SYMPOSIUM ON RACE, RACISM, AND INTERNATIONAL LAW

SLAVERY'S AFTERLIVES: HUMANITARIAN IMPERIALISM AND FREE CONTRACT

Vasuki Nesiah*

In 1833, slavery was abolished across the British Empire, but its specter continued to haunt the new labor regimes inaugurated in slavery's wake. While much of the analysis of these dynamics focuses on the triangular trade in the Atlantic, this essay focuses on the Indian Ocean.[1] Slavery was largely replaced by indentured labor in the Indian Ocean world, marking a historically significant shift in the political economy of empire, the legal architecture of labor, and the discourses through which the imperial racial capitalist system was legitimated and contested. In the decades that followed, labor became incorporated into market institutions that continued into the post-colonial era. Yet, today, almost two hundred years later, slavery's spectral presence continues to inhabit international labor policy.[2] I argue that the reference to slavery was incorporated into discourses of protection and free contract in ways that sought to sanitize and rationalize regimes of indenture and wage labor in the Indian Ocean world. Thus, paradoxically, slavery is often invoked in ways that are disconnected from its own material history. This essay seeks to trace the persistence of that double move of invocation and disconnection as itself symptomatic of the past in the present. In the context of the nineteenth century labor regime transitions, we might describe imperialism, humanitarianism, and capitalism as having a Weberian relationship of "elective affinities."[3] Slavery's haunting of the political and normative imagination of alternative labor systems encapsulated those affinities by fusing the denunciation of slavery with the promise of protection and profit, redeeming humanitarian imperialism and commodified labor.

In the Wake of Abolition

The British Parliament passed the Slavery Abolition Act in 1833, impacting the legal status of some 800,000 people across the Empire. Abolition emerged at the crossroads of several dynamics, including a history of slave revolts, a rising tide of popular opposition to slavery in Britain, and the changing political economy of empire.[4]

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* *Professor of Practice in Human Rights and International Law, The Gallatin School, New York University, New York, NY, United States.*

[1] The Portuguese inaugurated the era of European slavery in the Indian Ocean. The Dutch and French scaled up the slave trade, and by the early 1800s, Britain was the most powerful European slave trading power.

[2] Adelle Blackett with Alice Duquesnoy, *Slavery is Not a Metaphor: US Prison Labor and Racial Subordination Through the Lens of the ILO's Abolition of Forced Labor Conventions*, 67 UCLA L. REV. 1504 (2021).

[3] I draw here on Thomas Haskell's argument that market relations produced a cognitive style that naturalized ideas of moral responsibility among metropolitan elites. *See* Thomas L. Haskell, *Capitalism and the Origins of the Humanitarian Sensibility, Part 1*, 90 AM. HIST. REV. 339, 361 (1985).

[4] Eric Williams famously argued that abolition was driven by changes in capitalism that made the slave trade less profitable. *See* ERIC WILLIAMS, CAPITALISM AND SLAVERY (1944).

Scholars of Indian Ocean slavery speak of the "tyranny of the Atlantic" in referencing how understandings of the triangular trade have dominated slavery studies, with little attention to the multiple circuits of the slave trade in the age of European empire and the divergent material and ideological underpinnings of those processes.[5] In contrast, the Indian Ocean has been central to scholarship on the transnational trade in indentured labor in the age of empire. Abolition catalyzed a labor crisis in plantations, mines, infrastructure projects, and other economic engines of empire. For the next century, the crisis was addressed by an indenture regime that transported 2.2 million people across oceans and continents to replace and supplement the existing labor pool.[6] The Mauritius sugar plantation was the petri dish of the system, but indenture soon became globally popular. Some workers came from Indonesia, China, and elsewhere in Asia; the majority were transported from India to work on plantations in other parts of the Indian Ocean world, including Mauritius, Reunion, and Ceylon. Many were also taken to British colonies in Africa and the Caribbean. Hirers and firers from South Africa to the Caribbean sought out labor recruiters and other colonial middlemen to arrange for ship loads of labor knitting together the Indian Ocean world and the Atlantic world in a new kind of economic intimacy.[7]

Slavery's Afterlives in the Era of Indenture: Circuits of Civilizational Capital

Abolition brought the legal end of slavery, but slavery continued to reach into and define the future. This was materially true in how slavery's profits shaped the nineteenth century racial capitalist world order. In addition, slavery's afterlives framed the conceptual field of indenture, including in narrating that transition. Slavery was invoked to define oppressive working conditions, begetting a binary between slavery and its other as the defining normative framework for labor. The slavery reference triggers a "shock the conscience" reference point in ways that help represent alternative imperial labor regimes as evidence of the British Empire's humanitarian ethos. When indenture gets narrated through the renunciation and condemnation of slavery, those narratives carry forward implicit and explicit claims about the material and ideological character of the indenture system. Thus, the normative horizon of indenture gets framed—and redeemed—not only in the name of profit and productivity, but also in the name of protection and political virtue under the umbrella of humanitarian imperialism.

Historians have been captured by the British abolition movement as an origin story of human rights, and affirmation about the progress immanent in international law. Its imbrication with the consolidation and expansion of the British Empire at that same historical moment has often been treated as a tension to be ironed out over the next hundred plus years, as Britain shifted from being the leading slave-trading nation in the world to becoming the loudest voice for abolition. The Royal Navy patrolled the Atlantic Ocean, with commissions established along the Atlantic coast to adjudicate and enforce abolition. There was no parallel court system in the Indian Ocean, but the Navy policed the Indian Ocean too, asserting jurisdiction in the name of humanitarianism. Britain's Navy shared these waters with their symbiotic commercial twin, the ships carrying indentured workers for the profit of empire as Britain's maritime labor transportation infrastructure was retooled to transport thousands of indentured laborers across the seas. Workers were transported from the subcontinent all down the east coast of Africa. In some cases, the destination was Mauritius; in others, the ships headed down to Cape Town for work in Southern Africa. In the decades that followed, a steady stream of ships traveled southwest to skirt around the cape and head north in the Atlantic Ocean for work in Caribbean plantations.

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[5] Richard Allen, *Slaves, Convicts, Abolitionism and the Global Origins of the Post-Emancipation Indentured Labor System*, 35 SLAVERY & ABOLITION 328 (2014).

[6] DAVID NORTHRUP, INDENTURED LABOR IN THE AGE OF IMPERIALISM, 1834–1922 (1995).

[7] LISA LOWE, THE INTIMACIES OF FOUR CONTINENTS (2015).

Abolition offered Britain a new platform to reframe its relationship to the colonies by promising worker protection. This phase of imperial governance presented new channels for accumulating and redistributing civilizational capital, and for breathing fresh life into the categories of race and racialized taxonomies.[8] One of these channels was humanitarian virtue: an investment in norms and laws predicated on an emerging notion of the human, whose internal hierarchies and biases gathered force when projected onto distant people in distant places, from the slave ship to the plantation. It was an investment that accrued racialized credit on a number of fronts, from political confidence in the legitimacy of empire and its civilizational mission, to new articulations of imperial authority, such as the Royal Navy's policing of the high seas, and to London extending its reach into domestic labor arrangements across the colonies.

When the British Parliament abolished slavery in 1833, exceptions were carved out for the Indian subcontinent for another decade because local colonial authorities argued that subcontinental elites needed time to be educated and pressured to rearrange their moral compass to accord with the better angels of empire. The Indian Slavery Act of 1843 eventually abolished slavery in India (then under the rule of the East India Company), and a year later extended the abolition to Ceylon (then under direct rule from London).

This decade of purported moral tutelage of the subcontinent offered an important window into the future of antislavery discourse in which abolition became a part of an imperial discourse of civilization, and the history of slavery was depicted as a feature of uncivilized societies that needed the prod of an enlightened imperial authority to shed barbaric practices.[9] There are dots we can connect in the colonized world from this decade of abolition advocacy tutoring local elites in South Asia by colonial poohbahs, to a hundred years hence in a region closer to the western shores of the Indian Ocean, when the Italian occupation of Ethiopia gets reframed as an affirmation of international law's progress narrative in contradistinction to illiberal slave-holding Ethiopian elites.[10] With the connecting of these dots that narrate the history and geography of slavery, slavery emerges as a marker of the civilizational deficits of the colonized.[11] It is no accident that Benito Mussolini enacted a law abolishing slavery as one of his very first acts upon invading and occupying Ethiopia in 1935, a century after the British Parliament enacted a law abolishing slavery in the British Empire. The broad contours of redemption and condemnation—the abolition advocated for by the civilized and the barbarisms held onto by the uncivilized—rhymes with the Savior-Victim-Savage (SVS) triad that Makau Mutua invoked a century and a half later in speaking of the international human rights regime.[12]

The Economic Logics on Land and Sea: The Marriage of Protection and Free Contract

The slavery analogy buttresses a protection discourse that melds with the logic of humanitarian imperialism, and a redemption narrative regarding alternative labor regimes, such as indentured wage labor, and so called "free" wage labor. This entailed defining coerced labor as physically coerced labor but not as labor arising from structurally engendered impoverishment. Yet, debt repayment schemes were a common driver of indenture in colonial India. The economic historian Gwyn Campbell describes colonial policies dramatically expanding the number of Indians in debt bondage through increased taxes, commercialization of crops, underfunding public welfare,

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[8] Tayyab Mahmud, *Cheaper Than a Slave: Indentured Labor, Colonialism and Capitalism*, 34 WHITTIER L. REV. 215 (2013).

[9] A claim that is especially ironic given that the British government's labor policies at home were being challenged as inhumane by the Chartists at the very same moment. *See* JOHN CHARLETON, THE CHARTISTS: THE FIRST NATIONAL LABOR MOVEMENT (1997).

[10] Rose Parfitt, Empire des Nègres Blancs: *The Hybridity of International Personality and the Abyssinia Crisis of 1935–36*, 24 LEIDEN J. INT'L L. 849 (2011); ADOM GETACHEW, WORLDMAKING AFTER EMPIRE: THE RISE AND FALL OF SELF-DETERMINATION (2019).

[11] *See also* Christopher Gevers, *Slavery and International Law*, 117 AJIL UNBOUND __ (2023).

[12] Makau Mutua, *Savages, Victims and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201 (2001).

exclusion of subaltern communities from property ownership, and a host of other measures.[13] Millions shifted from subsistence agriculture to an increasingly precarious perch on plantation agriculture and other institutions designed for metropolitan profit. The financialization of governance of the impoverished by generating and then policing debt culminated in the 1859 Workman's Breach of Contract Act, that empowered creditors and employers and further weakened debtors by transforming them into bonded laborers.[14] The consequences for debtors were punitive on many fronts, including provisions restricting geographic mobility and making debts hereditary. Thus, caste and enslavement mutated and adapted to new economic conditions with different forms of financialized servitude conditioned by ledgers and accounting records rather than whips and chains. The coeval development of capitalism and colonialism shaped how race and caste got constructed and reconstructed in significant ways in the terrain of labor.

The line between economic and violent coercion did a lot of ideological work. As Campbell notes, "officials distinguished debts-bonds people from 'true' slaves, whose conditions they attributed solely to violent capture."[15] The slave analogy not only defines slavery to refer to physical violence, but also renders innocent the commodification of labor in ways that were designed to facilitate vast and intrusive creditor control of the debtor's labor, their body, and their family's future. These logics were part of the ecosystem that helped naturalize capitalist labor relations as free, and the labor market as fair. Framing of debt driven indenture as "free" was to the profit of all those who controlled surplus in the indenture value chain and invested in reorganizing labor for changing market needs. With protection as the reigning normative framework, the injustices of indenture got enveloped into a welfare problem to be addressed by improvements in physical conditions (such as the conditions of the transportation ships)[16] or labor market formalization that could be addressed by a colonial authority who profited in presenting itself as enlightened. [17]

As noted, these dynamics had a dialectical relationship with an evolving humanitarianism predicated upon locating the injustice in local barbarisms. However, not unlike contemporary humanitarianism, it also entailed foregrounding spectacular physical violence while insulating socioeconomic atrocity from critical scrutiny. In this case, the spectacular physical violence that was foregrounded was slave capture, and this violent coercion was pivotal in building the wall between voluntary and involuntary labor: coercion was located in the domain of physical coercion rather than economic exploitation and the framework of the voluntary contract; widespread rural debt was naturalized into the background conditions of colonial India, with poverty treated as if it were as much a part of the landscape as the monsoons that swept through the Indian Ocean. In equating coercion with physical violence, the vast infrastructure of exploitation that was baked into colonial institutional arrangements became disconnected from the so-called "voluntary bondage" of indenture. This approach to the transition from slavery to indenture had a long reach into the representation of "free" wage work in the transition from indenture to wage labor. Both historical moments offer examples of how imperialism became reconstituted in a humanitarian register under an evolving racial-capitalist world order.

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[13] Gwyn Campbell, *Introduction*, in ABOLITION AND ITS AFTERMATH IN THE INDIAN OCEAN, AFRICA AND ASIA (Gwyn Campbell ed., 2005).

[14] The Act was undergirded by the 1860 Indian Penal Code, which criminalized breach of contract. *See* Rana P. Behal, *Power Structure, Discipline, and Labour in Assam Tea Plantations Under Colonial Rule*, 51 INT'L REV. SOC. HIST. 143, 172 (2006).

[15] Campbell, *supra* note 13.

[16] Conditions on the slave ship were aimed at transforming humans into commodities as vehicles of "social death." *See* MARCUS REDIKER, THE SLAVE SHIP: A HUMAN HISTORY (2008); STEPHANIE E. SMALLWOOD, SALTWATER SLAVERY: A MIDDLE PASSAGE FROM AFRICA TO AMERICAN DIASPORA (2008); and ORLANDO PATTERSON, SLAVERY AND SOCIAL DEATH: A COMPARATIVE STUDY (1982).

[17] Kerry Rittich analyzes the discourse of social protection and economic progress as part of colonialism's "dual mandate" in *Historicising Labour in Development: Labour Market Formalisation Through the Lens of British Colonial Administration*, in RE-IMAGINING LABOUR LAW FOR DEVELOPMENT: INFORMAL WORK IN THE GLOBAL NORTH AND SOUTH (Diamond Ashiagbor ed., 2019).

In many cases, conditions of plantation labor had changed little since abolition.[18] British authorities tried to import slave plantation-style monocrop agricultural management of indentured workers in the cotton and rice fields of India to better compete with U.S. commodity prices that benefited from slave plantation economy.[19] Many workers, whether for local or transnational indentured servitude, were recruited under false promises or vague conditions of contract. Where there were formal contracts, some may not have known what they were signing on to, and had little recourse if employers unilaterally altered contractual terms. Moreover, the socioeconomic factors that drove workers to bonded contracts were so dire that they agreed to harsh conditions and coercive terms. Indenture exploited the economic precarity and social marginalization of those oppressed by foreign and local elites, as 빤한 the labor pool came overwhelmingly from those suffering class and caste oppression.[20] Indeed, some argue that those recruited into indenture belonged to so-called "slave castes" from India, which was especially true for those recruited in the first decades of indenture to work in other parts of the Indian Ocean.[21] Their vulnerability was exacerbated by being removed from communities of support and transported across oceans with few resources to challenge oppressive working conditions or contract violations.[22] There were disciplinary consequences (financial and penal) built into the indenture contract to ensure workers fulfilled its terms. Indeed, one of the responses by the British Raj to abolition was not unlike post-emancipation labor dynamics in the United States[23]—namely, the incorporation of labor into the criminal justice system in ways that gave slavery a new lease of life within the formal terms of abolition.[24]

The Shadow of the Slavery Analogy and the Future of Labor Conditions

As a free-floating signifier of all that should be condemned, post-1833 invocations of slavery as a codeword for "atrocity" entrenched a slavery/freedom binary that supplanted distributive analysis of systems of indenture and wage-labor, and of how these different labor regimes contributed to profiting and legitimating the British Empire. In the context of the "elective affinities" between imperialism, humanitarianism, and capitalism that shaped eighteenth century labor regime transitions, the invocation of slavery served to distract from, disguise, and even defend atrocity.[25] The invocation condemns slavery and redeems the path to humanitarian imperialism and commodified labor, marrying the moral promise of protection and the economic profit from precarity. Slavery lived on in the colonial and capitalist logics that shaped the labor ecosystem of the Indian Ocean world; its specter haunted its own future, from indenture to wage labor, but also the political imagination of what constituted unjust labor conditions or what warranted the most thorough repudiation. In all these ways, it also conditioned and constrained the political imagination of future freedoms.

There was much more to lose than chains.

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[18] HUGH TINKER, A NEW SYSTEM OF SLAVERY: THE EXPORT OF INDIAN LABOUR OVERSEAS, 1830–1920 (1974); MOON HO JUNG, COOLIES AND CANE: RACE, LABOR AND SUGAR IN THE AGE OF EMANCIPATION (2006).

[19] ZACH SELL, TROUBLE OF THE WORLD: SLAVERY AND EMPIRE IN THE AGE OF CAPITAL (2021).

[20] Ashutosh Kumar, *Subaltern Mobility and Labor Contract: Indian Indenture in New World*, 32 J. WORLD HIST. 19, 28 (2021).

[21] Allen, *supra* note 5; Benedicte Hjejle, *Slavery and Agricultural Bondage in South India in the Nineteenth Century*, 15 SCANDINAVIAN ECON. HIST. REV. 76 (1967).

[22] Richard Allen, *Slave Trading, Abolitionsim, New Systems of Slavery in the Nineteenth-Century Indian Ocean World, in* INDIAN OCEAN SLAVERY IN THE AGE OF ABOLITION 183 (Robert Harms, Bernard K. Freamon & David W. Blight eds., 2013).

[23] Blackett & Duquesnoy, *supra* note 2.

[24] CLARE ANDERSON, LEGIBLE BODIES: RACE, CRIMINALITY, AND COLONIALISM IN SOUTH ASIA (2004).

[25] Haskell, *supra* note 3.