Conclusion

Nothing is more misleading than the ambiguity of the word 'freedom' in labour relations.

—Otto Kahn-Freund, *Labour and the Law*

Freedom and its antithesis are both legal-juridical and social and ideological categories, categories fundamentally informed though ideologies of nationalism, racism, and sexism. It is these every day or 'banal' forms of discrimination that organize the legitimacy for their legal coercive consequences.

—Nandita Sharma, *Home Rule*

The 'discovery' in the twentieth-first century that an estimated 50 million people are modern slaves, and that 27.6 million are engaged in forced labour, raises troubling questions about the relationship between global capitalism and unfree labour.[1] The critical political economist Nicola Phillips helpfully identifies two broad and competing explanatory approaches to understanding the persistence of unfree labour in capitalism, which she refers to as residualist and relational.[2] These contrasting approaches inform debates about how best to characterise the problem of unfree labour and the range of different strategies to eradicate it.[3]

The residualist approach sees the persistence of unfree labour as a pre-capitalist remnant rooted in market failure, political corruption, or a failure of democracy. Leading international financial institutions such as the World Bank and key antislavery charities such as the Walk Free Foundation (the

[1] ILO and Walk Free Foundation, *Global Estimates of Modern Slavery*, 2022.
[2] Phillips, 'Unfree labour and adverse incorporation'.
[3] Mezzadri, *The Sweatshop Regime*; Plant, 'Combatting trafficking for labour exploitation in the global economy'; and McGrath and Watson, 'Anti-slavery as development'.

subject of Chapter 2) have adopted this approach and endorsed expanding and deepening markets, thereby incorporating people into free wage labour. Key researchers in the global antislavery governance network have analysed data on the prevalence of slavery and various measures of economic and political globalisation in more than sixty countries to determine whether there is a 'dark side to globalisation'.[4] They found that the prevalence of slavery is lower in wealthier and more globalised countries that have high levels of democracy. On this reading, they claim that it is too early to lay the blame for modern slavery at the feet of globalisation. Indeed, they hypothesise that since tradeable goods are increasingly subject to international scrutiny, globalisation should reduce modern slavery.[5] For residualists, globalised capitalism, properly managed temporary-labour migration programmes, and transnational supply chains are the solution to, and not a cause of, modern slavery. Slavery is cast as a problem that arises outside of the market and then infiltrates it.[6]

By contrast, the relational approach views the persistence of unfree labour as the adverse incorporation into capitalist relations. Here, the focus is on power relations and the terms of incorporation of so many of the world's poor into exploitative and precarious work with few possibilities for accumulation and the achievement of security.[7] On this reading, corporate concentration, outsourcing, and temporary migrant labour are seen as contributing to unfree labour in global production and labour chains and as crucial features of economic accumulation across the global economy. Research in this vein has found that unfree labour does not, as is commonly assumed, occur solely in local, small-scale, or domestic markets but instead persists within global economic activity and is incorporated within global supply chains.[8]

This book reveals that questions about the relationship between global capitalism and unfree labour percolate just beneath the surface of the antislavery governance network. It argues that transnational modern slavery laws are an attempt to shore up the fading legitimacy of global neoliberal capitalism – an economic, political, and social project that promotes profitability and accumulation as *the* measures of economic and social activities, which are

[4] Landman and Silverman, 'Globalization and modern slavery', 285. Todd Landman is the Rights Lab research director at the University of Nottingham, and Bernard Silverman was the UK's head statistician who came up with the UK's estimates of modern slavery.

[5] Ibid. However, they note that their data is very general and not broken down by sector or by tradeable goods.

[6] McGrath and Watson, 'Anti-slavery as development'.

[7] Phillips, 'Unfree labour and adverse incorporation', 172.

[8] Ibid., 190; and LeBaron, *Combatting Modern Slavery*.

encouraged through a core set of policies, including liberalisation, deregulation, privatisation, recommodification, and globalisation.[9] It focuses on labour migration and global supply chains because they are prime examples of the 'fixes' needed to feed the incessant demand for profits and accumulation under neoliberal capitalism.[10]

Modern slavery laws are attempts to mediate the escalating tensions around borders and markets created by neoliberal capitalism's reliance on managed migration and free trade as engines of accumulation. As we saw in Chapter 1, the UN's human trafficking protocol was a response to states' fear that the collapse of the Soviet Union, rapid economic liberalisation, and increasing globalisation were fuelling transnational criminal networks engaged in trafficking in drugs, people, and weapons. The protocol's focus is transnational trafficking involving organised crime, and it explicitly calls on states to strengthen border controls.[11] Its goal was to reinforce state authority and sovereignty over the movement of people across national borders and, thus, to preserve the political legitimacy of the neoliberal order. This book shows how the EU (Chapter 4), the United Kingdom (Chapters 5 and 6), and the United States under Bush and Trump (Chapter 1) used human trafficking laws to fortify national borders and bolster national sovereignty.

The global financial crash of 2008–2009 dealt a blow to neoliberalism's economic credibility, and the pandemic 'further upended' it.[12] Moreover, Trump struck at the heart of neoliberal orthodoxy: free trade. While other US politicians may not endorse his brand of ethno-nationalist populism, none 'can get anywhere by presenting free trade as an expression of freedom'.[13] In their 2021 joint statement on forced labour, the G7 Trade Ministers affirmed that 'there is no place for forced labour in the rules-based multilateral trading system' and recognised the role of trade policy and the importance of the UN Guiding Principles on Business and Human Rights in developing a comprehensive approach to eliminating forced labour in global supply chains.[14]

This book demonstrates the growing political consensus in the Global North (the Global South is much more sceptical) that mandatory human

[9] Harvey, *A Brief History of Neoliberalism*; Jessop, 'Neoliberalization, uneven development, and Brexit', 1729–1733; Davies, *The Limits of Neoliberalism*; and Gerstle, *The Rise and Fall of the Neoliberal Order*.
[10] Prentice, 'Labour rights from labour wrongs?', 1768.
[11] Rodríguez-López, '(De)constructing stereotypes', 61–72.
[12] Gerstle, 'A real opening', 19.
[13] Offner, 'A durable concept', 21.
[14] G7 Trade Ministers' Statement on Forced Labour, London, 22 October 2021.

rights due-diligence laws and import bans on goods made with forced labour are needed to tame some of the worst excesses of business practices in global supply chains.[15] Chapter 2 explains how the Walk Free Foundation cultivated close ties between business, faith, and government leaders to establish an ethical business alliance to promote antislavery initiatives targeting global supply chains. This alliance was extremely influential in the United Kingdom, where antislavery initiatives were championed by Theresa May, first as home secretary and then as prime minister (Chapter 6). Indeed, since resigning as prime minister, May has continued to champion the fight against modern slavery, which she says is 'still the greatest human rights issue of our time'.[16] She announced the launch of the Global Commission on Modern Slavery and Human Trafficking, which she will chair. The Commission's goal is to 'exert high-level political leverage to restore political momentum towards achieving UN Sustainable Development Goal 8.7 to eradicate forced labour, end modern slavery and human trafficking'.[17] The idea, according to May, is to 'fully engage businesses in identifying slavery and forced labour in their supply chains'.[18]

The problem with the current crop of mandatory human rights due diligence laws is that they run the risk of being counterproductive for addressing business practices that lead to human rights violations, including modern slavery, as they can result in 'cosmetic compliance' or institutionalise human rights due diligence as a defence to liability.[19] Moreover, even if redesigned to overcome existing shortcomings, alone they are simply insufficient as they do

[15] UN human-rights experts applauded the G7 Trade Ministers' statement. They noted, however, that while the G20 leaders did recognize the importance of decent work in global supply chains, the majority of their communiqué focused instead on stable supply chains to provide the goods and services that their economies need. They called on the G20 to follow the lead of the G7 in its commitment to rights-respecting supply chains. UN, '"G7 Trade Ministers" strong stance'.

[16] O'Donoghue, 'Headed up by former British prime minister Theresa May'.

[17] On its website, the Commission claims that it will have 'a global membership and leadership, particularly including the Global South, be genuinely independent from any government or international organisation, and look beyond the usual suspects to include fresh voices from outside the modern slavery sector'. The Commission also includes familiar voices from the ethical business alliance, such as Grace Forrest (from the Walk Free Foundation) and representatives of the Freedom Fund and Global Fund to End Modern Slavery. It is funded by the UK government (through UK International Development) and the government of the Kingdom of Bahrain. The Global Commission on Modern Slavery and Human Trafficking, 'About', www.modernslaverycommission.org/about/.

[18] Global Commission on Modern Slavery and Human Trafficking, 'A message from the chair', www.modernslaverycommission.org/message-from-the-rt-hon-theresa-may-mp/.

[19] Landau, 'Human rights due diligence and the risk of cosmetic compliance', 221; Deva, 'Mandatory human rights due diligence in Europe', 390.

not challenge the 'structural and systemic inequalities embedded in international legal frameworks and in companies laws'.[20] By treating these laws as a panacea to the problem of labour exploitation in transnational supply chains, the global antislavery governance network diverts attention away from the enormous economic and political power wielded by transnational corporations, including through their philanthropic organisations.

This book provides a genealogy of the amalgam of legal concepts that form transnational modern slavery law, probing the wider social relations that propelled this law's evolution. The case studies reveal how key legal concepts were interpreted and positioned by influential actors in the global antislavery governance network and how a 'common sense' understanding of modern slavery was constructed. This genealogy answers the questions that animated the book: How did modern slavery emerge on the global political agenda? Where do key actors in the global antislavery network draw the boundary between free and unfree labour? How does the multifaceted approach to modern slavery keep the different legal domains to which unfree labour is assigned from clashing? How do attempts to govern transnational forms of unfree labour reconfigure sovereignty? Finally, what makes labour 'free'?

A PUZZLED UNRAVELLED

The first puzzle that this book unravelled was how modern slavery became prominent on the global governance agenda and how it came to include transnational forms of unfree labour associated with globalisation. I used a sociolegal, genealogical, and multiscalar approach to investigate how unfree labour came to be expressed in legal terms. Chapter 1 traced the emergence of modern slavery as a global governance problem to the UN's Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. Rooted in anxieties caused by the breakup of the Soviet Union and the acceleration of the cross-border movement of people, goods, services, and capital, the UN protocol was designed to strengthen state sovereignty by creating a carceral apparatus to address human trafficking across national borders. This protocol was lodged in criminal law and part of a suite of international law instruments designed to tame the criminal underside of globalisation while preserving its much-celebrated economic outcomes.

To achieve a broad consensus among member states and facilitate the protocol's quick adoption, the UN included a range of different types of

[20] Villiers, 'A game of cat and mouse', 416; and Deva, 'Mandatory human rights due diligence in Europe', 389.

human exploitation, such as forced labour and slavery, in the definition of human trafficking, and the protocol gestured towards the protection of victims. This tactic resulted in what Janie Chuang termed 'exploitation creep' – the tendency to sweep an expanding assortment of unacceptable behaviours and practices under 'human trafficking'.[21] Diverse international organisations sought to stake a claim for their jurisdictions within the emerging antitrafficking governance network, and successive US administrations (under Bush, Obama, Trump, and Biden) pursued different governance agendas domestically and internationally.

What emerged from this contest was a multifaceted approach to human trafficking that simply aggregated the different legal domains – criminal, immigration, human rights, and labour law. While new abolitionists like Kevin Bales had been trying since the mid-1990s to popularise the term 'modern slavery', used to encompass human trafficking, it was only when Obama embraced 'modern slavery' as the true name of human trafficking in 2012 that the term gained pre-eminence in Anglo-American nations. In the EU, by contrast, as we saw in Chapter 4, for historical and jurisdictional reasons the term 'human trafficking' was preferred to 'modern slavery'.

Although modern slavery is not defined in law, it is used as an 'umbrella term that focuses attention on commonalities' across a constellation of legal concepts – slavery, forced labour, human trafficking, and forced marriage – that are defined in different international legal instruments.[22] Chapter 2 revealed how an ethical business alliance attempted to stabilise the meaning of modern slavery by identifying two axes – unfreedom and exploitation – and produced and distributed authoritative knowledge about the prevalence of modern slavery (in the form of the *Global Estimates of Modern Slavery*). By ranking the legal, policy, and programmatic actions that 181 governments are taking to respond to modern slavery, Walk Free's Government Response Index portrays a 'global moral order' composed of virtuous states (the United Kingdom, the Netherlands, and the United States) and wicked ones (North Korea, Eritrea, and Libya), a characterisation that is amplified in extensive media reports.[23] Absent from the ranking is any reference to the legacy of colonialism or the global economic governance apparatus that perpetuates economic inequality between and within nation-states.[24] The moral vocabulary of modern slavery obscures and occludes how political economy shapes

[21] Chuang, 'Exploitation creep', 609–649.
[22] ILO, Walk Free, and IOM, *Global Estimates of Modern Slavery*, 12.
[23] Brankovic, 'Measure of shame', 103–125.
[24] LeBaron, *Combatting Modern Slavery*.

the global configuration of unfreedom and exploitation. It also disguises the extent to which capitalism in Europe and North America was built about the legal institution of chattel slavery and an ideology of anti-Black racism.[25]

By examining how transnational forms of unfree labour are named and governed by different actors in the global antislavery network, this book illustrates 'the pliability of legal concepts and the way they shift with the vectors of power and interest'.[26] Legal terms such as 'human trafficking', 'forced labour', and 'slavery' are defined in terms of essentially contested terms such as 'exploitation', 'involuntary', 'consent', 'force', 'fraud', and 'coercion'.[27] By 'essentially contested', I do not mean simply that there is a penumbra of doubt about where to draw the line about what activity is caught by a term or that there are hard cases that do not easily fit under a legal category (although the recurring problem of legal classification arises each time an individual claims to be a victim of modern slavery). Rather, I mean the nature of the activity itself is disputed. Chapter 1 explained how the definition of 'exploitation' in the UN's protocol was left ambiguous so that each state could decide for itself whether the sale of sexual services (prostitution) was exploitative in the absence of coercion; and how, under the Bush administration, the United States put an extraterritorial disciplinary apparatus in place to treat prostitution as a form of exploitation for the purpose of human trafficking.

The problem of characterising commercial sexual service as either a form of labour or an exploitative practice is a recurring one, and the ILO and EU, like the UN, have refused to resolve it, delegating its solution to nation-states. The nature of exploitation in this context is disputed; some groups see commercial sexual services as a moral issue, others as an instance of violence against women, and still others as a livelihood strategy shaped by a range of structural economic and social constraints. This refusal to grapple with the status of the sale of sexual services as a form of work is also reflected in the academic literature on human trafficking and modern slavery, where, with but a few exceptions, sexual and labour exploitation are treated as ontologically distinct.[28] This is so, even though the mechanisms of control used are often the same. Sexual harassment and violence are used to control women (and sometimes men) in a range of employment relations and tactics (personal

[25] Blackett, 'Teaching critical race theory'; Gevers, 'Reconfiguring slavery through international law'.

[26] Mezzadra and Neilson, *Border as Method*, 178.

[27] Rittich, 'Representing, counting, valuing'.

[28] For the exceptions see Andrijasevic, 'Forced labour in supply chains'; Cruz, 'Beyond liberalism'; Theimann, 'Beyond victimhood and beyond employment?'; and Kotiswaran, 'Protocol at the crossroads'.

relations, tied housing, stigma) associated with controlling women in the context of prostitution are used to control workers in the agriculture, garment, and electronics sectors.[29] The difference between commercial sexual exploitation and labour exploitation is an artefact of governance.

As we saw in Chapters 1 and 5, although the United States and United Kingdom have criminalised many aspects of the purchase of sexual services as a way of combatting human trafficking, they have not yet criminalised the purchase of sexual services domestically (although there is growing pressure to do so). While none of the jurisdictions implemented a prohibition on the sale of sexual services as part of a broader antitrafficking strategy, all of them treated sexual and labour exploitation differently – as manifestations of qualitatively different types of problems. So, too, did most international and transnational organisations, advocacy groups, and NGOs. The result: profoundly gendered governance strategies that single out women and children for 'protection', often resulting in restrictions on women's mobility. Moreover, the collateral damage that 'raid and rescue' human trafficking policies caused to migrant sex workers and sex workers more generally was largely ignored, the racial profiling implicit in such policies continued, and, as we saw in the United Kingdom in Chapter 6, these tactics were extended to address instances of labour exploitation, with the result that migrants without lawful immigration status who were rescued were detained and deported.

Although pliable, legal concepts have their own history and must be embedded in a specific cultural political economy to take effect. Chapter 1 explained how the UN's 2000 Human Trafficking Protocol drew on a series of international treaties adopted at the turn of the twentieth century to address the problem of 'white slavery' – European women being procured to work as prostitutes in the colonies – which merged with ongoing moral and public health crusades to stop prostitution. These international laws were informed by a highly gendered and racialised notion of moral purity and a view of migration as a corrupting influence. Many historians have shown how trafficking 'became a way to manage porous borders and empower early immigration bureaus and departments to surveil and police marginalised and racialised women (and the men branded as "traffickers" and "pimps")'.[30] Prostitution and sexual exploitation were at the centre of antitrafficking strategies, particularly in the United States under Bush, the EU, and the

[29] Henry and Adams, *Spotlight on Sexual Violence and Harassment in Commercial Agriculture*; Andrijasevic, 'Forced labour in supply chains', 410–424; and Naved et al., 'Female garment workers' experiences of violence'.

[30] Hetherington and Laite, 'Trafficking, a useless category of historical analysis', 18.

Council of Europe, where eradicating prostitution was seen as a way to combat human trafficking and promote women's equality. This book illustrates how the paternalistic, gendered, racist, and nationalist overtones of anti-human trafficking initiatives continue to permeate the governance strategies designed to eliminate it.

New abolitionists and the international human rights advocacy network – composed of (mostly Christian) faith-based organisations and human rights groups – recast human trafficking as a specific form of modern slavery. Chapter 2 recounts how the bicentenaries of the abolition of the slave trade (in Britain in 1807, and in the United States in 1808) provided an opportunity for new abolitionists to mobilise the iconography and narratives of historical forms of slavery to highlight new forms and emphasise its continued moral repugnance. The United Kingdom was the first country wholeheartedly to embrace the new abolitionist language of modern slavery in 2013, when it introduced draft modern slavery legislation. Chapter 6 explains how the language of modern slavery activated a repertoire of aggrandising historical tropes, portrayed modern slavery as a moral issue that transcended party politics, and heralded a revitalised vision of British global sovereignty as the United Kingdom was on the cusp of leaving the EU. While this discourse appealed to the British political elite and the British press, it had 'negative historic undertones' in former British colonies.[31] More perniciously, it 'mystifie[d] British history' by depicting Britain's role in the abolition of the slave trade as 'driven by a uniquely British commitment to instilling human rights and respecting human dignity, while at the same time rendering it unbecoming and unpatriotic to mention the pivotal role of chattel slavery in the growth of the British Empire'.[32]

Jurisdiction has provided the central analytic framework for understanding the global governance of modern slavery. In this book, I followed Marianna Valverde's lead in treating jurisdiction as a complex legal assemblage with scalar and governance dimensions. It operates as a sorting mechanism that allocates a problem – a particular form of unfree labour, for example – to an authority for resolution.[33] Jurisdiction resolves scalar questions about which institution – international, transnational, nation-state, or subcomponent of a nation-state – has authority. By assigning a subject to a legal domain (criminal, immigration, human rights, or labour law, for example), jurisdiction also fixes the governance institutions and techniques that can be used. Additionally, it

[31] Broad and Gadd, *Demystifying Modern Slavery*, 25.
[32] Ibid., 3.
[33] Valverde, 'Jurisdiction and scale'.

determines whether the delegation of authority to public and private actors is lawful or unlawful.[34]

I argue that cultural political economy drives the assemblage of jurisdiction in the global antislavery governance network. Human trafficking was seen by powerful states and international organisations as a problem of transnational crime, and states came together to adopt an international criminal-law instrument to provide the basis for a criminal-law approach and to encourage international cooperation. As we saw in Chapters 1 and 4, policy actors and stakeholders at the UN and EU endorsed a multifaceted approach to modern slavery and human trafficking that emphasised the alignment of different legal jurisdictions – criminal, immigration, labour, and human rights – to address different aspects of the problem of modern slavery. Under this approach, different agencies and actors drew on their expertise and governance techniques to tackle different dimensions of the problem.

The ILO (a tripartite institution) used the human trafficking protocol to revitalise its governance agenda of labour market regulation at a time when the dominant neoliberal wisdom viewed its traditional governance mechanisms (labour standards, public inspections, and worker collective representation through trade unions) with suspicion. By enmeshing itself in the global governance network, the ILO put labour trafficking on the governance agenda. It also fashioned an international standard, the protocol of 2014 to the Forced Labour Convention, that incorporated the techniques of labour law into the governance of forced labour. It integrated a human rights approach by imposing obligations on states to protect victims and provide them with effective remedies. The forced labour protocol provides an alternative legal domain, one that is structural and preventative in orientation, unlike the criminal law, where the focus is individual and punitive.

This multifaceted approach raises the question: Is it possible to combine a range of different jurisdictions to combat the problem of labour unfreedom, or will one jurisdiction overwhelm the others? Principles of state sovereignty and subsidiarity, combined with the need for states to absorb the norms and obligations of international and transnational law into domestic legal systems, mean that we have to turn to the national scale to answer this question. I use the example of the United Kingdom (Chapters 5 and 6) to show that the political discourses of modern slavery, combined with the process of legal characterisation and assigning legal jurisdiction, have produced overlapping jurisdictions (criminal, immigration, business, and labour law) with differing

[34] Pratt and Templeman, 'Jurisdiction, sovereignties and Akwesasne', 338; and Valverde, *Chronotopes of Law*, 83.

associated techniques of governance. In the United Kingdom, criminal law and immigration law have elective affinities in the case of human trafficking and modern slavery. Authority over immigration, security, and law and order is lodged in a single ministry (the Home Office) that links the governance of immigration jurisdictionally with security and criminal law.

The relationship between these different jurisdictions is crucial for understanding the normative or legal characterisation of unfreedom and why, in the United Kingdom, the relationship between illegal migrants, criminals, and modern slaves is so fraught. The association of illegal entry and illegal working with human trafficking created an aura of criminality that spilled over to trafficking victims. Moreover, the cultural and political environment functions as a conductor that amplifies the force of a particular jurisdiction or an insulator that weakens the influence of one jurisdiction when compared with another. Despite the best efforts of workers' advocates, the UK government did not enhance labour market regulation to prevent modern slavery. More pertinently perhaps, modern slavery pulled existing labour-market institutions in a carceral direction at a time when successive UK governments were committed to deregulated labour markets and blamed illegal migrants for labour-market exploitation. This book illustrates the importance of cultural political economy in explaining how a state uses law to govern modern slavery.

Although the EU was at the forefront of the multifaceted approach to combatting human trafficking, Chapter 4 explains that its antitrafficking legal instruments emphasised *transnational crime* and *movement* across borders because these are the elements that activate EU legislative jurisdiction under the EU treaties.[35] As EU treaties expanded human rights, the EU's antitrafficking instruments provided greater protection to victims. Yet, in a context where migration could potentially undermine the EU, human rights were incorporated within and subsumed under a governance strategy designed to harden both the EU's and Member States' borders to exclude undesirable outsiders, exemplified by migrant sex workers.

Human rights groups and institutions have been the strongest advocates of a multifaceted approach to human trafficking and modern slavery.[36] The Council of Europe Convention on Human Trafficking is, as we saw in Chapter 4, the high-water mark of human rights protection for victims of human trafficking. Indeed, some legal scholars argue that it is possible to use human rights law to dismantle state action, such as extremely restrictive visa

[35] Krieg, 'Trafficking in human beings'.
[36] Jovanovic, *State Responsibility for Modern Slavery in Human Rights Law*.

conditions, that contributes to modern slavery.[37] While this is legally possible, the case study presented in Chapters 5 and 6 suggest that it is unlikely to be successful in the United Kingdom. Indeed, the Sunak government's Illegal Migration Act, 2023, runs roughshod over the rights of victims of modern slavery, and Suella Braverman (then the United Kingdom's Home Secretary) has launched a 'fresh' attack on the European Convention on Human Rights on the grounds that it protects the rights of illegal migrants.[38] By contrast, as we saw in Chapters 2 and 4, human rights advocates have had greater success in persuading actors in the antislavery governance network to embrace mandatory human rights due-diligence laws and import bans as tools to tackle forced labour in global supply chains. Of course, the difference is that these laws extend and reinforce the sovereignty of states in the Global North.[39] These examples from the United Kingdom and EU demonstrate that the different legal domains that make up a multifaceted approach to modern slavery are not equal; some have much greater influence on antislavery strategies than others.

The scalar dimension of jurisdiction can also operate as a technique of governance: one that challenges territorial notions of national sovereignty. Chapter 2 shows how Walk Free and other members of the ethical business apparatus advocated transparency legislation as a solution to the problem that territorially bound notions of sovereignty pose to regulating forced labour in global supply chains. They argued that mandatory due diligence and disclosure laws can have an extraterritorial effect by creating incentives for business to eradicate slavery transmitted through transnational supply chains. In this way, state sovereignty can be extended beyond territorial borders by requiring multinational enterprises to take steps to ensure that slave-made goods do not infiltrate their supply chains. Governments essentially delegate to multinational corporations the authority to enact extraterritorial borders. Sovereignty is rescaled and made transnational as public and private actors deploy disciplinary mechanisms that operate across national borders.

By contrast, scale is a contested technique of governance within the ILO. Forced labour presented an opportunity for the ILO to rescale its distinctive governance mechanism – labour conventions that are incorporated into national laws – by proposing a convention that applied to transnational corporations and required them to ensure that the links in their supply chains

[37] Mantouvalou, *Structural Injustice and Workers' Rights*.
[38] Savage, 'Suella Braverman makes fresh attack'.
[39] Krisch, 'Jurisdiction unbound', 512; Deva, 'Mandatory human rights due diligence laws in Europe'; and Villiers, 'A game of cat and mouse.

adhered to labour standards. The workers' group supported such an initiative, but the employers' group blocked it, claiming it disregards state sovereignty and illegitimately imposes human rights obligations directly on private actors.[40] The ILO and its constituents engaged in a game of jurisdiction in which scalar differentiation was mobilised strategically to promote specific interests.

The treaties that make up the EU allocate institutional jurisdiction on a scalar basis between EU institutions and Member States. EU legislative institutions and member states engaged in a game of jurisdiction over the governance of human trafficking. Under New Labour, the UK government sought to establish that UK sovereignty can be augmented through the selective adoption of EU rules around trafficking. However, in the context of austerity policies and unanticipated high levels of immigration, Eurosceptics, who wanted to free Britain from the EU, exploited the latent contradiction between this idea of a functional sovereignty based on interdependence between the United Kingdom and EU and the British notion of absolute sovereignty. After Brexit, the United Kingdom began to withdraw from those aspects of the EU's protocol designed to protect victims.

States have not lost sovereign power over human movement. Sovereignty has been reconfigured as states involve a growing number of nonstate actors in bordering practices. The United Kingdom is a clear example. Chapter 6 illustrates how the UK government recruited a growing group of private actors to enforce border controls within UK territory as it expanded its penal and disciplinary power extraterritorially. For migrants, sovereignty and governance intersect at these borders, where they are transformed into subjects with different legal statuses.[41]

International and transnational instruments define the main legal categories of unfree labour, but it is nation-states that implement them and give meaning to the concept of exploitation. This book argues that the border between free and unfree labour is 'largely a contested and ambivalent artefact of governance'.[42] As political economist Nick Bernards claims, this border, which distinguishes between acceptable and unacceptable forms of coercion, is 'a vital step in the normalisation of capitalist production'.[43] If we start with the premise that the commodification of labour takes place in legal and

[40] Indeed, the joint business response to the initial draft of a binding UN treaty to 'harden' the UNGPs objected to the form of extraterritorial jurisdiction envisioned in the draft on the ground that is did not 'respect national sovereignty'. Krisch, 'Jurisdiction unbound', 510.

[41] Mezzadra and Neilson, *Border as Method*, 204.

[42] Bernards, 'The global politics of forced labour', 964.

[43] Ibid.

economic spaces, the key question is, What forms of constraint are unacceptable at a particular place and time?

WHAT MAKES LABOUR FREE?

Focusing on forms of unfree labour ignores the analytically prior question: what makes labour free? The classical political economists Adam Smith, James Mills, and Karl Marx and the founder of economic sociology, Max Weber, all grappled with this question because, when they were writing, the concept of 'free' wage labour had not yet come to epitomise freedom for working people.[44]

Part of the answer has to do with how we understand freedom. Since the 1980s, freedom has come to be equated with free markets and free trade. Freedom means noninterference by the state. There has been a kind of neoliberal flattening of a much more complex and robust concept. There are at least three conceptions of freedom: negative, positive, and republican. Negative freedom is noninterference with another,[45] while positive freedom entails some kind of institutional support that enables individuals to effectively select a range of life options. This kind of positive freedom has been theorised by Amartya Sen in terms of capabilities.[46] Republican freedom, by contrast, is the form of freedom that means that no one is dominating you; it is freedom from subordination.[47]

Law provides a particularly helpful lens for understanding the prevailing conception of freedom as it reflects underlying assumptions in neoclassical economics and liberal social contract theory about freedom as consent. Although there is no legal definition of free labour, we can identify its characteristics from instances that the law considers unfree. International, multilateral, and domestic laws provide a good picture of what leading international institutions and liberal nation-states consider free labour to be. For them, free labour is characterised by the absence of coercion, force, and deception in entering, continuing in, and leaving an employment or service relationship.

In legal terms what makes labour free – exchange relations where there is no coercion, force, or deception – reflects a distinction originating in classical political economy. It also resonates with social contract theory – which

[44] Fudge, 'What makes labour free'.
[45] Nozick, *Anarchy, State, and Utopia*.
[46] Sen, *Development as Freedom*.
[47] Anderson, *Private Government*.

assumes that free relations take a contractual form – and liberal understandings of self-ownership and self-sovereignty. For liberal political economy, neoclassical economics, and contract law, the voluntariness of the exchange is the distinctive feature of free labour, and consent is the regulative ideal. The assumption is that the labour market is an arena of free exchange in which legally equal parties contract to their mutual advantage. The law simply provides neutral rules of the game. Meanwhile, the state's role should be to ensure a 'level playing field' between market actors. Because slavery, which is the epitome of unfree labour, interferes with individual autonomy, it must be outlawed as a crime. Moreover, the claim is made that forced labour and slavery are bad for development.

Of course, as Adam Smith, Karl Marx, and Max Weber pointed out, this description of free wage labour ignores how the legal regime – and I want to emphasise that all three of these authors saw the legal regime as constructing (and not simply reflecting) this inequality – renders this freedom purely formal for many workers. During the Industrial Revolution, there was no choice but to do wage work, to go to the workhouse or starve. In the Global North, the welfare state cushioned the process of commodification, but the spectre of a wageless life disciplines workers who increasingly must rely on workfare to subsist. In the Global South, workers construct precarious and informal livelihoods as they continue to hope for a truly developmental state.

Alleviating the economic compulsion that requires people to work would provide some measure of positive freedom. However, it would not address the other form of unfreedom that political economists and political theorists have identified – the subordination that resides in the hidden abode of production. Markets are unable to address the problem of subordination at work. Instead, democratic principles of governance are needed to give people voice at work. Voice is about exercising associational or collective power, and it involves democratic self-determination. Voice is what gives effect to the republican notion of freedom as non-domination at work.

Workers' collective voice is essential if labour is to be free. Indeed, for the first time, the 2023 edition of the *Global Estimates of Modern Slavery* elevated respect for the freedoms of workers to associate and to bargain collectively (described 'as indispensable to a world free from forced labour') to the top of the list of measures to counteract unfreedom.[48] Freedom from domination means that people need voice to challenge authority. This kind of freedom is potentially – although only potentially – transformative. Perhaps that is why

[48] ILO, Walk Free, and IOM, *Global Estimates of Modern Slavery*, 6.

substantive freedom of association at work is so strongly resisted even in liberal democracies.

This conception of free labour as including freedom from subordination is profoundly different from the thin, market-oriented version of freedom that animates the ethical business alliance's campaign against modern slavery. But, as Chapter 2 recounts, the alliance has come to accept forms of mandatory human rights due-diligence legislation and import bans and has supported measures to protect freedom of association.

Yet even a republican conception of freedom, which includes voice, does not address two much deeper problems problem: (1) the profoundly skewed power relations of the prevailing global economic order and (2) the restrictions on mobility placed on people by sovereign states through border controls.

A critical political economy perspective discloses the legal domains and practices through which corporate actors exercise power in the global economy. Private law concepts (corporation, property, contract, tort) combine with international investment, trade, and intellectual property law to invest transnational corporations with vast power over the distribution of resources and governance.[49] Indeed, transnational corporations have played a key role in shaping trade policy to their advantage.[50] Moreover, dispossession and expropriation through colonialism have simply been encoded in international law as postcolonial states were treated as sovereigns equal to their former imperial masters.[51]

Borders, as Harald Bauder explains, function as a mechanism that 'controls, disciplines, and in many cases exploits' workers' labour in two ways: first, by geographically dividing the global workforce into countries with different labour standards and, second, by creating migrant workers with legal statuses that trap them in low-wage and poorly regulated sectors of the labour market.[52] Under the existing global economic governance architecture, capital, goods, and services are free to move across borders while labour is constrained.[53] In the context of contemporary globalism, the flip side of capital's movement offshore to seek cheaper, harder-working, and more disciplined labour is the use of temporary migrant labour in labour-intensive sectors in the Global North and more developed states in the Global South. The 'free' and ever-expanding markets that are foundational to globalisation and neoliberal policies undermine the conditions needed to cultivate

[49] Danielson, 'Situating human rights approaches', 225; Alessandrini, 'Global value chains, development and the *long durée*'.
[50] Anderer, Dür, and Lechner, 'Trade policy in a "GVC world"', 639.
[51] Anghie, *Imperialism, Sovereignty, and the Making of International Law*.
[52] Bauder, *Migration Borders Freedom*, 25, 28.
[53] Fudge, 'Governing global labour migration'.

cohesive and durable communities and societies. Thus, policies that implement and support neoliberal globalisation create both the necessity and the desire for people to migrate across international boundaries in search of work. In turn, this surplus labour that is not 'native' to the receiving nation-state can be hired, fired, and deported to meet demand without providing workers with wages and working conditions that would enable them to sustain themselves or their households on a long-term basis.

For workers to be truly free, we need to dismantle the neoliberal economic and political order. Although resilient, neoliberalism is fading.[54] It persists, in part, for lack of alternatives that challenge economic inequality between and within nation-states *and* provide imaginaries of sustainable development beyond capitalism and political order beyond the nation-state. This task of revisioning, let alone achieving a different social imaginary, is a tall order. However, crusading for the elimination of modern slavery without changing the legal rules that vest unaccountable power in corporations or providing reparation for centuries of colonial dispossession obscures the ongoing and fraught relationship between freedom and power.

[54] Gerstle, *The Rise and Fall of the Neoliberal Order*.