Modern Slavery, Unfree Labour and the Labour Market:
The Social Dynamics of Legal Characterization

Judy Fudge, Kent law School*

Treating the UK's Modern Slavery Act as its focus, this paper examines what the legal characterization of labour unfreedom reveals about the underlying conception of the labour market that informs contemporary approaches to labour law in the UK. It discusses how unfree labour is conceptualized within two key literatures – Marxist-inspired political economy and liberal approaches to modern slavery – and their underlying assumptions of the labour market and how it operates. As an alternative to these depictions of the labour market, it proposes a legal institutionalist or constitutive account. It develops an approach to legal characterization and jurisdiction that is attentive to modes of governing and the role of political and legal differentiation both in producing labour exploitation and unfree labour, and in developing strategies for its elimination. It argues that the problem with the modern slavery approach to unfree labour is that it tends to displace labour law as the principal remedy to the problem of labour abuse and exploitation, while simultaneously reinforcing the idea that flexible labour markets of the type that prevails in the UK are realms of labour freedom.

Just as it was Britain that took an historic stand to ban slavery two centuries ago, so Britain will once again lead the way in defeating modern slavery and preserving the freedoms and values that have defined our country for generations.

Theresa May, UK Prime Minster (2016)

Introduction

Marking the first anniversary since the Modern Slavery Act 2015 came into force, Prime Minister Theresa May celebrated the UK's historic and contemporary position as a world leader in the fight against slavery. Noting that the legislation was the first of its kind in Europe, she characterized the Act as delivering 'tough new penalties to put slave masters behind bars where they belong, with life sentences for the worst offenders' (May 2016). Modern slavery is a portmanteau term that captures slavery, forced labour, servitude and human trafficking. Although not identical in a legal sense, each term identifies different forms of unfree labour. The Modern Slavery Act 2015 consolidated the different crimes targeting activities that result in these forms of labour unfreedom and established an Independent Anti-

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Slavery Commissioner with a UK-wide remit to 'encourage good practice in the prevention, detection, investigation and prosecution of modern slavery offences' (HM Government, 2014: 29). At the same time as the UK government is committed to weeding out modern slavery and to tackling labour exploitation, it proudly declares that its 'labour market is one of the most flexible in the world' (Business, industry and Skills, 2015: 5).

This paper treats the UK's Modern Slavery Act as an aperture through which to examine what the legal characterisation of labour unfreedom reveals about the underlying conception of the labour market that informs contemporary approaches to labour law in the UK. I argue that the modern slavery paradigm tends to reinforce the view that labour exploitation and unfreedom are the result of morally culpable individuals who should be publicly vilified, rather than systemic and institutional features of state policies and practices relating to immigration and labour regulation combined with the 'free market' behaviour of employers. To do so, I focus on conceptions of unfree labour in order to probe the underlying ideas of the labour market, and, specifically, whether the labour market is understood as a realm of free exchange or as a *legally* instituted process.

The paper begins by discussing how unfree labour is conceptualized within two key literatures – Marxist-inspired political economy and liberal approaches to modern slavery – and their underlying assumptions of the labour market and how it operates. As an alternative to these depictions of the labour market, I propose a legal institutional or constitutive account, which I then deploy to probe the conceptualization of unfree labour in contemporary capitalism as a continuum. The paper then shifts gear to consider a legal positivist account of slavery, forced labour and trafficking for the purpose of labour exploitation, which are the key legal categories of unfree labour. Postivists are concerned with assigning the appropriate legal categories to the different forms of unfree labour. In contrast to this approach, I develop an account of legal characterization and jurisdiction that is attentive to modes of governing and the role of political and legal differentiation both in producing labour exploitation and unfree labour, and in developing strategies for their elimination. Which legal jurisdictions — criminal, immigration, human rights and labour law – are selected as the appropriate response to unfree labour and labour exploitation sets the boundaries to the process of legal characterization. Moreover, the choice of jurisdiction is a social and political process that allocates social relations and social activities into different legal domains or regulatory contexts with material and ideological effects. In the penultimate section, this approach, which I call the social dynamics of legal characterization, is applied to the legal treatment of modern slavery in the UK. To conclude, I argue that expansive conceptions of modern slavery and forced labour that call upon the criminal law simultaneously obscure and normalize mundane forms of labour abuse that are rife within the UK's neo-liberal labour market.

Labour Unfreedom and the Labour Market

Different literatures deploy a range of epistemological frames in identifying

what makes labour unfree. Moreover, different conceptions of unfree labour rest on incommensurable ontological commitments and different epistemological models of the labour market.[1] A conception of free and unfree labour as discrete yet deeply interrelated phenomena builds on Karl Marx's method and writings about the integrated development of 'capitalist slavery' and 'free' labour (Brass 2011; Marx 1990), as well as feminist political economy approaches to understanding diverse modalities of labour in the capitalist mode of production (Strauss and Fudge, 2013; Fudge and Strauss, 2014; LeBaron 2015). By contrast, the liberal approach understands 'modern-day slavery' to be an enduring relationship of human domination which originated in pre-capitalist circumstances and has simply persisted unchanged into the present (Bales, 2004). However, although Marxist-inspired and liberal accounts of labour unfreedom have very different normative understandings of 'free' labour, what unites them is an inadequate understanding of the role of law in a capitalist labour market.

The free/unfree labour distinction originates in the Marxist political economy literature, which has sought since the eighteenth century to understand (and define) linkages between political and social power and economic systems of production and reproduction. Marx, influenced by Hegel's association of the freedom of the subject with the ability to engage in the exchange of property (which included, for Hegel, her own productive capacity), argued that under conditions of industrial capitalism labour power assumed the commodity form (Brass, 2011). Marx (1990, 49) characterised the buying and selling of labour power in capitalist societies as a process wherein 'both buyer and seller of a commodity, say of labour power, are constrained only by their free will. They contract as free agents, and the agreement they come to, is but the form in which they give legal expression to their common will'. The formal legal freedom to circulate in the labour market and to sell their labour power to a number of different employers was the hallmark of the 'free' labour of wage earners, albeit Marx emphasised the substantive economic conditions that compelled the sale of labour power. By contrast, 'the slave is the property of a particular master; the worker must indeed sell himself to capital, but not to any particular capitalist, and so within certain limitations he may choose to sell himself to whomever he wishes; and he may also change his master' (Marx, 1990: 50)

This equality of exchange was subsequently reified in orthodox political economy and economic theory, which understands buyers and sellers of labour power as utility-maximizing agents operating in a frictionless world, and in contract law. Orthodox economists ignore Marx's emphasis on the substantive economic conditions of industrial capitalism and the legal institutions of contract and property

[1] For traditional Marxist political economists the distinction between unfree and free labour is difficult, if not impossible, to draw because under capitalist relations of production all labour is exploited. Liberals, by contrast, believe that free labour is qualitatively distinct from unfree labour since economic exploitation on its own does not result in unfree labour. The institutional account that I advance argues that it is critical to understand the different modalities and forms of unfree labour by placing them within an historically and spatially specific labour regime.

that support capitalist relations of production, although they, like Marx, emphasise the 'freedom' of wage labour from personal and political forms of compulsion under capitalist social relations. Within liberal political economy the distinction between unfree and free labour was ontological as unfree labour is distinguished from free labour by virtue of the fact that the worker is coerced by force to threat and not simply economic need to enter or to remain in the labour process. Classical economists consider economic compulsion for workers to sell their labour power and liberals as a completely different order from legal, political or physical compulsion, all of which constitute different, but unacceptable, idioms of coercive power.

Kevin Bales' book *Disposable People: New Slavery in the Global Economy* (2004) exemplifies the liberal abolitionist approach to modern slavery, which is how unfree labour is characterized. More recently, Bales (2012a: 282) offers an expansive definition of slavery, which is unmoored from social institutions. He claims that 'slavery is, first and foremost a state of being – not a legal definition, an analytical framework, or a legal construct' (2012b: 360). He defines slavery as the experience or state of being of an individual slave with the human relationship of control:

> Slavery is the control of one person (the slave) by another (the slaveholder or slaveholders). The control transfers agency, freedom of movement, access to the body, and labor and its product and benefits to the slaveholder. The control is supported and exercised through violence and its threat. The aim of this control is primarily economic exploitation, but it may include sexual use or physiological benefit (Bales, 2012b: 370).

The hallmark of slavery is the 'radical diminution of free will' and loss of personal liberty (Bales, 2012b: 370).

Although it has been criticised as unduly expansive (Patterson, 2012), this definition has wide currency in policy debates and popular discourse. Defining 'modern slavery' as 'when one person possesses or controls another person in such a way as to significantly deprive that person of their individual liberty, with the intention of exploiting that person through their use, profit, transfer or disposal', the civil society organization Walkfree (2017) estimated that in 2016, 48.5 million people were enslaved.[2]

This approach to unfree labour and slavery is redolent of Edmund Burke's characterisation of slavery as 'a weed that grows in any soil' in his 1775 speech on conciliation with America. It conveys the idea that slavery is not a social and legal institution that requires actual cultivation, but, instead, the immoral and criminal actions of individuals who act outside the boundaries of liberal society. The problem is not with the market or the economy, nor is it systemic. Unfree labour is an aberration in a free market, either an historical remnant of a pre-modern society or a crime.

The tacit assumption is that the labour market is an arena of free exchange in which legally equal parties contract to their own mutual advantage. As Deakin

[2] The definition of modern slavery used in compiling the index and numbers it comes up with are highly contentious (Gallagher, 2017).

(2013: 146) explains, under this Hayekian view of the market, 'property law identifies the subject of the exchange, contract law enforces voluntary agreements, and tort law ensures protection of the person and of property.'[3] The law simply provides neutral rules of the game and the state's role should be to ensure a 'level playing field' between market actors. Since slavery, which is the epitome of unfree labour, interferes with individual autonomy, it must be outlawed as a crime.

By contrast, Marx was very clear to emphasise the formal freedom of wage labourers *and* their substantive inequality (see also Hale 1923: 473). Wage labourers were doubly 'free' – free both from personal dependence upon a master and from access to the means of subsistence. Unlike slaves or servants, wage labourers could sell their labour power to whomsoever they chose. But, at the same time as Marx emphasized the formal freedom embodied in the wage contract, he was also clear to stress the 'violent process of "primitive accumulation" that was an essential precondition for the emergence of the economic structure of capitalist society' (O'Connell Davidson, 2015: 59). Marx detailed enclosure laws that disposed peasants, the vagrancy laws that coerced the surplus population, the wage-fixing laws, master and servant statutes and criminal provisions targeting trade unions that were necessary for the creation of 'free' wage labour (Marx, 1990: Vol 1, Chapter 28).

Marx distinguished primitive accumulation from industrial capitalism, and although he regarded the former as necessary for the development of the latter, what distinguished the latter was that it no longer relied on public or state law to directly coerce labour. In his early work, Marx (1971: 20) regarded the economic structure in capitalism as the 'real foundation' upon which 'arises a legal and political superstructure' as the source of domination. Thus, there is some basis for critics' complaint that Marx regarded the law as secondary or ideological (Steinberg, 2017: 5; Deakin et al., 2017: 191). In his discussion of England's transition to industrial capitalism, Steinberg (2016: 14) argues that 'by focusing on the economic basis of the labor contract as part of the mystifying order of appearances Marx largely loses the opportunity to analyze how legal practices and state institutions can structure power in the sphere of production'.

Inspired by Marx, the legal theorist Pashukanis (1989) developed a commodity form theory of law, which some commentators interpret as providing a constitutive account of law (Fletcher, 2013; Fudge 1999). Drawing a parallel between the commodity form and the legal form, Pashukanis (1989: 112) claimed that the constitution of the subject as the bearer of rights over commodities produces the legal fiction that individuals are formally equal. Fletcher (2013: 142) explains that Pashukanis's understanding of the legal subject as the bearer of property rights is not simply a passive reflection of socio-economic conditions; instead, the legal form helps to bring the subject into being. Pashukanis' account of the commodity form of law explains how legal concepts and institutions are the

[3] As Knegt (this issue) notes, although the Hayekian view of the market as a spontaneous order has been criticised by economists for its failure to appreciate the significance of institutions, institutional economists also tend to naturalise markets as pre-existing, and ontologically distinct from, regulation.

expression of social relations, in capitalism the generalisation of exchange relations, while, at the same time, constitutive of social relations as the legal concepts and institutions of contract and property are essential for capitalism to be systematically reproduced. However, by focusing exclusively on the legal form at the expense of substantive legal norms, and by concentrating primarily upon the private law of contract and property, Pashukanis failed to appreciate the complex way that different legal subjects are constituted, for example, as wives, workers or menial servants, and that different rights and obligations are assigned to the different legal subjects (Fudge, 1999). While the wageworker is not compelled to enter an employment contract by anything other than economic necessity, the content of the contract is not simply a matter of bargaining power and the prior distribution of property rights. Instead, the rights and duties allocated to the parties to an employment contract are also a matter of substantive legal duties, such as obedience and good faith, that were implied by magistrates and judges to bind only one party, the employee, to the contract.[4] Both liberals and 'traditional' Marxists ignore the extent to which law is constitutive of 'free' wage labour because they fail to appreciate the extent to which law, especially the labour contract, 'is an institutional process through which domination is realised' (Steinberg 2016: 32).

The Legal Constitution of the Labour Market

At its inception, labour was freed both from personal dependence and land through state-sanctioned force (Marx 1990: Vol 1, Chapters 27, 28). As Sven Beckert (2014: xvi) recounts, war capitalism, which was 'characterized by powerful states with enormous administrative, military, judicial and infrastructure capacities', 'was the foundation from which evolved the more familiar industrial capitalism'. Colonialism and enslavement were key features of war capitalism. Only as the institutions of wage labour and property rights gained strength was industrial capitalism, which depended upon a supply of workers to populate the burgeoning factories, able to flourish. Bonds of mutual obligation between lords and peasants had to be broken down, and labour coercion shifted from lords and masters to the state, its bureaucrats and judges (Beckert, 2014:183). The abolition of the slave trade in the British Empire in the early nineteenth century and the 'formal instantiation of the freedom of contract were accompanied by the enactment of pass and policy laws and vagrancy legislation' (Deakin 2009: 53). Paupers, vagrants and children were legally compelled by the state to work at that same time as the enclosure of the commons made alternative sources of livelihood impossible. Legal forms of coercion, such as strictly enforced labour contracts, tied workers to their

[4] As Fox (1985, 101) explains: 'Workers made their employment contracts and performed their tasks within a controlling structure of power and status, ultimately enforced by the courts ….. Taking into account also the strength of ascription – the tendency for class and family origin to determine social destination – it is clear that the system of free enterprise capitalism embodied large quantities of unfree labour, not as "feudal relics" but as an integral part of the system itself.' See also Hay (forthcoming).

jobs. About 10,000 workers in England and Wales were prosecuted for 'breach of contract' between 1857 and 1875, and many were sent to prison (Beckert, 2014: 182).

The creation of a labour market and free wage labour in the metropole depended upon state power – the creation of private property and the 'right' to alienate one's labour power. Property is more than possession; it is a relationship between persons involving rights and duties with regard to things, and these rights and duties are state sanctioned, legitimated and enforced powers, capabilities, obligations and liabilities (Deakin et al., 2016: 4). Private law rules of property, contract and tort 'structure freedoms and prohibitions in ways that market actors actively use in organizing their relationships' (Hale, 1923; Rittich, 2014: 328).

Historical institutionalists regard law 'as a set of social practices that plays an important constitutive role in the organization of social relations' (Steinberg: 2016, 60). Legal practices and state institutions structure power in the labour market and sphere of production and in this way they constitute productive relations. Employment relations are embedded in legal practices and state institutions. Legal concepts define 'participants to interactions as "subjects", equipping them with legitimate powers, and … providing for the enforceability of the duties' (Knegt this issue). The duty to obey, which is implied by law into the contract of employment, is a legal artefact and not simply the outcome of a 'free' exchange (Hay, forthcoming). In this way the labour contract establishes the authority relation, the subordination of the employee, before the bargaining has begun. Once law positively ascribes rights to individual and collectives, it 'constitutes' social relations. From the perspective of the *longue durée,* the economic coercion that gives rise to free wage labour is an 'artifact of the law' (Steinfeld, 2001: 20). However, economic coercion is distinct from physical, legal and political compulsion, forms of coercion, all of which are treated by Marxists and liberals as indicators of unfree labour.

Unfree Labour and Capitalism: From a Binary to a Continuum

Unfree labour has come to be understood by liberals and some Marxists as the anti-thesis of 'free' labour. For Marxists, the term 'unfree' refers to relations of production where direct political/legal compulsion is used to acquire and exploit labour power (Satzewich, 1991: 42). It was associated with pre-capitalist forms of economic organization such as feudalism or chattel slavery, and understood as peripheral to the capitalist world economy. A key concern has been how to understand the coexistence of unfree labour with the expansion of capitalism. Robert Miles (1987) emphasized the articulation of pre-capitalist forms of unfree labour, such as bonded labour, for example, to provide a supply of labour for emerging capitalist production regimes. He also stressed the coercive power of the state in reproducing unfree labour. Similarly, Robin Cohen (1987: 17) explained that, although specific forms of labour control such as chattel slavery, serfdom, debt bondage, apprentice labour, child labour, indentured and contract labour are associated with certain labour regimes, it is perfectly possible for a variety of different forms of labour control to co-exist at a specific time and place.

Miles and Cohen also led the way in using unfree labour to explicate the relationship between capitalism and migration. Unfree labourers, such as peasants or bonded labourers, were compelled to migrate as a result of changes to agricultural production, especially capitalization and commodification, which resulted in their dispossession from the land. They became unfree migrant labourers as a result of immigration controls imposed by receiving countries that confined them to employment in certain sectors or bound them to particular employers. The state structures different modes of migrant labour incorporation through immigration controls that restrict the ability of migrant workers to freely circulate in the labour market (Satzewich, 1991). This approach draws upon an understanding of freedom that is rooted in the idea of the formal legal freedom to circulate in the labour market.

This juridical understanding of unfreedom can be linked to Nandita Sharma's (2006) sociological discussion of the ways in which particular national economies are constituted in and through the simultaneous inclusion of foreign workers in labour markets, and their exclusion from the nation as citizens. One of Sharma's key insights is that the processes by which the citizen (us) and the foreigner (them) are constructed do not, as orthodox and Marxist political economists claim, function solely through the process of commodification that produces the 'free' wage labourers. These categories are also constituted in the legal-juridical space of public law, instead of solely in the legal-juridical space of private law relations of contract and property, and they harness ideologies of race and gender (Sharma, 2006: 55-4).

Through her engagement with race and gender, Sharma's work extends scholarship and policy work that has sought to highlight the centrality of unfree labour to contemporary capitalism and to conceptualize freedom/unfreedom as a continuum rather than a binary. In contemporary capitalism 'the boundaries between free and unfree labour have been blurred, throwing into deep crisis the Marxian no less than the liberal emphasis on the freely concluded labour contract as juridically constitutive of the relations between labour and capital' (Mezzadra and Neilson, 2013:100). According to the ILO (2009: 8-9),

> There is a continuum including both what can clearly be identified as forced labour and other forms of labor exploitation and abuse. It may be useful to consider a range of possible situations with, at one end, slavery and slavery-like practices and, at the other end, situations of freely chosen employment. In between the two extremes, there are a variety of employment relationships in which the element of free choice by the worker begins at least to be mitigated or constrained, and can eventually be cast into doubt.

The concept of a continuum of labour unfreedom or exploitation helps to illuminate how the denial of rights results in workers being situated at the unfree end of the spectrum (Skrivankova 2010; Strauss and Fudge 2013; 4; Waite et al., 2015; Scott 2017).

Conceptualising labour unfreedom as a continuum is certainly an advance over seeing it as a simple binary. However, as Cathryn Costello (2015, 200) points out, from a *legal* perspective the metaphor of the continuum flattens out our understanding of unfree labour since

> the continuum only runs along a single axis, from freedom to slavery.

> … The problem with a continuum approach is that it fails to identify the extent to which different forms of work relations are legal institutions, not only distinguished by their degree of freedom or voluntariness, but also institutionalized and underpinned by different regulatory forms, a distinctive law of slavery, serfdom and so on, as well as supporting structures in property, contract, criminal and other laws.

What Costello's intervention brings to the fore is the fact that labour markets are *legally* instituted processes. There are structural and systemic processes that operate at multiple scales and produce different regimes of unfree labour – slavery, serfdom, and indenture, for example – at specific times and places.

The Limits to Legal Categorisation

'Unfree labour' is not, as Costello (2015: 198) helpfully reminds us, a 'legal concept, nor should it aspire to be'. For her, its utility lies in its capacity to demonstrate the complex political economy of labour relations, which can be used to inform understandings of the legal categories of forced labour, servitude and slavery. While I agree that unfree labour is not a legal term, unlike Costello (2015: 199) I do not think it is possible or desirable to understand and to test the legal definitions of forced labour, servitude, and slavery on their own terms. This is because the three key forms of unfree labour – slavery, forced labour and human trafficking – are defined in different legal instruments that build upon and overlap with each other, and it is social forces, and not a neutral process of legal interpretation, that gives these terms meaning.

The legal definition of slavery emerged at the height of colonialism (Allain, 2012: 199). Defined in the League of Nations Slavery Convention 1926, slavery is 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'. UN instruments outlawing slavery have also identified debt bondage, serfdom, servile marriage and child exploitation as 'other practices similar' to slavery which 'may be covered by the definition contained in the Slavery Convention 1926 (Supplementary Convention on Slavery 1953). Enslavement is considered to be a crime against humanity under the Statute of the International Criminal Court. International, supranational and national courts provide meaning to the definition of slavery on a case-by-case basis (Allain, 2012: 214-18; Costello, 2015: 201-2; Siller, 2016: 411).

The ILO's *Forced Labour Convention, 1930*, which was adopted shortly after the Slavery Convention, is considered to be the authoritative legal definition of forced labour. It defines forced labour as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.[5] While there have been attempts to expand the definition of slavery to include forced labour (Bales, 2012a), some commentators consider that it is preferable to distinguish even de facto slavery from forced labour

[5] The definition is in Article 2 (1); however, Article 2(2) provides for certain exceptions to the rule, such as the work of convicted prisoners or military service (ILO 1930).

on the ground that slavery requires control amounting to possession, which 'goes beyond mere lack of voluntariness' (Cullen, 2012: 321; Costello 2015: 202).

Over the past 80 years, ILO supervisory bodies have elaborated the definition in response to the different ways in which workers are coerced to work, and in doing so they have provided guidance on the two key elements of the definition: menace of penalty and freedom of choice (ILO, 2007). For example, consent is rendered irrelevant where there is evidence of deception (ILO, 2012). Although initially framed in criminal law terms, in 1998 the ILO characterized the freedom from forced labour as a fundamental human right (ILO, 1998). More recently, the ILO has linked forced labour to multiple simultaneous violations of labour law (ILO, 2014a). The 2014 Protocol to the Forced Labour Convention, 1930 emphasised traditional labour law techniques for combatting forced labour (ILO Protocol 2014), while at the same time articulating an explicit link between forced labour and trafficking in persons (ILO Protocol 2014, Art 1(3)).

In the late 1990s, as destination countries in Europe, North America and Australia identified migrant smuggling as a security threat, human trafficking was transformed from a mandate of the UN's human rights system and placed in the context of migration, public order and organized crime (Gallagher, 2009: 790). The key international instrument adopted was the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (known as the Trafficking Protocol), which supplements the UN Convention against Transnational Organized Crime. Its goal is to provide a universal model that states can implement in their domestic legislation. Although the definition of trafficking in the Protocol was not tied to the movement of people across national borders, from its inception the Trafficking Protocol was framed in terms of *both* criminal and immigration law.

The Trafficking Protocol defines trafficking in terms of three elements: (1) the act, which includes the recruitment, transportation, transfer or harbouring of persons; (2) the means, which includes the threat or use of force or other forms of coercion, fraud, abuse of power; and (3) the purpose, which is exploitation. Instead of defining exploitation, the Trafficking Protocol simply states that 'at a minimum, exploitation' refers to 'forced labour or services, slavery or practices similar to slavery or servitude' (UN 2000, Article3 (a)). Legal scholars disagree over whether 'exploitation' should be understood as referring only to specific categories of labour unfreedom such as slavery or forced labour that are already defined in legal instruments (Allain, 2013: 350, 369) or as encompassing a broader polythetic definition (Stoyanova, 2017: 67-8).

The problem of overlapping legal instruments and legal frames for attributing precise legal meaning to different forms of unfree labour is exemplified by the European Court of Human Rights' interpretation of Article 4 of the European Convention of Human Rights (ECHR), which prohibits, without defining, slavery, servitude, forced and compulsory labour. The Court's 2005 decision in *Siliadin v France* broke new ground when it ruled that Article 4 gave rise to positive obligations on states. It relied on international legal instruments, specifically the ILO's convention on forced labour, to interpret the meaning of compulsory and forced labour in the Convention to include domestic servitude, and it implicated immigration controls in the construction of unfreedom. In *Rantsev v. Cyprus* (2010),

the European Court of Human Rights also held that Article 4 encompassed human trafficking, without identifying whether trafficking amounted to slavery, forced labour or servitude and implicated restrictive immigration controls as contributing to the violation. While the failure to delineate the relationship between the different legal harms creates uncertainty, more troublesome is how some governments have responded to the link between immigration controls and forced labour. The UK government's response to the claim that very restrictive immigration controls on domestic workers from outside of the European Union contributed to violations of Article 4 was to make immigration controls more restrictive (Fudge and Strauss, 2014: 171-4; Stoyanova, 2017: 393). Despite the advocacy of some legal scholars that by adopting an integrated approach the European Court of Human Rights can develop a labour rights approach to the interpretation of Article 4 that downplays, rather than strengthens immigration controls (Mantouvalou, 2016: 238), the Court has yet to take up this suggestion (Costello, 2015: 225-6).

The legal definitions of the different forms of unfree labour are open-textured and imprecise. Legal scholars debate over the 'best' interpretation of these different legal categories – slavery, forced labour, servitude and trafficking for the purpose of labour exploitation – from a legal dogmatic or positivist point of view (Allain, 2013; Costello, 2015; Stoyanova, 2017). The meaning of each term depends upon how international, supranational and domestic courts, and United Nations and ILO supervisory bodies elaborate them. Moreover, there is no clear correspondence between how terms like slavery and exploitation are used by civil society and advocacy groups, on the one hand, and in legal instruments and by state and legal institutions, on the other. This instability in the legal definitions is itself productive of new 'knowledge' about different forms of unfree labour, which, in turn, can enhance state power. The claim that 'badges' or indicators of slavery can be used to 'galvanise courts to develop employment law instruments' (Paz-Fuchs, 2016: 785) ignores the social dynamics of legal characterisation. Such strategies run the risk of enhancing state coercive power, which may then be turned against the very populations that legal advocates seek to protect.[6] Instead of searching for the 'correct' legal definition or attempting to stretch legal definitions to include an ever-broader range of activity, it may be more fruitful to explore the interaction between social and legal characterisation in order to better understand the social foundations of legal technicalities and their associated legal domains.

Legal Construction, Jurisdiction and Unfree labour

Legal characterisation is often seen as the process by which different regulatory paradigms are assigned to resolve a social problem.[7] Regulatory paradigms or contexts involve assumptions about the nature and causes of the problem, the goals of regulation, and the strategies or techniques of regulation, which include burden of proof, remedy and redress, form and process of adjudication (Shamir, 2012).

[6] See the case studies in Fudge and Strauss 2014; Fudge 2016 a.
[7] This discussion draws on Fudge, 2016a, 155-158.

Typically, there is a range of possible legal categories inhabiting different regulatory contexts or paradigms. The process of legal characterization, which is process of assigning a legal category or legal classification to a social relation or activity, operates at two levels, the meso level of the institutional and discursive construction of regulatory contexts, and the micro level of deciding whether a particular instance falls with a specific regulatory context. At the meso level, legal characterization involves legal construction, which is the active assignment of legal consequences to legal character (Freedland and Kountouris, 2011). For example, classifying a particular contract as an employment, and not a commercial, contract places the contract into the regulatory context (or jurisdiction) of employment or labour law. Not only are specific duties implied by law in the employment contract, which are not implied into commercial contracts, a range of statutes, such as the Employment Rights Act 1996, govern the employment contract in the UK (Freedland et al, 2016). Legal construction is the process that forges the link between legal character, for example an employment relationship, and incidents, such as implied duties and statutes, creating a microsystem with a particular political and forensic dynamic that derives from the regulatory context. Each regulatory context also has its own complex internal structure and dynamic made up of different layers and scales of legal principle, doctrine and institutions. Different layers or scales of regulation – from international law and constitutional norms, through specific statutes, to the contract of employment in the case of personal work relations – are integrated into each other. These regulatory layers not only interact with each other as normative legal constructs, they also interact with the patterns and constructions with which those involved in the making of personal work relations, both workers, and, perhaps even more significantly, employers, place or seek to place their own dealings or arrangements. The process of legal construction has real ideological and material effects on how social actors organize their relations and activities.

As we saw in the preceding section, there are at least four different regulatory contexts or domains (crime, labour, human rights and immigration law) that govern unfree labour. Each operates at the international, national, and subnational levels and involves a wide range of institutions, discourses and practices that govern unfree labour (Fudge and Strauss, 2014; Fudge, 2016a). The idea of regulatory context or domain can be elaborated in terms of the concept of Valverde's jurisdiction, which is the governance of legal governance (Valverde, 2009: 145). While jurisdiction is typically identified with the 'where' (territory) and the 'who' (authority) of governance, 'jurisdiction also differentiates and organizes the "what" of governance – and most importantly because of its relative invisibility, the "how" of governance' (ibid: 145). The objects of governance – what is be regulated – for example, whether the exploitation of workers is a matter of criminal or labour law or the treatment of migrant workers fall within immigration or criminal law, are associated with governance technologies (how the object should be governed), which, in turn, can be understood in terms of institutional capacities and rationalities as well as social and political norms and practices.

Jurisdiction understood as governance sets the outer boundaries of the process of legal characterization, and it is an outcome of social and political contestation. It functions to allocate social relations and social activities into

different legal domains or regulatory contexts, and in doing so channels them into 'specific institutional forms and away from others' (Zatz, 2011, 254). During periods of equilibrium, legal jurisdiction creates cognitive maps about how best to navigate our social world (Fudge, 2014). However, periods of equilibrium are punctuated by episodes of social and legal contestation when the question of appropriate jurisdiction and governance techniques are up for grabs.

Jurisdiction also has an external dimension. Different regulatory domains or jurisdictions are dynamic, plural, overlapping and permeable, involving a number of institutions, actors and discourses that operate across a range of scales, with different degrees of attachment or embeddedness. Even within the same scale, for example international law, there are conflicts between rules or rule-systems and institutional practices that deviate from one another (Thomas, 2011). Moreover, the same jurisdiction, for example the law of trafficking, can operate simultaneously at the national, supranational and international levels. Different jurisdictions and different legal scales reflect contested and complicated histories involving the interaction of political economy and historical contingency (Thomas, 2011: 408).

The important issue is how the different jurisdictions fit together to govern the social processes that produce the different dimensions of unfreedom. It is helpful to think of the legal governance of unfree labour as composed of regulatory domains or spheres of jurisdictions (for example, criminal, immigration, human rights and labour law) that can attract or repel each other. The internal structure of each sphere or domain is complex, composed of a specific regulatory paradigm, with its own social assumptions, goals and technologies, which operates simultaneously along and across different scales and institutions that have varying degrees of influence on one another. Nor are the normative assumptions and goals of each sphere unitary (Numhauser-Henning, 2013). Externally, the borders between the spheres or domains may overlap or bleed into each other; two or more jurisdictions can share discourses, doctrines and institutions. The attraction and repulsion of different legal domains or jurisdictions operates both on the level of positive law and doctrine and on that of normative analysis. Moreover, jurisdictions interact in a social and political environment, which can function as a conductor that amplifies the force of a particular jurisdiction or an insulator that weakens the influence of one jurisdiction when compared with another.

Where and on what basis jurisdictional boundaries are drawn determines, for instance, how a subject stands in relation to existing legal categories, and thus how the subject can legitimately be treated (Dorsett and McVeigh, 2012). How these lines are drawn in practice, however, resembles an 'ethnomethodological miracle' (Valverde, 2015: 86) as the assignment of jurisdiction is transformed from a political conflict over the goals and technologies of governance into a neutral process of sorting subjects into legal categories. Conflicts over the assignment of legal categories arise when different jurisdictions overlap, such as immigration controls and forced labour. Legal positivists tend to treat the assignment of jurisdiction to different forms of unfree labour as either a problem of legal definition or one of selecting the 'best' jurisdiction (Mantouvalou, 2016). The problem with these approaches to the process of legal characterization is that they tend to normalise and legitimatise the deeper assumptions upon which the jurisdictions

governing unfree labour are constructed, and fail to appreciate the extent to which the prevailing political economy amplifies a specific jurisdiction at the expense of another.

Modern Slavery and the Social Dynamics of Legal Characterisation

The Modern Slavery Act 2015 consolidates the existing criminal offences (of slavery, servitude, forced or compulsory labour, and trafficking for labour exploitation) in domestic legislation. It is the culmination of the UK government's strategy of celebrating its role in combatting slavery, which began when the then-(Labour) Home Secretary John Reid signed onto the Council of Europe's 2005 Convention on Action in Trafficking Against Human Beings on a desk used by William Wilberforce (Balch, 2015, 92-3). 'Steeped in associations with … Wilberforce's … abolitionist crusade', the Modern Slavery Bill coincided with the introduction of the Immigration Bill (now Immigration Act 2014), which was designed to 'make the UK the least attractive destination for illegal migrants' by limiting migrant access to public services and increasing to £20,000 the penalty for employers found to have hired a migrant worker without the appropriate work authorization (Robinson, 2015: 132). Having made tackling modern slavery a personal priority, the then Coalition Home Secretary (and now Conservative Prime Minister) Theresa May understood that the Slavery Bill was a much needed counterweight to the Home Office's and Conservative Party's attempt to demonize migrants (Balch, 2015; Robinson, 2015).

Enacted just weeks before the May 2015 general election, the Modern Slavery Act 2015 does not define slavery, but instead provides that 'references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention' (Moderns Slavery Act 2015, s 1(4)). It also includes the crime of trafficking, and the Act's emphasis is on 'traffickers and slave drivers' who coerce, deceive, and force individuals against their will into a life of abuse, servitude and inhumane treatment' (HM Government, 2014: 9). An Anti-Slavery Commissioner has been appointed, and the strategy for combatting modern slavery builds upon the government's approach to organised crime and counter-terrorism. What has come to be known as the supply chain transparency provision requires certain businesses (those with over £ 36 million turnover per year) to produce an annual slavery and human trafficking statement for each financial year stating whether or not and, if so, what steps that they have taken to eliminate slavery and trafficking from their supply chains and their own business. Despite significant criticism that the Modern Slavery Bill did little 'to root out exploitation in high-risk labour sectors' or offer much in the way of 'victim protection or support measures', the government made only faint gestures towards labour protection (Robinson 2015: 140).

That the government's primary concern is with cross-border slavery and trafficking and not with forced labour or trafficking for the purpose of labour exploitation that occurs within the UK is reinforced by the Immigration Act 2016, which is designed to make it harder for people to live and work illegally in the UK

and to impose tougher penalties and sanctions on rogue employers who exploit illegal migrants. Among other things, the 2016 Act makes illegal working a criminal offence, with a maximum custodial sentence up to fifty weeks in England and Wales and an unlimited fine. Punishments for employers who employ migrant workers without proper authorization to work in the UK have been increased and businesses that employ such workers can be closed down.

This concern to punish and to prevent illegal work by migrants is entwined with the goal of preventing labour exploitation. Here it appears that the government seeks to protect two quite different groups from exploitation: vulnerable migrants and decent employers. According to then-Immigration Minister James Brokenshire,

> Some employers seem to think that by employing workers who are less likely to complain, including vulnerable migrants, they can undercut the local labour market and mistreat them with impunity. The unscrupulous need to know that breaking the law is a high-risk activity and the full force of the state will be applied to them (Home Office, 2016a).

But the problem is that the Immigration Act 2016 displays little concern 'for the well-being of migrant workers (regardless of their status)' and disregards relevant international norms on the treatment of migrant workers (Davies, 2016: 439). The ILO and the Council of Europe agree that it is critical to erect a firewall between the enforcement of labour standards and immigration controls (Crépeau and Hastie, 2015). Under the very broad doctrine of illegality that operates in the UK, except in limited circumstances, irregular migrant workers are barred from enforcing their statutory rights (*Allen v Hounga,* 2014). In fact, the only possibility that a migrant worker without lawful status has for redress is if they are designated a victim of slavery or trafficking under the Modern Slavery Act, where there is recourse to a reparation order. In other cases, the government can seize wages owed or paid to a migrant who engages in illegal work as proceeds of a crime.

Thus, it appears that the government's primary concern is protecting 'good' employers. According to the consultation document, which the government treated as fulfillment of its promise to review the Gangmasters Licensing Authority, 'other businesses struggle to compete against rogue employers, distorting competition and reducing levels of employment over the longer term' (BIS and Home Office, 2015: paragraph 53). In fact, the Government 'believes that labour market exploitation is an increasingly organised criminal activity and that government regulators that enforce workers' rights need reform and better coordination' (UK Parliament, 2016: 6).

The Immigration Act 2016 gestures towards enforcing employment standards through the establishment of the Director of Labour Market Enforcement (DLME) and by expanding the remit of the GLA, now called the Gangmasters and Labour Abuse Authority (GLAA) to the entire labour market. The Director's role is to provide strategic direction for the organisations responsible for regulating the UK labour market. Labour Abuse Prevention Officers have been given police powers to carry out enquiries into labour market abuse offences, which include failure to pay the national minimum wage, breaches of the Employment Agency Act and the Gangmasters Licensing Act, as well as modern slavery. Previously, the GLAA's core mission was licensing labour contractors in the agriculture, food and shellfish

sectors. It is an offence to operate in the specified sectors without a license and in order to obtain a license the labour contractor (gangmaster) has to demonstrate compliance with a range of labour standards and protections, including the payment of tax and national insurance, health and safety, and the provision of proper accommodation to workers. The grant of police powers combined with the new mandate to enforce the Modern Slavery Act raises the fear that the GLAA will be transformed from an agency that uses licensing to enforce labour standard to one that uses criminal law to target a narrow range of egregious forms of labour abuse. The Conservative government has already begun to shift away from the licensing system, and the Immigration Act 2016 could provide another opportunity for the government to dial it back (Fudge, 2016b: 6).

Despite the government's assurances that the DLME 'remit covers labour market breaches, and not immigration offences' (Home Office, 2016a), the GLAA is authorized to conduct joint operations with the UK Border Force, which enforces immigration controls. This intermingling of the enforcement of labour standards and immigration controls could undermine the ability of the Director and the GLAA to gather intelligence and to enforce labour standards. The extent to which the DLME is able to steer the GLAA and other enforcement agencies towards labour protection and away from prosecuting modern slavery and detecting illegal workers is an open question, especially as the Director's enforcement strategy is subject to approval by the secretaries of state for both the Home Office and the Department of Business, Energy and Industrial Strategy (BEIS). At the same time as the Home Office took great pride in its fight against modern slavery and embarked on its plan to make the UK a hostile environment for illegal migrants, the precursor to BEIS, the Department of Business, Industry and Skills, was committed to ending 'red tape' for employers. Although the government claims that the 'UK has a strong legal framework in place to ensure that minimum standards are met for workers', nothing could be further from the truth (Fudge 2016b, 6: Scott, 2017: 189). With the exception of the GLAA, labour inspection in the UK is complaint driven; it is also profoundly fragmented and confined to a limited set of standards. Instead of providing for a national labour inspectorate with wide ranging powers to enforce the entire suite of labour rights, the UK relies on individuals to bring legal claims to enforce their rights (Fudge 2016b; 6; Scott 2017:189). In this context, it is questionable whether the DLME will be able to persuade the government that the GLAA's licensing mandate should be extended to new sectors and that resources should be devoted to licensing rather than prosecuting slave drivers.

Combined the Modern Slavery Act 2015 and the Immigration Act 2016 demonstrate that the Conservative government's view is that that labour exploitation and unfreedom are the fault of morally culpable individuals who should be publicly vilified, rather than systemic and institutional features of state policies and practices relating to immigration and labour regulation combined with the 'free market' behaviour of employers. The modern slavery paradigm, which embodies a criminal law approach, tends both to skew attention toward the worse cases of abuse and to transpose the stereotypes that dominate the public discourses around slavery and trafficking into the discussion of labour exploitation. Litigators and advocates will often select the most egregious cases of abuse and the most

sympathetic victims in order either to win the case or to create a precedent, which tends to reinforce the use of stereotypes.

Conclusion

The attribution of a legal category to a specific form of unfree labour reveals how unfree labour is conceptualized, which, in turn, depends upon prior ontological commitments about whether the labour market is a sphere of free exchange or one of domination. The approach that dominates in the UK regards unfree labour 'as a series of individualized instances of domination rather than as a systemic social relationship of insecurity and exploitation involving relations of power within contemporary capitalism' (LeBaron, 2015: 2). This liberal approach to modern slavery tends to invoke the criminal law as the 'best' instrument for punishing these instances of bad behavior and human rights law as the appropriate way to protect victims.

Governments, such as that led by Theresa May, that embrace a 'law and order' agenda and portray migrant workers as a threat to their own citizens imbue the criminal law jurisdiction with a great deal more force that that of labour law when it comes to addressing the exploitation of workers. The problem with the modern slavery approach to unfree labour is that it tends to overbear other jurisdictions such as labour law that can be used to remedy the problem of labour abuse and exploitation. It is unlikely that labour and migrant rights advocates will be able to stretch the meaning of modern slavery to protect workers, including those without immigration authorization to work in the UK, from employers who breach labour standards. The Immigration Act 2016 demonstrates that a criminal approach to modern slavery is perfectly compatible with tighter immigration controls and a criminal approach to 'illegal working' (Fudge forthcoming). Moreover, the modern slavery paradigm reinforces the idea that flexible labour markets of the type that prevails in the UK are a realm of labour freedom and that the threat to working people's living standards is illegal migrants who are exploited by rogue employers.

References

Alain J (2012) The Legal Definition of Slavery into the Twenty-First Century. In Allain J (ed) *The Legal understanding of Slavery*. Oxford: Oxford, pp 199-219.

Allain J (2013) *Slavery in International Law: Of Human Exploitation and Trafficking*. Martinus Nijhoff. Leiden.

Allen v Hounga [2014] UKSC 47.

Balch, A (2015) Understanding and Evaluating UK Efforts to Tackle Forced Labour. In Waite, L et al (eds) *Vulnerability, Exploitation and Migrants*. Baskingstoke: Palgrave Macmillan, pp 86-98.

Bales, K. (2004) *Disposable People: New Slavery in the Global Economy*. Berkeley: University of California Press.

Bales, K (2012a) Slavery in its Contemporary Manifestations. In Allain J (ed) The Legal understanding of Slavery. Oxford: Oxford, pp 281-303.

Bales, K (2012b) Professor Kevin Bale's Reponse to Professor Orlando Patterson. In Allain J (ed) *The Legal Understanding of Slavery*. Oxford: Oxford U P, pp.360=372.

Beckert S (2014) *The Empire of Cotton*. Knopf: New York.

Business, Industry and Skills and Home Office (2015) *Tackling Labor market Exploitation: A Consultation* Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471048/BIS-15-549-tackling-exploitation-in-the-labour-market.pdf (accessed 17 May 2017)

Brass, Tom (2011) *Labour regime change in the twenty-first century: unfreedom, capitalism and primitive accumulation*. Leiden: Brill.

Cohen, R (1987) *The New Helots: Migrants in the International Division of Labour*. Hants: Gower.

Costello, C (2015) Migrants and Forced Labour: A Labour Law Response. In Bogg, A et al., (eds) *The Autonomy of Labour Law*. Oxford: Hart, 2015, pp 189-227.

Crépeau F and Hastie H (2015) The Case for 'Firewall' Protections for Irregular Migrants Safeguarding Fundamental Rights' 15 *European Journal of Migration and Law* 15:157

Davies, A (2016) The Immigration Act 2016 *Industrial Law Journal* 45: 431-442.

Deakin, S (2013) Conceptions of the Market in Labour Law. In Numhauser-Henning A and Rönnmar M (eds) *Normative Patterns and Legal Developments in the Social Dimensions of the EU*. Oxford: Hart, pp 141-160.

Deakin, S (2009) Legal origin, juridical form and industrialization in historical perspective: the case of the employment contract and the joint-stock company. *Socio-Economic Review*. 7: 35-65.

Deakin, S et al. (2017) Legal institutionalism: Capitalism and the constitutive role of law *Journal of Comparative Economics* 45 (1): 188-200.

Dorsett, S and McVeigh, S (2012) *Jurisdictio*n. London: Routledge.

Fletcher, R (2013) Legal Form, Commodities and Reproduction: Reading Pashukanis.

In Drakopoulou, M. (ed.) *Feminist Encounters with Legal Philosophy*. Routledge: London. pp 138-157

Fox, Alan (1985) History and Heritage: The Social Origins of the British Indistral Relations System. London: Georg Allen & Unwill.

Freedland, M et al (2016) *The contract of employmen*t. Oxford: Oxford University Press.

Freedland, M, and Kountouris, N (2011) *The legal construction of personal work relations*. Oxford: Oxford University Press.

Fudge, J. (1999) Legal forms and Social Norms: Class, Gender, and the Legal Regulation of Women's Work in Canada from 1870 to 1920. In E. Comack (ed.) *Locating Law: Race/Class/Gender Connections*. Halifax: Fernwood.

Fudge, J (2014) Feminist Reflections on the Scope of Labour Law: Domestic Work, Social Reproduction, and Jurisdiction, *Feminist Legal Studies* 21(1): 1-23.

Fudge, J (2016a) Migrant Domestic Workers in British Columbia, Canada Unfreedom, Trafficking and Domestic Servitude. In Howe J and Owens, J (eds) *Temporary Labour Migration in a Globalised World: The Regulatory Challenges*. Oxford: Hart, pp 151-172.

Fudge, J (2016b) Modern Slavery and Migrant Domestic Workers The Politics of Legal Characterization Policy Brief, The Foundation for Law, Justice and Society. Available at www.fljs.org accessed 5 May 2017).

Fudge J and Strauss K (2014) Migrants, Unfree Labour, and the Legal Construction of Domestic Servitude: Migrant Domestic Workers in the UK. In Costello, C and Freedland M (eds), *Migrants at Work*. Oxford, Oxford University Press, pp 160-179.

Fudge, J (forthcoming) Illegal Working, Migrants and Labour Exploitation in the UK: Liminal Legality and the Immigration Act 2016.

Gallagher, A (2017) What's Wrong with the Global Slavery Index?, Anti-trafficking Review 8: 190-211.

Gallagher, A (2009) Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway. *Virginia Journal of International Law* 50: 789- 836.

HM Government (2014) Modern Slavery Strategy. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383764/Modern_Slavery_Strategy_FINAL_DEC2015.pdf (accessed 17 May 2017)

Hale, R (1923) Coercion and Distribution in a Supposedly Non-Coercive State, Political Science Quarterly, 38(3): 470-494.

Hay, D (forthcoming) Working Time, Dinner Time, Serving Time: Labour and Law in Industrialization. In Tucker E and Fudge J (eds), *Law with Class: Essay Inspired by Harry Glasbeek*. Between the Lines: Toronto.

Home Office (2016) Immigration Act 2016 Factsheet – Labour market enforcement. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537203/Immigration_Act-_Part_1_-_Labour_Market_Enforcement.pdf (accessed 17 May 2017)

Home Office (2016) Immigration Act 2016 Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537203/Immigration_Act-_Part_1_-_Labour_Market_Enforcement.pdf (accessed: 16 May 2017)

Knegt, R (this volume) Labour constitutions and Market Logics: A socio-historical approach. *Socio-Legal Studies*

ILO (2014) *Strengthening Action to end Forced Labour*. Geneva: International Labour Conference 103rd (Report IV (1)).

ILO (2014) Protocol of 2014 to the Forced Labour Convention, 1930 (Entry into force: 09 Nov 2016) Adoption: Geneva, 103rd ILC session.

ILO (2012) ILO Indicators of Forced Labour, Geneva: ILO <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf> (accessed 17 May 2017).

ILO (2007) Report III (Part 1 B), General Survey concerning the Forced Labour Convention, 1930 (No.29), and the Abolition of Forced Labour Convention, 1957 (No. 105), International Labour Conference, 96th Session, Geneva.

ILO (1930) *Convention concerning Forced or Compulsory Labour*, 1 May 1932, 39 UNTS 55, art 2.

League of Nations (1926) Convention to Suppress the Slave Trade and Slavery, 25 September 1926, 60 LNTS 253, Registered No. 1414 (Slavery Convention)

LeBaron, G (2015) Unfree Labor Beyond Binaries: Insecurity, Social Hierarchy, and Labor Market Restructuring. *International Journal of Feminist Politics*, 17: 1–19.

Mantouvalou, V (2016) Temporary Labour Migration and Modern Slavery. In Howe J and Owens, J (eds) *Temporary Labour Migration in a Globalised World: The*

Regulatory Challenges. Oxford: Hart, pp 223-240.

Marx, K (1990) *Capital: Critique of Political Economy.* Harmondsworth: Penguin.

Marx, K (1971) *A Contribution to the Critique of Political Economy*. London: Lawrence and Whisart.

May, T (2016), Defeating modern slavery, Available at: https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article (accessed 16 May 2017).

Mezzadra, S and Neilson, B (2013) *Border as Method, or, the Multiplication of Labor*. Durham and London: Duke.

Miles R (1987) *Capitalism and Unfree Labour: Anomaly or Necessity?* London: Tavistock.

Numhauser-Henning, A (2013) Understanding Law as Normative Patterns in a Normative Field. In. In Numhauser-Henning A and Rönnmar M (eds) *Normative Patterns and Legal Developments in the Social Dimensions of the EU*. Oxford: Hart, pp 27-52.

O'Connell Davidson, J (2015) *The Margins of Modern Slavery*. Basingstoke: Palgrave Macmillan.

Pashukanis, E. [1923] (1989) *Law and Marxism: A General Theory*. Pluto Press, London.

Paterson, O (2012) Trafficking, Gender and Slavery: Past and Present. In Allain J(ed) *The Legal understanding of Slavery*. Oxford: Oxford, pp 322-359.

Paz-Fuchs, A (2016) Badges of Modern Slavery. *The Modern Law Review* 79(5): 757-785.

Rantsev v Cyprus and Russia (2010) 51 EHRR 1.

Rittich, K (2014) Making Natural Markets: Flexibility as Labour Market Truth. *Northern Ireland Law Quarterly* 65(3): 325-43.

Robinson, C (2015) Claiming Space for Labour Rights within the United Kingdom Modern Slavery Crusade. *Anti-Trafficking Review* 5:129-145.

Satzewich, V (1991) *Racism and the incorporation of foreign labour: farm labour migration to Canada.* New York: Routledge.

Scott, S (2017) *Labour Exploitation and Work-Based Harm*. Bristol: Policy Press.

Shamir, H (2012) A Labor Paradigm for Human Trafficking. *UCLA Law Review* 72: 76-136.

Sharma, N (2006) *Home Economics: Nationalism and the Making of Migrant Workers in Canada.* Toronto: University of Toronto Press.

Siliadin v France (2006) 43 EHRR 16

Siller, N (2016) 'Modern Slavery': Does International Law Distinguish between Slavery, Enslavement and Trafficking? *Journal of International Criminal Justice* 14: 405-427

Skrivankova, K (2010) Between Decent Work and Forced Labour: Examining the Continuum of Exploitation. JRF programme paper. York, Joseph Rowntree Foundation.

Steinberg, M (2016) *England's Great Transformation: Law, Labor and the Industrial Revolution*. Chicago: University of Chicago Press.

Steinfeld, R (2001) *Coercion, Contract, and Free Labor in the Nineteenth Century*. Cambridge; Cambridge University Press.

Stoyanova, V (2017) *Human Trafficking and Slavery Reconsidered*. Cambridge: Cambridge University Press.

Strauss, K and Fudge, J (2013) Temporary Work, Agencies and Unfree Labour: Insecurity in the New Work of Work. In Fudge, J and Strauss, K (eds) *Temporary Work, Agencies and Unfree Labour: Insecurity in the New World of Work*. New York and London: Routledge, pp 1-25.

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery , Geneva, 7 September 1956

Thomas, C (2011) Convergence and Divergences in International Legal Norms on Migrant Workers. *Comparative Labor Law and Policy Journal* 32: 405-441.

UK Parliament (2016) Immigration Act 2016- Explanatory Notes. Available at: https://www.publications.parliament.uk/pa/bills/cbill/2015-2016/0074/en/15074en.pdf (accessed 17 May 2017)

UN General Assembly (2000), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.

Valverde, M (2009) Jurisdiction and Scale: Legal 'Technicalities' as Resources for

Theory. *Social & Legal Studies* 18: 140-158.

Valverde, M (2015) *Chronotopes of Law*: *Jurisdiction, Scale and Governance*. London: Routledge.

Waite, L et al. (2015) Introduction. In Waite, L et al (eds) *Vulnerability, Exploitation and Migrants*. Baskingstoke: Palgrave Macmillan, pp 1-12.

Walkfree (2017) The Global Slavery index. Available at: https://www.walkfreefoundation.org/our-programs/ (accessed 16 May 2017).

Zatz, N (2011) The Impossibility of Work Law. In Davidov, G and Langille B (eds), *The Idea of Labour Law*. Oxford: Oxford University Press, pp 234–255.