eds., *The Oxford Encyclopedic English Dictionary* (Oxford: Clarendon Press, 1991)).
3. A declaration is a statement asserting or protecting a legal right.
4. 8 February 1815 63 Conso/TS no. 473.
5. An instrument is a formal, especially a legal, document.
6. M. Burton, *The Assembly of the League of Nations* 253 (1941). According to Article 22 of the League of Nations Covenant, "the Mandatory must be responsible for the administration of the territory under conditions which will guarantee...the prohibition of abuses such as the slave trade."
7. M. Cherif Bassiouni, "Enslavement as an International Crime," *New York University Journal of Law and Politics* 23:445 (1991).
8. Statute of the International Court of Justice, 26 June 1945 Art. 38(b) 59 Stat. 1055.
9. Mark W. Janis, "The Nature of Jus Cogens," *Comparative Journal of International Law* 3 (1988).
10. Report of the International Law Commission to the General Assembly, UN Doc.A / CN.4 / Ser.A/Add.1 (1963).
11. UN Doc CCPR/C/21/Rev.1/Add.6 dated 11 November 1994 para 8.
12. Renee Colette Redman, "The League of Nations and the Right to be Free from Enslavement: The First Human Right to Be Recognised as Customary International Law," *Chicago-Kent Law Review* 70:759 (1994): 780.
13. Forced labor can be defined as paid or unpaid work that is compulsory, often taking place under harsh conditions.
14. M. Cherif Bassiouni, "Enslavement as an International Crime."
15. *Barcelona Traction, Light and Power Co. (Belgium v Spain)*, 1970 ICJ 3.32 (Feb. 5).

16. A convention is an agreement between states, one less formal than a treaty.
17. The 1815 Declaration did not include a definition of slavery or the slave trade, as they were considered to be self-evident practices at the time. The 1890 Convention Relative to the Slave Trade and Importation into Africa of Firearms, Ammunition and Spirituous Liquors (the "Brussels Convention"), although one of the longest and most comprehensive instruments dealing with slavery and the slave trade, did not include any definitions in its text.
18. Slavery Convention 1926 60 LNTS 253 Article 1(1).
19. Slavery Convention 1926 60 LNTS 253 Article 1(2). A distinction can be made between the state of slavery and the process of enslavement. The state of slavery is the condition of being a slave; the process of enslavement concerns the way in which someone becomes enslaved, itself a large conceptual and substantive area. Although we acknowledge that the latter is an important part of slavery, in this paper we will focus on the state rather than the process of slavery, due to limits of space.
20. That is, all of the nation-states which make themselves party to the Convention by ratification.
21. Slavery Convention 1926 60 LNTS 253 Article 2(b).
22. Slavery Convention 1926 60 LNTS 253 Article 5.
23. Many international agreements include references to serfdom as a form of slavery. We do not see serfdom as slavery because it is based on a system of land tenure, and does not have the element of absolute control present in the forms of slavery we explore later.
24. Servitude is defined as "1. slavery 2. subjection (especially involuntary); bondage" (J.M. Hawkins and R. Allen, eds., *The Oxford Encyclopedic English Dictionary*). Of the main terms used in international agreements (*slavery, servitude, and forced labor*), "servitude" is least defined. For practical purposes it can refer to a set of practices and institutions including serfdom, debt bondage, unfree marriages, and unfree forms of child labor. The victims are identified as "persons of servile status" rather than "slaves."
25. Temporary Slavery Commission, Report to the Council, A.17.1924.VI, quoted in *The Suppression of Slavery, Memorandum Submitted by the Secretary-General (to the Ad Hoc Committee on Slavery)* (New York, 1951), 31.
26. Temporary Slavery Commission Report to the Council, League of Nations Doc.A. 17 1924 VI.B at p.1 (1924). The Report to the Sixth Committee of the League of Nations Assembly in 1926 also clarified, in relation to Article 2(b) of the final text of the Slavery Convention, that the words "notably in the case of domestic slavery and similar conditions" were being omitted on the grounds that "such conditions come within the definition of slavery contained in the first article and that no further prohibition of them in express terms was necessary. This applies not only to domestic slavery but to all those conditions mentioned by the Temporary Slavery Commission...i.e. debt slavery, the enslaving of persons disguised as adoption of children and the acquisition of girls by purchase disguised as payment of dowry." Quoted in *The Suppression of Slavery, Memorandum Submitted by the Secretary-General (to the Ad Hoc Committee on Slavery)* (New York, 1951), 15.
27. Seventh Assembly of the League of Nations resolution of September 25, 1926, A.123.1926.VI.
28. B. Nanda and C. Bassiouni, "Slavery and the Slave Trade: Steps Toward Eradication," *Santa Clara Lawyer* 12:424 (1972): 430
29. Universal Declaration of Human Rights, December 10, 1948, UN Doc A/810 at 71 Article 4.
30. UN Doc.E/1988.par 11.
31. Report of the *Ad Hoc* Committee of Experts on Slavery UN Doc E/AC.33/13 (1951), 13.
32. Servile can be defined as "of or being like a slave or slaves" (J.M. Hawkins and R. Allen, eds., *The Oxford Encyclopedic English Dictionary*). The term "servitude" is not used in the Supplementary Convention, which refers instead to "institutions and practices similar to slavery" and "persons of servile status."
33. UN Doc E/CN.4 Sub.2/1982/20 (1982).
34. A covenant is "a contract drawn up under a seal" (J.M. Hawkins and R. Allen, eds., *The Oxford Encyclopedic English Dictionary*).
35. A protocol is "the original draft of a diplomatic document, especially of the terms of a treaty agreed to in conference and signed by the parties" (J.M. Hawkins and R. Allen, eds.,

- The Oxford Encyclopedic English Dictionary*). Ninety-five of the States which have ratified the Civil and Political Covenant have also ratified the Optional Protocol. It appears that to date no claim has been made directly to the Human Rights Committee by an individual alleging that a violation of his rights has occurred in contravention to Article 8 of the Civil and Political Covenant.
36. International Covenant on Economic, Social and Cultural Rights, December 19, 1966, 993 UNTS 3, Article 6(1).
 37. "No one shall be held in servitude": International Covenant on Civil and Political Rights, 999 UNTS 171, Article 8(2).
 38. Article 8 (3) of the International Covenant on Civil and Political Rights.
 39. An act is "a written ordinance of a parliament or some other legislative body" (J.M. Hawkins and R. Allen, eds., *The Oxford Encyclopedic English Dictionary*).
 40. Rome Final Act Article 7 (2) c.
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 42. Vienna Convention on the Law of Treaties, 1155 UNTS 331, Article 31.
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 60. Convention for the Suppression of the White Slave Trade, 1910, Article 2.
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 62. *Creating an International Framework for Legislation to Protect Women and Children from Commercial Sexual Exploitation*, Centre on Speech, Equality and Harm, University of Minnesota Law School, Preliminary Report: January 1998.
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