

Will Bordell

René Cassin Essay Competition 2017 – winner (age 19 and over)

Competition judge Joshua Rozenberg comments:

“Thought-provoking and attractively written. Humanises the problem in a stark and compelling way. Questions whether it's helpful to describe anything as the "greatest" human rights issue. Shrewdly questions whether "slavery" is even a justiciable human right. Exposes the weaknesses in current legislation. Uses sources to buttress his own argument rather than as a substitute for thought. The clear winner.”

**Theresa May calls modern slavery “the great human rights issue of our time”.
Do you agree with her?**

There are some questions we prefer not to answer:

Who put the cocoa in my chocolate bar?

How was that dress so cheap?

Where does the man who washed my car sleep at night?

Slavery is always ugly. It's not the Universal Declaration of Human Rights that tells us it's wrong but the pit of our stomach. But what makes modern slavery such a pressing concern extends beyond the terrific suffering it exacts, to the profound challenge it presents to existing human rights frameworks and to this century's understanding of duty-bearing. Human rights discourse has its own kryptonite: the moment when the obligation to act is diffused among so many stakeholders that each has either too little power or too little compulsion to respond. For each actor, the imperative to end slavery—for good—struggles to take hold. It has lips to cry out but too few teeth to bite.

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If slavery were a country, it would probably be as populous as Spain. Since data are hard to collect in a domain where opacity is the norm, its extent can only be estimated. Slavery, long since shorn of its official legal scaffold, has morphed and moved with the times. It now takes several forms, each as clandestine as the next: human trafficking, prostitution, domestic labour, debt bondage.

For the 45.8 million people reportedly enslaved worldwide, this evolution is troubling.¹ Victims of slavery are socially isolated, lack information about their rights, and are unwilling to come forward for fear of reprisals. Some don't find out they're enslaved until they try to leave. "At the moment", writes Kevin Hyland, "there are too many gaps in the system for victims to fall through."² As so often, it's the most vulnerable who are the hardest to help.

Anachronistic as our understandings of the slave trade are, we are often blinded from exploitation when it's right in front of us. In a century where refugees will continue to be both powerless and numerous, the popular imagination cannot languish far behind. Basic definitions haven't changed much: for Kevin Bales, a slave is a person completely controlled for "economic exploitation," using "violence or the threat of violence".³ Much of what's new about 'modern' slavery comes down to price. Today's slaves come cheap.⁴ In previous eras, profit margins were tighter and legal documentation was widespread. Now, slaves represent a ready supply of inexpensive, unregulated, and therefore disposable labour.

Slavery, then, has come a long way since the days of sale deeds and chain gangs. Modern slaves pick our fruit in fields many miles away or clean houses just around the corner. They're trafficked and prostituted, bullied and beaten. They're packing our online clothes' orders, catching our fish, painting our toenails.⁵

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For a human right to be justiciable, injustice is necessary but not sufficient. Two further components are needed: a claimant with a clearly-defined legal claim, and a duty-bearer with a clearly-defined legal obligation. If the duty-bearer is neither locatable nor accountable, our current human rights framework is ill-equipped to respond. When slave labour takes place, is the government responsible for finding a remedy? If so, which one? Or are the duty-bearers the companies whose supply chains contain slavery? Do warehouses and plantations that directly exploit their workers have an

¹ The Global Slavery Index, 'The Global Slavery Index 2016' (The Minderoo Foundation Pty Ltd., 2016)

<<http://assets.globalslaveryindex.org/downloads/Global+Slavery+Index+2016.pdf>> [accessed 31 January 2017].

² Kevin Hyland, 'Independent Anti-Slavery Commissioner: Annual Report 2015-16' (Independent Anti-Slavery Commissioner, 2016) <<https://www.gov.uk/government/publications/independent-anti-slavery-commissioner-annual-report-2016>> [accessed 11 January 2017], p.2.

³ Kevin Bales, 'Expendable People: Slavery in the Age of Globalization', *Journal of International Affairs*, 53 (2000), 461–84, p.462.

⁴ Evidence suggests that the average cost of a slave today is only \$90 (Kevin Bales, 'How to Combat Modern Slavery', 2010 <http://www.ted.com/talks/kevin_bales_how_to_combat_modern_slavery> [accessed 30 January 2017]).

⁵ See Gary Craig, "'Flexibility', Xenophobia and Exploitation: Modern Slavery in the UK', in *Social Policy Review 22: Analysis and Debate in Social Policy, 2010*, ed. by Ian Greener, Chris Holden, and Majella Kilkey (Bristol: Policy Press at the University of Bristol, 2010), p.173; Julie McCaffrey, 'Cases of Modern-Day Slavery Are "on the Rise" in Britain', *The Telegraph*, 31 October 2014 <<http://www.telegraph.co.uk/sponsored/lifestyle/modern-slavery-britain/11196766/modern-day-slavery-britain-cases-on-rise.html>> [accessed 8 January 2017]; Alison Ramsay, 'Dispatches: Undercover: Britain's Cheap Clothes' (Channel Four, 2017) <<http://www.channel4.com/programmes/dispatches/on-demand/64584-003>> [accessed 1 February 2017].

obligation? Is every buyer of products that pass through the hands of slaves liable? The answer is equivocal; duty-bearing is splintered.

Globalisation plays a key part here. First, it means that “the nation-state is of diminishing significance in understanding or dealing with slavery”.⁶ Human rights once placed “the state at the center of the emancipatory promise,” yet the confidence that accompanied such certainties is fading as people, products and profits pour across borders and jurisdictions.⁷ When economic activity is dispersed, states have less control. Governments cannot fully regulate and monitor companies whose footprints are extensive, forcing them to depend upon tactics of co-operation, not compulsion.

Take the 2015 Modern Slavery Act, the gold-standard for anti-slavery legislation. Incentivising compliance rather than enforcing it, it demands that businesses whose turnover exceeds £36 million publish a statement outlining their efforts to prevent slavery in their supply chain. There’s no requirement to set goals, no formal repercussions for poor progress, and no enforcement mechanism to guarantee the statement’s publication (let alone its veracity). As *Harvey* parses, it’s only an offence “*knowingly* to hold another person in slavery”, suggesting that—for affected companies—both ignorance and distance can be bliss.⁸ The Act’s main deterrent is instead reputational damage among ‘ethical’ investors, employees and consumers.

Even granting that this may be a stronger deterrent than it appears, its deployment in this context signals a disquieting change in the essential character of the right. Lacking an identifiable duty-bearer, the law is converting a moral imperative (duty) into a transactional imperative (incentive). “Companies that take a proactive approach to enhancing the positive impacts of their supply chains”, argues CORE’s *Beyond Compliance* report, “can see a consumer dividend”.⁹ The UN and ILO use similar language. No longer able to apply existing human rights frameworks that ascribe rights and duties because of the aforementioned ambiguities they provoke, we’re left hoping for the prompt creation of a new socio-economic norm. Yet until there’s an obligation, a right can only ever be a wish.

It’s all the more difficult to impose duties on businesses given how intricately all sectors of society are entangled in slavery and its consequences. Most consumers are implicated in slave labour—and it often suits us, giving us products we want at prices we can afford. Our dividend from the status quo encourages companies to dodge responsibility, as well as increasing our susceptibility to their

⁶ Kevin Bales, ‘Expendable People: Slavery in the Age of Globalization’, *Journal of International Affairs*, 53 (2000), 461–84, p.472.

⁷ David Kennedy, ‘The International Human Rights Movement: Part of the Problem?’, *Harvard Human Rights Journal*, 15 (2002), 101–25, p.113.

⁸ Owen Warnock, ‘The Modern Slavery Act 2015’, in *Harvey on Industrial Relations and Employment Law*, by Brian Napier, Ian Smith, Jennifer Eady, John McMullen, Timothy Brennan et al (LNUK), sec. E(1), para. 387. My emphasis.

⁹ CORE et al, ‘Beyond Compliance: Effective Reporting Under The Modern Slavery Act’ (CORE Coalition, 2016) <<http://cafod.org.uk/content/download/29697/338648/version/1/file/Beyond%20Compliance%20effective%20reporting.pdf>> [accessed 26 January 2017], p.6.

spiel about taking slavery seriously. Why investigate when it's us who will feel the cost? Even if consumers demand more from private enterprise, collective action is complicated. Corporations—multinational, faceless, unelectable—cannot be held accountable like politicians.

Ultimately, it's in everybody's interests to pay lip-service to 'stringent standards'—but not to bite. Stakeholders can easily find more reasons to 'intend' to tackle modern slavery than actually to do so. This is a recipe for a lack of transparency and even, perhaps, active concealment of human rights abuses. In suffocating clamours for 'real' action and diverting attention away from other potential avenues for change, our well-intended efforts could become not just unproductive but dangerously counterproductive.

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It's troubling that even in conveying the gravity of modern slavery, Theresa May's rhetoric ironically strengthens the very forces of inertia she seeks to destroy. With the duty-bearer's identity hazy, the introduction of a hierarchy of rights deprives those rights of the non-negotiability and inalienability that underwrite them. Both the potential duty-bearers and the duty to be borne are commodified. When May calls modern slavery "the great human rights issue of our time," she resorts to superlatives and comparatives. We find ourselves in a transactional realm where obligations are too widely scattered to impose—and in which rights become a competition, suffering a pageant.

Despite her wish to elevate the profile of this particular set of rights, May's rhetoric ends up demeaning them by allowing the language of competition to interrupt another discourse entirely. Her words suggest that trade-offs are unavoidable necessities rather than choices. They imply that we divide rights finitely from a fixed sum, like slices of a pie, rather than expanding them infinitely. They submit to the argument that human rights are just a childish pawn in the more important adult's game of political and economic compromise.

Expressing rights as league tables of suffering in which one injustice is 'more worthy' of our attention than another is meaningless, even unintelligible. To waste energy pitting claims against one another is to avoid grappling "with the harder questions of rationalizing human rights lawmaking and distinguishing between rights and claims."¹⁰ Whenever we participate in such language, we allow human rights to speak themselves out of existence. We subscribe to a narrative that negates (and, at times, actively excludes) the inalienability and unconditionality that human rights must have in order to *be* at all. They come to belong to a contingent politics despite their essential, existential claim to

¹⁰ Theodor Meron, 'On a Hierarchy of International Human Rights', *The American Journal of International Law*, 80 (1986), 1–23, p.22.

transcend that category.¹¹ In a very real sense, human rights are universal or they are nothing: “one either is a human being (and thus has these rights equally) or not.”¹²

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This triptych—a horrific and multifaceted abuse of rights, a challenge to existing philosophical and legal frameworks, and a rhetoric that encourages a ‘transactional’ re-reading of those frameworks—is what makes modern slavery such an intractable issue. It demands of us that we think again about what rights-compliance really means in the twenty-first century. The task we face requires fresh language and ambitious thinking—from us all. For the end of slavery will never arrive without the sound of our voices asking the simple questions we so often prefer not to ask:

Who put the cocoa in my chocolate bar?

How was that dress so cheap?

Where does the man who washed my car sleep at night?

¹¹ See Samuel Moyn, ‘Epilogue: The Burden of Morality’, in *The Last Utopia* (Cambridge: Harvard University Press, 2010), pp. 212–30.

¹² Jack Donnelly, ‘The Social Construction of International Human Rights’, in *Human Rights in Global Politics*, ed. by Tim Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999), pp. 71–102.

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