

STREAM READINGS

**HUMAN RIGHTS &
SOCIAL JUSTICE**



IGLP SCHOLARS WORKSHOP | BANGKOK, THAILAND | JANUARY 6 - 10, 2019

Human Rights and Social Justice

Faculty

- **Ratna Kapur** (India) Queen Mary University of London
- **Vasuki Nesiah** (United States) New York University
- **E. Tendayi Achiume** (Zambia) University of California, Los Angeles Law School

Description

This stream will explore the relationship between violence and human rights law and advocacy. Human rights are often imagined as placing limits on violence. But they are also used to legitimate violence and to facilitate the exercise of violent power by individuals and states. We will explore this relationship by considering different forms of violence—spectacular, structural, slow, and revolutionary – and the role of human rights both in attending to and normalizing that violence. We will consider several case studies around issues such as the environment, trafficking, and religion.

TABLE OF CONTENTS

Human Rights and Social Justice

Source	Pages
Rob Nixon, "Slow Violence", Naguli Blog, January 6th, 2014 (excerpts).	2
Ratna Kapur, "Human Rights in the 21st Century: Take a Walk on the Dark Side", Sydney Law Review, Vol. 28, No. 4, 2006, pp. 665-687 (excerpts, pp. 675-682).	2-6
Franz Fanon, <i>The Wretched of the Earth</i> (trans. Richard Philcox), Grove Press, 1963, pp. 35-106.	6-8
Mathew Davies, "Not Quite the Rights Stuff", ANU College of Asia & the Pacific (Online), November 29th, 2012.	8-9
Susan Marks, "Human Rights and Root Causes", <i>Modern Law Review</i> , Vol. 74, No. 1, 2011 pp. 57-78 (excerpts).	9-15
Gwendolyn Brooks, "The Lovers of the Poor", in <i>Selected Poems</i> , Harper & Row, 1963.	15-17
Vasuki Nesiah, 'The Trials of History: Losing Justice in the Monstrous and the Banal', in Ruth Buchanan and Peer Zumbansen, (eds.), <i>Law in Transition: Human Rights, Development and Transitional Justice</i> , Hart Publishing, 2014, pp. 289-308 (excerpts - PAGES?).	17-19
Mahmood Mamdani, "Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)", <i>Diacritics</i> , Vol. 32, No. 3-4, 2002, pp. 33-59.	19-21
Kirstian Lasslet, "The Fog of Peace: Post-Conflict Environments as Sites of Impunity, Denial and Dispossession", <i>Open Democracy Blog</i> , December 17th, 2014 (excerpts).	22-25
Elizabeth Bernstein, <i>Brokered Subjects: Sex, Trafficking and the Politics of Freedom</i> , The University of Chicago Press, 2018, (excerpts, pp. 107-119).	25-28
Janie Chuang, "Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy", <i>University of Pennsylvania Law Review</i> , Vol. 158, No. 6, 2010, pp. 1655-1728 (excerpts, pp. 1657-1658, 1694, 1702-1704, 1712, 1718, 1727).	28-29
United Nations Office of Drugs and Crime, "Human Trafficking Fuels Violence Against Women", November 25th, 2009.	29-30
Association of Southeast Asian Nations, <i>ASEAN Convention Against Trafficking in Persons, Especially Women and Children</i> , 2015 (Articles 2(a), 2(b), 2(c), 5).	30

**INSTITUTE FOR GLOBAL LAW AND POLICY
REGIONAL WORKSHOP Jan. 6-12, 2019
BANGKOK**

Human Rights and Social Justice

Tendayi Achiume (University of California, Los Angeles)
Ratna Kapur (Queen Mary University of London)
Vasuki Nesiah (Gallatin School, New York University)

Day One: Human Rights and Structural Violence

A: Overview

- Nixon, R. Slow Violence, *Naguli*, January 2014 (excerpts). Available at <http://nagualli.blogspot.com/2014/01/rob-nixon-slow-violence.html>
- Kapur, R. (2006). Human Rights in the 21st Century: Take a Walk on the Dark Side. *Sydney Law Review*, 28, pp. 665-687. Excerpts from pp. 675-682.
- Fanon, F. (1963) *The Wretched of the Earth* (trans. Richard Philcox) (1963) CH 1: On Violence
- Davies, M. (29 Nov. 2012). Not quite the rights stuff. *ANU College of Asia & the Pacific*. [online] Available at <http://asiapacific.anu.edu.au/news-events/all-stories/not-quite-rights-stuff> [Accessed 7 Nov. 2016].
- Marks, S. (2011) Human Rights and Root Causes 74(1) *Modern Law Review* 74(1) pp. 57-78 (excerpts)
- Brooks, G. The Lovers of the Poor, *Selected Poems* (1963), Available at poertyfoundation.org/poems/43317/the-lovers-of-the-poor

B: Contemporary Problem

- Nesiah, V. The Trials of History: Losing Justice in the Monstrous and the Banal, in *Law in Transition*, Ruth Buchanan and Peer Zumbansen, ed.s, Hart (2014) (excerpts)
- Mamdani, M. (2002) Amnesty or Impunity?: A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC) *Diacritics*, 32 (3-4) Fall-Winter, pp. 33-59 (Article)
- Kirstian Lasslet, The Fog of Peace: Post-Conflict Environments as Sites of Impunity, Denial and Dispossession, *Open Democracy*, December 2014 (excerpts) Available at <https://www.opendemocracy.net/kristian-lasslett/fog-of-peace-postconflict-environments-as-sites-of-impunity-denial-and-dispossessi>

Day Two: Carcerality, Trafficking and Human Rights

- Bernstein, E. (2018) Brokered Subjects: Sex, Trafficking and the Politics of Freedom, (The University of Chicago Press) pp. 107-119 (excerpts)
- Chuang J. (2010). Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-trafficking Law and Policy. *University of Pennsylvania Law Review*, 158, pp. 1655-1728. Excerpts from pp. 1657-1658, 1694, 1702-1704, 1712, 1718, 1727.
- UNODC. (25 Nov. 2009). Human Trafficking Fuels Violence Against Women. Available at: <https://www.unodc.org/unodc/en/frontpage/2009/November/human-trafficking-fuels-violence-against-women.html> [Accessed 7 Nov. 2016].
- ASEAN Convention Against Trafficking in Persons, Especially Women and Children. (2015). Articles 2(a), 2(b), 2(c), 5. Available at: <http://www.asean.org/wp-content/uploads/2015/12/ACTIP.pdf> [Accessed 7 Nov. 2016].

We are accustomed to conceiving violence as immediate and explosive, erupting into instant, concentrated visibility. But we need to revisit our assumptions and consider the relative invisibility of slow violence. I mean a violence that is neither spectacular nor instantaneous but instead incremental, whose calamitous repercussions are postponed for years or decades or centuries. I want, then, to complicate conventional perceptions of violence as a highly visible act that is newsworthy because it is focused around an event, bounded by time, and aimed at a specific body or bodies. Emphasizing the temporal dispersion of slow violence can change the way we perceive and respond to a variety of social crises, like domestic abuse or post-traumatic stress, but it is particularly pertinent to the strategic challenges of environmental calamities.

Politically and emotionally, different kinds of disaster possess unequal heft. Falling bodies, burning towers, exploding heads, avalanches, tornadoes, volcanoes—they all have a visceral, page-turning potency that tales of slow violence cannot match. Stories of toxic buildup, massing greenhouse gases, and accelerated species loss because of ravaged habitats may all be cataclysmic, but they are scientifically convoluted cataclysms in which casualties are postponed, often for generations. How, in an age when the news media venerate the spectacular, when public policy and electoral campaigns are shaped around perceived immediate need, can we convert into image and narrative those disasters that are slow-moving and long in the making, anonymous, starring nobody, attritional and of indifferent interest to our image-driven world? How can we turn the long emergencies of slow violence into stories striking enough to rouse public sentiment and warrant political intervention, these emergencies whose repercussions have given rise to some of the most serious threats of our time?

The long dyings—the staggered and staggeringly discounted casualties, both human and ecological—are often not just incremental but exponential, operating as major threat multipliers. They can spur long-term, proliferating conflicts that arise from desperation as the conditions for sustaining life are degraded in ways that the corporate media seldom discuss. One hundred million unexploded land mines lie inches beneath our planet's skin, from wars officially concluded decades ago. Whether in Cambodia, Laos, Somalia, or Angola, those still-active mines have made vast tracts of precious agricultural land and pastures no-go zones, further stressing oversubscribed resources and compounding malnutrition.

To confront slow violence is to take up, in all its temporal complexity, the politics of the visible and the invisible. That requires that we think through the ways that environmental-justice movements strategize to shift the balance of visibility, pushing back against the forces of temporal inattention that exacerbate injustices of class, gender, race, and region. For if slow violence is typically underrepresented in the media, such underrepresentation is exacerbated whenever (as typically happens) it is the poor who become its frontline victims, above all the poor in the Southern Hemisphere. Impoverished societies located mainly in the global South often have lax or unenforced environmental regulations, allowing transnational corporations (often in partnership with autocratic regimes) the liberty to exploit resources without redress. Thus, for example, Texaco's oil drilling in Ecuador was not subject to the kinds of regulatory constraints the company would have confronted in America, a point highlighted by the Ecuadorean environmental-justice movement, *Acción Ecológica*. Our temporal bias toward spectacular violence exacerbates the vulnerability of ecosystems treated as disposable by capitalism, while simultaneously intensifying the vulnerability of those whom the human-rights activist Kevin Bales has called "disposable people."

Kapur, R. (2006) *Human Rights in the 21st Century: Take a Walk on the Dark Side*. *Sydney Law Review*, 28 (2006) pp. 665-687. Excerpts from pp. 675-682.

3. Troubling Subjects

The liberal subject lies at the heart of the human rights endeavour. This subject is free, unencumbered, self-sufficient and rational, existing prior to history and social context. However, given the arguments already

presented about the situatedness of human rights and its liberal underpinnings, it is evident that the sovereign, autonomous subject is unable to survive without the existence of an 'Other'. A host of subjects continue to be denied inclusion into the project, or entitled access only to the extent that they resemble the familiar subject of human rights discourse.

There are at least three different ways in which the 'Other' has been addressed in relation to rights discourse. The first is through the assumption that the difference can be erased and the 'Other' tamed and assimilated through some form of cultural or racial strip. The second is to treat the difference as natural and inevitable. And finally, there is the response that justifies incarceration, internment or even annihilation of the 'Other' because of the threat it poses. These are not rigid and absolute categorisations, but frequently overlap and leak into one another. And all of these responses are present in the contemporary moment.

Assimilation is integral to the liberal tradition. It is accompanied by cultural erasure and plays out on a host of sites. In the context of the colonial encounter in India, assimilation took the form of learning how to imitate the colonial power. The 'universal' principles of liberty, equality and freedom were contingent on the native's ability to conform or be trained into civilisation. While he was never entitled to full citizenship, citizen-like behavior nevertheless was encouraged and became part of the lexicon of the 'politically aware Indian.' The native was entitled to certain rights and benefits to the extent that he could reinvent himself as an Englishman. Yet that standard remained an elusive one, often unattainable, for no matter how hard the native struggled to mimic the 'master' at the cost of her own subjectivity, she remained at most, 'almost white, but not quite.'

In the contemporary period, this response is found in the proliferation of new citizenship and nationality laws being enacted throughout Europe and elsewhere. These laws reflect a simultaneous fear of the 'Other', while also providing an opportunity to enable these 'Others' to be part of the universal project of rights and acquire legitimacy through the process of assimilation and their permanent translation into a familiar medium.

One recent explicit example of this response can be found in the Danish family reunification law. according to the *Aliens Act* 2002 (Denmark), the government has sought to restrict the number of resident permits awarded for the purpose of family reunification ostensibly to reduce the number of unemployed aliens. Under the *Aliens Act*, the legal right of family reunification has been withdrawn and replaced with a provision regulating the right to a residence permit in Denmark for the purpose of family reunification with a person living in Denmark. It is based on extremely strict age and connection requirements. The marriage or registered partnership should be recognisable under Danish law and entered into voluntarily. There is also a requirement that the parties be over the age of 24, even if one of the parties is a Danish citizen and that their aggregate ties with Denmark be stronger than their aggregate ties with another country, a condition that is lifted in situations where the person residing in Denmark has held Danish citizenship for at least 28 years. The aggregate requirements used to evaluate attachment and loyalty to the nation, include the presence of family members already living in, Denmark, the completion of one or both partners' education in Denmark, proficiency in Danish and employment in Denmark. Evidence of either or both parties making extended visits to another country, and having children or other family members in another country, are also factors to be taken into consideration.

The impact of the aggregate ties requirement was illustrated in the case of Tien Dang, a 26 year old Vietnamese whose application to bring his wife to Denmark was rejected. The fact that he was a permanent resident and gainfully employed in Denmark, had his own home there, spoke Danish fluently and had other family members in the country (including his children and parents) were considered insufficient to counter the finding that his attachments with Vietnam were greater than his attachments to Denmark, presumably because he continued to visit his wife there. He remained an impostor, unable to reinvent himself as a true and loyal Dane. While the Council of Europe Human Rights Commissioner has concluded that Denmark's rules governing family reunification are in breach of the Convention, the *Aliens Act* reflects how the project of assimilation is being aggressively pursued through the proliferation of new nationality and citizenship laws in Europe. Following on the Commissioners report, Tien Dang has filed a suit challenging the Danish family reunification law as contravening the European Human Rights Convention, which guarantees all individuals the right to a family life.

has to do with the falsity involved here. False contingency is not a matter of what people know or don't know; it is a matter of how they act. It seems a safe assumption that those engaged in human rights work at the UN and elsewhere are aware that there is a systemic context to the violation of human rights. They know that what is involved is not simply a collection of free-floating bad events, to use Naomi Klein's phrase.⁶² Yet, in their work, they act - and, as we have seen, often have no choice but to act - as if it is. So the point is not to clear up delusions, but to bring out the effects of action, including action 'against better knowledge'.⁶³

An explanatory discourse informed by the concept of false contingency could be fashioned in many different ways, but one is suggested by a phrase evoked at the beginning of this article: 'planned misery'.⁶⁴ Viewed from the perspective of false contingency, planned misery does not denote intended or deliberately inflicted misery, though that is sometimes what is involved. Rather, it denotes misery that belongs with the logic of particular socio-economic arrangements. In a discussion of the history of the prohibition on torture, Talal Asad refers to a distinction drawn in that context between 'necessary' suffering and 'gratuitous'. 'wasteful' or 'unnecessary' suffering.⁶⁵ He shows how, during the late 19th century this distinction was deployed by colonial authorities to discipline colonised peoples in a double manner. On the one hand, it was used to outlaw traditional, local practices of punishment as gratuitously cruel. On the other hand, it was also used to justify colonial punishments as necessary to the process of becoming civilised. In this regard, Asad cites Lord Cromer, British Consul-General to Egypt from 1883 to 1907: if cruelties were imposed in the course of colonial administration, this was because 'civilisation must, unfortunately, have its victims'.⁶⁶ Planned misery denotes the necessary suffering of those dispossessed, exploited and oppressed today.

How then might the concept of planned misery orient the analysis of why human rights abuses occur? At this stage I can provide only a brief, initial sketch, in terms of five interlinked elements. To begin with, it would encourage a perspective that is anti-moralistic. In place of the question of what governments and others 'should' do, the central issue would be why governments and others are doing what they are doing, and not doing what they are not. Having determined that abuses are occurring, we would stay with the indicative mood of actuality, rather than shifting into the subjunctive mood of unreality and wish-fulfilment. Beyond that, such an approach would also foster greater reliance on transitive concepts - that is to say, concepts that express direct actions on people and things. The concept of discrimination looms very large in discussions of human rights abuse, but it expresses an indirect relation. If I discriminate against you, the action does not 'pass over' to you, and we are less tightly entwined with one another than if, for example, I exploit you. Transitive concepts such as exploitation, marginalisation, dispossession and displacement are generally more telling, because more basic to the understanding of social systems, than intransitive concepts, and thinking about planned misery would prompt us to explore their significance for human rights more fully than at present.

At the same time, thinking in these terms would promote attention to the relational character of social phenomena. The human rights movement is structurally predisposed to focus on victims - they are the ones to whom the rights violated belong. In recent decades, with the development and institutionalisation of international criminal law, there has also been scrutiny of perpetrators, at least in the case of abuses that constitute international crimes. But very little mention is ever made of beneficiaries. Those who (directly or indirectly) live off the practices and processes that victimise others have been allowed to remain comfortably out of sight. Challenging that invisibility, the concept of planned misery would insist on the question of how deprivation and privilege interrelate. A further concomitant would be an emphasis on materialist explanations - that is to say, explanations that account for phenomena not only in terms of the ideas informing them, but also in terms of their connection to processes of social production. To be sure, it is important to uncover problems at the level of ideas. But if we are fully to understand a situation, it is also important to delve deeper and ask about the socio-economic conditions within which those ideas were able to develop and gain influence. So where abuses are currently explained with reference to bad policies, laws and interpretations, the concept of planned misery would urge enquiry into the material context of such harmful thinking.

Finally, an approach oriented to the concept of planned misery would have a repoliticising thrust. Explanatory analysis would be geared less to problem-solving and the elaboration of remedial proposals (the style

of 'root cause analysis' pursued in business, administration and management) than to the strategic task of channelling grievances into organised and coherent action. Of course, explanatory analysis cannot itself specify the forms of that action, but it can be undertaken in ways that contribute more and less to effective political mobilisation. For instance, as we have already observed, a preoccupation with state-oriented remedies tends to domesticate potentially radical demands on the social structure and bring with it the demobilisation of oppositional activity. Likewise, the representation of abuses as products of a local dysfunction, historical accident or cultural gap tends to reduce the salience of political struggle. The idea that human rights implicates questions that are not simply technical, but political, is today quite widely acknowledged. 67, But most commonly, that puts the accent on particular practices and their distributional consequences, rather than on a collective project and its goals. In critical reflections on the international human rights movement, David Kennedy calls for a more 'pragmatic attitude' to human rights that '[weighs] the costs and benefits' of various alternative forms of engagement - political, legal, ethical, philosophical, and so on.⁶⁸ The concept of planned misery would invite us to consider the conditions under which all such calculations are made. It would take us beyond 'pragmatism' and 'practicality' to praxis, beyond distributional consequences to the organisation of productive processes, and beyond 'fantastic' possibilities to real, historically created ones. [...]

Brooks, G. *The Lovers of the Poor, Selected Poems (1963)*

arrive. The Ladies from the Ladies' Betterment League
 Arrive in the afternoon, the late light slanting
 In diluted gold bars across the boulevard brag
 Of proud, seamed faces with mercy and murder hinting
 Here, there, interrupting, all deep and debonair,
 The pink paint on the innocence of fear;
 Walk in a gingerly manner up the hall.
 Cutting with knives served by their softest care,
 Served by their love, so barbarously fair.
 Whose mothers taught: You'd better not be cruel!
 You had better not throw stones upon the wrens!
 Herein they kiss and coddle and assault
 Anew and dearly in the innocence
 With which they baffle nature. Who are full,
 Sleek, tender-clad, fit, fiftyish, a-glow, all
 Sweetly abortive, hinting at fat fruit,
 Judge it high time that fiftyish fingers felt
 Beneath the lovelier planes of enterprise.
 To resurrect. To moisten with milky chill.
 To be a random hitching-post or plush.
 To be, for wet eyes, random and handy hem.

Their guild is giving money to the poor.

The worthy poor. The very very worthy
 And beautiful poor. Perhaps just not too swarthy?
 perhaps just not too dirty nor too dim
 Nor—passionate. In truth, what they could wish
 Is—something less than derelict or dull.
 Not staunch enough to stab, though, gaze for gaze!
 God shield them sharply from the beggar-bold!
 The noxious needy ones whose battle's bald
 Nonetheless for being voiceless, hits one down.

But it's all so bad! and entirely too much for them.

The stench; the urine, cabbage, and dead beans,

Dead porridges of assorted dusty grains,
The old smoke, *heavy* diapers, and, they're told,
Something called chitterlings. The darkness. Drawn
Darkness, or dirty light. The soil that stirs.
The soil that looks the soil of centuries.
And for that matter the *general* oldness. Old
Wood. Old marble. Old tile. Old old old.
Not homekind Oldness! Not Lake Forest, Glencoe.
Nothing is sturdy, nothing is majestic,
There is no quiet drama, no rubbed glaze, no
Unkillable infirmity of such
A tasteful turn as lately they have left,
Glencoe, Lake Forest, and to which their cars
Must presently restore them. When they're done
With dullards and distortions of this fistic
Patience of the poor and put-upon.

They've never seen such a make-do-ness as
Newspaper rugs before! In this, this "flat,"
Their hostess is gathering up the oozed, the rich
Rugs of the morning (tattered! the bespattered. . . .)
Readies to spread clean rugs for afternoon.
Here is a scene for you. The Ladies look,
In horror, behind a substantial citizeness
Whose trains clank out across her swollen heart.
Who, arms akimbo, almost fills a door.
All tumbling children, quilts dragged to the floor
And tortured thereover, potato peelings, soft-
Eyed kitten, hunched-up, haggard, to-be-hurt.

Their League is allotting largesse to the Lost.
But to put their clean, their pretty money, to put
Their money collected from delicate rose-fingers
Tipped with their hundred flawless rose-nails seems . . .

They own Spode, Lowestoft, candelabra,
Mantels, and hostess gowns, and sunburst clocks,
Turtle soup, Chippendale, red satin "hangings,"
Aubussons and Hattie Carnegie. They Winter
In Palm Beach; cross the Water in June; attend,
When suitable, the nice Art Institute;
Buy the right books in the best bindings; saunter
On Michigan, Easter mornings, in sun or wind.
Oh Squalor! This sick four-story hulk, this fibre
With fissures everywhere! Why, what are bringings
Of loathe-love largesse? What shall peril hungers
So old old, what shall flatter the desolate?
Tin can, blocked fire escape and chitterling
And swaggering seeking youth and the puzzled wreckage
Of the middle passage, and urine and stale shames
And, again, the porridges of the underslung
And children children children. Heavens! That
Was a rat, surely, off there, in the shadows? Long
And long-tailed? Gray? The Ladies from the Ladies'
Betterment League agree it will be better

To achieve the outer air that rights and steadies,
To hie to a house that does not holler, to ring
Bells elsetime, better presently to cater
To no more Possibilities, to get
Away. Perhaps the money can be posted.
Perhaps they two may choose another Slum!
Some serious sooty half-unhappy home!—
Where loathe-love likelier may be invested.

Keeping their scented bodies in the center
Of the hall as they walk down the hysterical hall,
They allow their lovely skirts to graze no wall,
Are off at what they manage of a canter,
And, resuming all the clues of what they were,
Try to avoid inhaling the laden air.

The Trials of History: Losing Justice in the Monstrous and the Banal, Vasuki Nesiah, in *Law in Transition*, Ruth Buchanan and Peer Zumbansen, ed.s, Hart (2014) (excerpts)

II. Chile, Pinochet and The “Despot Crusade”: Radical Evil on Trial*

Writing in the heady aftermath of Pinochet’s arrest in London, Reed Brody, Counsel and Spokesperson for Human Rights Watch (HRW) declared that, “The Pinochet precedent puts tyrants on notice”.* Buoyed by the Pinochet case, and the Habre case that followed, HRW produced a report which explored the doctrine of universal jurisdiction and its potential in prosecuting a range of former heads of states, including Chad’s Hisssein Habre, Uganda’s Idi Amin and Milton Obote, Ethiopia’s deposed Mengitsu Haile Mariam, Haiti’s Jean-Claude “Baby Doc” Duvalier, and Paraguay’s Alfredo Stroessner; HRW described the Pinochet case as a “wake-up call to tyrants everywhere”.*

...

In Chile, the transitional-justice story can be traced to 1973, when General Augusto Pinochet took power in a *coup d’état*. Upon taking office, Pinochet made far-reaching changes in a number of areas, including economic policy. Pinochet and Milton Friedman had developed close ties, and Chile emerged as a test case for the “free market” economic prescriptions identified with the University of Chicago economics department.* The wealthy gained much, but the poor suffered: there was a rise in “the national poverty rate from 17 per cent... to 45 per cent...” in the Pinochet years....After almost 20 years, Pinochet was finally ousted from office. His successor, President Aylwin, appointed a truth commission that investigated the disappearances (*los Desaparecidos*),* which issued a report outlining its findings, and recommended reparations for the families of those who had disappeared.* Pinochet, while in office, had granted himself an amnesty, and was thus immune to charges; the military remained a strong force and the government was hesitant to challenge it directly.

But this was not the end of Chile’s transitional-justice story. In 1998, when Pinochet was visiting London, Spanish courts issued an international warrant for Pinochet’s extradition for trial on charges of torture and other abuses of Spanish citizens. After extended debate, the British House of Lords decided that Pinochet’s head of state immunity did not trump Britain’s own treaty obligations regarding torture; in relation to this, they concluded that the crimes of which he was accused were so heinous that he should be extradited. Despite this decision, citing concerns about his health, the British government chose not to extradite Pinochet, and he returned to Chile in the year 2000. But the political climate had changed in Chile, too, and legal proceedings removed his claim to immunity in key cases; indictments were issued for torture, disappearances and other abuses. Throughout this period, there were calls also to hold Pinochet to account for his economic policy. It was argued that his economic programme had

identifiable and quantifiable justiciable impact “in terms of otherwise avoidable deaths and illnesses”.* Ultimately, although he was charged with over 300 crimes, none of these related to the impact of his economic decisions.* By the time of Pinochet’s death in 2006, another commission had investigated torture during his reign,* a reparation policy was developed for torture victims and many court cases against Pinochet were still ongoing; however, the question of economic rights violations never entered any of these proceedings.

The Pinochet case was pivotal for both political inspiration and the legal precedent for the development of the doctrine of command responsibility, and these developments are to be applauded.* However, it is striking that the impact of Pinochet’s macro-economic policies is not part of Chile’s transitional justice story.* This is especially so as the macro-economic policies and military policies were intertwined in a deeply symbiotic relationship.* Yet, the economic impact has faded from view.

Economic policy is difficult to assimilate into claims about monstrous men or women - unlike killings, disappearance, torture - acts that more easily embody radical evil, to use the language of Immanuel Kant that has gained some traction within the transitional-justice literature.* ... Thus, radical evil and individual responsibility are inextricably intertwined even if accountability mechanisms for the latter are inadequate to capture the monstrosity of the former. Individual responsibility becomes translated in transitional justice as a call for every country to come to terms with its past by holding individuals responsible for the monstrosity which they unleashed and over which they presided. The arrests of Augusto Pinochet, Slobodan Milošević, Charles Taylor, Hisssein Habré/Hissène Habré and Alberto Fujimori are all different markers of this movement in different parts of the globe.

.....Deaths that do not emerge from the barrel of a gun but from socio-economic policies are rendered invisible on the “radical evil” audit – and, concomitantly, the transitional-justice charge sheet. The field is invested in the monster narrative to fuel its normative rationale and its legal doctrines. Abuses that arise from socio-economic policies, analysis of the inter-relationship between abuses that are the results of socio-economic policies and abuses that arise from military policies, systemic responsibilities for these abuses and systemic analysis of the patterns of abuse and their impact are all bracketed off as something outside this arithmetic of justice. Transitional justice knows Pinochet as a monster who tortured and killed, but it does not know the Pinochet who developed budget plans and economic policies that resulted in deaths from typhoid, hepatitis and other preventable illnesses.*

Dominant approaches to criminal accountability make two problematical equivalences – monstrous acts are equated with violent acts, and national historical accountability is equated with individual responsibility. Dictators are pursued on the theory that prosecuting these men allows their countries to confront the atrocities of their history.* But the complex legacies of macro-economic policy are not easily channelled into individual decisions. For instance, advancing accountability in Chile may require that we track responsibility for many levels of policy decisions that prioritised the rescue of “failed banks and large corporations” while de-prioritising expenditure on public-poverty alleviation.* Instead, transitional justice is geared towards the identification and punishment of *specific* perpetrators. As the star perpetrator absorbs all responsibility, other actors are absolved of responsibility and the stage is depopulated. Chile becomes a story primarily of Pinochet and his victims; his partners in economic leadership, be they internal actors (such as the Chilean bankers and the industrialists who supported Pinochet) or external actors (such as the Chicago School and the IMF economists), are pre-emptively acquitted. This is problematical on many counts. It means that many of Pinochet’s victims are overlooked. It also enables the continued power of both those selfsame actors and institutions that share responsibility for the socio-economic devastation of that period. The doctrinal, normative and

institutional architecture of redress can normalise some abuses by focusing exclusively on others. As a result, the effort to settle scores with Pinochet in Chile may have been precisely what diverted attention away from other actors who have also been *both* the protagonists and the beneficiaries of the abuse. Hannah Arendt's analysis of Nazi official/officer Adolf Eichmann is instructive here. Eichmann was the logistics *czar* who oversaw the train system that took millions to their death. In his trial in Israel, he emerged as an ambitious opportunist willing to undertake horrific responsibilities for career success. Arendt argues that it is Eichmann, not Hitler, who exposes the historical truth of the Holocaust; even if Eichmann was not anti-Semitic, as he maintained, even if he did not have the *mens rea* for genocide, he represents the more important, terrible fact that banal, commonplace conformism can enable and implement genoc Mass atrocity requires many actors; actors driven not by monstrous intent but by ambitions and ideologies which insidiously integrate governance and atrocity. In this way, Arendt pushes us towards complex explanations for the complex regimes that have spawned mass atrocity. In contrast, a focus on monstrous acts shifts our gaze away from how the enabling conditions of abuse become institutionalised.

Mahmood Mamdani Amnesty or Impunity?: A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa *Diacritics*, Volume 32, Number 3-4, Fall-Winter (2002) 33-59 (excerpt)

The Truth and Reconciliation Commission of South Africa was the fruit of a political compromise whose terms both made possible the Commission and set the limits within which it would work. These limits, in turn, defined the space available to the Commission to interpret its terms of reference and define its agenda. This paper takes the compromise legislation that set up the TRC as a historical given and focuses attention on the TRC's interpretation of its terms of reference.

.....

A Matter of Definition

Severe Ill-Treatment

The Act defined "gross violations of human rights" as including "the killing, abduction, torture or severe ill-treatment of any person . . ." [TRC 1: 60, ¶42].

Strong pressure was brought on the Commission to include the grossest forms of violations perpetrated through apartheid law under the rubric of "severe ill-treatment." The Report noted the pressure from a strong civil society organization: "The CALS submission argued that the definition of 'severe ill-treatment' should be interpreted to include apartheid abuses such as forced removals, pass law arrests, alienation of land and breaking up of families" [TRC 4: 288, ¶18].

The debate around the interpretation of "severe ill-treatment" is particularly illuminating. It went through several rounds. Each time, the Commission majority endeavored to justify a narrow definition of "victim." Every successive attempt attests to the failure of the previous attempt. At the outset, the Commission majority acknowledged that "the ordinary meaning" of severe ill-treatment "suggests that all those whose rights had been violated during conflicts of the past were covered by this definition and fell, therefore, within the mandate of the Commission." But it still resolved to set this ordinary meaning aside, and restated its original position: that "the focus of its work was not on the effects of laws passed by the apartheid government, nor on general policies of that government or of other organizations, however morally offensive these may be" [TRC 1: 64, ¶55]. But a mere restatement of this narrow definition of the political could not justify the refusal to acknowledge what obviously appeared as instances of "severe ill-treatment." To make it convincing, the Commission majority made three further distinctions—between "bodily integrity rights" and "subsistence rights," between individual and group rights, and, finally, between political and nonpolitical motivations behind each violation—and ruled that only politically motivated violations of bodily integrity (but not subsistence) rights of individuals (but not groups) fell

within its legislative purview. But this too was difficult to maintain consistently in the face of mounting evidence that often showed the irrelevance of these distinctions in the specific context of apartheid.

“Bodily integrity rights” vs. “subsistence rights.”

“Severe ill-treatment,” the Commission acknowledged at the outset, is “cruel, inhuman or degrading treatment” under international law and “ill treatment” under South African law. The Commission then resolved that only “bodily integrity rights” fell within its terms of reference. “Bodily integrity rights” were in turn defined as: “Acts or omissions that deliberately and directly inflict severe mental or physical suffering on a victim” [TRC 1: 80, ¶116].

The distinction between “bodily integrity rights” and “subsistence rights” echoes a familiar distinction in social theory between the realm of the political and that of the economic, that of the state and that of the market, the former the source of oppressive practices that directly deny rights and the latter the source of inequalities that indirectly limit the exercise of rights and thereby diminish the potential of life. But practices such as coerced labor and forced removals could be classified neither as just economic nor as just political; they were both. Where a command economy obtained, the familiar distinction between the political and the economic simply could not illuminate those practices where political power directly intervened in the sphere of economic relations. Like slavery, coerced labor and forced removals required the direct and continued use of force. They could not be dismissed as structural outcomes lacking in agency and therefore not signifying a violation. Rather than an outcome of “the dull compulsion of market forces,” to use a formulation of Marx, these practices were characteristic of extra-economic forms of coercion. Rather than illuminate the divide between the economic and the political, they tended to bridge that divide. The Commission, too, developed doubts about the familiar and rigid distinction between the economic and political, and voiced this in the final volume of its Report. The doubt surfaced when the Commission dealt with “arson” and at first dismissed it as a violation of “subsistence rights” but not “bodily integrity rights.” In time, however, the Commission wondered whether the loss of home and possessions may also not result in displacement and great mental anguish—precisely why arson may be employed for political purposes.

Arson was a frequent allegation, and at first it did not seem to constitute a gross violation in terms of the Act. The more it was discussed, the more it was seen as a deliberate tool used by political groupings to devastate an area and force people to move away, the more it became necessary to consider it seriously. Eventually, a decision was taken: arson would be considered as “severe ill-treatment” if it resulted in the destruction of a person’s dwelling to the extent that the person could no longer live there. The motivation for this decision lay partly in the result—the displacement of the person—and partly in the psychological suffering of a person experiencing the total loss of home and possessions. [TRC 5: 12, ¶53]

In the end, the Commission found it necessary to stretch the meaning of “bodily integrity rights” to include rights over both person and property. Even if belatedly, the Commission came to acknowledge that “the destruction of a person’s house through arson or other attacks” constituted “severe ill-treatment” and qualified as a gross violation [TRC 1: 81, ¶119]. The Commission thus came to distinguish between those who lost a home and those who lost only “cattle or vehicles,” and thus not “their entire livelihood”—acknowledging the former but not the latter as victims of gross violations. But the concession, we shall see, only landed the Commission in deeper contradictions.

Individual vs. Group Rights.

Following the above shift, the Commission went on to compile a list of acts “regarded as constituting severe ill-treatment.” The list included “banning or banishment”; banning referred to “the restriction of a person by house arrest,” banishment to “the enforced transfer of a person from one area to another” [TRC 1: 81, ¶119]. The list gives rise to more questions than it settles. Why was the “enforced transfer of a person from one area to another” a violation of a right over one’s person, but not the migrant labor system, which involved both coerced movement and coerced labor? If “the destruction of a person’s house through arson or other attacks” was a gross violation of a right, then why not a similar destruction through bulldozing, a practice

characteristic of forced removals? Could it be that the former involved identified individuals, whereas the latter usually involved the implementation of state policy by unidentified individuals or groups?

In a discussion on why it decided to close the list of victims toward the end of its deliberations, the Commission gave a pragmatic reason: “it became increasingly clear that there would be no value in simply handing the government a list which included a broad category of unidentified persons for consideration as victims deserving of reparations” [TRC 1: 86, ¶134]. The Commission “resolved, therefore, to confine the number of victims eligible for reparations to three areas.” These included “victims who personally made statements to the Commission,” “victims named in a statement by a relative or other interested person,” and “victims identified through the amnesty process” [TRC 1: 86, ¶136]. The result was a list of individuals, with no reference to groups. But if the violence of apartheid targeted groups more than specific individuals, it would not be surprising if most victims of apartheid turned out to be unidentified individuals. This, in turn, would be an argument for giving reparations to communities rather than individuals.

Political vs. Nonpolitical Motives.

It is the Commission’s narrow interpretation of “political motive” which decisively ruled out gross violations of rights suffered by ordinary people, and limited the Commission’s concern to gross violations that occurred in the course of the political conflict between state agents and political activists. We have seen that the Commission was willing to stretch its early emphasis on “bodily integrity rights” to include the violation of property rights. In rare instances, it was even willing to put aside its determination to focus exclusively on the violation of rights of individuals to include injury to groups.

One such rare instance was its finding on the Seven Day War in Natal and Kwazulu: The Commission finds that from 25–31 March 1990, the communities in the lower Vulindlela and Edendale valleys, south of Pietermaritzburg, were subjected to an armed invasion by thousands of unknown Inkatha supporters, and that during this week over 200 residents of these areas were killed, hundreds of homes looted and burnt down and as many as 20,000 people were forced to flee from their homes. These acts constitute gross human rights violations, and unknown members of Inkatha are held accountable. . . . [TRC 3: 267, ¶292]

Yet, if the final list of victims acknowledged and published by the Commission for its entire mandate was 20,000+, it is doubtful that these victims of a single event—numbering “as many as 20,000 people”—found their way onto the list of acknowledged victims entitled to reparations. In other words, “unknown members of Inkatha” were held accountable as perpetrators, but their victims —“as many as 20,000 people” who “were forced to flee from their homes”—were not acknowledged. Had they been, the community would have been entitled to reparations.

The Commission was only loosely bound by the legislation that created it. Reflecting on its willingness to stretch otherwise rigid qualifications, the Commission recognized that it was indeed not tightly bound by legislation: “the Act did not provide clear guidelines for the interpretation of the definition of ‘gross violations of human rights.’” This was no less than an admission that it had considerable latitude in interpreting terms, such as defining the meaning of “victim.” When it made use of this latitude, the Commission argued that “the underlying objective of the legislators was to make it possible for the Commission to recognize and acknowledge as many people as possible as victims of the past political conflict,” claiming that “this objective, in turn, was central to the Commission’s overall task to promote national unity and reconciliation.” The seven page deliberation on “defining gross violations of human rights” ended with the claim that “the Commission made a conscious decision to err on the side of inclusivity” [TRC 1: 70–71, 78]. But the commitment to being inclusive is precisely what the Commission set aside when it defined its terms of reference to exclude the project of apartheid, determined that the project itself should not be defined as political. As a result, it turned a blind eye to gross violations that occurred in the course of the implementation of apartheid.

Kirstian Lasslet, *The Fog of Peace: Post-Conflict Environments as Sites of Impunity, Denial and Dispossession*, *Open Democracy*, December 2014 (excerpts)

Too often the sterile, objective needs of capital, for a range of reasons, take precedence over the subjective needs of traumatised, conflict-affected peoples.

Peacebuilding in the aftermath of armed conflict is an intricate process designed to heal broken bonds and create a shared social fabric that can support a future free of violence. Best practice places a premium on grassroots participation, and ‘bottom-up’ reconciliation, out of which percolates a sustainable peace driven by the people, rather than political elites and technocrats. Yet peacebuilding can also be a formidable framework for neutralising social contention, marginalising dissent, denying justice, rebuilding or preserving structural inequalities, and enacting new forms of dispossession, under the powerful garb of sealing a lasting peace.

Nowhere is the complex, contested, and contradictory nature of peacebuilding more apparent than on the Melanesian island of Bougainville, which sits on the easternmost border of Papua New Guinea. For most of the 1990s it was embroiled in a bitter war that pitted Papua New Guinea Defence Force (PNGDF) troops against Bougainville Revolutionary Army (BRA) guerrillas.

The Bougainville conflict

The hostilities were triggered by a major copper and gold mine owned by British-Australian mining giant Rio Tinto, and operated by its Papua New Guinea subsidiary, Bougainville Copper Limited (BCL). The mine was emblematic of a contested process of social change on Bougainville that had eroded biocultural diversity and community cohesion in a part of the world where both are revered. Out of increasingly bitter intra-community tensions, and hostility towards foreign exploitation, emerged a radical anti-capitalist movement that sought to preserve Melanesian communitarian and ecological values in the face of the dissolving effect of global market forces. The expropriation of Rio Tinto, and then secession, would become the preferred avenue for achieving these ends.

However, before Bougainville could recalibrate its position within the global economy, the revolutionary currents within the BRA – the force also had more ‘moderate’ strains – would need to defeat the PNGDF, who were armed and advised by the Australian Defence Force (ADF), and logistically supported by BCL. They also faced internal resistance from domestic factions on Bougainville who had benefited from the commercialisation of the rural economy and the extractive industries.

Out of this contested situation a brutal war developed that left between 10,000 and 20,000 people dead. No party to the hostilities can maintain the high moral ground, but the violence employed by the PNGDF, with ADF and corporate backing, was particularly devastating. Thousands were displaced by offensive operations which saw villages indiscriminately levelled. Equally indiscriminate was the violence against civilians: torture and extra-judicial killings were commonplace, so was rape.

None of this could have occurred without the Australian government [underwriting the PNGDF onslaught](#). They plied pressure on the government to ratchet up its counterinsurgency, and then supplied the means to wage war on a largely civilian population. Equally BCL [played its role](#); the company provided the PNGDF with trucks, fuel, accommodation, messing and medical facilities, storage space, communications equipment and secretarial services.

The war would continue until 1997 when a ceasefire was reached. This paved the way for a permanent peace agreement signed in 2001. The latter grants Bougainville special autonomy status, and a referendum over independence that will take place within the next five years.

Peace and denial

Since 1997 an intricate peacebuilding process has taken place. To that end, considerable headway has been made with respect to local reconciliation, and the establishment of an Autonomous Bougainville Government with significant devolved powers. These are important milestones and have rightly been celebrated. However, certain lacunas remain. For example, there has not been any form of redress for the crimes committed by state and corporate actors. Also, much more needs to be done with respect to acknowledging conflict legacies (good and bad), analysing the structural processes which prompted the hostilities, and recording/commemorating the memories of those who endured the violent upheavals of war. Indeed, some of these more contentious processes have been actively suspended or side-lined in the name of securing the peace. A demonstrative example is the Bougainvillean [class action](#) launched against Rio Tinto in 2001 employing the US, Alien Tort Statute. While the action was not without problems, it represented the first innovative attempt by victims to seek reparations from Rio Tinto, albeit using a rather obscure foreign statute. The British and Australian governments bitterly protested the action.

In a [stark warning](#) to the US State Department, Australia's Department of Foreign Affairs and Trade (DFAT) underlined the fragility of Bougainville's peace. The class action, it argued, 'would be an unsettling and destabilising event in circumstances where the need for stability and certainty on the island is paramount'.

Then in the worst neo-colonial tradition, where paternalistic officials presume to know what is best for people over whom they have no rightful mandate, DFAT's First Secretary claimed, 'if the peace process were to be disrupted by this court case the welfare of the people on the island would suffer'.

Britain was more candid in its motivations for opposing the class action. In [government records](#) recently uncovered by the Corporate Responsibility Coalition, the Foreign and Commonwealth Office (FCO) acknowledged the impact their opposition to the Bougainvillean action would have: 'It could also be interpreted as cutting across our stated ambition to challenge impunity and to help deliver justice to victims of the most serious of international crimes'.

But compelling factors outweighed these concerns: 'Extraterritorial jurisdiction is a problem for business, particularly in the US courts which have power to make very high damages awards. [redacted] Supporting Rio Tinto in this case (and more generally the interests of UK business as a whole) is consistent with the FCO's commitments under our Charter for Business'.

The class action was indeed snuffed out in 2013 on jurisdictional grounds, as the FCO and DFAT had hoped.

Contesting post-conflict reconstruction

But it is not merely the haughty application of imperial power that is impeding a thoroughgoing process of healing and reflection. The Autonomous Bougainville Government's (ABG) ambition to rebuild a market-economy on Bougainville has also had an unexpected constraining effect. To that end, Dr John Momis, the ABG President, has consistently argued that only by reinvigorating the extractive industries on Bougainville can peace and independence be secured. He has received auxiliary support for this initiative from the Australian government and the World Bank. Momis contends that 'the ABG supports re-opening Panguna', because he claims, 'we see that as the most realistic way of contributing to broad-based economic growth, and generating the ABG revenues required to meet the needs of our people'. It is also his argument that landowners from the Panguna region welcome the return of BCL as the preferred operator: 'Leaders of the landowners from the mine lease areas have consistently indicated that they prefer to deal with BCL rather than a new potential operator. They talk of preferring the "devil they know, and not a new devil"'.

However, a more contested narrative has emerged in a [recent report](#) published by Jubilee Australia in collaboration with the International State Crime Initiative and Papua New Guinea NGO, the Bismarck Ramu Group. Based on 82 accounts provided by a cross-section of society in the mine affected area, participants talk of a modern history punctuated by the marginalisation, dispossession and immiseration of landowning communities. The war in this sense was the sharpest expression of a much broader social current that has threatened their ways of life and sovereignty. Participants also expressed a deep fear that this process will continue, but this time at the hands of the autonomous government.

Bougainville's President was [affronted by the testimony](#) and took the unusual step of [reporting Jubilee Australia](#) to the Australian High Commission. To date he has [labelled](#) the report 'deeply racist' and 'divisive'. Indeed, over the course of numerous media interventions and three letters that stretch to 26 pages in length, the President catalogues a range of grievances. Most significantly he accuses Jubilee Australia of harming the peace process, '[undermining the authority](#)' of his 'fledgling government', and dividing communities. The President has demanded Jubilee formally apologise and retract the report.

Dr Momis adopted a similar line in 2013 when a UN Gender Violence Survey raised concerns over heightened interpersonal violence against women. Here again the authors were [accused of racism and an apology](#) was demanded.

Post-conflict reconstruction and transformative justice

Bougainville has reached a challenging phase in the transitional process. Despite the considerable achievements made with respect to local reconciliation, modest efforts designed to confront impunity, reflect on the past, and raise sensitive legacy issues, are still being framed by certain organisational actors as deeply incendiary acts that could unravel the peace. None of which is to impute *mala fides* to the latter actors, indeed the above criticisms should be seen as the genuine concerns of a government and its allies, in dealing with a challenging post-conflict environment. Nevertheless, it is important to acknowledge the constraining effects which international political economic currents have on those managing the transitional process. For governments of small, resource-rich island states in search of an expanded revenue base, there is an orthodox tendency to court those industries which hold the prospect of commanding large flows of capital – with commensurate profits – from which a relatively sizable volume of taxation can be subtracted.

With that in mind, the ABG and its international advisers, have strongly argued that the extractive industries hold out the best hope of attracting large injections of capital, from which revenues can be garnered to help strengthen the ABG, stimulate rural industries, and quench popular desires for a post-conflict dividend. This is not the place to reflect on the latter economic model, the critical point is, as a result of these calculations, a premium has been placed on local reconciliation efforts as a buttress for stability, in addition to programmes that help build government capacity, including the management of the extractive industries.

On the other hand, peace-making processes that confront state-corporate impunity, register enduring legacy issues, and critically reflect on the past and its structural dynamics – all of which might prove more uncomfortable for state-corporate actors, especially those instrumentally involved in Bougainville's extractive industries – are [being dismissed](#) as the remit of divisive hardliners, or worse still the naïve offerings of foreign anti-mining activists. This marginalisation of certain peacemaking currents, it would seem, is prompted by a genuine belief on the part of certain actors that these types of critical interventions will seriously deter investors, and quash Bougainville's most viable chance for achieving an independent, sustainable future.

In effect, what we are confronting here is a constraining force that emerges in post-conflict environments when critical spokes in the peacemaking process, namely post-conflict reconstruction and transformative justice, come into confrontation. This confrontation, where the former is often the frequent victor, cannot be blamed on any one organisational actor. Rather, it must be seen as an articulation of broader contradictions in the political economic currents which frame transition, wherein the sterile, objective needs of capital, for a range of reasons, take precedence over the subjective needs of traumatised, conflict-affected peoples.

Yet this begs the question, what does peace mean if it entails rebuilding the very structural dynamics that prompted conflict (including the dispossession of landowners), and silencing forms of civil society resistance that have the potential to avoid contention from taking an armed form?

This question is not for Bougainville alone to wrestle with. It is a dynamic that goads many post-conflict societies, who are facing the bleak reality of the structural dynamics that so many sacrificed so much to transform; except that now to question these dynamics is to become labelled an opponent of peace and progress, on occasion by the very actors that were instrumental in overseeing brutal state violence.

It is important, therefore, that transitional environments are recognised as the critical sites of contention that they are, despite the frequent appeals to unity of purpose. And that within this contested environment deeply unequal distributions of power exist – even where ‘bottom up’ practice is hotly championed – that can trigger new cycles of dispossession and marginalisation under the delusive garb of peacebuilding, security and ‘moving on’.

Elizabeth Bernstein, *Brokered Subjects: Sex, Trafficking and the Politics of Freedom*, (The University of Chicago Press, 2018) pp. 107-119 (excerpts)

(107) Although the sale of sexual services is currently illegal in Thailand, the Thai government does little to curb the existence of businesses that cater to sex tourists.³¹ In fact, the government has historically supported sex tourism because of its military and economic positioning in the area.

(109) Preconditioned by anti-trafficking NGOs and popular representations of human trafficking, reality tourists interpret commercial sex as a deplorable symptom of third-world poverty and regard sex workers as victims-by- definition who lack meaningful voice and agency. The erotically charged images of anti-trafficking campaigns and the reality tourists’ desires to save worthy victims ironically mirror the humanitarian impulses that inflect some forms of sex tourism—revealing a neocolonial formation that includes not only secular and evangelical activists but also those clients of sex workers who also endeavor to “help.

Anti-Trafficking Tourism as Humanitarian Endeavor

Previous chapters have pointed to the various ways in which moral agendas around sex work have become intricately interwoven with contemporary anti-trafficking campaigns. They have also described anti-trafficking activists’ frequent equation of even adult and voluntary forms of prostitution with “sex trafficking,” and the tendency among activists (including when their focus is expanded to include forms of trafficking into other labor sectors) to single out sex trafficking as the most devastating case. As commentators such as legal scholar Jennifer Chacón have (110) noted, “trafficking” as defined in current federal law and in international protocols could conceivably encompass sweatshop labor, agricultural work, or even corporate crime, but it has been the far less common instances of sexually trafficked women and girls that have stimulated the most concern by evangelical Christians, prominent feminist activists, and the press.⁴¹

The tour operators on our trip frequently reproduced such assumptions and elisions, as did the promotional materials for the tour. For instance, the photo that advertises the Thailand tour in Global Exchange’s promotional materials invokes the simultaneous moral and erotic allure of the enigmatic industry. It depicts an interracial couple embracing in a public balcony ensconced in bright red light. The blurry image, never explicit in its caption of what viewers are actually witnessing, suggests a clandestine peek into what is referred to in the accompanying text as a photographic representation of “the global sex trade.”

The photo foregrounds the “redlight district” as evidence of the realities of human trafficking, despite the fact that brothel-style sex establishments such as the one depicted have all but disappeared from Thailand due to the aforementioned combination of changing local market economies, public health concerns around controlling HIV/AIDS, and recent legislation around prostitution.⁴² Furthermore, the district that the photo is meant to portray would likely include a diverse range of beer bars, go-Go bars, massage parlors, and karaoke bars, all distinct types of commercial establishments that employ sex workers to provide various forms of entertainment. Reality tourists are thus not encouraged to see the vast array of possible labor arrangements and power relations that encompass commercial sex work, or the particular political and economic factors that make the situation of the Thai sex industry unique.

(p.111) Both the tour leaders and the participants on our reality tour shared the conviction that commercial sex and human trafficking cannot be easily distinguished, a fact that became clear during the initial round of group introductions. During our first dinner together, over a table of Thai tourist staples like pad thai and Singha beer, the tour leaders asked participants to introduce themselves and to briefly explain their interest in the anti-trafficking tour. Several of the young women named popular movies on both sex work and sex trafficking, like *Born into Brothels* and *Taken*, as their primary motivation for joining the tour.⁴³ As one master’s degree student from a university in central California eagerly shared: “We watched *Born into Brothels* in one of my

classes and that just opened the door for me.” The deeply felt significance of this film was shared by a journalist from Atlanta, who echoed: “I am very passionate about ending human trafficking. *Born into Brothels* was also the film that really introduced me to the sex trade.” Other participants attributed their interest in the issue to the 2004 Hollywood film *Taken*, which tells the story of an American teenager who is kidnapped on a vacation to Paris and nearly forced to become a sex worker before she is rescued. Reflecting on them as a “wake-up call” as to how pervasive global sex trafficking has become, another female tourist noted that movies like *Taken* alerted her to “just how real” the problem of human trafficking was.

The grounding of knowledge claims in sensationalist films about sex trafficking had thus shaped tourists’ visions of “reality” and led them to broadly define all sex work as human trafficking before they had even left US soil. Consistent with the findings of other studies of humanitarian travel, the reality tour that travelers embarked on in Thailand did nothing to disabuse them of preexisting feelings and beliefs. In her study of Canadian aid workers, Barbara Heron emphasizes the important role played by Western media in the process of “othering” Global South nations, and the ways in which it “normalizes our centering of ourselves in relation to other people’s needs.”⁴⁴ In her ethnographic research on volunteer tourism in Guatemala and Ghana, Wanda Vrasti similarly found that tourists had established certain expectations of travel prior to departure, including levels of poverty that deem a tourist destination (p. 112) worthy of aid, and a gracious and welcoming recipient population in the host country.

(115) One day of our anti-trafficking reality tour was subcontracted to the Mirror Art Foundation, which agreed to provide us with an ecotour of the region, including an elephant ride, dinner, and participation in a dance (116) performance in an ethnic minority village. Our group was driven down a bumpy, unpaved road located about twenty minutes from the nearest highway and deposited at the foot of a local Akha community. One of six indigenous hill-tribe populations in Thailand, the Akha are based in rural mountainous areas in the north, and many Akha persons continue to be without Thai citizenship and thus ineligible for land, services, or social protection under the law. Traditionally practitioners of subsistence farming, Akha communities now engage in cash cropping for sale, and increasingly participate in the tourist economy by hosting ecotours and producing ethnic handicrafts.⁵⁵

As we disembarked from our van, half a dozen Akha women stood waiting at the entrance to the village, adorned in colorfully woven headpieces and dresses, unveiling baskets full of handicraft items for sale. After completing their purchases, our group was ushered to sit in a giant circle of chairs where we were given the opportunity to direct questions to a person described as the village leader. Eager to have this opportunity, a social worker from Boston asked earnestly: “Have you had any cases of human trafficking here?” Through a translator provided by the Mirror Art Foundation, the Akha village leader told us he had never heard of the term “human trafficking,” and after some clarification of the terminology, he told the group that this was not a key problem in the village. Disregarding his response, other reality tourists persisted with similar lines of questioning: “What about migration? Do people from this village leave to work?” The village leader once again said that this wasn’t their primary problem.

As the discussion circle disbanded and we headed to a meal that had been prepared for us (described by tour guides as a “typical” Akha dinner of seasoned pork, stewed vegetables, and rice spread elaborately across a bed of banana leaves), tour participants huddled together and agreed that the village leader must have been lying. They easily dismissed the village leader’s claim that in lieu of human trafficking, the more pressing issues of concern were securing Thai citizenship for ethnic hill-tribe populations and the aggressive infringement of land by corporations and the Thai government.⁵⁶ While they appreciated the Akha village’s food, handicrafts, and costumes as an “authentic glimpse” into hill-tribe life, they quickly dismissed as fabricated the village leader’s claim that his village was not particularly vulnerable to human trafficking. Just as Vrasti found in her study of volunteer tourism, the cultural authenticity of the tourist experience and the validity of insider claims were called into question only when they violated tourists’ preexisting notions of social realities.⁵⁷ Significantly, the tourists ignored the most “authentic” (117) voice they had heard so far—that of the Akha village leader himself—because it did not conform to the understandings of human trafficking that they already harbored, accounts that had been confirmed for them by the Mirror Art Foundation’s “experts.”

Selling Sex and Trafficking: Conflations and Contestations

In contrast to the Akha village leader who claimed that human trafficking was not as relevant as were concerns about citizenship and land rights—issues that were never otherwise addressed during the tour—the reality tour’s insistence on the pernicious and pervasive nature of human trafficking was explicitly asserted during our visit to the Labor Rights Promotion Network in Bangkok, an organization that focuses on the labor rights of migrant workers in the Thai fishing industry. Founded in 2004, LRPN was one of the earliest advocates and service providers for victims of labor trafficking in deep-sea fishing and the shrimp-peeling industries.⁵⁸ Alongside the growth of global anti-trafficking campaigns, LRPN has received a significant amount of international attention for (118) addressing the problems of severe labor exploitation in the Thai fishing industry. LRPN has also received a steady stream of funding to pursue research, advocacy, and direct interventions in human trafficking.

During our visit to the organization, we huddled around a large table in the organization’s meeting room while LRPN’s director of human trafficking programs described the basic parameters of three recent trafficking cases that they had worked on: a labor trafficking case, a case of trafficking for domestic servitude, and a case of sex trafficking. When describing the sex-trafficking case, LRPN pulled up photographs of a raid that they had conducted in collaboration with the Thai Department of Special Investigations, one of the government anti-trafficking agencies.

The majority of photographs focused on the special team that had been assembled to deal with the case: a large group of first responders including cameramen, note takers, social workers, and police agents converging on a room where several sex workers lived. One grainy photo that briefly flashed on the screen depicted eight women sitting in a simple living room adorned with only heavily worn furniture. The presenter explained that the squalid living conditions in this home represented a clear indication of human trafficking. Aside from the brief and occluded glimpse into what appeared to be merely a room full of Asian women, the presenter never indicated to us why this case was considered a case of trafficking under current Thai law.⁵⁹

Puzzled by the still-unspecified particulars of the alleged sex-trafficking case, we queried the LRPN representative further, hoping to get a better sense of how the organization identified trafficking cases and how they distinguished consensual from coerced forms of sexual labor. Frustrated by our persistent questioning, one reality tour participant shook her head grimly and whispered to her neighbor: “Why don’t they believe that it’s trafficking? Did you see the conditions they were living in?” Like the other tour participants, she was already schooled in the cinematic language of what the medical anthropologist Carole Vance has termed “melomentary,” a cinematic genre in which “the horror of sex is amplified by the horror of poverty.” In melomentaries, Vance notes, the camera visually attributes “residential crowding, lack of clean water, TB, poor hygiene, disease, and living on the street specifically to brothels, prostitution, and sex trafficking, rather than to the more general and widespread living conditions of impoverished people.”⁶⁰ Fluent in the cinematic languages of melomentary that Vance describes, the tour participants required no proof of human trafficking beyond the photos of the dimly lit and crowded living conditions in a brothel located in one of the poorer sections.

(119) In fact, we were soon to discover that the actual case turned out to be significantly more complicated than initially presented. When we interviewed the LRPN presenter on our own following the larger group meeting, we learned that the case concerned a group of migrant Laotian sex workers, many of whom, LRPN admitted, were working willingly. Given that they were undocumented, the police raid that was done in the name of “combating human trafficking” left the majority of workers facing deportation. Meanwhile, those workers who were under the age of eighteen were automatically classified as “victims of trafficking,” because as minors, they legally did not have the right to choose to be sex workers. This latter group was taken to government shelters, where they would be held (with or without their consent, it was not clear) until the legal proceedings against their brothel owners were completed.

Through our own supplementary research with local sex worker organizations and activists, we would also later learn that many sex workers find such protectionist interventions to be even worse than jail or deportation because the “sentences” are indefinite, and because once they are deemed to be “victims of trafficking,” apprehended sex workers are subject to a number of gender-specific forms of discipline and control. The Empower Foundation has

identified a number of common anti-trafficking practices which are justified by the state in the name of providing protection but are often experienced by sex workers as intrusive and discriminatory, including compulsory medical testing.⁶¹

Chuang J. (2010). Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-trafficking Law and Policy. *University of Pennsylvania Law Review*, 158, pp. 1655-1728. Excerpts from 1657-1658, 1694, 1702-1704, 1712, 1718, 1727.

U.S. law and policy have fueled controversy over anti-trafficking strategies, both at home and abroad. In 2000, the United States led negotiations over a new international law on trafficking, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the U.N. Trafficking Protocol). At the same time, the United States enacted a comprehensive domestic law on trafficking, the Trafficking Victims Protection Act. Both instruments define trafficking as the movement or recruitment of men, women, or children, using force, fraud, or coercion, for the purpose of subjecting them to involuntary servitude or slavery in one or more of a wide variety of sectors (for example, agriculture, construction, or commercial a concerted effort to move away from traditional perspectives that narrowly defined trafficking as the movement or recruitment of women or girls into the sex sector and toward a broader understanding of the problem as also involving the exploitation of women, men, and children in non-sex sectors.

Although trafficking into non-sex sectors arguably accounts for the larger proportion of trafficking activity, anti-trafficking laws and policies — both within the United States and abroad — have nonetheless remained focused on sex-sector trafficking and prostitution. This focus reflects the potent influence of prostitution-reform debates on the anti-trafficking movement. Those debates have embroiled anti-trafficking advocates and policymakers in a struggle over whether prostitution is inherently coercive, and therefore a form of trafficking, or whether the trafficking label should be applied only to instances of forced prostitution. The Bush Administration adopted the former position, marking the increasing influence of the “neo-abolitionists” — an unlikely alliance of feminists, conservatives, and evangelical Christians who have used the anti-trafficking movement to pursue abolition of prostitution around the globe.

... Through two discursive moves, this narrative redefines the putative victim population as linked to the sex sector—first, by focusing attention on sex-sector trafficking to the exclusion of non-sex-sector trafficking, and second, by conflating trafficking with prostitution. While in some sense all narratives are reductive, these particular discursive moves have set in motion a set of negative (however unintended) consequences. The reductive trafficking narrative oversimplifies the problem of trafficking from a complex human rights problem rooted in the failure of migration and labor frameworks to respond to globalizing trends, to a moral problem and crime of sexual violence against women and girls best addressed through an aggressive criminal justice response. In so doing, the narrative circumscribes the range and content of anti-trafficking interventions proffered, feeding states’ preference for aggressive criminal justice responses. It overlooks, if not discounts, the need for better migration and labor frameworks or socioeconomic policies to counter the negative effects of globalizing trends that drive people to undertake risky migration projects in the first instance.

(p. 1702) Thus construed, trafficking is no longer the product of the disparities of wealth created by globalization, gendered labor markets, or inadequate migration frameworks, but rather the result of the sexual (p. 1703) proclivities of deviant individuals. The logic of this representation suggests that to resolve the problem of trafficking, women should be rescued or deported back home, or prevented from traveling in the first place, and that governments should pass and aggressively enforce laws to punish these deviant elements...

Capitalizing on the “recycled” “tropes” of “violated femininity, shattered innocence, and the victimization of ‘women and children,’” the neo-abolitionist campaign promotes, in Bernstein’s terms, a “militarized humanitarianism and carceral feminism” in its pursuit of social remedies. The neo-abolitionist approach thus feeds a border-protection and crime-control agenda by framing trafficking as a humanitarian issue that the “privileged” can combat by supporting efforts to rescue and restore victims and punish the depraved individuals who perpetrate the abuse... Notwithstanding multiple reports of failed rescues—where surprisingly high percentages of involuntarily “rescued” women escaped the shelters in order to return to the brothels—the “rescue and restore” model has been enthusiastically embraced by faith-based and anti-prostitution feminist organizations alike, and lauded and generously funded by the U.S. government...

.... The source of the harm thus lies not in institutions of corporate capitalism and the state but in “individual, deviant men: foreign brown men . . . or even more remarkably, African American men living in the inner city,” against whom the full power of law enforcement and criminal law must be brought to bear. Indeed, the “root cause” of much of the suffering in the developing world is not “hunger, homelessness, lack of education or disease” but “the failure of the criminal justice system to protect the poor from violence.”

It is in this sense that neo-abolitionist constructions of the problem of trafficking hinder development of long-term strategies for combating trafficking. Assuming away agency on the part of female migrants obviates critical examination of the ways in which women turn to informal migration avenues and to the informal economy for work (including the sex sector). This, in turn, results in a fundamental failure to understand how restrictions on female migration, especially for semiskilled or unskilled workers, actually make offers by third parties to facilitate their clandestine migration all the more attractive, thus increasing vulnerability to trafficking.

Regrettably, the savior mentality avoids nuance in its quest for salvation and leaves little room for self-doubt. The fact that pursuing such raids brings in millions of dollars in federal funding, that shelters have a financial incentive to stay full (to justify their funding), and that governments rely on shelters as evidence of their efforts to combat trafficking (in response to the threat of U.S. anti-trafficking sanctions), adds to the disincentives for critical self-assessment.

..... [D]emand for trafficked persons is not simply about satiating sexual appetites or taking advantage of cheap migrant labor but deeply entwined with the trafficked person’s identity as a migrant “other.” The vulnerability and lack of choice that result from their migrant (and possibly foreign and undocumented) status foster the perception, if not the reality, that they are more “flexible” and “cooperative” with respect to poorer working conditions and more vulnerable to “molding” to the requirements of job. Moreover, their racial “otherness” makes it easier to “dress up a relation of exploitation as one of paternalism/maternalism” toward the impoverished “other.”

UNODC. (25 Nov. 2009). Human Trafficking Fuels Violence Against Women. Available at: <https://www.unodc.org/unodc/en/frontpage/2009/November/human-trafficking-fuels-violence-against-women.html>

As the world marks the International Day for the Elimination of Violence against Women, UNODC is drawing attention to how human trafficking fuels violence against women.

In its *Global Report on Trafficking in Persons* UNODC revealed that two thirds of the identified victims of trafficking were women.

In his message for the day, Secretary-General Ban Ki-moon stressed that whether the crime against women is rape, domestic violence, genital mutilation or trafficking for sexual exploitation, it is inexcusable and must be stopped.

Human trafficking is, indeed, one of the worst forms of violence against women and girls. Traffickers may use violence to intimidate and subdue the victims. Once recruited, the women usually find themselves in situations with severely curtailed freedoms. Many times they suffer extreme physical and mental abuse, including through rape, imprisonment, forced abortions and physical brutality at the hands of their so-called "owners". The victims become isolated, losing ties with their former lives and families.

With a better understanding of why women in particular are vulnerable to trafficking and how traffickers operate, and by providing the necessary legal and technical assistance to ensure that effective countermeasures are in place, this crime can be stopped.

Violence against women does not only concern women. It concerns everyone, and the work to combat it must be done by all. Women around the world are the linchpin keeping families, communities and nations together. Eliminating gender discrimination and gender-based violence will enhance the dignity and human rights of women and girls and help prevent their being trafficked.

Addressing human trafficking cuts across all fundamental issues. It is about human rights, peace and security, development and family health. In the most basic sense, it is about preserving the fabric of society. We all have a role to play, either in raising awareness, building partnerships, providing information, protecting victims or bringing the criminals to justice.

In 2008, Secretary-General Ban launched the UNiTE to End Violence against Women campaign, which aims to prevent and eliminate violence against women and girls in all parts of the world. UNiTE calls on Governments, civil society, women's organizations, young people, the private sector, the media and the entire United Nations system to join forces in addressing the global pandemic of violence against women and girls. This year, as part of the UNiTE campaign, the Secretary-General started the UNiTE Network of Men Leaders to End Violence against Women. The Network consists of men - young and old - who have pledged to work to end violence against women and girls. These men will add their voices to the growing global chorus for action, and each has pledged to take concrete steps in his community of influence and create partnerships with women to end this violence.

ASEAN Convention Against Trafficking in Persons, Especially Women and Children. (2015). Articles 2(a), 2(b), 2(c), 5. Available at: <http://www.asean.org/wp-content/uploads/2015/12/ACTIP.pdf> [Accessed 7 Nov. 2016].

Article 2: Use of Terms

For the purposes of this Convention:

- a. "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. 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;
- b. The consent of a victim of trafficking in persons to the intended exploitation set forth in Paragraph (a) of this Article shall be irrelevant where any of the means set forth in Paragraph (a) have been used;
- c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in Paragraph (a) of this Article;

* * *

Article 5: Criminalisation of Trafficking in Persons

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 2 of this Convention, when committed intentionally.
2. Each Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - a. Subject to the basic concepts of its legal systems, attempting to commit an offence established in accordance with Paragraph 1 of this Article;
 - b. Participating as an accomplice in an offence established in accordance with Paragraph 1 of this Article;
 - c. Organising or directing other persons to commit an offence established in accordance with Paragraph 1 of this Article.
3. Each Party shall adopt such legislative or other measures as may be appropriate so that offenders are liable to higher penalties than usual if any of the following aggravating circumstances are present:
 - a. Where the offence involves serious injury or death of the victim or another person, including death as a result of suicide;
 - b. Where the offence involves a victim who is particularly vulnerable.....;
 - c. Where the offence exposed the victim to a life-threatening illness, including HIV/AIDS;
 - d. Where the offence involves more than one victim;
 - e. Where the crime was committed as part of the activity of an organised criminal group;...
 - g. Where the offence was committed by a public official in the performance of his or her public duties.