

WHAT IS EXPLOITATION?

Palermo Protocol 20th anniversary special
What is exploitation?

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Preferred citation: Howard, N., Quirk, J. & Thibos, C. (Eds.) (2021) *Palermo Protocol 20th anniversary special: What is exploitation?* London: Beyond Trafficking and Slavery/openDemocracy.

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INTRODUCTION

What is exploitation anyway?

Neil Howard

The concept of exploitation sits at the heart of efforts to define and deliver decent work. It is foundational to what institutions like the International Labour Organization do. And it occupies a central position within the global legal architecture around extreme forms of abuse like ‘trafficking’, ‘forced labour’ and ‘modern slavery’. Nearly all of the campaigns, interventions, laws, and policies which have been introduced to address these crimes in recent decades have exploitation at their core.

Yet exploitation is nowhere defined in international law. Even the Palermo Protocol, which establishes the internationally agreed upon definition of trafficking, deliberately avoids offering anything concrete. Some say this doesn’t matter, believing that ‘we’ll always know it when we see it’. Others regard this omission as positive. If we leave the content of exploitation open, they say, then legislators and activists can fill it with ever more examples of ‘unacceptable’ work – thereby advancing the cause of improving working conditions for us all.

These arguments have some merit. But a wealth of contemporary research and years of frontline engagement with vulnerable workers in the Global North and South suggest that this lack of definitional clarity contributes to all kinds of problems.

The key sticking point here is the issue of power. Simply put, not everybody is permitted to help define exploitation or to nominate examples of it. Seats at the table are limited and exclusive, so the activities that get defined as exploitative are usually the ones that people in power find offensive. Likewise, what is understood as a cause of exploitation and what is legitimated as a remedy both tend to be that which makes sense to and for the powerful.

This is troubling because the powerful and their perspectives are not representative of the whole. Indeed, they tend to be people at the top of vectors of inequality, such as race, class, gender, and generation, with perspectives that are seriously circumscribed by their privilege and the ideologies that underpin it.

This translates into an approach to exploitation that is de-politicised, individualised, racialised, adult-centric, and patriarchal. The prevailing causal narrative, for example, tends to view exploitation as something that only morally corrupt individuals ‘do’ – and to unsuspecting innocents. Often this binary breaks down along crudely racialised and gendered lines, with black or brown male perpetrators on one side and innocent women and children on the other.

Liberal capitalist tropes also heavily inflect this narrative, in the sense that the exploited are said to be victims of largely interpersonal coercion or deception, with an ahistorical and abstract understanding of poverty conceded as the immovable *force majeure* in the background.

A further issue here is the way in which certain categories of work (such as sex work) are framed as essentially exploitative, with clear lines drawn between what is ‘acceptable’ to human dignity and that which is said to be alien to it. The problem is that, once again, those who draw these lines do so according to culturally and class-specific moral frameworks. And these are far from universally shared.

These definitional deficiencies can have damaging consequences, as many of the scholars and activists writing on this website have demonstrated. For the

purposes of this introduction, there are three points worth highlighting.

The first is that by singling out only certain phenomena as exploitative and in need of eradication, we end up excluding other, similarly troubling phenomena from our analysis and interest. Take, for example, modern abolitionists' simmering outrage over forced child marriage in the Global South and contrast it with their much more muted reaction to the plight of migrants (including children) stuck in European and North American detention facilities. How can this difference be justified? And what is lost in the process?

Second, when entire categories of work are constructed as exploitative by default, livelihood strategies can be problematised that may *not* be problematic for the people living within them. Even worse, when these livelihood strategies are consequently targeted for abolition, the people whose lives depend on them almost always suffer. Sex work and child work are the paradigmatic examples here. Policymakers and civil society actors on all continents have attempted to 'save' sex workers and child workers by banning them from doing the work that they rely on to live. In doing so they only cause them ever greater misery. Is this really in the interests of the exploited?

Third, by concentrating on individual 'bad egg' perpetrators or on sectors seen as inherently exploitative, the prevailing modern abolitionist approach to exploitation has the effect of naturalising the underlying causal conditions of *all* problematic labour relations. It deflects attention away from the core processes and structures that facilitate violence and abuse, including the private property regimes that deny people the means of subsistence and the socio-legal systems that dehumanise some humans and not others.

So what is to be done? The conversation that *Beyond Trafficking and Slavery* aims to initiate with this collection intends to offer answers to this question. It profiles the perspectives of political theorists, philosophers, sociologists, economists, and representatives of 'the exploited'. Our goal is to push the boundaries of how we think about exploitation, and to tease out the implications of doing so differently. Fundamentally, the collection will point in the direction of more radical efforts – to understand the structurality of exploitation, exclusion, and the vulnerability entailed in both, and to support workers in accessing and operationalising greater collective power in the world of the market. Enjoy.

Exploitation is the rule, not the exception

Michael Hardt and Kathi Weeks

The Palermo Protocol was established twenty years ago. A supplement to the UN Convention Against Transnational Organized Crime, it aims to “prevent, suppress and punish trafficking in persons,” with a specific focus upon “women and children.” Despite receiving numerous expressions of official support in the years that have followed, the protocol has not proved to be especially effective. This is, in part, because it fails adequately to articulate the nature of the problem to be addressed. Our particular concern here is the vague and ambiguous use of two key terms, “exploitation” and “vulnerability,” which lead to ineffective and even harmful solutions. In this article, we argue that a better formulation of the problem will yield more effective solutions.

The protocol defines trafficking in terms of the means that an actor uses, including force or fraud, and the purpose for which the person is trafficked, namely exploitation. Rather than formally defining exploitation, it instead offers a list of examples: “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

These examples are presented as a ‘minimum,’ yet they also represent exploitation as an exceptional problem: immoral and illicit profiting from the victimisation of others, especially, as the language makes clear, women and children performing sexual labour. If, as the protocol suggests, the problem is a matter of criminal individuals, then its preferred solution of rescuing the victims and prosecuting the perpetrators might make some kind of sense. But, as we will see, the underlying problem needs to be understood more clearly before an appropriate solution can be found.

The concept of exploitation

To investigate how “exploitation” is used in the protocol, we find it instructive to turn to the theorist who most thoroughly develops the concept: Karl Marx. There are many relevant lessons which Marx can offer here. First, exploitation in capitalist society is the norm. Rather than a form of corruption, exploitation is the very lifeblood of a capitalist economic system. Workers have no choice but to sell their labour in order to live and, when they work, they produce more value than they receive back in the form of wages or other remuneration.

By exploiting others, capitalists are simply playing by the rules of the game, following the economic practices dictated by the system. People are exploited, then, not because their boss is doing anything illegal or even particularly immoral, but because exploitation is intrinsic to the workings of the economic system. The economic surplus that is produced by the many is understood to be legitimately appropriated privately by the few. Income generation and profit generation are two sides of the same coin. Exploitation, in short, constitutes the ‘proper’ functioning of the system, not an exceptional deviation or individual criminal scheme.

It can be very difficult to draw a clear line between relations of “servitude,” which the protocol lists among examples of criminal exploitation, and normal income-generating activities under capitalism. The remarkably unfettered power that employers enjoy needs to be understood as a prerequisite for exploitation: the employer has the legal right to command the employee’s labouring activity. Even the best employment contracts create, at base, relations of command and obedience. Capitalist work has always been a realm of unfreedom. Although

Marx only thought about this relationship of domination in terms of economic class, we should also be able to recognise it within other hierarchies that structure contemporary society based upon gender, sexuality, race, and nation. Each of these axes of unequal power define exploitative relationships, and being forced into such asymmetrical relations of power, as the vast majority of people are, constitute relations of servitude. We thus need an expanded vision that grasps all these hierarchies in order to have a complete picture of the ways that labour is exploited in capitalist society.

It is true, of course, that labour can be exploited at different rates, with workers receiving back somewhat more or less of the value of their labour in the form of remuneration. And different workers are subject to more or less control, more or less abuse,

[the European Commission](#) include “economic reasons” in their “list of indicators of recruitment by abuse of vulnerability.”

Marx once again helps us to see the problem more clearly. Economic vulnerability is not an exceptional and illegitimate means of recruiting people into income- and profit-generating work, but instead the normal and necessary method by which capitalism coerces and disciplines labour. What [Marx calls alienating work](#) – the “labour of self-sacrifice” in which a worker does “not develop freely his physical and mental energy but mortifies his body and ruins his mind” – is endemic to all forms of employment under capitalism. “Its alien character,” Marx continues, “emerges clearly in the fact that as soon as no physical or other compulsion exists, labour is shunned like the plague.”

“What the Palermo Protocol portrays as exceptional ends up being a description of the conditions of the system itself.”

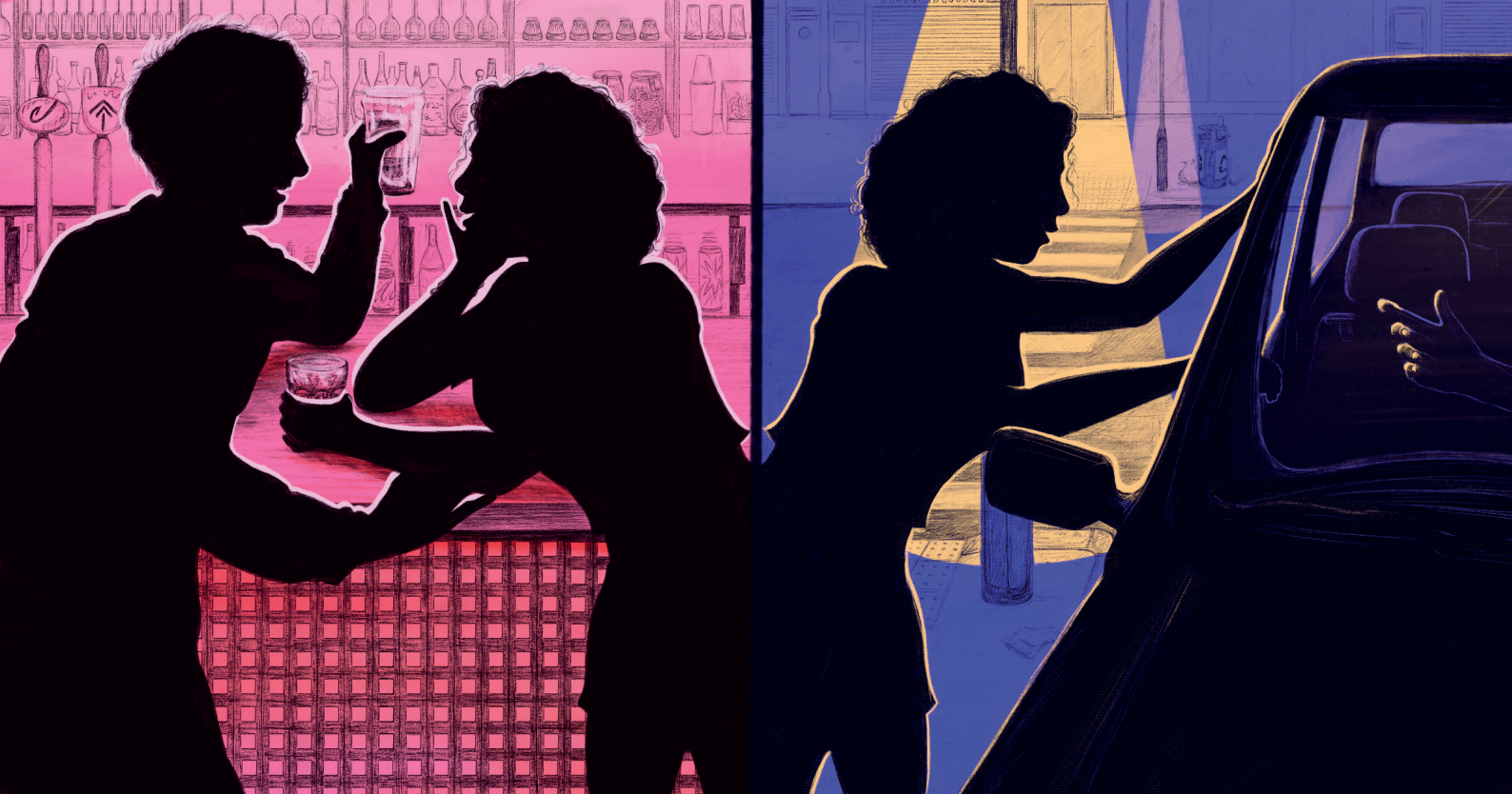
and more or less risk from employers. None of these differences are acknowledged, let alone addressed, within the protocol.

Forced labour

The human trafficking definition also focuses on the methods of recruitment into these relations of exploitation. But here, too, what is presented as exceptional activity turns out to be a structural condition. In the language of the protocol, the list of criminal methods of recruitment is expanded well beyond the use of force or fraud to include the astonishingly vague notion of “abuse of a position of vulnerability.” But vulnerability is a generalised social condition. We find it telling, in fact, that in their attempt to operationalise and systematise the ambiguous language of the protocol, [the ILO and](#)

Workers accept these jobs because they have no other choice but to sell their labour power to members of the owning class who will appropriate the surplus as their own profit. For that reason, even if they are waged workers rather than enslaved people, their labour cannot be reasonably described as freely offered: it is “not voluntary, but coerced; it is *forced labor*.” In other words, economic vulnerability is the *normal* condition of workers who are recruited into work. Capital needs to exploit workers and most workers have no other choice but to be exploited.

Despite various efforts to generate clear criteria to define the exceptional nature of recruitment into trafficking, the boundaries between capitalist labour and criminal activity continually break down. What the Palermo Protocol portrays as exceptional



ends up being a description of the conditions of the system itself.

The case of sex work

The porous border between everyday capitalist exploitation and exceptional criminal abuse is especially apparent when it comes to debates over sex work and trafficking. The case of trafficking into sexual labour exploitation, which the protocol singles out as an area of emphasis, reveals that the blurring of the boundary is not the result of sloppy thinking or writing by committee. Instead, it is a conscious strategy on the part of the feminist prostitution abolitionists who left an indelible mark on the document.

The conflation of sex trafficking and sex work is a key strategy of extremist abolitionist organisations. The [Coalition Against Trafficking in Women](#), for example, insists that “the exploitation of prostitution and trafficking cannot be separated” and therefore equates the work of any form of prostitution to sexual violence and abuse. The protocol and the national anti-trafficking policies modelled on it have served as tools to reinvigorate the policing and prosecution of sex workers more broadly.

One clear example of this agenda in action is the [SESTA/FOSTA bills](#) passed by the US Congress and enacted into law in 2018. The law is intended to combat both prostitution and sex trafficking –

the two are consistently linked in the text – by targeting online sites and platforms sex workers use to market their services and screen clients on the grounds that they could also be used by traffickers. The law jeopardises the safety and livelihood of the many sex workers using these tools as part and parcel of the effort to de-platform the small numbers of traffickers who might also use these sites. With assistance from all the sensationalised media stories about sex trafficking, the by now common conflation of sex work and sex trafficking has been a boon to sex work abolitionists in the US.

It is worth noting (although this point deserves a separate argument) that the expansive reach of human trafficking laws is also used as a weapon against migrants and migrant aid networks. Just as the law tends to cast all sex work as trafficking, so too migrant aid has become subject to prosecution as “trafficking in persons.” As a result, humanitarian projects, such as rescue missions in the Mediterranean to aid migrants in distress, have been criminalised and repeatedly charged under anti-trafficking laws.

The power of the exploited

It should be clear from the proceeding analysis that exploitation is a structural characteristic of capitalist society – not the exception but the norm – and is thus a much larger problem than presented by the protocol. As such it may seem that a solution will

be much more difficult, if not impossible, to find. At this point another aspect of Marx's concept of exploitation comes into view.

In contrast to standard notions of domination or repression, the Marxist approach to exploitation regards workers as much more than victims. Exploited workers must have a certain power, since if they were powerless and unproductive there would be no way to exploit them. This power of the exploited, which is currently harnessed in the relationship with the exploiters, has the potential to be deployed by the workers themselves. The potential of the exploited, in fact, must be explored not just in terms of economic class but also along all the hierarchies of power that we mentioned earlier. The exploited in all these cases are not victims (or, not *only* victims) but rather potential agents of power. Since exploitation is structural, not exceptional, and since those exploited are endowed with potential, organising them to act politically for themselves is not only possible but also necessary.

We are not saying that workers are never deceived, forced, or held against their will or that these practices are not odious. Our point is that, as the protocol's own tendencies to expand its scope demonstrate, these problems exist on a continuum with the far more common problems workers face. Rendered vulnerable by economic circumstances and a dearth of other options for generating income, workers end up in relations of labour exploitation characterised by low pay, danger, subordination, unfreedom, and drudgery. The protocol focuses on exceptional criminal activity rather the structures of inequality. But if the goal of the protocol was to distinguish criminal trafficking from business as usual, then it has failed miserably. The language of exploitation and vulnerability blurs the boundary between the exception and the rule. Take away the moralising evocation of villains and victims and the sensational references to sexual exploitation, slavery, servitude, and organ removal – posed as a simple list with a kind of poker-faced neutrality – and the protocol's language could well describe many bad jobs.

It is ironic that feminist prostitution abolitionists, who had outsized influence in the drafting of the protocol, actually repeat one aspect of Marx's argument, albeit in a distorted and limited way. They too reject the division between sex work and sex trafficking. Perhaps, one might think, we could simply expand the frame further from "all sex work is exploitation" to "all capitalist work is exploitation." But the prostitution abolitionists cannot accept that sex work is like other work; it must remain exceptional, in part because of the fundamentally moral basis of their condemnation. And, as a result, their preferred solution must revolve around criminal prosecution, such as the Nordic model that criminalises the consumers of sexual services in a bid to destroy the sex work sector.

Not rescue and prosecution, but empowerment and organising

In order to arrive at a real solution, we need a better formulation of the problem. If, as we have argued, economic vulnerability and exploitation are general conditions in capitalist society, then the problem is much larger than recognised by the Palermo Protocol. Moreover, the two facets of Marx's understanding of exploitation – its structural rather than individual nature and the potential power of the exploited it reveals – demonstrate that the adequate strategy to combat vulnerability and exploitation is not **rescue and prosecution**, but **empowerment and organising**. First, since most people are recruited into work by means of their economic vulnerability, then the way to address this is to empower them by creating genuine economic security. Endeavours like poverty-reduction initiatives, debt relief programmes, and projects to end homelessness. Second, since the exploited in capitalist society – those exploited in terms of hierarchies of class but also of gender, race, sexuality, and nationality – have a potential power, they are able to organise politically. A genuine solution to the problem of exploitation will thus have to be initiated by modes of coalitional labour organising that are able to address all of these hierarchies together.

Twenty years after Palermo, can we stop discussing labour exploitation and start fixing it?

Judy Fudge

Exploitation is at the heart of the definition of the crime of human trafficking in the United Nation's 2000 Palermo Trafficking Protocol. During the drafting process the most contentious issue was whether exploitation is inherent to prostitution, and thus whether prostitution is exploitative even when direct coercion is absent. Since it was hard to reach a clear position, a diplomatic compromise was reached by giving exploitation both a broad and an ambiguous definition.

Exploitation is one of the three constituting elements of human trafficking under the protocol. It states that "exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." The addition of other, 'non-sexual' forms of exploitation to the definition of human trafficking broke the immediate political logjam, but the meaning of exploitation remains profoundly contested on economic, moral, political, and legal grounds. The explicit reference to forced labour in particular has provoked a lively debate about what kinds of practices and conditions amount to labour exploitation both within and beyond the context of human trafficking.

This debate is important because how we frame or conceptualise labour exploitation shapes the strategies and policies that we devise to deal with it. At the same time, we need to prevent ourselves from getting so mired in nuance that we forget why we are trying to define exploitation in the first place. If the goal is to eradicate labour exploitation, carving out its most extreme forms and criminalising them

cannot be the solution. Instead, we need a strategic approach to addressing labour exploitation, one which identifies the relationship between different forms of exploitation and their drivers and, on that basis, develops the capacities of local actors to make sustainable, system-wide changes.

What is exploitation?

There are two very broad ways of understanding exploitation. One sees it in terms of 'wrongful use' – a person is used simply as a means by another and thus is objectified and instrumentalised inappropriately. This is why some feminists object to even consensual prostitution. The other way regards exploitation in terms of disparity of value, such as when a person takes advantage of their superior bargaining position by under-compensating another person. Here we can think of the legions of zero-hour contract workers in the UK. Treated as independent contractors, many earn less than the minimum wage even while the large retailers benefitting from their labour make record profits.

The first understanding is associated with liberal political theory and it is concerned with identifying the categories of wrongful use of one individual by another. The latter comes from the Marxist tradition, and focuses on the structural features that enable certain individuals to do things like pay others less than the value of their labour. The challenge for the first approach is to identify what counts as wrongful use, whereas for the second it is identifying what constitutes unequal value.

Traces of this philosophical debate can be discerned in contemporary policy discussions of what consti-

tutes labour exploitation. Historically, the leading organisation on labour rights, the International Labour Organization (ILO), has shied away from using the term exploitation because in the context of labour markets it has typically referred to poor outcomes like very low wages. Instead, the ILO has focused on coercive means. This approach aligns with the [ILO's definition of forced labour](#), which is “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.” Although the ILO interprets coercion broadly to include physical, psychological, and financial manifestations, its Committee of Experts is clear that “the employer and the state are not accountable for all external constraints or indirect coercion existing in practice: for example, the need to earn one’s living.”

Similarly, [a discussion paper prepared for the World Bank](#) distinguishes between “consensual exploitation” and “non-consensual exploitation”, with the latter including unfree forms of labour such as forced labour, human trafficking, and slavery. The paper’s authors recognise that individuals may, in certain contexts, allow themselves to be exploited. However, for them such situations are limited to when the potential labour pool is so large that a dominant employer enjoys vastly superior bargaining power (known as monopsonistic markets). The ILO’s and the World Bank’s approaches track the liberal approach, where the problem is seen as wrongful use and typically involves some form of coercion, deceit, fraud, or abuse perpetrated by an individual. This approach does not take into account the background legal and economic arrangements that create fertile conditions for exploitation.

This can be contrasted with an influential [policy paper](#) by Klara Skrivankova, who focuses upon the kinds of constraints that contribute to exploitation beyond coercion and deception. For Skrivankova, exploitation can be regarded as the outcome of “external and individual circumstances” that include “legal framework, labour market functions and failures, crime, migration, individual agency and status”. This approach links exploitation to regula-

tion, the market, and status hierarchies by looking at how immigration and employment laws operate in specific sectors, such as agriculture and domestic work, to make groups of workers, such as women or racialised workers, vulnerable to exploitation. Skrivankova also popularised the idea of a continuum of exploitation that ranged from slavery and forced labour through to decent work.

Law and labour exploitation

Lawyers and legal researchers also argue over the ‘best’ interpretation of the meaning of exploitation. Initially, the debate arose in the context of the definition of human trafficking. Anne Gallagher, in an [issue paper](#) for the United Nations Office on Drugs and Crime, argues for understanding exploitation as a continuum and suggests that a “threshold of seriousness” may be needed “to prevent the inclusion of less serious forms of exploitation into the concept of trafficking in persons, such as labour law infractions that may be anyway subject to another legal regime.”

For Gallagher the question is one of drawing the line between criminal forms of labour exploitation and those forms of labour abuse that are of a ‘regulatory’ nature. This approach to defining exploitation avoids what Janie Chuang calls “[exploitation creep](#)”: the tendency to stretch the meaning of exploitation in the human trafficking protocol to capture an ever-broader range of practices. However, this approach effectively devolves the decision of where to set the bar for human trafficking to a state’s pre-existing legal norms regarding the scope of criminal behaviour.

It also demonstrates how the law renders some workers vulnerable to exploitation. Virginia Mantouvalou, for example, [has shown](#) how immigration controls on temporary migrant workers, work programmes in prisons and immigration detainment centres, and legal tests of employment status for casual workers create contexts in which exploitation is ripe to occur. This focus on the role of the law in constructing structures of exploitation shifts our attention away from individual wrongdoers,

which is the subject of criminal law, to state responsibility and the positive obligations on states to address conditions that give rise to exploitation.

The problem with a human rights approach like Mantouvalou's, however, is that to date binding positive duties on states to address labour exploitation in the context of trafficking have been limited to criminalisation and victim protection. So far human rights courts such as the [European Court of Human Rights](#) have not told their member states to provide legal pathways for migration or to enforce labour standards as part of their legal obligation to protect individuals from forced labour, slavery, and human trafficking.

Legislators and law enforcement officials continue to argue over whether or not coercion needs to be present for human trafficking to occur. One of the key points of contention is whether an employer who subjects workers to inhuman or degrading conditions, and who pays them well below the legal minimum or national average, can be convicted of the offence of human trafficking or forced labour. National approaches are currently mixed. The [European Union's Agency for Fundamental Rights](#) advocates addressing labour exploitation outside of the context of human trafficking and extending the definition of labour exploitation beyond coercion to include "particularly exploitative working conditions".

This approach is supported by the [EU Employer Sanctions Directive](#). Designed to deter employers from hiring workers with irregular migration status, the sanctions directive requires member states to criminalise the conduct of employers who employ irregular workers in "particularly exploitative working conditions". This is defined in Article 2(1) as "working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity". Exploitative conditions are those that fail by a wide margin to meet the prevailing standards.

A strategic approach

These approaches to labour exploitation favour either a criminal law or a human rights lens. Both come with problems. The former is only concerned with individual culpability, while the second doesn't require enough of states to prevent exploitation by private actors. Both fail to grapple with how state immigration and labour policies combine with labour market institutions and actors to create a range of different types and degrees of labour exploitation. They instead invest a great deal of effort in establishing definitions and indicators for forms of severe exploitation, and the typical solution remains prosecution.

However, we know that using criminal law often backfires. It tends to harm the most vulnerable populations, and anti-trafficking and other criminal laws are often used as a cover for different agendas – such as [demonising undocumented migrant workers in the UK](#). A more effective approach to addressing all forms of labour exploitation regardless of how it's defined is to tackle the state policies, business practices, and labour market actors associated with the avoidance and violation of basic labour standards.

[Wage theft](#), which "can be conceived as an amalgamation of a number of different types of labour rights abuses related to the denial of remuneration or benefits to a worker to whom they are owed or entitled", is a perfect example of where a strategic approach is needed. Wage theft is one of the indicators of forced labour, although not all of its forms will amount to forced labour. We also know that migrant workers are particularly vulnerable to having their wages withheld and to unlawful wage deductions. One way of dealing with wage theft is to develop and enforce labour laws, such as the law in Brazil that holds contractors liable for the wage violations of subcontractors. The only way to tackle 'extreme' forms of labour exploitation is to see how they are tied up with other more mundane forms and to develop a strategic approach to regulating unacceptable forms of work.

A [strategic approach to targeting labour exploitation](#) goes beyond responding to particularly egregious examples by changing the conditions that produce them. Here, it is important to learn from local actors, especially affected workers and their representatives, who are familiar with local regulatory and institutional frameworks. Workers have been absent from most discussions on what forms of labour exploitation to target and how to go about doing so. They and their representative organisations – global, national, and local labour unions, worker-based human rights organisations, and other organisations that genuinely represent workers’ interests – need to be central to efforts to create and implement any form of regulation, including its priorities, design, monitoring, and enforcement. [Worker participation in the governance of labour standards](#) is necessary to ensure that those in authority, whether corporate actors or state officials, can be held accountable.

Policies designed to end labour exploitation should identify points of leverage at which system-wide effects are most likely. These may be found on multiple levels, including geography, sector, and product market. However, they are not possible to predict in advance. Points of leverage must be identified within a particular locale or sector with the input of local labour market actors – workers, their representatives, employees, intermediaries and state officials. Finding effective leverage points is particularly important in contexts in which resources for addressing labour market disadvantage are profoundly constrained.

The transformation experienced in recent decades by load carriers in India provides a good example of this in action. Known as [mathadi workers](#), this mostly male workforce migrates from the rural parts of the Indian state of Maharashtra to Mumbai and other urban centres in search of work. Initially their work was poorly paid and dangerous. It was controlled by middlemen, and workers were victimised and sometimes tortured. In 1974, legislation set up boards representing mathadi workers, labour users, and government officials, and these boards began to regulate the supply and demand for labour as well as the terms and conditions of employment. The result has been a remarkable improvement in mathadi workers’ wages, conditions, and social protection, as well as the elimination of the most egregious forms of exploitation.

A key goal of strategic regulation against labour exploitation should be to build capacities and assist labour market actors to internalise norms, thereby ensuring the sustainability of regulatory interventions. A critical dimension of any strategy to combat labour exploitation is to cultivate effective worker voice and power. The idea that labour exploitation is perpetrated by a few bad actors distracts us from all the ways that labour exploitation is a by-product of contemporary business practices, labour market institutions, and immigration policies. Until we design a new strategy based on the realisation that labour exploitation is part and parcel of the dominant business model not much will change.

Marx on exploitation: an ABC for an unequal world

Alf Gunvald Nilsen

“Equivalent has been exchanged for equivalent.” This is how Karl Marx, writing in his magnum opus *Capital: A Critique of Political Economy*, described the various exchanges that drive capitalist accumulation. He was referring to how capitalists pay the full value of all the things that are needed in order to produce a commodity – such as raw materials, technology, and, very importantly, labour power.

That might seem like an odd thing for someone like Marx to say. After all, he understood capitalism to be a fundamentally antagonistic economic system, where politics is defined by interests of an exploiting class of capitalists clashing with those of an exploited working class. How can exploitation be taking place if workers are being paid the full value of their labour power? Surely exploitation is all about paying workers less than what their labour power is actually worth?

It is useful to reflect on this question. It not only helps us to understand what was specific about Karl Marx’s theory of exploitation under capitalism, but also supplies some very important tools for better understanding our profoundly unequal world. The world’s 2,153 billionaires [currently control more wealth](#) than the bottom 4.6 billion people (60% of the planet’s population) precisely because the worldwide exploitation of working classes has thrown up perverse patterns of maldistribution.

Surplus value and/as exploitation

Capitalist accumulation hinges on profit. At the end of day, capitalists have to be able to walk away with more money than they initially invested in the production and sale of commodities. They will go out of business very quickly if they don’t. “More money,” Marx wrote, “is finally withdrawn from circu-

lation than was thrown into it at the beginning.” This extra bit on top – profit – is what Marx called surplus value. And the extraction of surplus value is key to his understanding of how exploitation takes place under capitalism.

In contrast to feudal economies, where lords squeezed surplus from peasants, surplus extraction under capitalism generally happens without the use of direct force and coercion. In a capitalist economy, capitalists and workers encounter each other in the marketplace to buy and sell labour power as apparent equals. Indeed, in *Capital*, Marx speaks of capitalists and workers as “two very different kinds of commodity owners”. Capitalists own the means of production while workers own their own labour power, which they sell to capitalists. So where is the exploitation?

Marx answers this question by looking at what makes labour power different from other commodities. He describes it as “being a source not only of value, but of more value than it has itself”. This is the source of surplus value. How? Marx argued that the value of a worker, paid out in wages, is based on how much it costs the worker to live – that is, to cover material needs like housing, food, clothing and so on. Wages, then, are *not* based on how much value a labourer produces in the course of a day. The difference between the two *is* surplus value. This is the central hinge of Marx’s argument: under capitalism surplus value accrues to the capitalist, and is thereby foundational to what exploitation is and how it works. And, crucially, inequality deepens whenever the difference between wages and the amount of value that workers produce increases. As such, deepening inequality is hardwired into the dynamics of capitalist accumulation.



Marx is clear that exploitation under capitalism doesn't rely on force and coercion to function, yet his analysis is keenly attuned to questions of power. After all, we are talking about an economic system in which capitalists enjoy greater structural power than workers simply because they own both the means of production – machinery, raw material, production facilities and so on – and the commodities produced and then sold in markets. Marx further says that capitalists use this power difference to increase surplus value by intensifying exploitation – for example, by lengthening the working day, by putting downward pressure on wages, by exerting more control over the production process, or by introducing new technologies.

Capital is obviously powerful, but it's not all-powerful. On the contrary, capitalists' power to impose the terms and conditions of work from above can be limited by collective struggle from below. The dynamics of exploitation, in turn, are shaped by how workers' struggles play out. For example, in his 1864 Inaugural Address to the International Workingmen's Association, Marx reflected on how English workers, having organised and mobilised for 30 years, had finally managed to win a ten-hour working day. This victory, he argued, "was the first time that in broad daylight the political economy of the middle class succumbed to the political economy of the working class."

Through collective struggle, workers had managed to exert influence over how their labour power would be used. By gaining a legal reduction in hours, workers had set an upper limit on the quantity of exploitation that they could be subjected to each day. It's rarely put this way, but things like legal regulation of working hours and working conditions, minimum wage legislation, and social protection measures like unemployment benefits and free public healthcare are all examples of how workers' struggles have successfully imposed limits on the capitalist drive to maximise profit by exploiting labour.

The lesson of all this is that when we try to understand the relationship between inequality and exploitation under capitalism, we need to pay attention to the changing dynamic of power between capitalists and workers. This dynamic impacts the quantity and severity of exploitation experienced by the working class, which in turn has a decisive effect on the degree of inequality in any given society at any given time.

Capitalists, workers and exploitation in the twenty-first century

So far, so good. But what's the relevance of all this at the start of the second decade of the twenty-first century? Can we really draw on the writings of a mid-nineteenth century revolutionary to understand the world economy of our time?

Yes, we can. Marx's theories continue to provide crucial insights into how we got here and what needs to be done to challenge exploitation. A good place to start is by considering how inequality has changed with globalisation. [Researchers have shown that inequality has risen along with global value chains](#), where production processes are broken into separate activities located in different countries. These global value chains have been driven by transnational corporations shifting industrial manufacturing from Europe and America to countries in the Global South, especially to Asia and Latin America. Poor countries have experienced significant economic growth as a result of their integration into global production networks, and many have made the transition from low-income to middle-income countries.

since the 1980s. At the same time, the wealth and income of the richest 1% and 10% have increased dramatically during the same period. In short, the past four decades [have seen a huge extraction of surplus value from working classes](#), and consequently also a huge concentration of wealth and income among corporate elites across the world.

We can't understand how this has happened if we disregard the fact that the past four decades have also been a period of very successful class struggle from above. The neoliberal political project has reversed many of the historical gains won by progressive social movements – workers' movements, but also women's movements, black freedom struggles, and anti-imperialist movements. This has had the cumulative effect of tipping the balance of power between

“The accumulation of wealth at one end is closely related to the accumulation of misery at the other.”

At first glance this seems a cause for celebration, but when we look closer a different picture comes into focus. [As the economist Andy Sumner has pointed out](#), more than 70% of the world's poor – people living on less than \$2.50 a day – live in middle-income countries in the Global South. This is due to the fact that work in global value chains is profoundly precarious, with low wages, long working hours, poor working conditions, and very limited social protection. This precarious work has enabled capitalists to extract even more surplus value from the vast reservoirs of cheap and disposable labour found across the Global South.

This is part of a larger global transformation. [The labour share of income](#) – the part of national income that is allocated to wages – has been declining steadily in both the Global North and the Global South

capitalists and workers even further in favour of the former, enabling capitalists to exploit workers more intensively by extracting more surplus value. This is the key to understanding how and why accumulation of wealth at one end is so closely related to the accumulation of misery at the other.

These insights compel us to think about what collective workers' struggles against inequality and exploitation might look like as we begin what is doubtlessly going to be a deeply turbulent decade. Even before the onset of the COVID-19 pandemic powerful protests against inequality [were sweeping the world](#). We know also that the pandemic has intensified inequalities, with [researchers estimating](#) that 400 to 500 million people will enter poverty worldwide as a consequence of COVID-19's economic impact. So it is highly likely that, as

lockdown restrictions gradually ease, popular protests will resume. What would progressive workers' struggles look like in this context?

First of all, such struggles would have to be based on a strategy of organising and mobilising that moves beyond conventional understandings of what working classes look like. They would have to encompass workers in the informal sector, migrant workers, and unemployed and underemployed workers. Secondly, in addition to challenging the power of capitalists by championing higher wages, shorter working hours, and better working conditions, such struggles would also have to push for a radical expansion of social protection to ensure universal and unconditional access to public goods and services.

[As I have argued elsewhere](#), these would not and should not be struggles to make working class lives a little more liveable within a context of continuing capitalist accumulation. They should instead decisively assert what Marx, in his speech to the International Workingmen's Association, referred to as the political economy of the working class against the political economy of capital by demanding a fundamental transformation of the balance of power between the two. The goal should be nothing less than the creation of a new system that ends exploitation by vindicating life-making over profit-making. Such a strategic ambition is nothing short of a necessity in the context of an economy that has been deliberately constructed to allow a fortunate few to prosper so endlessly and so mercilessly through the labour of so many.

What is trafficking in a region built on exploitation? Thoughts from the Caribbean

Kamala Kempadoo

The idea of exploitation is at the heart of anti-trafficking protocols and legislation. It is the reason why people are said to be trafficked, and without it human trafficking cannot be shown to exist. Yet there is no agreement on what exploitation actually is – it remains undefined in law and discretionarily applied in practice. So what does it mean? Instead of grappling with this question in the abstract, I speak here from Caribbean experience.

Severe exploitation created the Caribbean, as we know it today. European colonisers conquered the region, appropriated its land and plundered its wealth. They massacred and enslaved its first peoples, the Taino and Kalinago, and imported millions of enslaved Africans as well as European and Asian indentured labourers to work on their coffee and sugarcane plantations. Under colonialism, the land was further exploited for its gold, bauxite and timber, and the climate prized for its health benefits for Europeans. For centuries the Caribbean has provided the raw human and natural resources from which other nations, especially in the global North, have not only economically profited but relied upon for their social and political well-being, prosperity and identity.

The tourist industry is the postcolonial plantation, and Caribbean peoples in many of the islands have few alternatives to working in it for paltry wages under weak health and safety regulations, and with little job security. In tourism, Black and Brown workers provide service labour predominantly as housekeepers and hotel maids, administrative, technical and clerical personnel, gardeners, water-sports operators, cooks, bartenders, waiters, cruise-ship dock workers, taxi drivers, sex workers

and entertainers. And they labour within an industry that is designed for the pleasure of visitors from the global North and, by and large, owned and managed by white and foreign corporations.

The story is similar in other sectors. Working conditions in the gold, bauxite and oil mining sectors, all of which are dominated by corporations in the global North, may be even less regulated than in tourism, and the hazards even greater. Off-shore manufacturing plants and call centres rely on a supply of cheap, temporary labour, and throughout the Caribbean economies informal work abounds.

In some scholars' eyes, the postcolonial Caribbean has resulted in “[even more egregious forms of domination, super-exploitation, and dependency](#)” than it experienced under colonialism. So, what does it mean for the Caribbean to talk about ‘exploitation’? And can campaigns aimed at combatting human trafficking and thus aimed at ending exploitation be effective? Or do we need another approach?

Searching for the wrong exploitation

While most Caribbean countries have accepted the UN Protocol in one way or another, the US Department of State and its annual [Trafficking in Persons \(TIP\) reports](#) are what pressures Caribbean governments to deliver evidence of combatting human trafficking. They risk economic sanctions or decreased financial aid if they do not. The proof that counts most is the number of convictions of smugglers or persons who employ others in sub-par working conditions. There is a heavy focus on the sex trade, but the agricultural, manufacturing, mining, lumber and fishing industries are targets as well.

Most Caribbean states cannot produce enough satisfactory evidence, but they also cannot afford to lose funds or aid from the US government or to be internationally shamed as trafficking hotspots. They are small, postcolonial states that cannot sustain themselves independent of political, economic and social relations with the rest of the world. As a result, each year many Caribbean countries contort themselves to provide evidence that traffickers and exploiters are ferreted out and locked up or sent away.

These anti-trafficking campaigns are deceptive. They reduce the problem of exploitation to a few incidences of abuse of workers or women, obfuscating historical, colonial and postcolonial causes of inequality for the Caribbean region. They disconnect the link between low-wage work and the broader drive for greater profitability and corporate greed, and between the growing wealth and security of a few and the impoverishment and precarity of the majority. Similarly, dominant narratives regarding sexual exploitation portray women, men and trans as victims of compulsion by rapacious third parties, or the sex work itself as an extension of personal needs and desires. Both narratives effectively reduce exploitation to something that could be avoided by acting either more carefully (i.e. by resisting the lure of traffickers) or more morally (i.e. by keeping sexual intercourse to marriage, monogamy and love).

Exploitation thus is a narrow frame that is divorced from the region's history of colonialism and the wider political economy of globalised capitalism. It becomes a property of individuals from 'vulnerable communities' who are defined as susceptible to manipulation, coercion and false promises or as tempted by consumer goods and lavish lifestyles. They are the 'victims' of a few criminals, law-dodgers and informal sector operators who can be rescued and freed from exploitation.

Once defined in these terms exploitation becomes a problem to be addressed by prosecuting people identified as traffickers, by policing the sex trade,

and by applying immigration and anti-prostitution laws and policies to identify and remove victims from harm. It is a case of 'a few bad apples' who make use of exploited labour for their own benefit and profit, and of isolated incidences of abuse and harm. Exploitation thus is about individual experience instead of a systemic issue.

Can such wrongs ever be made right?

How then can the Caribbean address the issue of exploitation in the contemporary period? I would suggest that we cannot ignore the region's history of colonial, patriarchal, capitalist plunder, abuse and severe exploitation. We cannot ignore it because it continues today as racialised, gendered and structural inequality between the global North and South, between the rich and poor, and between white and Black peoples.

Undoing the harms that the Caribbean faces today will be difficult, for they are extensive and far-reaching. A global redistribution of wealth, which could in part be made possible through reparations for the millions of enslaved Africans, would be a start. So would the recuperation of land for communal use by Indigenous peoples and their descendants, as well as the destigmatisation and decriminalisation of women's sexual agency and transactional sexual relations. Such changes would need to go hand in hand with a complete decolonisation of national consciousnesses, as [Frantz Fanon once urged](#).

None of this, of course, can happen quickly or even in our lifetimes. The task begins with an acknowledgement that exploitation is the foundation upon which these postcolonial nations were built and which they continue to live with. It is not a problem that can be eradicated through appeals to moral righteousness, increased state surveillance, carceral politics or through apprehension of weak or corrupt links in the supply chain of goods and services. And anti-trafficking most certainly will not do the job.

Vulnerability to exploitation is created by law

Virginia Mantouvalou

According to its preamble, the [United Nations Palermo Protocol on Human Trafficking](#) is designed to combat exploitation. The protocol, however, leaves ‘exploitation’ undefined. It instead provides some examples, such as “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”. Exploitation also regularly appears in political speeches. In 2016, the then home secretary for the United Kingdom, Theresa May, [declared](#) that “it is only by working together, taking responsibility and fighting criminality that we can stop the misery of exploitation and enable everyone in society to work without fear.” May was a key figure behind the adoption of the UK Modern Slavery Act of 2015, which codified and consolidated existing legislation on human trafficking and modern slavery. This legislation was, at least initially, widely celebrated. But it is [by no means clear](#) that it actually offers an effective platform against exploitation.

There are many reasons to be sceptical here. First, exploitation tends to be narrowly understood in terms of extreme forms of abuse. Severe exploitation is undoubtedly a problem to be tackled. Yet many policymakers who have endorsed efforts against modern slavery have remained silent on, or even actively supported, legal and regulatory frameworks that lead to widespread instances of injustice at work, such as underpayment of wages or work in unsafe conditions. Modern slavery rhetoric can therefore obscure the moral wrong of exploitation by normalising less severe but no less pressing forms of ill treatment at work.

Second, the current approach to exploitation in

modern slavery laws mainly identifies individual wrongdoers, and routinely misses the role of state authorities. This plays into the already well-established idea that there are evil traffickers whom the state seeks to intercept in order to protect potential victims. What is missing here is the role that states play in paving the way for exploitation. I will give two examples to illustrate this, before returning to the definition of exploitation.

Structures of exploitation

In January 2018 a frightened, 18-year-old man from Vietnam went to a police station in London and [re-reported](#) that he had spent five years being trafficked in and out of cannabis houses by criminal gangs across the capital. He explained how he travelled from Vietnam to Europe, where he was put in the back of a lorry to come to the UK and work in cannabis cultivation. The police contacted the Home Office. The man was detained and sent to an immigration centre, Brook House, where people are held prior to deportation.

Now, as a general rule asylum seekers and irregular migrants in the UK are prohibited from working. But they are allowed to [work while in detention](#). According to a [report](#) on the conditions in Brook House, there were 116 paid work roles in the centre, including “wing orderlies, barbers, kitchen orderlies and posts in the laundry, the garden, the chaplaincy and the food serveries”. Despite performing this work, those detained could not earn qualifications, certificates, or other forms of recognition for it.

One detainee [wrote](#) that he had morning, afternoon, and evening shifts, as well as shifts in between. There was so much work for him to do that



he ended up cleaning all day, seven days a week. He took pride in his work and received positive feedback from staff. But he was only paid £1 an hour, and a maximum of £30 a week, because immigration detainees are excluded from national minimum wage rules. At some point this person will be deported, because that is what happens to people in immigration detention centres. If they are victims of trafficking, it is distinctly possible that they will be trafficked again soon after they are returned. And their ordeal will start all over again.

This example demonstrates that people who contact the authorities for help after being trafficked or exploited can ultimately end up being further exploited by the system ostensibly there to assist them. While there are some exceptions, many end up in immigration detention. There they are exploited through overwork and underpay, eventually deported, and possibly trafficked all over again in order to be exploited once more.

Exploitation is also integral to the design of welfare conditionality, such as that found in the UK's Universal Credit scheme. Welfare-to-work schemes oblige individuals to seek and accept work under threat of sanction: accept work or lose social support. These schemes are often portrayed as a [route out of poverty](#). Yet the strict conditionality favoured

by the UK effectively coerces people who are poor and disadvantaged into precarious and irregular work, which leaves them in poverty even though they are now working.

This happens because jobseekers [are expected to accept even zero-hours contracts](#), which do not offer fixed or even guaranteed work hours. In some countries they are [banned](#). Recent studies in the UK suggest that welfare claimants do not want this kind of precarious and insecure work. One respondent in a recent study [reported](#), for example, that:

I used to work in hotels doing waiting on silver service. I've done all kinds of work, do you know what I mean, all kinds. Whatever job come up I'd take really. Mostly factory work. Just boring work really. No skills in it.

[...]

Any job I'd do. Any job. As long as I know it's a permanent job. Not one of these zero hour contract things, because I don't want to take a job and not afford where I'm living now and end up back on the streets.

Strict conditionality for welfare-to-work [forces people into these precarious arrangements and cre-](#)

ates opportunities for employers to take advantage of them.

Acceptable and unacceptable exploitation

These examples point to a fundamental tension: governments that have signed up to the Palermo Protocol are committed to tackling exploitation, yet they have simultaneously enacted laws and adopted policies which enable exploitation. In order to square the circle, they seek to justify their conduct in various ways. In the case of asylum seekers and other immigration detainees the system is justified in terms of offsetting the costs of operating the facilities, which is said to merit exclusion from the national minimum wage. In the case of welfare-to-work schemes that compel people into zero-hour contracts and other precarious work, the justification is that work is the best route out of poverty, and that non-standard work offers opportunities for flexibility that is desirable for many. Lines are drawn between ‘acceptable’ and ‘unacceptable’ forms of exploitation.

This brings into focus the need to look at the concept of exploitation [afresh](#). In some theoretical accounts of exploitation, the wrong in question consists of taking unfair advantage of another person. However, this ‘taking unfair advantage’ is not examined against background conditions of fairness, but rather against what fairness requires in a specific transaction. If people consent to being underpaid, for instance, they are not viewed as exploited unless there are strong indications that the consent is not genuine.

This version of exploitation aligns with the modern slavery and human trafficking agenda, since it focuses attention upon interpersonal relations between

individual exploiters and innocent victims. This is illustrated in [this piece](#) by Theresa May, in which she writes that “vulnerable people who have travelled long distances believing they were heading for legitimate jobs are finding they have been duped, forced into hard labour, and then locked up and abused. Innocent individuals are being tricked into prostitution, often by people they thought they could trust.” In this familiar scenario, the focus is on how the freedom of innocent victims is physically restricted while the background conditions are generally neglected. Both individual vulnerability and the background conditions, however, need to be considered for exploitation to be fully addressed.

This means rethinking the position of exploitation within the Palermo Protocol. At its core exploitation comprises taking advantage of someone’s vulnerability in order to make profit, but the analysis cannot stop there. We need to re-assess the *sources* of vulnerability to exploitation, with a specific focus upon the role of the state and its laws as key sources of vulnerability. Sometimes states enact laws that have an appearance of legitimacy, but this legitimacy erodes once we recognise that these same laws lead to the construction of structures of exploitation. As soon as we identify the laws that constitute a source of vulnerability to exploitation, we need to take steps to change these. These steps cannot be limited to punishing individual traffickers. They should involve structural changes, and more specifically changes in the law. On the twentieth anniversary of the adoption of the Palermo Protocol, we need to invest in identifying and changing laws that create and sustain structures of exploitation.

Exploitation in trafficking: questions of context, commerce, and conduct

Marika McAdam

As a lay term, exploitation simply means to take unfair advantage of a person. The United Nations protocol on trafficking in persons sets out that exploitation is the purpose of human trafficking, but does not offer a legal definition of exploitation to challenge this standard dictionary definition. Instead, the protocol provides a non-exhaustive list of examples of exploitative practices. This list includes some practices that are defined elsewhere in international law, such as slavery, practices similar to slavery, and forced labour. It also includes other practices that are not defined elsewhere, such as the exploitation of prostitution of others and other forms of sexual exploitation.

These examples were intended by the drafters to allow for flexibility in understanding trafficking, while also offering some parameters around the type of exploitation being confronted. Yet [research](#) shows that this lack of precision challenged consistency of response to human trafficking. Can criminal liability be justly attributed to a person for a crime of uncertain parameters and with no clear threshold for severity? What common values, if any, shape understanding of exploitation? And importantly, in a world of socio-economic disparity and cultural diversity, can exploitation be universally understood?

I suggest, perhaps counterintuitively from a legal perspective, that the lay meaning of exploitation as ‘taking unfair advantage of a person’ should not be altered or embellished when understanding exploitation as the purpose of trafficking. We don’t need a separate legal meaning of the term. Rather, we need to remember that exploitation alone does not amount to human trafficking. For exploitation

to occur in the context of trafficking, it must reach a threshold of severity, and result from specific actions intended to achieve it.

Questions of context

Evocative depictions of the exploitative conditions endured by victims of human trafficking give rise to the notion that exploitation has some innate rather than instrumental quality. The more egregious those conditions are, the more exploitative they are deemed to be. Indeed, in the most extreme situations marked by violence and harm there is little need to quibble over what is meant by exploitation. A person who works without pay on a fishing vessel for twenty hours per day while being force-fed methamphetamines so that he continues to function is clearly exploited. So too is the person who is recruited into the sex industry on the basis that he will receive \$200 per client per hour, yet when the day is done he only receives \$150.

But have either been ‘exploited’ in the trafficking sense? Would it have mattered if the latter had only received \$50? What about \$5? What if he were working in the legal profession rather than the sex industry? It is clear that there is a spectrum at play, with tolerated forms of exploitation falling outside the scope of trafficking at one end, and intolerable forms being included within trafficking at the other. Both the space between those poles and the location of any given scenario along the continuum will be highly contested.

The examples of exploitation found in the protocol are listed as a non-exhaustive minimum, so that any form of exploitation may be captured within

the definition of trafficking. This means that the drafters made no presumptions about whether or how the type of exploitation bears on its severity, allowing for exploitation in any sector to be severe. But can all forms of exploitation be treated as 'like', or do some types speak to an intrinsic nature of exploitation more than others?

That the type of exploitation has bearing on assumptions about its severity in practice, is perhaps most evident in the context of 'sexual exploitation'. It is here that the notion that some types of work are 'innately' more exploitative than others seems to have taken root. This is not only in the minds of a puritanical few, but also within society more broadly. Think, for instance, of the woman who believes she is bound for work as a waitress only to find herself exploited in the sex industry. This is a commonly used scenario to illustrate deceptive recruitment into trafficking. But the situation of the woman who believes she is bound for prostitution, yet then ends up being exploited as a waitress, is not referred to as an example of trafficking. Why?

Similarly, exploitation that occurs in the context of marriage – whether forced, child, early, temporary or servile marriage – has not inspired a movement of marriage abolitionists in the same way that exploitation in the sex industry is met with demands to abolish prostitution. The same is true for fishing, farming, manufacturing and domestic work. In all of these sectors it is uncontroversial to argue for increased protections against exploitative practices, but calling for their outright ban because of the abuses that occur within them would appear plainly absurd.

The legality of a practice or activity is of equally little help when trying to determine what, if anything, is 'innately' exploitative. The quality of 'legality' does not mean that 'unfair advantage' cannot be derived. On the contrary, law can create, entrench, and legitimise vulnerability to exploitation, for example where workers are driven into debt bondage by legally required recruitment fees. Similarly, the *kafala* system that ties migrant workers to specific employers is 'legal' in many countries, yet may

deliver people into exploitative situations. In some countries, marriages can legally take place against the wishes and best interests of the parties involved while also legitimating their labour and sexual exploitation. In short, exploitation can occur in legal and regulated settings as much as in illegal and unregulated ones.

Allowing states parties to the trafficking protocol some degree of flexibility in determining what comprises 'unfair advantage' in their context is of course necessary for meaningful domestication of the international counter-trafficking framework. But cultural relativity cannot be given so wide a berth that it results in the degradation of human dignity and freedom. Court-sanctioned forced marriages and legislatively prescribed, worker-paid recruitment fees do not remove the taint of exploitation; they sow its seeds. Context then may be relevant to determining where on the spectrum a given situation may fall, but internationally agreed human rights and labour standards must steer the course and set the bar.

Questions of commerce

The current global economic order is steeped in inequality. Some have access to social safety nets when they opt to quit jobs they don't like, while others pay exorbitant fees and incur debts in order to get any work at all. Given these variations, objectively agreeing on a universal understanding of 'exploitation' seems as feasible as describing the air we breathe. We live in the ether of exploitation. I recall a meeting with counter-trafficking stakeholders in the Horn of Africa to discuss challenges of applying these concepts in practice. At some point as we unpacked the nexus between vulnerability and exploitation, a participant laughed out loud and waved his arm to gesture towards the world outside the meeting room: "Who here isn't in a situation like that!?" In so far as exploitation is the purpose of trafficking then, it must be narrowed down.

Here, what the protocol's drafters opted to omit from their list of exploitative forms is as telling as what they included. The International Labour Or-

ganization's (ILO) proposal to include the broader concept of 'labour exploitation' was rejected, pointing to the drafters' intention that the exploitation at issue would have some degree of severity and scope and not apply to all situations of labour that are exploitative. Here, we are back to the issue of a spectrum of exploitation and no agreement regarding where any given situation should sit upon it to meet the threshold for trafficking.

We should not automatically assume that trafficking has occurred whenever a vulnerable migrant accepts a low-paying job because it provides an income he would not otherwise have. But nor should we assume the opposite. Why? Firstly, because the protocol tells us that a person's consent to exploitation is irrelevant where 'means' have been used. And secondly, because exploitation in the protocol does not refer to what the victim experiences, but to the unfair advantage intended to be taken by the perpetrator. To identify a situation as being one of trafficking then, we must look to the actions and intentions of the trafficker, not the actions and intentions of the victim.

Questions of conduct

In its sibling protocol on smuggling of migrants, the purpose specified for that crime is "financial or other material benefit". But no such benefit is explicitly required for trafficking. During negotiations of the trafficking protocol, suggestions to include a profit element were rejected, with concerns raised that it would be too restrictive and that a broader understanding should prevail.

But perhaps material benefit is anyway entailed in the understanding of exploitation. As explained [elsewhere](#), the trafficking protocol applies to offences that "are transnational in nature and involve an organized criminal group" (according to article 4 of the same protocol). And organised criminal groups, according to the United Nations Convention against Transnational Organized Crime, act for "financial or other material benefit". But in practice, material benefit is treated as inessential to exploitation; as something that is inci-

dental to its more abstract and conceptual 'know it when we see it' character.

If exploitation means to take unfair advantage, in extreme situations it seems sufficient to infer from the circumstances that advantage has been derived. We *can* know it when we see it in such cases by adjusting our perception of what 'it' is to the economic and cultural context. The risk in such an approach is that the same type and severity of exploitation may be condemned in one place while accepted in another. And even if that standard could be harmonised in an ideal world (through universal fulfilment of human rights and labour standards), still not every instance of exploitation would occur in the context of trafficking.

The definition of 'trafficking in persons' set out in the trafficking protocol describes a very specific form of criminal conduct. The tripartite definition requires that an "act" be done, by use of "means", for "the purpose of exploitation". Critically, this definition speaks to the conduct and intentions of the trafficker, not the plight of the victim. In reality, the conditions that exploited people endure may not always be the result of somebody proactively intending to take advantage of them. Indeed, many situations that may seem like trafficking may simply be people working in unfair and unsafe conditions, for want of options for decent work. At the same time, particularly in settings where exploitation is pervasive, it may be difficult to detect those exploitative instances that traffickers have brought about with the intention of benefiting from them, allowing criminals to carry on unseen and with impunity.

In the final analysis then, it is sufficient to understand exploitation as 'taking unfair advantage' of a person. But it is only when we identify who is receiving that advantage, and how they delivered a person into the exploitative situation to begin with, that human trafficking can be understood and addressed as criminal conduct taking place against a wider backdrop of economic, social and cultural inequity that provides fertile ground for exploitation.

What can stop lawmakers who exploit workers?

David Picherit

When talking about labour exploitation, does it matter if the activity that the labourer is doing is legal or not? Many would say yes. If the job is to commit a crime, simply enforcing the law should put an end to the exploitation as well.

But reality in contemporary globalisation is **far more complex** than that. And detailed study of the closely entwined economic and political processes at the heart of globalisation show that unfree labour and illegality are part of what makes globalisation tick in the first place. The question then is: how does the interplay between legality and illegality, as well as between freedom and unfreedom, shape and impact the exploitation of labour?

Contemporary capitalism adjusts to socio-political environments through concrete articulations of politics, state, and markets. One window into seeing this at work is when politicians-cum-entrepreneurs play with the boundaries of legality, illicitness, and legitimacy to create a violent and exploitative environment in which they can increase their own profit. And there are few better places to see that in action than in the illegal business of sandalwood smuggling in India.

Sandalwood and the structures of exploitation

Red sanders, a particular species of sandalwood grown exclusively in the Rayalaseema region of southern India, has been protected by international convention since 1981 and listed as endangered since 1995. India banned its trade in 1998. This did not, however, make the world safe for the red sanders tree. Undiminished international demand, notably from China, where it is still sold legally to the rich, has simply created an illegal industry where there was once a legal one.

These are no fly-by-night operations carried out by a couple of men with a chainsaw. Starting in the mid-2000s, the red sanders trade became a source of criminal capital for Rayalaseema's politicians-cum-businessmen. They have used it to finance their electoral politics as well as to make personal fortunes. Struggles to control the trade now follow the rhythm of elections and involve strongmen and national leaders from major political parties.

This combination of electoral democracy, violence, and money, whatever the legality of it, is at the heart of political impunity across **India**. Those who have money and power are more likely to win elections; while those who win elections can then use the resources of the state to increase their wealth and power. In the red sanders business, elected leaders attempt to control the harvest and sale of this wood while using the 'legitimate' violence of state special forces against rival smugglers.

Kumar does not know the details of all this. A poor, migrant labourer, he was brought to Rayalaseema from a neighbouring state by a labour middleman to cut sandalwood. Now he is in jail. Thousands of labourers have been arrested for cutting and smuggling red sanders over the last six years. With their work declared as smuggling, labourers are convicted or even killed as smugglers by police.

Yet one of the heads of the Red Sanders Anti-Smuggling Special Task Force told me: "We have arrested migrant wood cutters and some middlemen, and we could seize logs of red sanders...But ... you know, this is huge business. Many powerful people are involved. Very powerful. Not only local elected officials. Up to the top. No one can fight against them."

No one can fight, and there's profit to be had if you don't try. Only the day before hearing these words, I had lunch in a small, isolated house in the vicinity of the forest. Police officers, employees of the forest department, local officials, party followers, and henchmen of local politicians came as pilgrims to show their loyalty to the personal assistant of a local member of the legislative assembly. All were in some way earning from the illegal trade.

It is this, the combination and intertwining of politics, state, and market, and the ability to play with legal and illegal, licit, and illicit forms of authority, that shapes the exploitative environment in which many people [work](#).

Inside the labour process

This exploitative environment is not specific to the sandalwood economy. The processes that make exploitation work can be found in many sectors. In the construction sector, migrant labourers – be they debt-bonded or daily wage workers – are recruited by middlemen, kept in remote labour camps in rural areas, or isolated in their huts on the outskirts of cities. This is similar to what happens on stone quarries and in canal irrigation work in remote rural areas, as well as in sandalwood smuggling.

Labour contractors recruit male migrant labour from tribal and Dalit castes originating mostly (but not exclusively) from neighbouring states. In the sandalwood sector, they monitor the wood cutting and, once the wood is cut, various agents load it into vans or trucks, hide it in safe places, and transport it to the destination. Labour middlemen rely on caste, gender, class, and intimacy to personally recruit labourers and enforce indebtedness. Maintained away from the local population, they depend entirely on the labour middlemen to survive. Wages are only paid once they return to their villages. These personal labour relations contrast starkly with the labourer's distance from the politician-cum-businessman. By subcontracting the employment process, the latter is not held responsible for labour issues (low wages, absence of social and health protection, etc.) or for security issues (acci-

dent, police, etc.). All of these issues are delegated to the labour middlemen.

Those labourers, originating from the poorest and most discriminated sections of society, have no idea who their real employer is. They respond only to the middleman's authority. This anonymity is especially critical in the sandalwood economy. There is an extra need to impede the circulation of information and prevent single individuals from understanding the different layers of the organisation. This model prevents anyone from giving information to the police.

The power to exploit

Beyond free or unfree, legal or illegal, the articulation of politics, markets, and state create exploitative environments where freedom can be increased or decreased as needed – all the way up to extreme forms of trafficking and exploitation. Kumar was aware that cutting down red sanders trees was illegal; he voluntarily entered into a work relationship with the middleman; and when he did so he was not bound into it through debt. Indeed, the skills required to perform the work and the harsh conditions in which it took place made him a specialist of sorts – he was able to negotiate better wages in the illegal sandalwood business than in other sectors of the economy.

Yet a focus on the intentions of free labourers-smugglers hides the structurally exploitative character of this economy. Middlemen – often from the same class or caste as the people they hire – must frequently make use of debts, threats, and violence to maintain labourers in remote areas and make them work in the forest. Exploitative configurations are then shaped by how the forces of states, politics, and markets come together at any particular point in time. Illegality is not a strict line. It is a power relation, both structural and relational, which is created in everyday life through the interaction of labourers, politicians, entrepreneurs, and state employees. Illegality is used as a driver of power and wealth for the few, and as an additional element of the exploitation of labourers. As one local politician told me, "I can make everything legal if needed."

What is exploitation in the context of ‘modern slavery’? A legal proposal

Marija Jovanovic

Exploitation has been given a prominent place in the definition of ‘human trafficking’ found in the 2000 United Nations [Palermo Protocol](#). It is identified as the specific aim of the crime of trafficking: all human trafficking is for the purpose of exploitation. But while the protocol lists some examples of exploitation, including slavery, servitude, or forced labour, it does not define the term itself. Nor do the numerous other international instruments that reference the term. And so, [as Susan Marks has rightly wondered](#), we must ask ourselves: “When activists invoke international law to challenge exploitation, when lawyers advise on rights and duties regarding exploitation under international law, and when academics discuss the theme of exploitation in international legal writing, what is it that they have in mind?”

I [recently proposed](#) a tripartite definition of exploitation, which I argue underpins practices commonly referred to as ‘modern slavery’. While ‘modern slavery’ is not a legal category per se, I use it as an umbrella term for the practices of human trafficking, slavery, servitude, and forced or compulsory labour. These are jointly prohibited in many human rights instruments, either expressly, as in [the EU Charter of Fundamental Rights](#) or [the Arab Charter on Human Rights](#), or implicitly, as in the case of [the European Convention on Human Rights](#).

Exploitation is a distinct harm that binds together practices captured by the human rights prohibition against ‘modern slavery’, which includes actual manifestations of exploitation in the form of slavery, servitude, and forced or compulsory labour, and intended exploitation as part of human trafficking. The latter, if uninterrupted, always results in actual exploitation.

The three elements of my proposed definition [are](#): “(a) abuse of vulnerability of an exploitee; (b) excessive (disproportionate) gain acquired through the actions of an exploitee; (c) sustained action (the practice takes place over a period of time)”. We will cover each element in turn below. Before we do that, however, I must first note that my proposed definition of exploitation applies only to practices of ‘modern slavery’ and represents the severity threshold for triggering important state obligations to protect victims under human rights law. Accordingly, while we may consider exploitation as a [continuum](#), it is important to distinguish practices that trigger state obligations required by international human rights law from lesser forms of exploitation that warrant different types of action, or no action at all.

In other words, the proposed definition of exploitation sets “[a threshold of seriousness](#), which operates to prevent the inclusion of less serious forms of exploitation into the concept of trafficking in persons, such as labour law infractions that may be anyway subject to another legal regime”. As such, the definition represents an important tool for both courts and individual victims in determining whether a state owes and has complied with its obligations arising out of human rights law. The absence of clear parameters for determining what counts as exploitation allows states to misclassify victims as ‘predatory economic migrants’, who willingly deploy the services of smugglers to bring them across international borders, or as ‘criminals’, who engage in unlawful activities such as [cannabis cultivation](#) or [shoplifting](#).



The three pillars of exploitation that underpins ‘modern slavery’

Exploitation as a distinct harm that underpins all practices of ‘modern slavery’ rests on three cumulative conditions. These are discernible from philosophical debates and the jurisprudence of international and domestic courts, but they have never been expressly spelled out. These are: a) the abuse of vulnerability of an exploitee; b) excessive (disproportionate) gain acquired through the actions of an exploitee; and c) sustained action over a period of time. These three cumulative conditions provide a universal frame of reference for the notion of exploitation in relation to ‘modern slavery’, while allowing for a certain leeway to account for specific conditions in different countries. We will consider each in turn.

Abuse of Vulnerability. It is generally accepted that the abuse of a position of vulnerability is “central to any understanding of trafficking” and “[the common feature of all forms of exploitation](#)” contained in the human rights prohibition of slavery and forced labour. The United Nations Office On Drugs And Crime states in a background paper that human traffickers “[prey on people who are poor, isolated and weak](#)”. And the [explanatory report to the Council of Europe’s anti-trafficking convention](#) notes that:

The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim’s administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited.

Importantly, it is the abuse of vulnerability, not vulnerability per se, that is a necessary condition for the notion of exploitation. It is [considered](#) that “one’s vulnerability is exploited if the other person uses this weakness to obtain agreement to, or at least acquiescence in, a course of action that one would not have accepted had there not been this asymmetry in power”.

Establishing that a person had no realistic alternative due to the abuse of vulnerability might seem a weighty task, but it is not unlike other matters domestic courts engage with on a daily basis when it comes to assessing factual circumstances. For example, [the UK Court of Appeal addressed this question](#) in a case concerning an Iraqi Kurdish woman. She appears to have voluntarily approached the smuggler to bring her to the UK but was allegedly coerced into having sex with him along the way. The court found that “while she may have been

vulnerable, she had a real and acceptable alternative available to her (...) in the shape of making an asylum and human rights claim to the French authorities.” The extent to which domestic courts are sympathetic to the plight of victims and are willing to interpret this condition broadly is debatable, but this is something which can be evaluated.

Excessive Gain. The second element of my approach to exploitation is concerned with excessive gains. While an exploited person may sometimes ‘benefit’ from being exploited, whatever benefits might accrue will fall significantly short in terms of “what [they] might or ought to be” when judged from the standpoint of fairness, as the philosopher Robert Mayer put it. However, the nature of fair-

turn. Take, for example, a case before the European Court of Human Rights which **considered** allegations of servitude and forced or compulsory labour by two orphaned Burundi sisters, aged sixteen and ten. The court ruled that “the type and amount of work involved (...) help distinguish between ‘forced labour’ and a helping hand which can reasonably be expected of other family members or people sharing accommodation”.

Distinguishing between the situations of the two sisters, the court found that the older one was forced to work “so hard that without her aid Mr and Mrs M. would have had to employ and pay a professional housemaid”. The second sister, by contrast, was said not to have contributed “in any ex-

“The absence of clear parameters for determining what counts as exploitation allows states to misclassify victims as ‘predatory economic migrants’ or as ‘criminals.’”

ness is not necessarily straightforward. An entry in the **Encyclopedia of Ethics** notes, there may be “as many competing conceptions of exploitation as theories of what persons owe to each other by way of fair treatment”. Nonetheless, the philosopher Mikhail Valdman is likely right when **he concludes** that extracted benefits become unfair and excessive when “they deviate from the benefits we would expect A to receive were he transacting with someone who was rational, informed, and could reasonably refuse his offer”.

Thus, in addition to the abuse of vulnerability, exploitation is characterised by excess: a disproportionate gain at the expense of an exploited person. In all situations of exploitation an exploited person gives significantly more than she receives in re-

cessive measure to the upkeep of Mr and Mrs M’s household”. It is clear that all circumstances of the case need to be taken into account when assessing whether actions required from an individual were disproportionate to the benefits she received in return. Like the assessment of ‘no realistic alternative’ for the element of abuse of vulnerability, this is a factual question which courts can determine.

Sustained Action. We have so far established two necessary conditions for an exploitation: first, that one extracts excessive benefits, and second, that these benefits are extracted from someone who is unable to reasonably refuse an offer or demand. The final element of my approach to exploitation is the idea of repetitiveness. Exploitation takes place (or is intended to) over a period of time. One-off situ-

ations may qualify as fraud or abuse, but exploitation in the context of ‘modern slavery’ involves sustained activity. This “indeterminate temporal nature” is said to be “one of the defining characteristics of the crime of slavery”. Similarly, inherent in the notion of servitude is a victim’s feeling that her condition is permanent and that the situation is unlikely to change. When it comes to the concept of forced labour, it is obvious that ‘labour’ implies work that stretches over a period of time – not a one-off transaction.

When these three elements are put together, we have a working legal definition of exploitation within the context of ‘modern slavery’: *to exploit is to acquire disproportionate gains from the actions of an individual by abusing her position of vulnerability over a sustained period of time*. All three cumulative conditions (abuse of vulnerability, excessive gain, and sustained action) are factual, which leaves room for domestic courts to use national parameters when interpreting potentially exploitative practices while preserving the universality of the definition itself.

In a seminal [case by the Dutch Supreme Court](#) concerning the exploitation of Chinese restaurant workers with irregular migration status in the Netherlands, the court held that “the wretchedness of the working conditions required to conclude that exploitation is an issue” was to be determined by using “the Dutch situation as the benchmark”.

This approach means that exploitation must be regarded as a relative concept. What one country understands as exploitation may not amount to ex-

ploitation in another country, with differences being especially pronounced along the North-South divide. Yet, such flexibility is both inevitable and appropriate. This is because divergent standards between states is far less problematic than unequal protection of individuals within one state, where characteristics such as one’s immigration status or type of employment are decisive in determining the extent of protection against exploitation one may enjoy. Virginia Mantouvalou [shows](#) how the immigration system and schemes leading to precarious employment conditions are conducive of exploitation of certain categories of individuals within the UK. Thus, while labour conditions are expected to differ between states, practice reveals that even within one country certain categories of individuals experience unequal treatment and lesser protection of their rights than other categories, regardless of whether a country in question belongs to the Global North or South.

Even though the proposed definition allows for some divergence between states when determining which practices count as exploitative, it mandates each state to provide equal treatment to all persons within their jurisdiction once the three conditions are met, irrespective of their immigration or employment status. As such, it represents a powerful tool in hands of individuals subject to exploitation and a useful benchmark for courts when asked to determine which practices engage important human rights obligations of states.

Triple (e)X rating the trafficking protocol

Julia O'Connell Davidson

The Palermo Protocol on trafficking is applauded by anti-slavery NGOs and many liberal human rights advocates as a tool that can be used to combat exploitation and other rights violations. However, the protocol and the anti-trafficking and modern slavery discourse surrounding it are generally discussed – at least privately – in triple-X rated language by critical race thinkers, sex worker rights activists, and many scholars and activists mobilising for labour rights and/or the rights of migrants and their families. Why the gap?

It's important to remember that while the protocol makes 'exploitation' core to its definition of 'trafficking', it was not developed to tackle exploitation *per se*. It exists only to address a subset of cases in which people are recruited and moved into exploitative situations by a third party using coercive or underhand means. Supplementary to the UN Convention on Transnational Organized Crime, the trafficking protocol sits alongside a protocol on smuggling, which allows that exploitation can also feature in the experience of 'smuggled' persons. It calls on state parties to criminalise the smuggling of migrants, and to establish as aggravating circumstances to that crime those which "endanger, or are likely to endanger, the lives or safety of the migrants concerned; or that entail inhuman or degrading treatment, including for exploitation, of such migrants".

So as far as persons over the age of eighteen are concerned, then, these two protocols do not separate migrants according to whether or not they are subject to 'exploitation' in the process of movement or at the point of destination. Instead, they divide migrants into two groups according to whether or not they give informed consent to movement. Those who consent to movement are not 'trafficked' but

'smuggled'. These protocols are thus centrally concerned with mobility, and more particularly, with connections between mobility and criminality.

When exploitation and mobility collide

What's wrong with introducing the term 'exploitation' into policy and political discussions around criminalised forms of mobility? The term is used by those who mobilise for workers' rights – including the rights of migrant workers – so why is it a problem in anti-trafficking and anti-slavery discourse?

The answer is that labour movement activists work with an understanding of labour exploitation that is embedded in a broader critique of capitalism. Anti-trafficking and modern slavery activists do not. They extend the concept of exploitation well beyond labour relations, and also detach it from an analysis of the structural relations of power in which particular acts, transactions, and relationships are embedded. Used in this way, exploitation is nothing but an empty signifier – a word without a meaning – and can therefore be filled with different meanings by different actors. This makes its association with unauthorised migration extremely dangerous.

So, for example, in anti-immigration rhetoric, the false suggestion that smuggling always entails exploitation allows politicians and journalists to employ the categories 'trafficking' and 'smuggling' interchangeably. Anyone who facilitates unauthorised migration becomes part of the category that Priti Patel, the UK home secretary, brackets as "abhorrent criminal gangs and people smugglers who exploit vulnerable people". At the same time, such 'criminals' are described as exploiting the supposed generosity of EU asylum and immigration systems – or in the UK, what Patel calls the "broken asylum



system”. Suddenly, it is possible to present citizens as the real victims of exploitation, as Patel does when she speaks of “criminal gangs” who “[laugh in the face of the British people](#)”. Through this lens, migrants and asylum seekers meld into the category of ‘criminals who exploit vulnerable people’. It then becomes not only conscionable, but righteous, to [jail asylum seekers](#) who steered small boats crossing the English Channel, and to [prosecute the bereaved father of a six-year-old child](#) left to drown by the authorities.

In the US, Australia, and the EU, trafficking discourse has allowed for the [sanitisation](#) of some extraordinarily harsh, highly illiberal, and often lethal measures taken to suppress unauthorised migration from Latin America, Asia, and Africa. And the impact of the trafficking protocol extends far beyond the borders of countries in the Global North. The language of trafficking in general, and the US TIP process in particular, has also been used to press governments of countries within Latin America, Asia, and Africa to adopt laws and policies that restrict and criminalise mobility, with extremely negative consequences for large numbers of people.

Anti-trafficking and anti-slavery NGOs sometimes, but not always, recognise that current immigration rules [contribute to or compound the problems](#) experienced by those seeking to enter countries in the

Global North. But their emphasis is on how such rules make migrants vulnerable to trafficking and wrongly penalise its victims. They neither demand an end to bordering regimes and other restraints on mobility nor challenge the global political and economic structures that make mobility into a site of profound inequality.

But as critics of these structures point out, contemporary bordering regimes and other controls over mobility are rooted in [histories of colonial violence](#) and dispossession, including transatlantic and Indian Ocean slavery and their aftermaths. They exist not to prevent human movement, but to differentially allocate mobility rights and freedoms. Thus, they largely grant freedom of movement to those who are white and/or relatively wealthy and/or from the Global North, and who are adults. Meanwhile, they heavily restrict the mobility of people from and within the Global South, people who are racialised as black, brown or ‘other’, people who lack economic and social privilege, and people defined as children in international law. The trafficking and smuggling protocols are part and parcel of these regimes, and reproduce their racial and Global North-centric, as well as their class, gender, and age logics.

Features, not faults, of the system

As theorists of [racial capitalism](#) argue, the concept

of exploitation, even as applied in critiques of capitalism, is not enough on its own to fully explain the racial logics of global capitalism – logics that are central to regimes of bordering and patterns of mobility and immobility in the contemporary world. Such patterns do not only or always spring from capital's efforts to squeeze more surplus value from the working classes in processes of production and service industries.

Consider, for example, the militarised conflicts over territories containing sought-after resources. Those affected by such processes generally move if they can. Their journeys mostly end in [Global South countries](#), but sometimes they are able to continue on to the Global North. Either way, many find themselves forcibly immobilised in refugee camps or detention centres. They may still be exploited as workers in production processes (as, for instance, many Syrian refugees are in Jordan), but others become the raw material of profit for the many private companies involved in immigration detention, [refugee reception centres](#), and asylum [accommodation and support services](#) around the world.

The way in which multinational companies like [Serco and G4S](#) extract profit from populations of refugees and immigration detainees is better captured by the Marxist concept of 'expropriation'. This describes forms of capital accumulation that do not arise from economic exchange with workers, but rather from extra-economic coercion such as the state forcibly caging people, or enforcing a "hostile environment" that prevents certain categories of person from freely entering into market exchanges.

Expropriation is also found within neoliberal eco-

nomic reforms. Transnational corporations' [trade, investment and financial deals](#) dispossess communities of their subsistence land to make way for profitable agribusinesses, mines, dams and other infrastructure required to power capitalist development. Again, expropriation and exploitation are not necessarily either/or predations – the same populations can be subject to both, as is the case for [India's Adivasis](#), among many more such examples.

A third 'ex' also needs attention – 'expulsion'. This refers to the processes by which people of no value to capitalism as either workers or consumers are ejected from their political communities and, frequently, from environments in which life itself can be independently sustained. These '[surplus populations](#)' in the Global North and South, a large proportion of whom are black, brown, and other groups racialised as 'other', are increasingly warehoused in both private and state-run prisons and immigration detention centres. Here, both expulsion and expropriation are at play, and in the case of those who perform below [minimum wage paid work while incarcerated](#), also exploitation.

As Gargi Bhattacharyya argues in [Rethinking Racial Capitalism](#), exploitation, expropriation, and expulsion need to be analysed and addressed as three interlocking regimes. The trafficking protocol and the surrounding discourse of trafficking and modern slavery do not do this. In fact, they continue the tradition of 'emancipation propaganda' which, to paraphrase [Marcus Wood](#), provides a symbolic vocabulary that can actually be used to paint over the brutalities of these regimes "in the brilliant brush strokes of the gift of freedom". That is why many of us think of 'trafficking' in triple (e)X rated terms.

Are you better or worse off? Understanding exploitation through comparison

Joel Quirk

Exploitation tends to be evaluated and classified according to levels of relative severity. Lines are routinely drawn between **acceptable and unacceptable**, between normal and exceptional, and between 'severe' and 'everyday' exploitation. Not everyone draws these lines in the same way, but there is nonetheless a near universal consensus that some **forms of exploitation are much more severe than others**. These variations in experience are most commonly described in terms of a spectrum, or continuum. Some practices are said to belong at the pinnacle. Others instead fall further down the scale.

The category of 'modern slavery' can be best understood as a politically motivated effort to draw attention to the most extreme cases. It primarily operates as an evocative concept, rather than a legal category, with slavery serving as a catch-all signifier for the 'worst of the worst'. Many governments and other actors are attracted to this formula. It concentrates attention upon a small number of 'exceptional' cases, and thereby ends up tacitly legitimating – or at least de-prioritising – **everyday abuses and systems**.

This worst-of-the-worst formula only really makes sense in comparative terms. If slavery is really bad (**and it undoubtedly is**), then what is it really bad *in comparison to*? It is exceptionally difficult to determine either the nature or degree of exploitation without comparing one set of circumstances to another. Not all comparisons look the same, but there are two core themes which play a key role when it comes to contemporary assessments of exploitation: consent and treatment.

Are you better or worse off?

Severe exploitation is commonly defined in terms of 1) the absence of meaningful consent combined with 2) high levels of physical and psychological ill-treatment, unconstrained authority, and hard and unhealthy labour for little or no reward. Both of these attributes are associated with enslavement, and they therefore play a decisive role within stylised comparisons between slavery and freedom. Free labour always sounds preferable to slave labour. Who wouldn't want to be free if slavery was the alternative?

Things are rarely this straightforward. Life rarely features binary choices between forced or free. The far more common question is instead 'are you worse or better off?' This question is routinely asked by workers around the world, whatever their individual circumstances, as they try to make sense of both big and small differences in wages, conditions, and alternative livelihoods. Conventional models which juxtapose slavery with freedom are frequently unhelpful and misleading here, since the vast majority of people tend to be somewhere in between, rather than at the ends of the scale. Informal and precarious work is the norm, rather than the exception, and economic systems have been designed to take unfair advantage of this vulnerability.

These kinds of variations tend to be overshadowed by abstract comparisons between slavery and freedom. There are many issues which could be raised in this context, but for my purposes here there are two main themes that need to be highlighted. First,

we have the familiar division between free and unfree labour, where the forced labour which slaves endured is compared to 'free' labour. Consent usually plays a central role within this comparison. Forced labour is coerced, rather than consented to, which creates a contrast with voluntary contractual agreements entered into by both workers and employers. However, this rhetoric of consent frequently ends up concealing more than it reveals. There are many occasions where desperate and precarious workers have few if any alternatives, and thus 'freely' consent to [highly exploitative conditions](#).

The question of whether labour is ever truly free was famously raised by Karl Marx, who argued that workers are compelled by circumstances to enter into inherently exploitative working conditions owing to the design and operation of the capitalist economic system. This not only complicates the notion of free labour. It also paves the way for a diagnosis which regards all forms of waged labour as exploitative – not just the most extreme examples. While this helps to focus attention upon underlying systems, it does not offer enough guidance when it comes to variations *within* systems.

Well-paid workers with permanent contracts and health and holiday benefits experience waged labour on very different terms than precarious workers with irregular and day-to-day employment. The same can be said of the self-employed, a term which refers to well-paid contractors as much as it does [migrant street sellers](#) or [waste reclaimers](#). Marxist notions of shared experience and collective solidarity can make it hard to draw sharp distinctions between these different forms of capitalist labour. Yet these are exactly the kinds of comparisons that workers – and others – make on a regular basis. Declaring that all wage labour is exploitative runs up against the observation that some people are clearly doing much better than others.

I will return to this point later. First, we must look at the second main axis of comparison: treatment. Comparisons between slavery and other experiences and practices (and also [between](#) historical slave sys-

tems) tend to be strongly informed by subjective appraisals of 'good' or 'bad' treatment. These can sometimes be crude and simplistic, with a focus on bodily suffering at the expense of the less visible yet still massively harmful psychological and social effects of systems of exploitation. It is here that slavery is primarily defined in terms of spectacles and testimonials of extraordinary suffering: chains, ships, whips, auctions, death. This iconography has a complex and contested history, as scholars such as [Saidiya Hartman](#) have [demonstrated](#), but it nonetheless sets up a series of markers against which other experiences can be evaluated. Efforts to associate contemporary practices with slavery most commonly rely upon an underlying assertion that they are *just as bad* as Transatlantic enslavement.

Treatment is an inherently subjective category. There will never be universal agreement regarding what is meant by 'good', 'bad', or 'somewhere in between'. This is not just a question of cultural or personal differences. We also need to take into account the ways in which interests shape evaluations. During the eighteenth and nineteenth centuries abolitionists maintained that enslavement had no equivalent, while defenders of slavery maintained that 'wage slavery' in factories was similar to – or even worse than – legal enslavement. [Modern day apologists for the white supremacist Confederacy](#) continue to maintain that 'servants' on plantations were well-treated and contented.

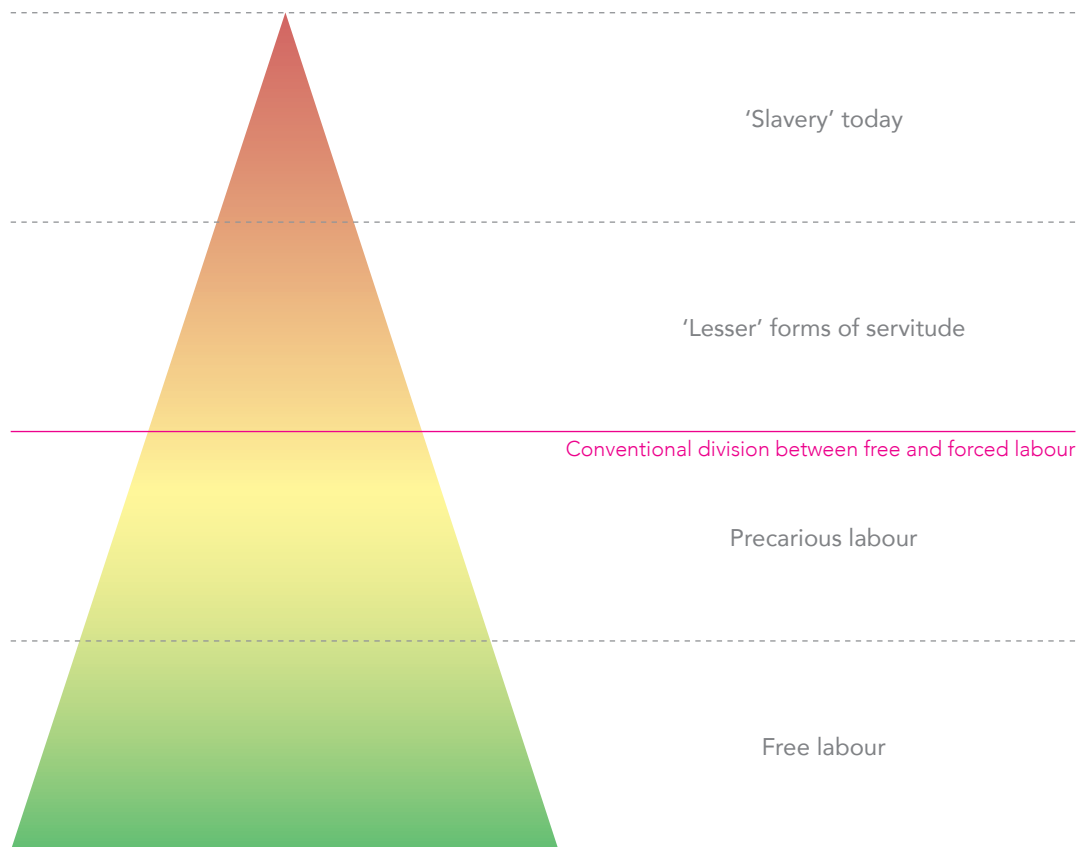
The continuing salience of [the 'Lost Cause'](#) underscores the challenges involved. 'Good treatment' can be reduced to self-serving claims about food, clothes, and shelter, with keeping people (mostly) alive being (re)defined as an exercise in 'benevolence'. Much the same applies in relation to comparisons between slavery and other practices. Governments and employers who make use of forced and precarious labour routinely rationalise their conduct using claims of 'welfare' and 'good treatment', where providing jobs – no matter how precarious and abusive – is portrayed as a laudable act which prevents people from starvation. Their critics instead go in the opposite direction, with the

main goal being to instead emphasise their close relationship to slavery. Nearly everyone involved in these kinds of debates regards treatment as a primary litmus test. The main difference of opinion is over what ‘treatment’ actually looks like in practice.

There is a hierarchy at work here that is worthwhile teasing out further. As the graphic below helps to illustrate, comparisons between slavery and other experiences typically locate slavery at the apex of a hierarchal scale, with other categories being located further down the triangle based on appraisals of their ‘lesser’ severity. As we have seen, the placement of different experiences within this hierarchy is not based upon objective and universal indicators, but instead primarily arises through a process of subjective evaluation where one set of experiences and circumstances is contrasted with another. ‘Free labour’ is defined in opposition to slavery. The

concept of ‘lesser’ forms of servitude only really makes sense in comparison to slavery. Precarious labour is primarily defined by worse treatment and less scope for consent than free labour.

The language of ‘lesser’ forms of servitude comes from the work of the [international lawyer Jean Allain](#), who uses it to classify practices that can legally fall short of slavery, but which nonetheless have features in common with slavery. Notable examples of lesser servitude include serfdom, indentured, bonded, and forced labour, and some forms of marriage. However, the dividing line between the two categories at the apex of this hierarchy is by no means clear-cut or obvious. Like most other scholars working in this field, Allain maintains that there will be times when specific cases of forced labour rise to the thresholds associated with slavery. The lines between different categories are permeable, rather than sharply demar-



cated, and they frequently involve differences of degree rather than kind. Even the familiar dividing line between 'free' and 'forced' is more ideal type than accurate description.

It is also important to recognise that these assessments of relative treatment are also mediated by other considerations. Soldiers who are compelled to fight for their government in wars are frequently treated terribly, yet their ill-treatment and even death tends to be minimised and justified since they are said to be fighting for a noble and necessary cause. Colonial rulers in Africa similarly justified the widespread use of forced labour as a 'public good', despite the tremendous levels of suffering and death which was involved. Political prisoners in Gulags and work camps were abused in all sorts of ways because of their 'crimes'. Migrants and refugees confined to immigration detention are routinely subject to torture and abuse, yet this is only rarely regarded as a problem or priority.

Many different rationales will always be available to justify treating some categories of people very differently to others, with familiar divisions of race, ethnicity, gender, and citizenship invariably playing leading roles. Moreover, there will also be occasions when this dynamic goes the other way, with broader notions of innocence and vulnerability ensuring that women and children secure elevated attention and concern in comparison to adult males, especially in contexts where exploitation is associated with sexual activities. Nearly everyone agrees that there is a hierarchy which distinguishes 'severe' exploitation from 'everyday' exploitation, but the placement of specific cases on the scale will always be messy, subjective, and political.

Beware of triangles

The main thrust of my argument so far is that exploitation is 1) usually understood in terms of a hierarchical scale, which is 2) most commonly structured around a series of stylised and subjective comparisons. Within this, treatment and consent frequently serve as primary markers when it comes to how and why specific practices get classified and

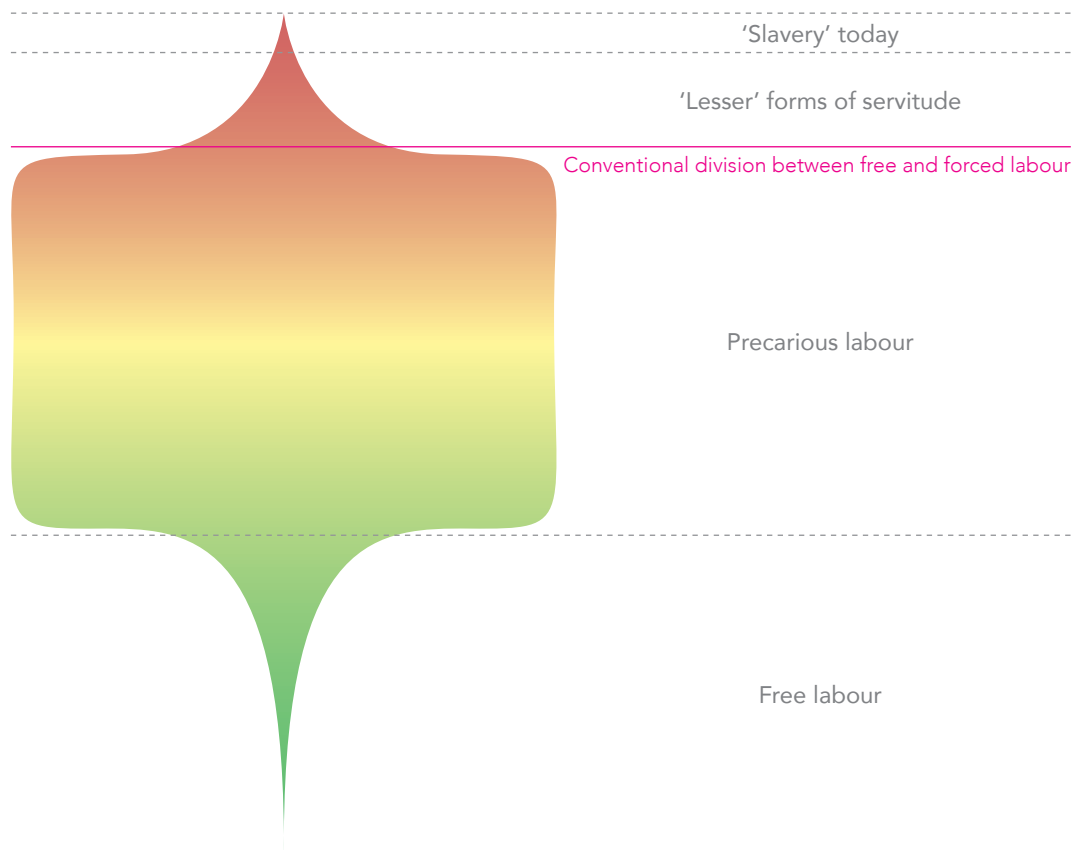
compared. It is not necessary to endorse my second argument in order to accept my first claim. People are much more likely to argue about how the scale should be classified – such as whether or not 'modern slavery' is a useful category – than with the notion that degrees of exploitation can be best understood using a scale of some kind.

This is where I throw a wrench into the works. While it is obvious that not all forms of exploitation are equally severe, the triangle in the figure above can be dangerously misleading. Whenever people see triangular graphics along these lines they tend to associate the width of the triangle with the relative prevalence of the practice. This creates a misleading impression that free labour is the norm, and that 'unfree' practices deviating from this norm become less common the further you move up the scale. This, they assume, is why the width of the triangle steadily narrows the closer you get to its apex.

This is also where the foundational division between free and forced becomes increasingly unhelpful. Far too much importance is attached to differences between the two polar ends of the scale and not enough attention gets paid to what is happening in the middle. Only a minority of people across the globe experience either free labour or forced labour. The vast majority of the action instead takes place somewhere in the middle, where abstract comparisons between 'forced' and 'free' labour rarely resonate with lived experiences. Comparisons between forced and free are frequently far less consequential than comparisons between different versions of precarious labour.

We need a new shape.

According to the International Labour Organization, there were around **24.5 million people** subject to forced labour globally in 2016. This estimate comes with all kinds of methodological problems, but it nonetheless functions as a very rough marker. During the same period, the ILO also calculated that over 60% of the world's employed population – or **two billion people** – were engaged within the



informal economy. This total includes 90% of workers in developing countries and 67% in emerging economies. Forced labour is so rare that it would be barely visible if the proportions of this second graphic were fully adjusted to accurately represent its global prevalence.

Free labour is also much less prevalent than is commonly assumed. The wage and regulatory systems of rich Western countries are in no way representative of [labour regimes more generally](#), yet most treatments of 'free labour' continue to regard experiences within post-1945 welfare states as the norm. The vast majority of workers globally do not get paid holiday, illness or parental leave. They do not have pensions or occupational health and safety provisions. Many do not have an employer at all. They are irregularly self-employed and reliant on tenuous sources of income that sometimes dry up

entirely. It is also common for households to engage in mixed livelihood strategies which combine various forms of wage labour, self-employment, and agricultural subsistence.

Too many accounts of 'free' labour rest upon a series of prior assumptions about the kinds of rights and protections workers exercise when they 'voluntarily' enter into an agreement with an employer. Yet these assumptions do not apply to the vast majority of the world's workers. Only a small minority are able to bargain with their employer over their terms and conditions from a position of relative strength. In the vast majority of cases the language of 'consent' ends up concealing a massively unequal playing field. The number of people for whom free labour is a positive condition are in the minority, and the increasingly popularity of outsourcing, subcontracting, and deregulation means that many

people within this otherwise privileged minority are under ever increasing strain.

This is where my analysis returns to Marx and labour exploitation. Marx had a lot to say about the exploitative nature of economic systems, but his arguments do not necessarily capture contemporary variations in experience within systems. Not all forms of capitalist labour exploitation will be created or experienced equally. When people ask themselves whether they are better or worse off, they are – far more often than not – comparing different versions of precarious labour. The forced and free ends of the scale are less consequential than the variations somewhere in the middle.

The better or worse off framework suggests that individuals try to make sense of their lived experiences by comparing them with the experiences of others, or to their experiences in the past. This process typically features multiple points of comparison, rather than a single reference point. One reference point is likely to be employment vs. unemployment (the ILO calculated that roughly **188 million people were unemployed in 2019**, and this figure is pre-COVID). Having a job will usually be regarded as better than not having one (although there are **exceptions**). A second reference point focuses upon the experiences of peers doing similar work, or those doing alternative work which could be a viable option for the person in question. The third and final point of comparison is concerned with people from different social statuses. It is here that questions of plenty/privilege and poverty/precarity take centre stage.

I will return to this final point below. At this juncture, it is important to emphasise that differences between forms of precarious labour are still highly consequential for the individuals involved. Being worse off or better off is not an abstract question, but an immediate necessity. If the main point of comparison is between sex work and domestic work some people are going to favour sex work. Mining may compare favourably to farming. Migrating to another country on a tied work visa may appeal

more than available options at home. The ‘big picture’ Marxist approach which regards all forms of labour as exploitative can flatten the complex ways people make their way in the world.

All the pieces matter

Ongoing efforts to target individual cases of forced labour and ‘modern slavery’ have not been particularly effective. This is by no means a new observation, but it is worth reiterating here for several reasons. Firstly, and most obviously, we have the political and logistical challenges associated with trying to separate out and **specifically and selectively** target a small minority of extreme cases. Forced labour is much less prevalent than precarious labour, and the conditions, interests, and systems which enable precarious labour also tend to pave the way for forced labour. So there is a strong case for putting the two together (although there are also some occasions where forced labour is spatially concentrated, such as the **Xingjing** region of China).

Modern slavery/extreme exploitation is the tip of the iceberg. The larger whole can only be properly understood by looking below the waterline. This means raising **difficult political questions**, but trying to avoid these questions – as many have – isn’t working either. It is time to (re)centre the struggle for migrant and worker rights and focus on economic systems. Workers need to be able to organise and bargain collectively. Their employers need to be held accountable when they steal their wages. Migrant workers need to be able to change their employers. Lead firms in global supply chains need to be held directly accountable for abuses which consistently occur further down their chains. There are no shortage of policies and strategies to get behind here. Attempting to separate out and specifically target cases of ‘modern slavery’ is not an effective strategy.

There are a number of different ways in which extreme exploitation can be understood. In this piece I have tried to capture the logic behind how many people think about exploitation – extreme or otherwise – by focusing upon the role of comparisons.

As we have seen, these comparisons can take a variety of forms. In many cases there is a strong emphasis on consent and treatment as primary markers of comparison, with the general idea being that extreme exploitation can be best understood in terms of the absence of consent in combination with highly abusive treatment. Greater scope for consent and better treatment generally moves things back down the scale. These markers are inherently subjective, however, since people frequently have competing interests in either downplaying or accentuating the effects of exploitation. Lived experiences rarely correspond to conventional distinctions between 'forced' and 'free', but instead primarily operate somewhere within the middle of these two poles.

Extreme exploitation can also be understood in other ways. Our deeply unjust global order is increasingly defined by extreme concentrations of wealth and power, which enable a small minority to leverage their privileged position to take unfair advantage of the majority. Earlier this year, Oxfam calculated that the world's [2,153 billionaires had more wealth than 4.6 billion people](#), or 60% of the global population. This was prior to a global pandemic which saw billionaires add another \$10.2 trillion to their existing holdings, [including \\$74 billion for Jeff Bezos](#), the founder of Amazon. This is the same Amazon which has systematically abused and exploited its workforce for years, and which has failed to offer sufficient [protection against COVID for its workers](#).

The distribution of global wealth looks like a [shallow, long-stemmed cocktail glass](#). The vast majority of wealth sits right at the top, while both precarious workers *and* precarious employers are concentrated within the stem of this glass. Precarious employers may be better off than their workers, but they are nonetheless subject to economic forces which frequently leave limited margin for error.

Subcontractors in the Global South who participate in global supply chains are under intense pressure to cut costs and accelerate production cycles, and are frequently obliged to intensify their demands on workers in order to win contracts. Extreme exploitation is commonly said to arise when these suppliers push their workers too far. But if we step back from the specifics of individual relationships a different version of extreme exploitation also comes into focus. In this version, privileged corporations and individuals leverage their concentrated market power to capture the vast majority of the economic value produced within supply chains, and thereby take unfair advantage of everyone else.

Much of our thinking about exploitation is shaped by interlocking economic markets. Market mechanisms play a foundational role in determining the value of various goods and services, and thereby end up determining the going rate for different kinds of labour. This sometimes results in situations where exploitation is primarily understood in terms of pay and conditions which fall short of the going market rate. Faced with the question of whether they are worse or better off, many people will answer that they are worse off if their market value has not been properly evaluated and rewarded.

This kind of thinking is understandable yet problematic. The uncritical acceptance of market value is a recipe for normalising exploitation and inequality. When the CEO of a company earns [as much as 725 times the pay of their average workers](#) the critical question is not whether the average worker is being paid the going market rate, but how an already fabulously wealthy minority has organised global economic systems in order to take unjust advantage of a still precarious majority. If your market value is limited, does this mean that you should expect and deserve to be exploited?

Breaking down exploitation under Palermo

Upendra Baxi

International legal instruments are supposed to provide clarity and precision regarding key concepts, yet they are frequently silent or unhelpful when it comes to many of the concepts that are central to our everyday lives. Exploitation is one such idea. It is a term frequently invoked but rarely defined, apart from, that is, in the UN's Palermo Protocol.

In defining 'human trafficking', article three of the protocol states that trafficking comprises:

Actions, i.e. "the recruitment, transportation, transfer, harbouring, or receipt of persons";

Means/methods, i.e. "the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person";

Ends, i.e. "exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs."

This definition may initially seem straight-forward, but in practice it leads to much contention and confusion. For example, the expression "prostitution of others" or "other forms of sexual exploitation" are used by many state parties to continue to criminalise all sex work. But the Global Network of Sex Work Projects (NSWP) has long warned of "the dangers of conflating trafficking with sex work", which many organisations and states do on the assumption that sex work is inherently exploitative. This conflation leads to the criminalisation of sex work, often in the

name of the Palermo Protocol, and in turn provides justification for all kinds of arbitrary and tyrannous 'raids' and related enforcement measures. Despite being justified in humanitarian terms, these anti-trafficking interventions routinely deny dignity, rights, and freedom of work to people who engage in voluntary sex work. This especially true for migrant sex workers.

What do we mean by exploitation?

One of the main problems here is a lack of precision regarding what we mean by exploitation, and how and on what terms this category is actually being applied. One way of achieving greater clarity is by breaking down our understanding of exploitation into the following categories: (1) classical capitalist structural exploitation; (2) other Marxian variants; (3) carceral exploitation; (4) authority exploitation; (5) dominance exploitation; and (6) corporeal exploitation. All these forms share features in common, but if we aren't clear what we are talking about it becomes easier for governments and other actors to manipulate the definition of exploitation to serve their own ends.

The classical distinction, outlined by Marx, was simple: while the working class would be better off as a whole by withdrawing consent to labour, it cannot in reality do so in a society based on capitalist production. This is a system of structural exploitation within which workers struggle to find the dignity of decent work. This structural exploitation is deepened when a large number of workers are systematically disorganised and pauperised by the state and market forces.

Other Marxian variants can be grouped together under 'capital theory exploitation'. Under capitalism

owners and managers exercise their concentrated market power to shape basic decisions on what is to be produced, how, how much, for how long, and at whose/what cost. This necessarily has serious implications for workers and their ability to work in dignity. For both Marx and his more recent interpreters exploitation is not so much an individual condition as a collective and systemic status.

This can be contrasted with carceral exploitation, which occurs when the supplier of labour power is held captive at a site where production occurs. Very often such a situation arises in institutions such as jails, psychiatric care institutions, sites of preventive detention, and camps. Not for nothing did the Italian philosopher Grigio Agamben rue the fact that the camp is the “space that is opened when the state of exception begins to become the rule”. But this is only a partial illustration; the growth of home-based work and special economic zones marks the extension of the state of exception into ever further domains. Here exploitation arises from the immediate and direct application of coercive power in combination with systems of physical constraint.

Domination and authority exploitation both relate to the exercise of institutional power and legitimacy. For Marx, workers are coerced, on the pain of starvation, to sell their labour power to the employ-

er at a disadvantage. It does not necessarily follow, however, that all exploitation involves day to day labour. There are other situations of dominance/subservience which relate to status asymmetries which routinely result in coercion and exploitation. Priests can abuse their disciples and congregation. Police and other agents of the state routinely leverage their authority to extract resources from the people they are supposed to be serving and protecting. Power conferred by higher authorities can be easily abused, but in some cases exploitation can also arise from the manipulation of personal and informal relationships.

Sadly, each of these varieties of exploitation occurs on a daily basis. Central to them all is the relation between the agent of exploitation and those denied their core human rights in the process. Does this mean that the way ahead lies in turning away from the glacial pace of governance reform towards more radical demands for addressing structural but unjustifiable states of social inequality? Surely, the twentieth anniversary of the Palermo Protocol calls us urgently towards the latter. For as Marx said in 1855: ‘The classical saint of Christianity mortified his body for the salvation of the souls of the masses; the modern, educated saint *mortifies the bodies of the masses* for the salvation of his own soul’.

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