Mapping Child Marriage within the History of International Law: A Turn to the Archives of the 1926 Slavery Convention

Didar Shwan

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Abstract

At its heart, this thesis is an investigation into how the female child, compelled into conditions akin to slavery through marriage, has been historically marginalized from the scope of slavery as it is defined in the 1926 Slavery Convention. Conversely, the Human Rights Council of the United Nations General Assembly recently recognized that the experiences and exploitation of women in forced marriages can meet the international legal definition of slavery. This framing evolution indicates the reorientation of institutional efforts in recognizing forced marriages as a form of slavery. Through a historical study of the international legal origin of slavery, this thesis probes into the conceptual and linguistic shift in the framing of forced marriages. In doing so, it identifies, within the archives of the League of Nations, the forces which shaped a narrow conception of slavery in the law.

A critical analysis of the intersections of law and gender during the colonial era of the League of Nations concludes with the identification of a systematic exclusion of child marriage from the legal construction of slavery, driven by hegemonic forces. This work finds that the politics and ideologies of coloniality shaped a narrow conception of slavery, enabling the continued economic, labor, and other forms of exploitation of the colonized Global South. It emphasizes the limitations of the prevailing anti-slavery framework, rooted in this history, which continues to relegate the enslaved child to the margins.

Dedication

To the spirited women and girls who endure and resist under regimes of gender apartheid. You are my inspiration.

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My deepest gratitude goes to my supervisor, Professor Emily Kidd White, for her generosity of spirit. I have yet to encounter a Professor as thoughtful, encouraging, and patient as she.

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The writing of this thesis has been made sweeter by the companionship of my soul dog, Chai.

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Chapter 1: Introduction

1.1. Research Question

The global abolition of slavery, as it occurred in the 20th century by virtue of the 1926 Convention to Suppress the Slave Trade and Slavery (1926 Convention), was grounded in the findings of the League of Nations' Temporary Slavery Commission, an expert body tasked with investigating practices of slavery.[1] The 1926 Convention, which defines the markers of slavery and the slave trade, was supplemented by a series of international treaties regulating this harm, all of which draw their foundational understanding of slavery from the original 1926 Convention.[2]

If this instrument is, therefore, held at the crux of modern-day abolition law, then the *problématique* of the 1926 Conventions and the topic this thesis investigates is two-fold. First, it becomes evident that the League of Nations' focus in formulating a convention was not merely the abolition of a practice cruel to humankind but also the tutelage of the "backward races" of the Global South.[3] This purpose can be traced in the works of the Temporary Slavery Commission in the lead-up to the 1926 Convention, where a philosophy of Othering the peoples of the Third World imbues the prevailing Eurocentric bias and its ethnocentric dimensions in the groundwork for the 1926 Convention. This same bias and ideology, as we now know, characterizes the rise of fascism

[1] Jean Allain, *The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention*, 1st ed, The Travaux Préparatoires of Multilateral Treaties (Boston: BRILL, 2008) at 31-34.

[2] The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery affirmed the authority of the 1926 Slavery Convention. Many of the human rights treaties and other international law treaties which have been created in the past decades include prohibitions on slavery. The definition of slavery within these treaties is generally derived from article 1 of the 1926 Slavery Convention. Some examples of this are discussed in Chapter 2.3. For a detailed study of slavery in various international treaties see: Jean Allain, *Slavery in international law of human exploitation and trafficking*, Human exploitation and trafficking (Leiden ; Martinus Nijhoff Publishers, 2013).

[3] See generally: Cyrus Schayegh & Andrew Arsan, *The Routledge handbook of the history of the Middle East mandates*, The Routledge history handbooks (London: Routledge/Taylor & Francis Group, 2015). For the use of the term "backward races" by the Commission itself, see for example: "Temporary Commission on Slavery - Minutes - Second Session - Geneva - July 13, 1925." League of Nations, Temporary Slavery Commission, Geneva (R71/1/45167/34440/Jacket1) (1925).

in Europe in the mid-20th century, with the rise of several totalitarian dictatorships, such as Nazi Germany and *Italia Fascista*. Second, and perhaps related to the first, the formulation, revisions, and final drafting of the 1926 Convention reflect the colonial politics of the time, which sought to formalize within the law a construction of slavery that would tactically alleviate humanitarian pressures on Western powers, while allowing their continued economic and labour exploitation of the colonial territories and peoples.

The colonial powers sought to mitigate their ongoing participation in the enslavement of peoples by pre-emptively indemnifying their liability under the international law that they themselves constructed.[4] The institutions and laws of the League, including the 1926 Convention, thus allowed the colonial states to consolidate their footing within the colonies. It is the central assertion of this thesis that these politics, as artifacts in the transcendental survival of law, have left little room for the inclusion of various forms of harm that otherwise resemble the condition of slavery. It pertains to moral, jurisprudential, and legal bases for authority that the promise of individual liberty by the state, in exchange for the vindication of state sovereignty in international law, is continually violated, particularly where international law and states fail to recognize forced and child marriage as slavery under the 1926 Convention.

Conversely, in its fiftieth session, the Human Rights Council of the United Nations General Assembly recognized the data and academic literature which conclusively asserts the gendered practice of forced and child marriage as a key source of vulnerabilities suffered by female

[4] See generally: Amalia Ribi Forclaz, *Humanitarian imperialism : the politics of anti-slavery activism, 1880-1940*, first edition. ed, Oxford Historical Monographs (Oxford: Oxford University Press, 2015). See also: Joel Quirk, "Defining Slavery in all its Forms: Historical Inquiry as Contemporary Instruction" in Jean Allain, ed, *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford Academic, 2013) 253.

children,[5] and, consequently, affirms that the experiences and subjugation of women and children to forced marriages can "meet the international legal definition of slavery."[6] This framing evolution indicates the reorientation of institutional efforts in recognizing forced marriages as a form of slavery, owing to a high degree of legal and moral culpability attributable to violations of its prohibition by virtue of its *jus cogens* status. However, as this discussion maps out, such reorientation cannot succeed in its claims in the absence of a systemic critical reflection of the contexts that constructed the current legal regime on slavery. Through a historical study of the origin of slavery in our international legal framework, this thesis acknowledges international law's culpability as one of the life forces of forced marriages. The central question that this thesis seeks to answer is: What were the influences on the conception of the international legal framework on the prohibitions of slavery, and how was this formulation exclusionary to gendered forms of exploitation, in particular, child marriages?

The central question takes place within a contemporary context of continued reluctance to recognize the call for justice in cases of gender-based crimes,[7] and "unlike other forms of slavery, [forced marriage] has not been the target of the same legal and cultural prohibitions afforded the forms of enslavement where men are included."[8] Resulting from a narrow conception of slavery,

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[5] Cynthia B Lloyd & Barbara S Mensch, "Marriage and childbirth as factors in dropping out from school: An analysis of DHS data from sub-Saharan Africa" (2008) 62:1 Population studies 1–13. See also: Aisha K Gill & Sundari Anitha, *Forced marriage: introducing a social justice and human rights perspective* (London ; Zed Books, 2011). For literature on the gendered nature see of forced marriage see: Megan Arthur et al, "Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities" (2018) 39:1 Journal of women, politics & policy 51–74. In the United States, girls and women who are in danger of being forced married or have been forced married may claim asylum on grounds of gender-based persecution.

[6] *Adverse impact of forced marriage on the full and effective enjoyment of all human rights by all women and girls*, Report of the Office of the United Nations High Commissioner for Human Rights, by Human Right Council, Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/52/50 (United Nations, 2023).

[7] Melanie O'Brien, "'Don't kill them, let's choose them as wives': the development of the crimes of forced marriage, sexual slavery and enforced prostitution in international criminal law" (2016) 20:3 The International Journal of Human Rights 386–406.

[8] Jody Sarich, Michele Olivier & Kevin Bales, "Forced Marriage, Slavery, and Plural Legal Systems: An African Example" (2016) 38:2 Human rights quarterly 450–476.

the examination of forced marriage through the lens of reasoning in the 1926 Convention is notably sparse in the human rights literature.[9] This disparity persists despite the fact that every minute, 28 underaged girls enter into a marriage for which they are developmentally unprepared for, physically and mentally.[10] Particularly, in the aftermath of the COVID-19 pandemic and the increasing number of global humanitarian crises, the efforts and progress made to eradicate this practice have faced severe setbacks.[11] For instance, at the time of this writing, a bill has been progressing through the Iraqi parliament to rectify marriage laws, which, if passed, would result in girls as young as nine years old being unprotected from the practice of forced marriage.[12] These laws are nothing less than the legitimization and institutionalization of the subjugation and rape of young girls, under the guise of cultural legitimacy and relativism. It may be in light of these setbacks and amplified calls to action from stakeholders that international bodies are opting for a conceptual and linguistic reframing of this practice as slavery.

Where slavery is characterized by the commodification and trade of human lives, it is a phenomenon that has subsisted throughout human history, surviving, and flourishing particularly in our age of conceptual jurisprudence. This has ensued by the grace of the surviving legacy of colonialism in the legal bureaucracies that have historically allowed for its practice and that are currently less reticent to prohibit it.[13] In ancient times, slavery was part and parcel of society and, by way of infrastructural or otherwise technological restriction, it was localized to domestic

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[9] *Ibid*. See Gulnara Shahinian, *Preface, Out of the Shadows: Child marriage and slavery*, by Catherine Turner (Anti-Slavery International, 2013).

[10] United Nations Office of the High Commissioner, "Child and forced marriage, including in humanitarian settings: OHCHR and women's human rights and gender equality", online: <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings#:~:text=One%20in%20every%20five%20girls,union%2C%20before%20reaching%20age%2018.>.

[11] *COVID-19: A threat to progress against child marriage*, by United Nations Children's Fund (New York: UNICEF, 2021).

[12] Hiba Abdulwahhab, "Proposed Amendments to the Iraqi Personal Status Law: A Pathway to the Legalization of Child Marriage and Prostitution?", (7 November 2024), online: <https://www.wilsoncenter.org/blog-post/proposed-amendments-iraqi-personal-status-law-pathway-legalization-child-marriage-and>.

[13] Roy L Brooks, "Ancient slavery versus American slavery: A distinction with a difference" (2003) 33:2 The University of Memphis law review 265.

settings. With the advent of modern times, slavery transformed into a transnational trade, with millions of people transported across the oceans to form the labouring class for the New World.[14] The African continent, in particular, was plagued by the colonial mobilization and displacement of its peoples as capital, which led to the reign of colonial powers over its lands, resources, and human labour. International law, through treaties between nations, played a counterintuitively pivotal role in the legitimization and enforcement of African enslavement and the slave trade,[15] acting as the formalizing catalyst between the Western political elites that sought to leverage the military insufficiencies of the Global South for their own infrastructural development.[16] Coming out of the First World War, the same political elite, after reaping the full benefits of the economic development attendant to the slave trade, sought to turn international law into a primary force against slavery, but due to their exclusion of various forms of slavery, failed to realize the threshold of their moral conviction and take their place as the rectifying force of the abolition movement.

To this end, two prevailing streams of thought represent two sides of a spectrum that this discussion finds itself contending with. One stream of thought purports that the abolition movement was born out of moral imperialism,[17] as the European states sought to civilize the "backward races."[18] Another stream portrays some of the Great Powers as leaders of the humanitarian cause for the realization of God-given liberties[19] and the League of Nations' 1926

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[14] *Ibid*. For an introduction into the broader history of slavery, see: Trevor Burnard & Gad Heuman, eds, *The Routledge History of Slavery* (London: Routledge, 2010).

[15] Jenny S Martinez, "Britain and the Slave Trade: The Rise of Abolitionism" in *The Slave Trade and the Origins of International Human Rights Law* (United States: Oxford University Press USA - OSO, 2012).

[16] Randall Lesaffer, "Peace Treaties and the Formation of International Law" in Oxford Handbooks in Law (Oxford University Press, 2012).

[17] See generally: Derek R Peterson, *Abolitionism and imperialism in Britain, Africa, and the Atlantic*, African studies from Cambridge (Athens, Ohio: Ohio University Press, 2010). Frederick Cooper, Thomas C (Thomas Cleveland) Holt & Rebecca J (Rebecca Jarvis) Scott, *Beyond slavery : explorations of race, labor, and citizenship in postemancipation societies*, HeinOnline UNC Press law publications (Chapel Hill: University of North Carolina Press, 2000).

[18] League of Nations, Temporary Slavery Commission, *supra* note 3.

[19] Thomas Clarkson, *The History of the Rise, Progress and Accomplishment of the Abolition of the African Slave-Trade, by the British Parliament (1839)* (Project Gutenberg).

Convention, which prohibited slavery on a global scale, as a revolutionary tool of international law and justice.[20] The focus of the dominant discourse is either one of colonial domination or one of international law's triumphalism. Perhaps, as this thesis maps out, both perspectives hold *some* truths, but neither account for the neglect of gendered manifestations of slavery as a core and distinct concern. In considering the history and legal standing of the female slave, particularly the female child, it becomes evident that the tale of international law is a scattered story. Marriage was a customary practice that deprived the female child of her liberties and resulted in her subjugation to circumstances "analogous to slavery";[21] however, in the conception of the 1926 Convention, slavery (and its immediate prohibition) was defined so narrowly as to exclude this particular form of oppression.[22] At the same time, in its second article, the Convention endows a responsibility onto states for the "abolition of slavery in all its forms" over a period of time.[23] The scope of the second article was adequately vast to encompass a number of practices, including child marriage.[24]

Following concerns relating to the restrictive character of the 1926 Convention, the United Nations Economic and Social Council mandated an *Ad Hoc* Committee of Experts on Slavery to investigate the situation of slavery in the 1950s. The *Ad Hoc* Committee recognized the issue of constraint in article 1 and suggested its remedial modification *via* a supplementary convention by

[20] See generally: Forclaz, *supra* note 4. Eric Williams notably challenged the dominant narrative in the mid-20th century, and since then, there has been an emergence of scholarship on the historiography of the abolition era that counters the humanitarian narrative. See: Eric Eustace Williams, *Capitalism and slavery / Eric Williams*, third edition. ed (Chapel Hill, NC : The University of North Carolina Press, 2021). See also: Thomas Bender, *The Antislavery debate : capitalism and abolitionism as a problem in historical interpretation / edited by Thomas Bender.* (Berkeley : University of California Press, 1992).

[21] "1st Session of the Temporary Slavery Commission, Geneva, July 1924 - Minutes." League of Nations, Temporary Slavery Commission, Geneva (R71/1/37136/34440) (1924).

[22] Quirk, *supra* note 4; Robin Hickey, "12 Seeking to Understand the Definition of Slavery" in Jean Allain, ed, *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press, 2012).

[23] *Convention to Suppress the Slave Trade and Slavery*, 1926, art 2(b).

[24] This was later reaffirmed by the United Nations Economic and Social Council. See: *Slavery, the Slave Trade, and other forms of Servitude (Report of the Secretary-General), UN Doc. E/2357*, by United Nations Economic and Social Council (1953).

evolving the definition of slavery to include other forms of violence that were previously omitted.[25] This resulted in the formation of 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956 Supplementary Convention on the Abolition of Slavery). The forms of enslavement expounded on in 1956 Supplementary Convention on the Abolition of Slavery are commonly referred to as modern-day slavery or contemporary forms of slavery. The expansion of the definition of slavery has, however, caused a conflation of the practice, per its 1926 definition, with contemporary forms of slavery.[26] While similarities exist between them, they are, as a matter of law, different from one another. Leading scholars note that the notion of contemporary forms of slavery has emerged as a political tool to frame various human rights issues that are adjacent to slavery as *de facto* slavery.[27] The consequences of the politicization of modern-day slavery, therefore, have had adverse effects on the child's experience of forced marriage and undermine the violence suffered at the altar of slavery. Girls globally recount experiences reminiscent of conditions akin to slavery,[28] yet their voices are overshadowed by the historical continuum of the politicized abyss.

This thesis traces the ways in which the institution of international law has marginalized the voices of victims who suffer the harms of child marriage. The historical character of the study

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[25] *Ibid*.

[26] Jean Allain, *The law and slavery prohibiting human exploitation* (Leiden, The Netherlands ; Brill Nijhoff, 2015).

[27] Quirk, *supra* note 4. See also: Allain, *supra* note 26. Julia O'Connell Davidson writes a detailed analysis on the politics of modern-day slavery and the conflation of different form of subjugation with slavery, see: Julia Davidson O'Connel, *Modern Slavery the Margins of Freedom* (London: Palgrave Macmillan, 2015).

[28] A joint Statement by a group of UN human rights experts on the first International Day of the Girl Child reads "Girls who are forced to marry face a life of violence in the home where they are physically and sexually abused, suffer from inhuman and degrading treatment and ultimately slavery". UN Committee on the Rights of the Child et al, "First UN International Day of the Girl Child, Thursday 11 October 2012 Forced child marriage, slavery like reality in every single region of the world: A day for the girl child", (10 October 2012), online: *Media Center* <https://www.ohchr.org/en/statements/2012/10/first-un-international-day-girl-child-thursday-11-october-2012-forced-child>.The Antislavery Usable Past is a databank recounting stories of child marriage, see: The Antislavery Usable Past, The Rights Lab, *VOICES: Narratives by Survivors of Modern Slavery* (University of Nottingham). *Position Paper: Child Marriage and Modern Slavery*, by Girls Not Brides (2018) <https://www.girlsnotbrides.org/documents/1552/Child_marriage_and_modern_slavery_Position_paper.pdf>.

emanates from an understanding that the violence of child marriage, which is relegated and, at times, perpetuated by international law, is deeply rooted in a colonial context, the legacies of which persist in systems of today. The historical approach, then, allows for a reflective understanding of the constraints of international law, with which the system and policy efforts must contend. It also enables the foregrounding of traditionally marginalized stories of international law with an "ethical commitment to the intellectual and practical struggle to expose, reform, or even retrench those features of the international legal system that maintain the generally unequal global order."[29]

The body of the thesis is divided into three core chapters, each in interplay with the other to identify the influences that shaped the international legal framework on the prohibitions of slavery and to demonstrate how the understanding of slavery was conceived in exclusion to a diversity of slavery practices in the Global South, particularly, gendered forms of exploitation and child marriages.

Chapter II, *Framing the Research*, situates the research question in context, by establishing the theoretical and methodological foundation for the inquiry. The first of the two sections, *Context: Slavery and Forced Marriage* highlights the relegation of child marriage to the margins in human rights mechanisms and policy discourse. The second section, *On Theoretical Framework & Method*, situates the philosophical orientation of the work in an intellectual forum that navigates feminism and coloniality. The third section, *Literature Review*, brings into conversation the key perspectives on the configuration of the legal anti-slavery framework to relate them to forced marriage.

[29] Obiora Chinedu Okafor, "Newness, imperialism, and international legal reform in our time: A TWAIL perspective" (2005) 43:1/2 Osgoode Hall law journal (1960) 171–191.

Chapter III, *The League of Nations and the Question of Slavery,* embarks on a voyage through the international community's post-war political climate. *From the Formation of the League of Nations to their Consideration of Slavery* provides an insight into the racial ideologies that would govern the Western world's perception and colonial administration, as these directly influenced slavery policy. The European nations perceived themselves as humanist trustees of the colonized peoples and territories of the Global South. By elucidating the League's internal workings, legal framework, and conceptualization of slavery, this chapter reveals an inherent bias in its institution. *The Temporary Slavery Commission* outlines how these biases affected the experts elected to investigate the question of slavery. It crucially identifies a colonial conception of an archetype of slavery, where manifestations of slavery in the Global South would be excluded from its remit.

Having charted the narrow and colonial perception of slavery more generally, Chapter IV, *Marginalized: The Exclusion of Child Marriages from the 1926 Slavery Convention,* weaves a gendered intervention into the analysis. This chapter demonstrates that child marriage was a point of consideration and likened to slavery by the Temporary Slavery Commission and the colonial powers, but they eventually refused its recognition and outright prohibition under the 1926 Convention. The sections *Acquisition of Girls by Purchase disguised as Payment of Dowry* and *Age of Consent* tread into the Temporary Slavery Commission's archive to identify the rationale behind refuting child marriage as slavery. The first of these chapters finds that bridewealth was a contested matter among the experts; they recognized it as a method to circumvent abolitionist laws but would later dismiss this practice as slavery. This was partly because a commercial dimension was attached to the understanding of slavery, which bridewealth did not satisfy. The latter section highlights how colonial administrations perceived the concept of girlhood in the Global South as

being different from White girlhood. It speaks to the sexualization of the girl at the hands of colonial law and force. Chapter IV also identifies the commodification of the girl for her labour and for the offerings of her body as driving forces of her exclusion from the understanding of slavery.

The Drafting of the 1926 Convention follows the drafting process at the League of Nations, observing the purposeful exclusion of child marriage from the international framework on the abolition of slavery. Finally, the section *The Modern Consequences of the Narrow Definition of Slavery* briefly expounds on the consequences of this exclusion in the international landscape today for those enduring enslavement.

Across these chapters, cooccurring factors are identified that resulted in an environment and an institution dismissive of the plight of the child as peripheral. Notably, the 1926 Convention was a product of its time, meaning that despite its humanitarian aims, it was in its substance, consisting of colonial politics and racial ideology. The Global South's participation in slavery practices was narrated from a biased Western perspective, resulting in an insufficient reading of the manifestations of slavery across locales. These caused the marginalization of the Global South more broadly from the 1926 Convention. The girl assumed a role in conversations at centers of power, which would relegate her commodification as falling short of being in a state of proprietorship, as a cultural practice, or as too complex to be dealt with. The colonial powers, who dominated the legal abolition movement through the League's Eurocentric makeup, further formulated the 1926 Convention in line with their economic interests, which necessitated the continuation of the female labour force. The Temporary Slavery Commission, the League and its member states thus beget a legacy of international law that has historically disenfranchised the enslavement of women and girls.

Chapter 2: Framing the Research

2.1. Context: Slavery and Forced Marriage

Legal systems have often shown reluctance to deliver justice for women who are victims of gender-based crimes, especially sexual violence. This is, in part, due to a reluctance that stems from a historically male-centric construction of the law, law enforcement, and the legal profession, which has consistently de-prioritized the prevention and prosecution of crimes against women.[30] This tendency is evident in the globally widespread violence against women, occurring in both peacetime and during conflicts.[31] Supported by equally repressive socio-cultural norms and perspectives, systemic indifference results in significant obstacles when a woman tries to bring her case to light. She must account for the potential retaliation from perpetrators, community ostracism, ridicule, or not being taken seriously by law enforcement and lawyers, including experiencing shame and guilt.[32] Yet, these obstacles are systematically engrained in the social and legal existence of the woman.[33]

This chapter explores the theme of the relegation of harm and violence experienced by women and girls, more broadly, in an effort to elucidate the narratives that currently underlie public and policy discourse on consent and child marriage. This exploration is a primer into the marginalization of women's rights traced in the archival investigation of the following chapters. It sets the scene for what will be, in the following chapters, a series of critical interrogations into how

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[30] Kelly Dawn Askin, *War crimes against women : prosecution in international war crimes tribunals* (The Hague: M. Nijhoff Publishers, 1997). See also: Kathleen M Pratt & Laurel E Fletcher, "Time for Justice: 'The Case for International Prosecutions of Rape and Gender-Based Violence in the Former Yugoslavia'" (1994) 9 Berkeley women's law journal 77.

[31] O'Brien, Melanie, "'Don't kill them, let's choose them as wives': the development of the crimes of forced marriage, sexual slavery and enforced prostitution in international criminal law" (2016) 20:3 The International Journal of Human Rights 386–406.

[32] Pratt & Fletcher, *supra* note 30.

[33] Hilary Charlesworth & Christine Chinkin, *The boundaries of international law : a feminist analysis*, Melland Schill studies in international law (Manchester: Manchester University Press, 2000). For an extensive commentary of international law's engagement with women's rights, see: Marsha A Freeman, C M Chinkin & Beate Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination Against Women : a commentary*, Oxford commentaries on international law (Oxford ; Oxford University Press, 2012).

marginalization is at the foundation of international slavery law. This chapter is divided into two sections. The first section will begin to explore the broader context of slavery and child marriage, relating it to the jurisprudential crux of slavery as a human condition. It begins by considering the social facets of slavery, honour, and consent in relationship to the anthropological outcomes of forced and child marriage. It further outlines the contextual legal and policy milieu within which forced and child marriages take place, as a consideration of the applied human rights space provides the backdrop for the later discussions of Chapters III and IV. This serves as an introduction to the rationale of this thesis' theoretical framework and method, which are expounded on in the second section of this chapter. The theoretical and methodological approach's grounding is facilitated by considering those theoretical and conceptual relationships binding law and time as both phenomenological mechanisms of being and the disciplinary intersection of law and history. Acting as a philosophical anchor for the feminist and Third World frame of this thesis, the understanding of law's relationship to time rationalizes the relevance of the method and the research question itself.

2.1.1. Contextualizing: Marriage and Consent

The conception of the Convention on the Elimination of All Forms of Discrimination against Women sought to introduce an enumeration of the woman's right to choose her partner and to consent to a marital union under the principle of non-discrimination in international law, but its text and general recommendations neither speak to slavery nor to modern-day slavery. Sadensa proposes that the issue is not an absence of enumeration but rather the insertion of an enumeration that "[does] little to the articulation of specific issues affecting women" and indicates the international order's systemic reluctance to otherwise include the particularities of gender-

specific issues.[34] In the social realm, we need not look beyond Robin Blackburn's framing of slavery to understand the ostracization that is experienced. Blackburn characterizes slavery as a social condition in which the individual is in complete alienation from kinship and their native community.[35] In this conceptualization, the slave is someone who has been transferred from one group to another without their consent, for the master to do with the slave as they please.[36] According to Blackburn, the feature of isolation is what distinguishes slavery from marriages that have been settled between the male guardians on behalf of women.[37] Despite recognizing the brute environments of "labour and punishment," Blackburn notes that women's reproductive capacities embed them with a pragmatic value that results in conditions which are just "short of enslavement."[38] (It is worth asking, what if a married woman is unable to bear children?) If social isolation were the decisive feature that discounts the non-consensual relationship between the woman and her husband as a form of slavery, then contrary to Blackburn's determination, many forced marriages would satisfy this criterion. Although this is not present in all forced marriages, studies into this form of abuse consistently indicate that alienating the woman from her community and broader society is a common consequence.[39] It is well established that children who have been married are at heightened risk of ostracization.[40] Therefore, if alienation from kinship and their wcondition of slavery, then what is?

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[34] Anu Saksena, "CEDAW: Mandate for Substantive Equality" (2007) 14:3 Indian J Gend Stud 481–498, 482.

[35] Robin Blackburn, "Eighteen Defining Slavery-its Special Features and Social Role" in Léonie J Archer, ed, *Slavery and Other Forms of Unfree Labour*, 1st ed (Routledge, 1988) 262.

[36] *Ibid*.

[37] *Ibid*.

[38] *Ibid*.

[39] Khatidja Chantler & Melanie McCarry, "Forced Marriage, Coercive Control, and Conducive Contexts: The Experiences of Women in Scotland" (2020) 26:1 Violence Against Women 89.

[40] See generally: Parveen Ali & Michaela M Rogers, *Gender-based violence : a comprehensive guide* (Cham: Springer, 2023).

In conformity with the prominent work of Orlando Patterson on slavery across time and culture, Blackburn weaves the idea of honour into his discussion. Patterson's study culminated in the idea that slavery is a perpetual condition marked by the "violent domination of natally alienated and generally dishonoured persons."[41] Through this frame, the slave is perceived as intrinsically dishonourable. Blackburn utilizes this conception to denote that wives could not be considered slaves because doing so would diminish the honour of their husbands.[42] This perspective fundamentally links the woman's status (for example, as a wife) and her honour to that of the man she is subjected to. It adds a second layer to Blackburn's condition of slavery that speaks both to the slave's isolated ecosystem and to their perceived kernel worth. In this analysis, the worth of the woman emanates from her relationship with the man. This view of slavery – that forced marriage cannot constitute enslavement as it would otherwise diminish the honour of the man – contains a paradox within itself. If a woman's honour is vested in the man, then that woman does not possess honour inherent to her. If she does not have intrinsic honour, she could very well satisfy the dishonoured persons condition within the context of a marriage. This way of thinking about slavery also raises several questions on the impact of the perceiver of such honour; for example, how does honour change depending on the beholder? Do shifts in the husband's honour reflect in her standing, and if so, can the enslavement of the woman emerge in situations where the husband's honour is diminished? The anchoring of slavery in honour elicits further difficulties in its temporal dimensions and cultural perceptions, and it is, therefore, not a reliable method of delineating the social conditions of slavery. The following chapters demonstrate that the essence of Blackburn's and Patterson's claim – a relegation of the woman's human condition – manifests itself in the 1926

[41] Orlando Patterson, *Slavery and social death : a comparative study* (Cambridge, Mass: Harvard University Press, 1982).

[42] Blackburn, *supra* note 35.

Convention, which continues to govern the international legal system's understanding of slavery today.

Moving away from this social perspective, legal regimes globally have accepted that the consent of both parties must be present for the undertaking and validity of a marriage.[43] Consent within a marriage can, however, be more restrictive as marital rape exceptions prevail in many countries, usually justified through the cultural relativity prism, which is also the antidote proposed by Global South nations to universalist triumphalism of international law.[44] In this paper, the focus of inquiry will be the consent *to* marry, and where such consent is absent, it will assume that this absence carries throughout the marriage and extends to a lack of consent to sexual acts or any other matter that necessities genuine consent for the realization of a person's dignity. In other words, where the forum for consent is presumed to be a priori exclusive of the woman or child, it can be safely and reasonably presumed that her consent will not be given for the duration of her exclusion. It goes without saying that for consent to be valid, a person must have the genuine ability, free of coercion and fear of violence of any kind, as well as the capacity to provide their consent. The book *Marital Rape: Consent, Marriage, and Social Change in Global Context* extensively considers conceptions of consent and inter-relating subjects from a comprehensive line of perspectives. As it grapples with questions of reconciling the cross-cultural issue of consent, it offers a firm "conviction that women must be free to make good lives and attain full personhood regardless of cultural context".[45] Pateman provides a substantial argument that consent also

[43] *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962 (entry into force 9 December 1976)*. *International Covenant on Civil and Political Rights, 1966 (entry into force 23 March 1976)*.

[44] M Gabriela Torres, "Reconciling Cultural Difference in the Study of Marital Rape" in (Oxford University Press, 2016).

[45] Kersti Yllö & M Gabriela Torres, *Marital rape : consent, marriage, and social change in global context*, Interpersonal Violence Series (New York, NY: Oxford University Press, 2016).

requires the presence of alternatives, and thus, "consent is always in conversation with the capacity to imagine and to implement alternative visions of society and social relations."[46]

Child marriage falls under the umbrella of forced marriage, which, according to the ILO, is the operating practice that keeps millions of women living in conditions of modern-day slavery.[47] The intrinsically gendered nature of the practice also leads to unique detriments for girls, tied inherently to their biological sex, as the (s)exploitation of their biology for their sexual labour and reproductive capabilities is also among the drivers of child marriage. It can have detrimental consequences for young girls of all ages, especially those who have not undergone puberty. From emotional and psychological ramifications to forced pregnancies[48] and pregnancy-related death as the leading cause of mortality amongst girls aged 15-19,[49] the associated harms have beckoned much concern from stakeholders.[50] Child marriage has become of greater concern in concurrence with the deepening of our scientific understanding of childhood development.

2.1.2. Contextualizing: Policy Narratives on Child Marriage

Indeed, childhood is a developmental and formative stage in the human life cycle, distinct from adulthood and furnished with its idiosyncratic characteristics. The developing physical, cognitive, emotional, and social capacities of children require special rights and restrictions to be

[46] Anne Phillips, "Free to Decide for Oneself" in Daniel I O'Neill, Mary Lyndon Shanley & Iris Marion Young, eds, *Illusion of Consent: Engaging with Carole Pateman* (Penn State University Press, 2008) 99.

[47] *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, by International Labour Organization (ILO), Walk Free, and International Organization for (Geneva, 2022).

[48] Suresh Lal, "Child Marriage in India: Factors and Problems" (2013) 4:4 Intl J of Science & Research 2993.

[49] United Nations Population Fund, *Marrying Too Young* (New York: UNFPA, 2012).

[50] See generally United Nations Population Fund & United Nations Children's Fund, *Child Marriage and Other Harmful Practices: A Desk Review of Evidence from South Asia* (Bangkok: UNFPA, 2020). For a more detailed insight into the harms of child marriage see: Ali & Rogers, *supra* note 40.

enacted in their best interest as they evolve from a dependent into a sovereign existence.[51] Children are, therefore, "entitled to special care and assistance", while the state must endeavour the realization of their potential to navigate the human condition independently and as members of society.[52] This state of evolution and potential is widely protected under international and domestic legal systems, and the United Nations Convention of the Rights of the Child is, accordingly, the most ratified international treaty to date. With the move from the Millennium Development Goals towards the 2030 Sustainable Development Goals, child marriage has found its way into prominent human rights discourse, falling under target 5.3 to "eliminate all harmful practices, such as child, early and forced marriage and female genital mutilations."[53] This followed after years of one ambiguous international treaty after another, refusing to outright prohibit the marriage of children below a specified age.[54] Recently, the United Nations, international organisations, and many states alike have taken an increasingly stronger stance against child marriage. This has culminated in the Human Rights Council of the United Nations General Assembly's weighty rebranding of forced marriage as a practice of slavery.[55] This form of violence necessitates attention by the international community under the auspice of human rights and as an issue that is prevalent in all corners of the world.

The contemporary discourse on child marriage has, however, been subjected to as well as geared towards hegemonic interest groups. These discourses reduce the substance of the issue of

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[51] Edward Kruk et al, *The Routledge International Handbook of Shared Parenting and Best Interest of the Child*, 1st ed (United Kingdom: Routledge, 2021).

[52] *Convention on the Rights of the Child, 1989 (entry into force 2 September 1990), preamble*.

[53] United Nations Office of the High Commissioner, *supra* note 10.

[54] Article 2 of the Universal Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages states, "States Parties to the present Convention shall take legislative action to specify a minimum age for marriage." However, the Convention does not actually specify what that minimum age should be. White its preamble urges the "eliminating [of…] child marriages and the betrothal of young girls before the age of puberty," the concept of childhood and puberty are subject to cultural understandings. In Iran, girls as young as 13 years old can be married by their parents. These low minimum marriage ages persist globally.

[55] Human Right Council, *supra* note 6.

dominionship of one over another into digestible headlines and data markers. These do little to enumerate the nature of the harm or reveal its relation to conditions of enslavement. Publications of major international institutions and organizations read: Economic Impacts of Child Marriage: Work, Earnings and Household Welfare Brief (World Bank and International Center for Research on Women); Economic Impacts of Child Marriage: Fertility & Population Growth Brief (World Bank and International Center for Research on Women); Does Child Marriage Matter for Growth? (International Monetary Fund); Ending child marriage can help curb population growth (Girls Not Brides). Many academic articles have been published in eminent journals, speaking to the economic and growth-related dimensions and indicators of child marriage.[56] Their catchy titles and vindicating economic approaches to the issues facing children subjugated to forced marriage bear semblance, as will become evident in the following chapters, to the ambivalence of the colonial drafters of the 1926 Convention. In *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking,* Engle Merry critically expounds on the reductionist challenges of quantifying complex social phenomena through numerical knowledge.[57] Importantly, she traces the human's hand in interpreting and creating seemingly scenically objective truths. Engle Merry ascertains that data, which guides funding efforts of human rights issues, is based on "expertise inertia" and "data inertia".[58] The data is evaluated by a technocratic elite, who is far removed from the complexities of the issues in their education and their socio-

[56] See for example, Muin Boase & Mansur Boase, "Sundhya Pahuja. Decolonising International Law. Development, Economic Growth and the Politics of Universality. Cambridge: Cambridge University Press, 2011. Pp. 303. 65.00. ISBN:9780521199032" (2012) 23:3 European journal of international law 887–889; Jennifer Parsons et al, "Economic Impacts of Child Marriage: A Review of the Literature" (2015) 13:3 The review of faith & international affairs 12–22; Oudom Hean, "The Economics of Child Marriage" (2023) 11:1 African journal of economic review 1–10; Pritha Mitra et al, *Does Child Marriage Matter for Growth?*, IMF Working Papers (Washington, D.C: International Monetary Fund, 2020); E Diane Pask & ML (Marnie L) McCall, *How much and why? : economic implications of marriage breakdown : spousal and child support* (Calgary: Canadian Research Institute for Law and the Family, 1989).

[57] Sally Engle Merry, *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking*, 1st ed, The Chicago series in law and society (Chicago: University of Chicago Press, 2016).

[58] *Ibid*.

economic and geographical locale, leading to expertise inertia. Experts of the North create truths about the conditions of the South – a trend that has followed from the dawn of the League of Nations. More so, data inertia is caused by the recycling of data, which establishes dominant categories of measurement.[59] These two markers of quantification create a universal truth and, in doing so, "marginaliz[e] local knowledge and alternative epistemologies as "culturally-bound" ways of knowing the world."[60] Bessa is quite right in identifying that "child marriage policies are thus implicated in wider power relations and political-economic interests of Western governments",[61] as she quotes a report from the US Council of Foreign relations which states:

> "Given the abundance of evidence demonstrating the devastating effect of child marriage on a range of development and security priorities, the U.S. government should address this practice to maximize returns on its aid investments and promote stability in crucial parts of the world."[62]

The quantification obfuscates the human rights issue from its jurisprudential foundation. Instead of locating policy in ideas of individual self-determination, freedom and dignity, the approach quantifies violence through an economic lens. In these narratives, the gross domestic product trumps dignity.

The current policymakers fail to ask what it means to be *truly* free.[63] We must ask, has the girl (and her family) had a genuine choice in the marital union? In other words, what economic, social, and political barriers must be addressed to create a space within which choice exists not to marry? It is no secret that those who endure poverty are more likely to enter into marriage as a

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[59] *Ibid*.

[60] Kimberly Theidon, "The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking by Sally Engle Merry (review)" (2018) 91:1 Anthropological quarterly 427–431.

[61] Thais Silveira Bessa, *Speaking About and Speaking for the Third World : Representations of Women's and Girls' Agency in Child Marriage Discourses* ProQuest Dissertations & Theses, 2021) [unpublished].

[62] *Ending Child Marriage; How Elevating the Status of Girls Advances U.S. Foreign Policy Objectives*, by Rachel B Vogelstein (Council on Foreign Relations, 2013).

[63] For an alternative consideration of freedom and women's development, utilizing Amartya Sen's capabilities approach, see: Martha C Nussbaum & Jonathan Glover, eds, *Women, Culture, and Development: A Study of Human Capabilities* (Oxford University Press, 1995).

means of securing basic human needs. Families with lower economic capabilities, regardless of their locale, are more likely to marry their girls at younger ages as they struggle to bear the cost of the child.[64] In fact, a direct relationship between poverty and the marriage of children has been established.[65] At the same time, child marriage also causes the cycle of poverty to subsist, and children, particularly girls, in those families habitually face the same fate. It would be naïve to not recognize the forces that drive child marriages and to propose that all families, let alone girls, have an abundance of choice. The remanences of colonial annexation, as well as subsisting patriarchal cultural and legal institutions, continue to uphold a system that bears high costs to the lives of girls. The first step to revising and reframing the governing system and discourses *vis-à-vis* child marriages into more just and effective institutions is comprehending how the structure was created and what it truly consists of. The reflection on the very foundation of the law – and with it, the international legal structures and narratives that reinforce these underpinnings – is the basis for a more profound philosophical contention with the practice of child marriage and its nexus to slavery. Building on this premise, this thesis engages with the historical exclusion of girls from the legal definition of slavery. In doing so, it extends an invitation for a self-critical conversation within the human rights space to ask how is it that in the 21st century, 22 million women endure under conditions of enslavement?

[64] United Nations Children's Fund, Ending Child Marriage: Progress and prospects, UNICEF, New York, 2014. See also: United Nations Children's Fund, Looking Ahead Towards 2030: Eliminating child marriage through a decade of action, UNICEF, New York, 2020. United Nations Children's Fund, Ending Child Marriage: Progress and prospects, UNICEF, New York, 2014; Wodon, Q., C. Male, A. Nayihouba, A. Onagoruwa, A. Savadogo, A. Yedan, J. Edmeades, A. Kes, N. John, L. Murithi, M. Steinhaus and S. Petroni, 'Economic Impacts of Child Marriage: Global Synthesis Report', The World Bank and International Center for Research on Women, Washington 2017.

[65] Ibid.

2.2. On Theoretical Framework & Method

Since the turn of the century, a revived appetite for the historical study of international law has emerged in scholarly circles.[66] Indeed, the academic landscape has become rife with recent publications on the histories of international law.[67] In his annotated bibliography of post-1990 scholarship within the field, Thomas Skouteris' work identifies the drivers as being, *inter alia*, "a move away from grand Eurocentric narratives and toward global, micro, and subaltern histories; [...] a (re)turn to the archive; a reflection on epistemic questions; and a recognition of the significance of the field's historical consciousness for its legitimacy and vitality."[68] Yet, the infancy of international legal history has opened the floodgates to a slew of questions and debates with their focus on purpose, substance and method of doing international legal history properly.[69] This section engages with these theoretical and epistemological considerations and, in doing so, it substantiates the methodological rationale of this thesis. It first examines the dichotomy between the writing of "historians' history" and that of "jurists' history."[70] Secondly, the discussion parses out the feminist and Third World framework that orient the discussion later on in Chapters III and IV. Thirdly, the discussion engages with the archival method – its opportunities and shortfalls – as a way of writing omitted voices into their legitimate place within international legal history. The commitment of this section is to ground the subsequent discussions within a defined theoretical and methodological locale. Throughout this and the following chapter, the question of purpose –

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[66] Martti Koskenniemi, "Why History of International Law Today?" (2004) 2004:4 Rechtsgeschichte : Rg : Zeitschrift des Max-Planck-Instituts für Europäische Rechtsgeschichte 61–66.

[67] *Ibid*. Thomas Skouteris, *The Turn to History in International Law* (Oxford Bibliographies in International Law, 2017).

[68] Skouteris, *supra* note 67.

[69] *Ibid*. See also: Matthew Craven, "Theorizing the Turn to History in International Law" in Anne Orford & Florian Hoffmann, eds, *The Oxford Handbook of the Theory of International Law* Oxford Handbooks (Oxford University Press, 2016). See also: Anne Orford, "International Law and the Limits of History" in Mareike de Hoon, Wouter Werner & Alexis Galán, eds, *The Law of International Lawyers: Reading Martti Koskenniemi* (Cambridge University Press, 2017) 297.

[70] Randal Lesaffer, "International Law and its History: The Story of an Unrequited Love" in *Time, History and International Law* (Leiden, The Netherlands: Martinus Nijhoff, 2007) 27.

the *why* – guides both methodology and our traversal through the terrain of scholarship that this thesis engages with.

2.2.1. The Interplay between Law and History

Insights from critical legal and feminist schools of thought have called for the necessity of a systematic inquisition into the rise and consolidation of international systems of regulation and their constituent bodies.[71] In response to, and possibly because of the existential weight of the assertions in support of this call from critical and feminist approaches to international legal history and historiography, the call for (re)visiting history has resulted in epistemological turmoil.[72] Party to this turmoil are historians and legal scholars alike, who share the disciplinary quest of uncovering international law's story and are thusly caught in "method wars."[73] Such challenges can be traced back to a temporal dimension within the law – the making of law transcends its time of creation and embeds itself into a subsisting system of governance of micro and macro facets of society, culture, politics, and economies.[74]

Natasha Wheatley, in her essay *Law and the Time of Angels: International Law's Method Wars and the Affective Life of Disciplines,* illuminates that the zeal and fervour with which these debates are "summoned forth, that is, something like the subconscious of disciplines. They

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[71] See generally: Annabel S Brett, Megan Donaldson & Martti Koskenniemi, *History, Politics, Law: Thinking through the International* (Cambridge, United Kingdom ; Cambridge University Press, 2021). See also: Charlesworth & Chinkin, *supra* note 33. See also: Hilary Charlesworth, "Alienating Oscar: feminist analysis in international law" in Dorinda G Dallmeyer, ed, *Reconceiving reality : women and international law* (Washington, D.C: American Society of International Law, 1993).

[72] Skouteris, *supra* note 67.

[73] Natasha Wheatley, "Law and the Time of Angels: International Law's Method Wars and the Affective Life of Disciplines" (2021) 60:2 HIST THEORY 311–330. Thomas Skouteris provides critical remarks on the traditionalist teleological method of legal history, dominated by narratives of international law's linear progress. He notes that "writing into history what has been excluded, and the writing of new histories, generates imaginative space with immediate re-distributive impact." See: Thomas Skouteris, "Engaging History in International Law" in *New Approaches to International Law: The European and the American Experiences* (The Hague: T .M. C. Asser, 2012) 99.

[74] See generally: Matthew C R Craven, Malgosia Fitzmaurice & Maria Vogiatzi, *Time, history and international law*, Developments in international law, v 58 (Leiden ; M. Nijhoff, 2007).

extended all the way down (or back) to engage the nature of time, the nature of truth, and the very possibility of political critique."[75] The contentions, which Wheatly gives us a comprehensive recounting of, engage specifically with the dichotomy of contextualism and anachronism as approaches in international legal history. Historians are in defence of their disciplinary codes of conduct where contextualism is a core canon and law must be placed and understood within respective periods.[76] Some legal scholars, however, view contextualism as the philosophical force that confines law's natural state and method – a misplacement in the legal discipline – and accordingly, they embrace anachronism as a necessary means to maintain the normativity of the legal discipline and understand the embodiment of history's authority in law today.[77]

For Leopold Van Ranke, commonly viewed as the father of objective historical research, any methodological recount of history must be *as it really was* by drawing on primary sources and critically analyzing one's sources.[78] Therefore, to the historian, their scholarly method must emanate from a seemingly objective locale – a Nagelian *view from nowhere*. Yet, telling history *as it really was* delimits the historical researcher to an exclusively observational role devoid of interpreting authority and positionality. In reality, historians make choices about the research topic they study, what materials they consider and much else that shapes their storytelling as they "construct narratives about the past that would never exist without some amount of self-assertion, choice, desire, fortitude."[79] The legal historical study mirrors this research agency because its endeavour is, in part, a normative task. International law is not desuetude, and its subsisting role in state and citizen is therefore measured against pertinent jurisprudential and moral philosophies.

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[75] Wheatley, *supra* note 73.

[76] *Ibid*.

[77] Anne Orford, "On international legal method" (2013) 1:1 London review of international law 166–197.

[78] Andreas Boldt, "Ranke: objectivity and history" (2014) 18:4 RETHINK HIST 457–474.

[79] Susan A Crane, "Historical Subjectivity: A Review Essay" (2006) 78:2 J MOD HIST 434–456.

Peter Kosso further points out, as acknowledged by other scholars, that historians engage in a social process when they research and produce accounts of history because their own social environment dictates the writing and reading of historiography.[80] He distinguishes between two particular social influences that historians are subject to. On the one hand, the researcher faces the weights of their own "public society and culture," and on the other, their "professional society and training."[81] In fact, psychologists and anthropologists have established a link between the ways in which we observe the society in which we exist and the "peculiarities of our perceptual apparatus, by our culture, and by our needs, interests, and desires, as well as by external stimuli."[82] Embedded in this environment, the researcher studies human subjects of another time, culture and social setting.[83] This is where the researcher's role as a professional becomes relevant: The researcher must put on their professional hat and conduct the study as an agent of their field of expertise.[84] To Kosso, this does not mean that they cannot have a professional orientation but that this orientation must be legible to the reader. The reader must be able to discern the professional subjectivity of the author to allow the reader to "compensate" for it.[85]

Contextualists, famously emanating from the Cambridge School of thought, would necessarily disagree with Kosso because their professional training is, in fact, the ability to put histories in conversation with their own society, culture, beliefs, and materials. Fasolt, insisting on the sanctity of contextualism and aberration of anachronism, forcefully notes that "No one who

[80] Peter Kosso, "Philosophy of Historiography" in (Oxford, UK: Wiley-Blackwell, 2008).

[81] *Ibid*.

[82] Murray Murphey, "Realism about the Past" in (Oxford, UK: Wiley-Blackwell, 2008) 183.

[83] Kosso, *supra* note 80.

[84] *Ibid*.

[85] *Ibid*.

violates that great taboo may claim to be a true historian."[86] The complexity of such an undertaking has resulted in a plurality of voices and contentions amongst historians themselves, yet in the context of the legal tradition, the conversation must take an independent shape from the historical discipline.[87] The operative philosophical mechanisms of law are inherently different from that of history, requiring a rethinking of contextualism, and a consideration of Kosso's ideas on the social processes and role of the researcher.

Anachronism, as a response to questions of law's inheritable ancestry, suggests that international law's time is neither chronological nor linear; it is "genealogical, depending as it does upon the transmission of concepts, languages and norms across time and space."[88] The transcripts of a critical dialogue between David Kennedy and Martti Koskenniemi recount international law's abandonment of its wicked past.[89] International law's perception of itself was along two lines: Its identity was of revolutionary and ambitious intervention and of realism amidst states' political power dynamics.[90] David convincingly notes:

> "Together these historical stories—wildly inaccurate, partial, even a bit crazy—seem more about defending the field, grounding its normative claims, or lionizing its ethical vision than accounting for international law's actual role in history. Just for starters, so much was left out—colonialism, slavery, all but a couple of wars, pretty much everything outside the North Atlantic. We knew about 1648, but what was happening in India or China or Africa or Latin America in 1648?"[91]

The question is not only what happened across the Western seas in 1648, but also, what are the reminisces of the happenings in international law today? The anachronist is acutely aware of the

[86] Constantin Fasolt, *The limits of history* (Chicago: University of Chicago Press, 2004).

[87] Wheatley, *supra* note 73.

[88] Orford, *supra* note 77.

[89] David Kennedy & Martti Koskenniemi, *Of Law and the World: Critical Conversations on Power, History, and Political Economy*, 1st ed (Cambridge: Harvard University Press, 2023).

[90] *Ibid*.

[91] *Ibid*.

law's ability to carry meaning across context and time.[92] Wheatley pierces beyond these discussions to propose that they are symptoms of a more foundational question about the law itself – they point to law's self-governing mechanism of time and truth – law's transtemporality allows for methods of creating a quasi-divine "legal real."[93] Law, through these systems that allow its evasion of time, has granted itself a superior status, wherein it abdicates culpability in systems of oppression while using the very same temporal tools to withhold the rights of others.[94]

Laws' historical consideration, therefore, reaches beyond the limitations of context and time to take a forward-looking shape. Indeed, this is because its structure is created and reinforced not only by legal scholars and practitioners but also through law's internal systems of subsistence, what Wheatley terms "technologies of its temporal indifference."[95] In exploring its technologies of temporal indifference, particularly those that have aided in the maintenance of repressive structures, we must also evoke law and its technologies' fantastical ability to redesign or create tools and truths of liberation. Legal history – one such medium – is itself law, produced through law's transtemporality and, therefore, a participant in the meaning-creation of what was, what is, and what will be.

2.2.2. Feminism and the Global South

Cognisant of international law's transtemporality and attendant technologies, and international legal history's sustenance in (and by way of) current-day global legal systems, a revisitation of its making must aim to present a more holistic narrative. The reconstruction of a

[92] Orford, *supra* note 77.

[93] Wheatley, *supra* note 73.

[94] *Ibid*.

[95] *Ibid*.

richer account of international legal history is necessary to our understanding of how international law manifests in the state today and especially how it bears on the rights of the people whom it is intended to protect. Fundamentally, its reconstruction allows us better insight into the object of the law and its impact. Notably, the revisiting of international law's making, especially its slavery abolition laws, require a fuller account, where dominant triumphant portrayals have taken the lead in history and legal books. The marginalization of knowledge by dominant voices is well documented,[96] as Dilar Dirik crucially writes that "ideas of history as a linear march towards progress are Eurocentric, male-centric, and state-centric myths or dogmas."[97] Feminist scholarship has long criticized the scientific discipline for its deeply entrenched epistemological violence caused by these very knowledge-power dynamics. Historically, and still today, the production and dissemination of mainstream knowledge has transpired amongst elite circles and spaces, and international law is no exception to this. To the European victors have gone the spoils of creating international law's universalist tale, from which the Global South, and its women in particular, have either seen themselves missing or, worse yet, deconstructed and reimagined by a colonial lens.

Feminist thinkers have stressed that the gendered dimensions of international law exclude women and or perceive them in the ideal image of man.[98] The encounters with the international legal regime's governance of rights and their violations are inherently gendered, yet much of the stories that historical legal analysis details emanate from a male birds-eye view.[99] For instance, Hilary Charlesworth and Christine Chinkin, in *The Boundaries of International Law: A Feminist*

[96] Claudia Brunner & transcript: Open Library 2020 (Politik) funder, *Epistemische Gewalt Wissen und Herrschaft in der kolonialen Moderne* transcript Verlag, 2020) [unpublished].

[97] Dilar Dirik, *The Kurdish women's movement : history, theory, practice* (London: Pluto Press, 2021).

[98] Charlesworth & Chinkin, *supra* note 33.

[99] *Ibid*.

Analysis, reveal this prejudice in international law's most divine but ostensibly neutral tenet of state sovereignty.[100] Their dominance in legal scholarship perpetuates them as the impartial norm, where the woman's encounter is the divergent.[101] Feminist legal history is thus a response to the paradoxical subjectivity of male neutrality. The history of law is, in some respects, a story of *the human condition,* and a legal history that neglects the *being* of women amidst it is thus merely a story of mankind.

Feminist scholarship is a discipline as much as it is a political endeavour. It thusly aims to bring to the forefront erased stories and radical truths through reimagined and alternate epistemologies.[102] This thesis positions itself within the feminist scholarly landscape where it intuitively fits to assume its polemic identity. This thesis, consistent with feminist principles, seeks to "posit[ion] women and women's conditions at the heart of historical interrogations of law."[103] Gender dynamics and their analytical tools are particularly relevant to histories of colonization, de- and re-colonization, and the laws that followed, be it international law or the reconstruction of the legal system in the newly sovereign state. Feminist thought questions the professed truths of law and history and seeks to uncover how legal systems have contributed to the production of inequality of the sexes.[104]

In the spaces of international law, feminist analysis is a relatively new mode of scholarship. International law and its concern with state matters, which are *prima facie* gender-neutral, have sheltered it from the feminist school of thought. That is, until the notable essay *Feminist*

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[100] *Ibid*.

[101] Christine Chinkin, "Feminism, Approach to International Law" in *Oxford Public International Law* (Max Planck Encyclopedias of International Law, 2010) publisher: Oxford University Press.

[102] Brunner & transcript: Open Library 2020 (Politik) funder., *supra* note 96.

[103] Renisa Mawani, "Archival Legal History: Towards the Ocean as Archive" in Oxford Handbooks (Oxford University Press, 2018).

[104] Hilary Charlesworth, Christine Chinkin & Shelley Wright, "Feminist Approaches to International Law" (1991) 85:4 The American Journal of International Law 613–645, online: <http://www.jstor.org.ezproxy.library.yorku.ca/stable/2203269>.

Approaches to International Law, written by Hilary Charlesworth, Christine Chinkin, and Shelley Wright, institutionalized feminist approaches to international law.[105] In their essay, they elucidate the ways in which international law is, in fact, "international men's law," from decolonization to the right to self-determination – its make-up mirrors the patriarchal figure of its principal subject: the state.[106] In one section of their analysis, they reflect on the General Assembly's role in propagating the *mujahideen* regime in Afghanistan under the guise of self-determination, without due regard for the fact that "the high-sounding ideals of non-interference do not apply to [women], for their self-determination is subsumed by that of the group."[107] No doubt, its detrimental consequences persist to date as Afghan women have been excluded from all forms of public life under a gender apartheid system.[108] When considering the making and state of international law and its mechanisms, feminist analysis allows us to deconstruct dominant narratives in an aspiration for truth-seeking. Therefore, as a key philosophy of this thesis, the discussion expounds on the current state of academia as it pertains to international law's exclusionary character.

Within the critical paradigm, there is a second layer to the feminist nature of this thesis that addresses the inherently continental nature of feminist legal scholarship. The collective of Third World Approaches to International Law scholarship leads this interrogation of international legal history as an equally Westernized promotion of governance and regulation. Broadly speaking, Third World Approaches to International Law hypothesizes international law's genesis to be borne out of the (de)colonization projects of the West, colluding to legitimize Ethnocentric ideology and

[105] Ignacio de la Rasilla, "Feminist Approaches to the History of International Law" in (United Kingdom: Cambridge University Press, 2021) 183.
[106] Charlesworth, Chinkin & Wright, *supra* note 104.
[107] *Ibid*.
[108] *Ibid*.

power through its doctrines and institutions.[109] From this perspective, international law's self-professed universality is deemed rather a performative triumphalism, negligent to the particularities of a diverse world populace and, in practice, specifically futile to marginalized groups.[110] Third World scholars theorize that our current international legal system, which emanated from the 20th century civilization mission, was inspired by the very ideologies that had previously driven colonization.[111] Third World Approaches to International Law scholars, amongst other critical, feminist and post-colonial scholars, have thus been writing and rewriting the history of international law over the past few decades in an attempt to uncover the *Third* voice within international legal history's Western silos. In a review of Sundhya Pahuja's award-winning book *Decolonising International Law: Development, Economic Growth and the Politics of Universality*, published by Cambridge University Press, students of United Kingdom's elite institutions write with poetic irony an imperative truth: "The shadow of appropriation, violence, oppression, poverty, and corruption and all that international law finds abhorrent must be exposed within the law itself, for the best protection against the shadow's projection onto the world is by becoming conscious of it within."[112] In the spirit of this ethos, the discussion assumes a feminist orientation

[109] Antony Anghie, *Imperialism, sovereignty, and the making of international law*, Cambridge studies in international and comparative law ; 37 (Cambridge, UK ; Cambridge University Press, 2005). Guy Fiti Sinclair synthesis the intellectual history of international institutions, including the International Labour Organisation, which was established in tandem with the League of Nations. Especially relevant are the first two chapters of the book, which "illustrate the complex interplay of moral, expert, and legal claims to authority in the activities of international organizations." See: Guy Fiti Sinclair, *To reform the world : international organizations and the making of modern states*, first edition. ed, The history and theory of international law (Oxford: Oxford University Press, 2017). See also: Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge, UK: Cambridge University Press, 2001). B S Chimni, "International Institutions Today: An Imperial Global State in the Making" in Edward Kwakwa, ed, *Globalization and International Organizations*, 1st ed (Routledge, 2011) 41. James Thuo Gathii, "Imperialism, Colonialism, and International Law" (2006) 54 Buffalo Law Review 1013–1066.

[110] Bonny Ibhawoh, "Human rights for some: Universal human rights, sexual minorities, and the exclusionary impulse" (2014) 69:4 INT J-TORONTO 612–622.

[111] Anghie, *supra* note 109. See also: Chimni, "Third World Approaches to International Law: A Manifesto" (2006) 8:1 International community law review 3–27.

[112] Boase & Boase, *supra* note 56.

that is compatible with critical self-consciousness and self-reflection, while also positioning itself within a commune of Third World scholars.

In the feminist space, much room emerges for a plurality of feminist voices, and significant contributions hail from Global South scholars who approach their work with a feminist Third World Approaches to International Law sensibility.[113] The narratives and ambitions of Third World Approaches to International Law scholarship are to expound "that doctrinal and institutional developments in international law cannot be understood simply and always as logical elaborations of a stable, philosophically conceived sovereignty doctrine […] but as being generated by problems relating to colonial order".[114] Third World Approaches to International Law enables the supplement of international law studies with voices from beyond its dominant Eurocentric establishment and historical echoes.[115] Through its universal orientation, Third World Approaches to International Law scholars offer this framework as the salvation for international law and justice.[116] Its prophetic abilities for a universal international law are a thought-provoking question and certainly in need of evaluation, yet they may find a more befitting place in a different forum. What Third World Approaches to International Law offers this particular discussion is a sensibility to look in the margins of scholarship and history to make sense of the colonial entanglements in slavery abolition law. This work, through re-writing the girl into international law's history, actively employs a Third World Approaches to International Law philosophy. It allows for reconsideration of the dominant narratives of international law's success in coding *jus cogens* norms, and it provides a lens through which the making of abolition legislation can be examined

[113] See for example, Vasuki Nesiah, Sylvia Tamale, Celestine Nyamu, Dianne Ottoso, Penelope Andrews, Berta Hernandez , Hope Lewis, Lama Abu-Odeh, Adrian Wings, Athena Mutua, Leslye Obiora, Sundhya Pahuja, Sylvia Kangara, and Mosope Fagbongbeo.

[114] Anghie, *supra* note 109.

[115] Koskenniemi, *supra* note 66.

[116] Antony Anghie, "Rethinking international law: A TWAIL retrospective" (2023) 34:1 EUR J INT LAW 7–112.

against its colonial backdrop. This is particularly so as Third World Approaches to International Law's evolution was "inspired" by feminist analysis, in its method and aim, of international law – to study its exclusionary form.[117]

2.2.3. Archival Research

The United Nations has digitized and made publicly accessible the archival documents of the League of Nations, which this thesis utilizes to address the research question. This method of engagement with international legal history research enables an intimate insight into the work of the stakeholders at the forefront of codifying the prohibition of slavery. Further, the archival method also aids the thesis in addressing the concerns laid out in the previous section because the analysis of primary sources enables the reconstruction of legal history through a feminist and Third-World lens. Archival research enables us to travel back in time to uncover the voices of the Global South that have been omitted from the historical canon. An archival approach offers a means to examine collective memory and the reasons for its fragmentation, while uncovering data that allows us to reshape this collective memory.[118] Nonetheless, it is essential not to imagine archives as sites of absolute truths or neutral representations of history.[119] On the contrary, this work considers the United Nations archive as sites of hegemony and colonial remnants.[120] Renisa Mawani, speaking to the transatlantic slave trade, reminds us that these archives are a mortuary,

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[117] *Ibid*.

[118] Stephan Mühr examines historiographical and ethnological works to argue that remembrance, like the practices of scientific and cultural memory, is an activity of constructing and reconstructing reality. In his conceptual analysis of scientific memory, Mühr concludes that the validity of memory depends on cultural self-perception and the cultural understanding of scientific inquiry. See: Stephan Mühr, "Wissenschaftliches Gedächtnis als Erinnerungskultur : Zwei Fallstudien zum Kolonialkrieg in Namibia" (2018) 46:1 Acta Germanica 29–46.

[119] Griselda Pollock & Saul Ostrow, "Trouble in the archives" in Saul Ostrow, eds, *Looking Back to the Future: Essays on Art, Life and Death* (London: Routledge, 2001) 23.

[120] Ann Laura Stoler, *Along the archival grain: epistemic anxieties and colonial common sense*, 1st ed (Princeton: Princeton University Press, 2010).

where each material is representative of the life, and arbitrary deprivation of life, of individuals subject to the practice of slavery.[121] Despite this reality, archives do not give us the accounts of the individuals subjected to slavery.[122] Instead, they tell stories *about* the subject, documented by the beneficiaries of the power structures that subjugated the slave to dominionship.[123]

Archival scholarship is particularly vulnerable to the exclusion of perspectives, not only by fault of ideation or method but also by virtue of the logistical limitations of source materials. There is a scarcity of primary sources that have kept alive the first-hand accounts of slaves and even fewer sources that have preserved those of the Global South women subjected to various forms of slavery. The prevailing tools of record-keeping (and the record-keepers) of the 20th century and afore have left us yearning for the technologies of our time to be technologies of theirs. Histories are left unwritten, lives forgotten, bodies eradicated, and entire clans have disappeared without a trace. Archival materials are thus a keyhole view into worlds and graveyards simultaneously. They are representations and snapshots of a world as alive and vibrant as ours today, providing us with an intimate insight into the past – however, they are *just that*: representations and snapshots.[124] This intimacy is, paradoxically, also characterized by an alienation as the materials privilege a particular perspective, idea, sentiment, or person, eluding us in their omission of truths not recorded. For instance, Marisa Fuentes writes that archives on the abolition debates in Britain fetishize the image of the beaten female slave while excluding other forms of violence that she experienced.[125] The propositions in favour of abolition and the

[121] Saidiya V Hartman, *Lose your mother : a journey along the Atlantic slave route*, 1st ed. ed (New York: Farrar, Straus and Giroux, 2007).

[122] Mawani, *supra* note 103.

[123] *Ibid*.

[124] Aviezer Tucker & Zaid Ahmad, *A companion to the philosophy of history and historiography*, Blackwell Companions to Philosophy; 41 (Chichester, England ; Wiley-Blackwell, 2009) 10.

[125] Marisa J Fuentes, *Dispossessed Lives: Enslaved Women, Violence, and the Archive*, 1st ed, Early American studies (Philadelphia: University of Pennsylvania Press, Inc, 2016).

associated accounts of slavery's cruelty are generated from the male witness rather than the female slave victim, and thus, "these depictions of enslaved women—both seemingly sympathetic and hostile—deflect the violence of slavery onto enslaved women and enact a form of archival violence."[126] Hilary Jones suggests that one must also read such archives with awareness of the biases they hold and attempt to counteract them through a critical, diverse and comparative use of sources.[127]

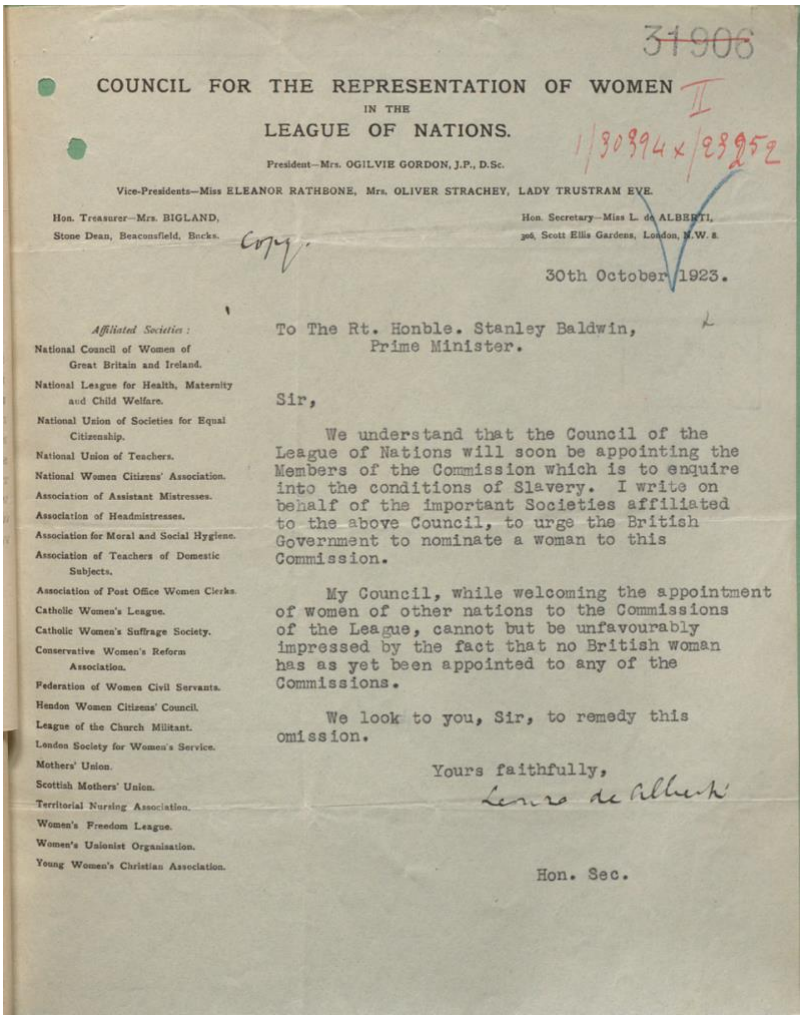
These concerns of unrepresented voices and archival violence are particularly relevant to the following chapters, as the thesis studies the documents of the colonial powers and their investigations of slavery practices. The documents made available by the United Nations archives represent the views of colonizing nations, in particular the League of Nations and their commissions, and omit the voices of the slave man, of the slave woman and of the slave child. Feminist researchers are increasingly highlighting how absences and gaps in archives are not merely omissions of historically undocumented or immaterial perspectives, but "are themselves the technologies that rendered those women as outside history, feeling, and intellect."[128] These half-truths, omitted voices, and lack of diversity in materials gives us insights into the historical epoch and its very laws. The incompleteness of archives is a statement of history itself and those whose voices are represented in archival material tell us that their voices were significant or powerful enough to be represented. A letter written by Miss Alberti (picture 1), the Honorary Secretary of the Council for the Representation of Women in the League of Nations, reinforces

[126] *Ibid*.

[127] Hilary Jones, Lawrence Aje & Nicolas Gachon, "Senegambia and the Atlantic World: African Voices on Slavery and the Slave Trade Through the Archive" in, 1st ed (Routledge, 2020) 15.

[128] Jennifer L (Jennifer Lyle) Morgan & JSTOR E-Books - York University, *Reckoning with slavery : gender, kinship, and capitalism in the early Black Atlantic* (Durham: Duke University Press, 2021).

this paradigm.[129] She calls for a British woman to sit on the Temporary Slavery Commission and, once rejected by the Mandate, these concerns are not to be found again in the thousands of pages of archival materials relating to the Slavery Commission and its undertaking. Yet, if we look closely enough, in-between the ink and in the voids of the paper, the Global South woman has marked her name with pencil and eraser.



31906

COUNCIL FOR THE REPRESENTATION OF WOMEN
IN THE
LEAGUE OF NATIONS.

President—Mrs. OGILVIE GORDON, J.P., D.Sc.

Vice-Presidents—Miss ELEANOR RATHBONE, Mrs. OLIVER STRACHEY, LADY TRUSTRAM EVE.

Hon. Treasurer—Mrs. BIGLAND,
Stone Dean, Beaconsfield, Bucks.

Hon. Secretary—Miss L. de ALBERTI,
306, Scott Ellis Gardens, London, N.W. 8.

Copy.

30th October 1923.

Affiliated Societies:
National Council of Women of Great Britain and Ireland.
National League for Health, Maternity and Child Welfare.
National Union of Societies for Equal Citizenship.
National Union of Teachers.
National Women Citizens' Association.
Association of Assistant Mistresses.
Association of Headmistresses.
Association for Moral and Social Hygiene.
Association of Teachers of Domestic Subjects.
Association of Post Office Women Clerks.
Catholic Women's League.
Catholic Women's Suffrage Society.
Conservative Women's Reform Association.
Federation of Women Civil Servants.
Hendon Women Citizens' Council.
League of the Church Militant.
London Society for Women's Service.
Mothers' Union.
Scottish Mothers' Union.
Territorial Nursing Association.
Women's Freedom League.
Women's Unionist Organisation.
Young Women's Christian Association.

To The Rt. Honble. Stanley Baldwin,
Prime Minister.

Sir,

We understand that the Council of the League of Nations will soon be appointing the Members of the Commission which is to enquire into the conditions of Slavery. I write on behalf of the important Societies affiliated to the above Council, to urge the British Government to nominate a woman to this Commission.

My Council, while welcoming the appointment of women of other nations to the Commissions of the League, cannot but be unfavourably impressed by the fact that no British woman has as yet been appointed to any of the Commissions.

We look to you, Sir, to remedy this omission.

Yours faithfully,
Leonora de Alberti

Hon. Sec.

Picture 1.

[129] "The question of slavery - Representation of Women in any Commission which may be formed to inquire into this question." League of Nations, Geneva (R64/1/30394/23252) (1925 1923) Scope ID 278058.

Hubert Gerbeau diagnoses the silos in the historical archive as *l'histoire du silence*.[130] To tell the untold and missing stories, David Kazanjian, in his essay *Freedom's Surprise: Two Paths Through Slavery's Archives*, highlights how related archival materials can be used to present a more complete version of history by *pluralizing* archives.[131] Kazanjian traces the 17th-century case of Antonia de la Natividad Pluralization, who is an African slave in South America, living in distance from her husband as he is enslaved to a different master. Antonia appealed to a judge of the clergy that her husband be allowed to embrace marital life with her, allowing designated visits to her locale, or that the judge compel the sale of her husband to a master in proximity to her.[132] Kazanjian notes the boldness of Antonia's plea, "assert[ing] sexuality and sexual pleasure over and against labor and property" and importantly, this case, and many like it, allow us to penetrate the dominant Anglo-American tales of slavery.[133] He emphasizes that "we ought to consider how archives of slavery also teem with black lives whose languages and narrative forms might not be as familiar as the classic nineteenth-century Anglo-American slave narrative, but whose stories nonetheless have much to teach us not only about past slaveries but also about the future of our own continuing struggles for freedom."[134] Pluralization then occurs first and foremost through an understanding of the *who* – to understand the particularities and commonalities permits an understanding of what their artifacts, *their* archives, are and employ those archaeologies to diversify the sources that narrate our international legal history. This work locates the *who* in the girl of the Global South rather than a distinct geographical or cultural locale. It pluralizes its

[130] Hubert Gerbeau, *Les esclaves noirs; pour une histoire du silence.*, Collection R (Paris: A. Balland, 1970).

[131] David Kazanjian, "Freedom's Surprise: Two Paths Through Slavery's Archives" (2016) 6:2 History of the present (Champaign, Ill) 133–145.

[132] *Ibid*.

[133] *Ibid*.

[134] *Ibid*.

archives through finding shared features in their experiences and resistances to their commodification.

2.3. Literature Review

The 1926 Convention has resulted in a rich body of literature that analyzes the history of the Convention and the definition of slavery as it pertains to various forms of human rights violations. The scholarship engages with the 1926 Convention's consequential effects on the anti-slavery framework and its contemporary manifestations in international law. This thesis locates itself within this body of literature and converses from a perspective that considers the history of abolitionist legislation *vis-à-vis* forced marriage. In much of the existing literature, the gendered dimensions of slavery are studied with a focus on women. This study elaborates on these works while placing a particular emphasis on the female child. It is further distinctive from the existing scholarship in that it historicizes forced marriage, rather than strictly considering its expression in law today. To place the archival study in context, the remainder of this chapter explores the academic literature on slavery from its conception to its evolution into modern-day slavery, focusing on the two core components of the research question. The first component uncovers the elements that comprise slavery's relationship to international law, while the second connects this relationship to global south perspectives and forced marriage. Within these two overarching themes, this section synthesizes the central conversations within the literature that are relevant to the exclusion of gendered manifestations of slavery from the 1926 Convention's definition.

In the following section, *Slavery and The Law*, the definitional challenges are identified, which form part of a broader conversation around the inadequacy of the current anti-slavery framework. The intersection between slavery and similar forms of exploitation is explored to

highlight the prevailing perspectives on the law through types of human rights violations that are akin to forced marriage.

The final section, *Slavery and the Global South*, considers the recent academic and policy shift in framing forced marriage as a form of slavery to locate the central question of the thesis within contemporary prevailing discourses. It explores feminist readings of international law and slavery legislation to place in discussion in a broader academic conversation. The chapter also divulges from the definitional criticisms to consider the scholarship on the colonial roots of international law and the League of Nations, which institutionalized their violence against the Global South through international law. The broader critiques of the system of international law are relevant to contextualizing the archival study, as well as the form of analysis and Third World Approaches to International Law sensibility the thesis engages with.

2.3.1. Slavery and the Law

Universally, slavery relies on the suppression of a person's freedom, yet the challenge in defining slavery *universally* lies in its diverse and nuanced manifestations across cultural, religious, and legal locales.[135] Considering these external influences on shaping the state of slavery, a definition must leave sufficient room to encapsulate the varied conditions of subjugation that a person faces when their existence is under the control of another. Yet, in international law, the 1926 Convention provides a narrow and the only international legal definition of slavery to date,[136] stating that it is "the status or condition of a person over whom any or all of the powers

[135] Nadir A Nasidi, "Slavery and its characteristics" (2022) 19:2 Lwati: A Journal of Contemporary Research. See also: Kate Boehme, Peter Mitchell & Alan Lester, "Reforming Everywhere and All at Once: Transitioning to Free Labor across the British Empire, 1837–1838" (2018) 60:3 Comparative studies in society and history 688–718.

[136] Vladislava Stoyanova, "United Nations against Slavery: Unravelling Concepts, Institutions and Obligations" (2017) 38:3 Michigan journal of international law 359–454.

attaching to the right of ownership are exercised."[137] This definition has proven problematic because of its conceptual ambiguity and practical limitations, which are discussed in more depth over the coming pages. Some aspects of the definitional challenges in international law are highlighted by the prominent slavery and law scholar Jean Allain, who has written much about the inconsistent application of slavery in jurisprudence and case law, as well as the politicization of slavery in the modern human rights framework.[138] Allain relies on the *travaux préparatoires* of the 1926 Convention to postulate that the drafters of the Convention intended a restrictive definition of slavery by attaching a *right of ownership* requirement.[139] The drafting and negotiation process of the Convention, which Allain outlines in great detail in his book *The Slavery Conventions: The Travaux Preparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention,* attests to the aim of the drafting nation-states of conceptualizing slavery in a narrow sense. Slavery then "occurs where one person controls another as he would control a thing possessed,"[140] subjugating the person to an objectified state where the "control she experiences is indefinite, and it is outwith her will to bring it to an end."[141]

In his scholarship, Allain regularly postulates the dilution of the Convention's intended scope through modern reinterpretations of slavery. Focussing on property law to emphasize the ownership aspect of the definition, Allain and Robert Hickey insist on the importance of a traditionalist reading of slavery in accordance with the ownership principle.[142] They offer other

[137] *Convention to Suppress the Slave Trade and Slavery*, *supra* note 23.

[138] Jean Allain, "Immanent Critique: International Law and the Dubious Case-Law on Slavery" in (2015) 230. See also: Julia O'Connell Davidson, *Modern slavery : the margins of freedom* (Houndmills, Basingstoke, Hampshire ; Palgrave Macmillan, 2015).

[139] Allain, *supra* note 2.

[140] Jean Allain & Robin Hickey, "Property and the Definition Of Slavery" (2012) 61:4 The International and comparative law quarterly 915–938.

[141] "Report of the Secretary-General on Slavery, the Slave Trade, and Other Forms of Servitude" United Nations, Economic and Social Council, (U.N. Doc. E/2357) (27 January 1953) 36.

[142] Allain & Hickey, *supra* note 140.

legal frameworks, such as the 1956 Supplementary Convention on the Abolition of Slavery, as a better alternative to "lesser servitudes […] namely, debt bondage, serfdom, servile marriage, and child trafficking".[143] The definitional challenges of the 1926 Convention were examined after the dismemberment of the League of Nations by its successor, the United Nations, and resulted in the creation of the 1956 Supplementary Convention on the Abolition of Slavery. Indeed, with the Supplementary Convention, new categories of slavery-like practices were created under international law, as the tasked Committee at the United Nations was not conclusive in their view of whether the aforementioned types of enduring slavery would fall under the 1926 definition.[144] The Committee nonetheless decided to uphold the 1926 definition. Their cautionary approach to the 1926 definition is made clear by the first article of the 1956 Supplementary Convention on the Abolition of Slavery, which prohibits a list of "institutions and practices, where they still exist and *whether or not* they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926 [emphasis added]."[145] These forms of slavery have come to be known as contemporary or modern-day slavery. The necessity for a clarifying convention alone reveals much about the problematic restrictiveness and, ambidextrously, ambiguous character of slavery's definition.

Diverging from Allain and Hickey, Joel Quirk denotes that, at least in theory, "it is also by no means clear how far a "right of ownership" extends since this could theoretically include married relationships […]."[146] Quirk, who has investigated the contextual relevance of politics in

[143] *Ibid*.

[144] "Rep. of the Ad Hoc Committee on Slavery" Economic and Social Council, Second Session, (U.N. Doc. E/1988) (4 May 1951) (Recommendation A.1) 19.

[145] United Nations Economic and Social Council, *supra* note 24.

[146] Joel Quirk, "The Anti-Slavery Project: Linking the Historical and Contemporary" (2006) 28:3 Human rights quarterly 565–598.

creating the Slavery Convention in multiple works,[147] stresses the importance of understanding that the legal definition of slavery was not constructed in a political vacuum.[148] Instead, it is the product of the political and economic motivation of states with colonial footholds in the Global South.[149] While Quirk concurs that one must be careful that slavery is not to be conflated with extreme forms of domination, he denotes that these ostensibly modern manifestations of slavery, as they fall under the 1956 Supplementary Convention, can, in reality, be traced throughout history.[150] Indeed, during the drafting process of the Convention, Germany observed that it "is exceptionally difficult to define slavery, in as much as the legal conception of civilised States and those of the African natives do not completely coincide."[151] Going back to the challenge of defining slavery *universally*, Germany appropriately raised the relativistic dimensions of how this form of oppression can manifest differently and, thus, the need for the law to accommodate those variances. The consequences of the drafter's disregard for this intuitive reality are evident in the one hundred years since, as both streams of thought generally agree with Kevin Bales and Peter Robbins' assessment that the definitional deficiencies of the 1926 Convention have hindered its legal efficacy and resulted in ineffective policy measures to address human rights abuses.[152]

On the one hand, slavery has become an obsolete legal phenomenon, with, for example, the European Court of Human Rights determining the necessity for a *de jure* right of ownership.[153] This is undoubtedly impossible as slavery, in the property law sense, has been altogether outlawed.

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[147] Quirk, *supra* note 4.

[148] Quirk, *supra* note 146.

[149] Forclaz, *supra* note 4.

[150] Quirk, *supra* note 146.

[151] "Draft Convention on Slavery, Replies of Governments, Reply from the Government of Germany" League of Nations, Geneva (A.10(a).1926.VI) (22 July 1926).

[152] Kevin Bales & Peter T Robbins, "'No one shall be held in slavery or servitude': A critical analysis of international slavery agreements and concepts of slavery" (2001) 2:2 Human rights review (Piscataway, NJ) 18–45.

[153] *Siliadin v France*, 2005 European Court of Human Rights.

As a corollary, a number of scholars posit that there is a trend of policymakers and activists utilizing slavery as a "powerful term" to address forms of exploitation that do not befit the conventional reading of the 1926 Convention.[154] Quirk also observes that the expansion of the definition of slavery has caused a conflation of the practice, per its 1926 Convention definition, with contemporary forms of slavery,[155] which, with the incipience of technological and infrastructural developments takes on a vastly different form than what previously characterized its institution. It is on this basis that despite the similarities between contemporary and historical forms of slavery, they are inherently different from one another and must necessarily be treated accordingly.[156] Quirk's characterization of contemporary forms of slavery – as opposed to its former institution – is therefore placed in a vastly different context, where, as a political tool, it can be wielded indiscriminately to frame various human rights issues that are adjacent to slavery as *de facto* slavery.[157]

However, Quirk's suggestion does not aim to restrict the understandings of slavery to its 1926 legal constraints. Instead, he offers a solution to this prevailing is by recommending that we look to "slavery in all its forms" as a means of delineating whether a practice falls under *de jure* or *de facto* slavery. "Slavery in all its forms" is grounded in the 1926 Convention, as well as other human rights treaties, and it allows for a sufficient *legal* framework while being narrow enough in its scope to avoid the pitfall of politicisation. Therefore, rather than solely assessing whether certain practices resemble slavery-like practices, the key criterion should be whether these cases truly represent the *de facto* equivalent of historical experiences of slavery. Where Bales et al.

[154] Karen E Bravo, "Using (and Mis-Using?) Slavery" (2016) Slavery Past, Present and Future.

[155] Quirk, *supra* note 4.

[156] *Ibid*.

[157] *Ibid*.

describe the oppressive condition as " slaves have lost free will, are under violent control, are economically exploited, and are paid nothing",[158] in Quirk's framing, slavery does not need to be a commercial transaction or have an economic dimension; rather, it can have other significant markers that are grounded in the historical roots of "slavery in all its forms."[159] Indeed, this is in the spirit of Bales and Robbins' postulation that "our understanding and our definition of slavery must become as dynamic as the phenomenon itself."[160] With much relevance to this thesis, Quirk notes:

> "When someone is forced into marriage and their subsequent experience of married life is principally defined by their partner exercising powers attaching to a right of ownership over their productive and reproductive capacity (and perhaps also their social and religious identity), and they are unable to exit the marriage owing to the threat of violence and other sanctions, then their individual circumstances may very well amount to slavery according to the 1926 definition. This link between slavery and forced marriage has not gone entirely unnoticed in recent times, but for the most part it has been chiefly framed in terms of situations of forced marriage arising out of conflict situations."[161]

In line with this observation, Allain places particular importance on the distinction between two types of forced marriages: one, which falls under the Convention on the Elimination of All Forms of Discrimination Against Women's jurisdiction, whereby a bride has been deprived of her right to consent by her family members and the other, which is better suited under the auspice of slavery, whereby a bride has been forced into marriage during times of armed conflict.[162] Allain then outlines the rationale behind such a distinction, noting that the type of sexual slavery accompanying a forced marriage during armed conflict is ill fit to be coined as marriage altogether,

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[158] Kevin Bales, Zoe Trodd & Alex Kent Williamson, *Modern slavery : a beginner's guide*, Beginners guides (Oxford: Oneworld, 2011).

[159] Quirk, *supra* note 4.

[160] Bales & Robbins, *supra* note 152.

[161] Quirk, *supra* note 4.

[162] Allain, *supra* note 26.

and in "labelling this crime as 'marriage' we fail in the requirement of the State and society to protect the institution of marriage."[163] By relying on the "requirement of to the state and society" to compartmentalize forced marriages, Allain employs a relativistic anthropo-legal orientation that inadvertently lends some degree of legitimacy to forced marriages outside of war contexts.

The Special Court for Sierra Leone has previously tried and charged a defendant for forced marriage as a standalone crime from sexual slavery, acknowledging that forced marriages encompass more than sexual exploitations, while noting that it can involve crimes of enslavement.[164] The International Criminal Tribunal for the Former Yugoslavia elaborated upon this framing in the case against *Kunarac, Kovač and Vuković* to determine that a person does not necessarily need to be under the *de jure* ownership of another.[165] The International Criminal Tribunal for the Former Yugoslavia utilized the definition of enslavement in article 7 (2) (c) of the ICC Statute, which mirrors article 1 of the 1926 Convention.[166] The judgement then outlines criteria through which powers attaching to the right of ownership can be determined:

> "The control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat or force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour."[167]

Adversely, however, Allain notes that the legal expansion of what constitutes slavery has concluded in "dead-letter law", where the political tool of the slavery narrative has been yielded

[163] *Ibid*, 468.

[164] O'Brien, *supra* note 7. See relevant cases on child slavery: Judgment, Brima, Kamara and Kanu (AFRC) (SCSL-04-17-T), Trial Chamber, 20 June 2007. Judgment, Sesay, Kallon and Gbao (RUF) (SCSL-04-15-T), Trial Chamber, 2 March 2009. Judgment, Taylor (SCSL-03-01-T), Trial Chamber, 18 May 2012.

[165] Allain, *supra* note 26. *Kunarac et al, IT-96-23-T & IT-96-23/1-T,* 2001 Trial Chamber II, judgment, para 539–543.

[166] Alexandra Adams, "Sexual Slavery: Do We Need This Crime in Addition to Enslavement?" (2018) 29:2 Crim Law Forum 279–323.

[167] *Kunarac et al., IT-96-23-T & IT-96-23/1-T, supra* note 165.

to frame "any social ill" as one of a the violations of anti-slavery commitments.[168] In opposition to Allain's view, Cécile Aptel observes the Special Court for Sierra Leone's recognition of forced marriage as sexual slavery as a significant precedent for international courts persecuting individuals who engage in forced child marriages, which then result in situations of slavery for the victims.[169] Her criticism is instead that the Special Court for Sierra Leone's decision, which categorizes forced marriage as a separate offence under sexual slavery rather than the broader category of slavery, fails to acknowledge that forced marriages can lead to various forms of enslavement experienced by women at the hands of their spouses, not just sexual slavery.[170] From an international criminal law perspective, Victoria May Kerr also explains that forced marriage is better suited as a crime under Other Inhume Acts rather than sexual slavery because this category better encapsulates the substantive types of harm accompanied by it.[171] The International Criminal Court's decision is further critiqued by Quirk, who notes:

> "The fact that sexual slavery has been treated as a separate category is revealing in and of itself. As historians of slavery have repeatedly shown, sexual abuse was an integral feature of the history of slavery, yet it has now been extracted into a distinct category that can stand apart from slavery per se, to the point where the International Criminal Court has charged defendants with sexual slavery, but not enslavement."[172]

Sara Palacios-Arapiles postulates that the International Criminal Court has been trying to harmonize the definition and scope of slavery in its judgements, not only in its jurisprudential application in case law but also in its relationship to international and human rights law.[173] The

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[168] By Jean Allain, *The law and slavery* (Martinus Nijhoff Publishers, 2015).

[169] Cécile Aptel, "Child Slaves and Child Brides" (2016) 14:2 Journal of International Criminal Justice 305–325.

[170] *Ibid*.

[171] Victoria May Kerr, "Should Forced Marriages be Categorised as 'Sexual Slavery' or 'Other Inhumane Acts' in International Criminal Law?" (2020) 35:1 Utrecht journal of international and European law 1–19.

[172] Quirk, *supra* note 4.

[173] Sara Palacios-Arapiles, "The Interpretation of Slavery before the International Criminal Court: Reconciling Legal Borders?" (2023) 25:1 Max Planck yearbook of United Nations law 416–456.

outcome of these efforts has, however, been the convolution of the concept of sexual slavery as distinctive from enslavement.[174] Alexandra Adams, contrary to Kerr, advocates for the renunciation of sexual slavery as a distinct crime.[175] Instead, it is to fall under enslavement as the criminal manifestation of slavery defined in the 1926 Convention. Adams concludes that "the African phenomenon of 'forced marriage' constitutes enslavement of women."[176] In fact, even in non-conflict contexts, a study conducted by Helen McCabe and Lauren Eglen concludes that forced marriage – as it is present in many corners of the world – could constitute "arguably slavery itself."[177] In any case, to Aptel, the use of distinctive labels to describe instances of slavery, rather than systematically classifying them as slavery, has reduced our understanding of the impact of slavery, in particular, as it effects children.[178] This has resulted in a fragmentation of initiatives aimed at combating this issue in all its diverse forms.[179]

2.3.2. Slavery and the Global South

Law and slavery have a problematic history, as in the centuries of the transatlantic slave trade, the authority of the law and its enforcing instruments coordinated the subjugation of slaves. This means that the objectified status of the slave, the master-slave relationship and the slave trade were all legitimized and fortified through domestic and international legal mechanisms. In the dominant discourse, however, the law is purported as the technology that came to the slave's salvation. The complicity of legal systems in the trade of human lives is generally omitted in place

[174] Adams, *supra* note 166.

[175] *Ibid*.

[176] *Ibid*.

[177] Helen McCabe & Lauren Eglen, "'I bought you. You are my wife': 'Modern Slavery' and Forced Marriage" Journal of Human Trafficking 1–24, online: <https://doi.org/10.1080/23322705.2022.2096366>.

[178] Aptel, *supra* note 169.

[179] *Ibid*.

of international law's emancipatory narrative. While this account perseveres, there has been an emergence of counter-narratives that depict more nuanced histories and more critically consider the nebulous legal character of slavery as it manifests today.

No doubt, as has been outlined thus far, the emergence of the legal definition has had adverse effects. Amongst them, it has resulted in the proliferation of forced labour, which characteristically mirrored slavery.[180] While the abolitionst agenda was used to justify colonial paternalism and expansion,[181] slavery would persist through forced labour, which was appropriated within the colonial territories of the League of Nations states. Indeed, slavery persisted in various forms that would fall outside of the scope of the narrow legal definition. Suzanne Miers asserts this notion, noting that the abolition efforts were, in reality, rooted in the self-interest of the colonial powers instead of humanitarian intentions.[182] David Wilkins speaks to the problematic historicization of the abolition movement as Eurocentric narratives of the White saviour are foregrounded, and the role of slaves in the emancipatory battle is neglected.[183] To Wilkins, these narratives lack cognizance of as well as reinforce the prevailing systems of inequality that were caused by and embedded through slavery.[184] Christine Whyte proposes, for example, a more nuanced reflection on anti-slavery reforms in Abyssinia, which are typically led by Ethnocentric accounts. [185] In her work, she centres on the importance of non-Western Japanese

[180] Nicholas Lawrence McGeehan, "Misunderstood and neglected: the marginalisation of slavery in international law" (2012) 16:3 The international journal of human rights 436–460.

[181] Joel Quirk, "Ending Slavery in all its Forms: Legal Abolition and Effective Emancipation in Historical Perspective" (2008) 12:4 The international journal of human rights 529–554.

[182] Suzanne Miers, "Slavery and the slave trade as international issues 1890-1939" (1998) 19:2 Slavery & abolition 16–37.

[183] David Wilkins, Jackie Jones & John Winterdyk, "Understanding Historical Slavery, Its Legacies, and Its Lessons for Combating Modern-Day Slavery and Human Trafficking" in (Cham: Springer International Publishing, 2020) 3.

[184] *Ibid*.

[185] Christine Whyte, "'Everyone Knows that Laws Bring the Greatest Benefits to Mankind': The Global and Local Origins of Anti-Slavery in Abyssinia, 1880-1942" (2014) 35:4 Slavery & abolition 652–669.

influence in shaping the anti-slavery reforms. [186] This type of reframing and rereading of history is an essential tool to the Global South scholar, and it has most prominently been employed by Anthony Anghie in his pioneering book *Imperialism, Sovereignty and the Making of International Law*.

In this work, Anghie traces the shift from overt colonialism to more hidden forms of colonialism that began with the concept of development under the League of Nations and further infiltrated – really *informed* – the formation of the United Nations.[187] The League's paternal mandate system of supervising non-European territories was only its latest manifestation, and economics was its latest vessel.[188] From the outset, Anghie explains in his book:

> "My broad argument is that colonialism was central to the constitution of international law in that many of the basic doctrines of international law – including, most importantly, sovereignty doctrine – were forged out of the attempt to create a legal system that could account for the relationship between the European and non-European worlds in the colonial confrontation. In making this argument, I focus on the colonial origins of international law; I attempt, furthermore, to show how these origins create a set of structures that continually repeat themselves at various stages in the history of international law. In so doing I seek to challenge conventional histories of the discipline which present colonialism as peripheral, an unfortunate episode that has long since been overcome by the heroic initiatives of decolonization that resulted in the emergence of colonial societies as independent, sovereign states."[189]

To Anghie, international law has progressed through the discourses and doctrines of civilization, sovereignty, and development. Yet, those very same concepts have reinforced coloniality. In fact, he postulates that the "sovereignty doctrine acquired its character through the

[186] *Ibid*.

[187] Anghie, *supra* note 109.

[188] Antony Anghie, "Colonialism and the birth of international institutions: sovereignty, economy, and the mandate system of the League of Nations" (2002) 34:3 New York University journal of international law & politics 513–634.

[189] Anghie, *supra* note 109.

colonial encounter."[190] Tracing the efforts of the protagonist, Francisco de Vitoria, known as the first international lawyer, to establish a universal natural law, Anghie introduces the concept of the "dynamic of difference." Through Vitoria's construction of a dichotomy between the Spaniard and the Indian, the concept of the dynamic of difference is elucidated as "the inexorable logic by which the subaltern entity always regards itself as needing to remedy a situation of backwardness and underdevelopment, or to bridge a 'gap' that the very dichotomy between civilized and uncivilized, or developed and underdeveloped, has created."[191] With much relevance to this thesis, Anghie identifies the dynamic of difference in the Mandate System of the League of Nations. The Mandate System perpetuated the belief that the Indigenous peoples in the colonial territories were in need of tutelage by the civilized European states so that they may be prepared for and eventually attain sovereignty.[192] Under the guise of humanistic aims, the Mandate System was wielded as an exploitative economic tool which "resulted in the instantiation of pervasive and structural economic inequalities in a system that claimed to provide formal political equality."[193]

Sundhya Pahuja builds on this idea of international law's pervasive coloniality. In undertaking a critical redescription of the origins of The Bretton Woods Institutions, she denotes how they engrain Western domination through their development project of the *Other* – the underdeveloped state.[194] Pahuja describes international law as a state of "critical instability" in which it possesses innately imperial as well as decolonial characteristics simultaneously.[195] This duality is critical for international law studies because it means that international law is not

[190] *Ibid*.
[191] *Ibid*. See also: Andrea Bianchi, "Third World Approaches" in *International Law Theories: An Inquiry into Different Ways of Thinking*, first edition. ed (Oxford: Oxford University Press, 2016).
[192] Anghie, *supra* note 188.
[193] Anghie, *supra* note 109.
[194] Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality*, 1st ed, Cambridge Studies in International and Comparative Law (Cambridge: Cambridge University Press, 2011).
[195] *Ibid*.

confined to a neo-colonial state. Anghie and Pahuja, in employing a Third World Approaches to International Law sensibility to their works, exemplify that international law can be re-read and reconstructed to integrate Global South perspectives. In doing so, they bring systems of international law and human rights closer to a universal. Crucially, in this frame, international law possesses emancipatory potential, which can, in part, be realized through our critically minded engagement with its histories.

Distinct from its Western counterpart, Third World Approaches to International Law feminism centralizes the plight of the Third World woman in relation to edifices and impacts of patriarchal systems and those that find their roots in colonialism.[196] In postcolonial settings, in particular, women's struggle takes a paradoxical form. Swati Parashar explains that the woman is subject to the systematic postcolonial violence that has been implanted into all facets of life, while prevailing patriarchal systems exploit women as a symbol of national identity.[197] The state acts concurrently as a source of rights and systematic oppression. There is a deep complexity in modern feminist movements in the Third World, often enmeshed with and overtaken by struggles for nationhood and self-rule. Kumari Jayawardena, in her detailed account of women's liberation movements, unravels these conjoined yet competing interests and concludes that, while the Western feminist school of thought was influential to the Third World woman, "historical circumstances produced important material and ideological changes" that were the principal factor for the insurgence of feminist resistance in the 20th century.[198] Amongst those factors was the desire for emancipation from the colonizer and from the colonized man. As the Global South dealt with the brute force of colonization, for long, women's liberation struggles took the backseat in

[196] Anghie, *supra* note 116.

[197] Swati Parashar, "Feminism and Postcolonialism: (En)gendering Encounters" (2016) 19:4 Postcolonial studies 371–377.

[198] Kumari Jayawardena, *Feminism and nationalism in the Third World* (London: Zed Books, 1994).

such times of turmoil, and women's political demands would be deferred to an imagined future as a second-order priority.[199] Thus, women's quest for liberation is central to a fuller understanding of the entangled and intersecting nature of (de)colonization and international law.

Beyond Third World Approaches to International Law, a diversity of *isms* persists where feminist voices of the Global South seek to locate women in relation to domestic patriarchal legal systems that interact with and counteract international law and its histories. Feminist scholarship emanating from the Global South, however, has been subjugated to claims of religious, political, and cultural apostasy. Figures from various streams of thought and ideology have claimed feminism to be yet another imported Occidental idea, inculcating the peoples of the Global South in the way of Western progressivism.[200] These views are the very essence of what feminism aims to reveal; they reduce the Global South woman to a mouthpiece for Western ideals without heeding to their unique experiences and exploitations in the colonial aftermaths of their locales, as well as at the hands of the patriarchal domestic structures. In reality, religious, political, and social philosophies that resemble feminist teachings, with respect to their context, have been traced back in Global South history to before the advent of institutional Western feminist thought.[201] They may not find themselves within the *isms* of today, or within a time in which these streams of thought were readily expressed, but their spirits bear much resemblance. In studying its legal tenets and history, some scholars posit that Islam – which enacted the prohibition of femicide, granted women property rights, and, at the least, improved women's status in society during the time of its

[199] Dirik, *supra* note 97.

[200] Jayawardena, *supra* note 198.

[201] Mai Yamani & Andrew Allen, *Feminism and Islam : legal and literary perspectives*, Feminism & Islam (New York: New York University Press, 1996).

inception – is itself a feminist teaching.[202] Certainly, gender dynamics in many *Sharia*-based theocratic states depict a different story today, but these scholars suggest that they are not reflective of the religious text but rather of historical and subsisting patriarchal cultural and political phenomena.[203]

The feminist scholars of the Global South have also problematized the idea of feminism as an umbrella category, pointing to its dominant Western feminist images.[204] The critique of Western feminism expresses contention with the sex-gender formula for its neglect of other identity markers, particularly those that define the positionality of the Global South woman as vastly different from the Global North one.[205] Scott offers us a concise definition of gender as a historical analytical category, wherein gender is a fundamental aspect of social relations founded on arbitrary sex differences and gender, also, is a principal means of unveiling power dynamics: "[…]politics constructs gender and gender constructs politics."[206] This interdependence of gender and politics is inalienable. Yet, this prescription disregards other identity markers that are deeply intertwined with not only politics but also culture, economics and more. It further entrenches the idea that Global South women's plight follows the same historical course as that of the Western woman, only "further behind."[207]

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[202] Amira El Azhary Sonbol, *Women, the family, and divorce laws in Islamic history : edited by Amira El Azhary Sonbol ; with a foreword by Elizabeth Warnock Fernea*, acls humanities e-book (Syracuse, N.Y: Syracuse University Press, 1996).

[203] Barbara Freyer Stowasser, "Women and Citizenship in the Qurʾan" in (Syracuse University Press, 2020) 23.

[204] de la Rasilla, *supra* note 105.

[205] *Ibid*.

[206] Joan W Scott, "Gender: A Useful Category of Historical Analysis" (1986) 91:5 The American Historical Review 1053–1075, online: <http://www.jstor.org/stable/1864376>.

[207] Giovanna Maria Frisso, Kate Ogg & Susan Harris Rimmer, "Third World Approaches to International Law: feminists' engagement with international law and decolonial theory" in Research Handbooks in International Law series (United Kingdom: Edward Elgar Publishing, 2019) 479.

These criticisms resemble the contrary writings to much of Western feminist philosophy – we need only look to Simone de Beauvoir's *The Second Sex*, wherein "the Other" is a reflection of herself, her Whiteness, and the kaleidoscope of social identities of Global South woman is made invisible.[208] Not only was the Global South woman's identity erased in the White woman's plight for liberation, but Western feminism also marginalized her conceptions of emancipation, her politics, her desires, her mind, and her body. Another *problématique* of feminist legal histories was, indeed still is, the civilizing undercurrents of Western feminism, seeking to liberate, in their image and as the colonial powers did, the subjugated, oppressed, non-agentic woman.[209] From her religion to her sexuality; "where Rathbone had sought state intervention, for Gilman it was the marketplace that could fulfil women's unmet needs for scientific and efficient household organization";[210] the White woman utilizes the very same paternalistic tones and tools that she endures. The universal feminist subject thus emerges as a White woman and falls "prey to its own work by claiming to speak for all women."[211] These conversations are central to the dissemination of the historical and archival materials of this thesis. This work contends not only with colonial sources of domination through state, system, and law but also through society. The perception and distinction between Western and Global South women become particularly evident within this social sphere, and their recognition is foremost in employing non-reductionist feminism. Chandra Talpade Mohanty's critique of the homogenization of the Third World woman emphasizes the

[208] Simone de Beauvoir, *The second sex.*, H.M. edited by Parshley, ed (New York, NY: Alfred A. Knopf, Inc., 1989).

[209] Lucy Delap, *Feminisms: A Global History*, 1st ed (Chicago: University of Chicago Press, 2020).

[210] *Ibid* at 78.

[211] Stephen Morton, "'Third World' Women and Western Feminist Thought" in *Gayatri Chakravorty Spivak* (Routledge, 2003) 85.

necessity for feminism to focalize specificity to ensure that diversity of experiences of womanhood is recognized as foundational to feminist praxis.[212]

2.4. Conclusive Thoughts

This chapter has facilitated an understanding of the discriminatory policies and ostracizing narratives as they pertain to child marriage, which prosper in the institutions of international law at the expense of the girl. For that reason, it has thematized the intersection of international law and history, and has anchored the importance of a revisitation of the making of slavery law in prevailing discourses on international law's idiosyncratic character. Further, this chapter has introduced pertinent theoretical conversations within feminist and Third World Approaches to Law scholarship and praxis, as a foundation for what the later chapters engage with – a reimagining of the girl's story in international law. The chapter then expounds on the archival approach to the reworking of the girl in international legal history, discussing the opportunities that the archive offers and, importantly, the ways in which this work aims to overcome its limitations. The literature review, finally, places these ideas in the relevant legal landscape, highlighting the definitional limitations of the slavery and how its ambiguity has manifested in the international legal system. In these sections, this work has outlined a roadmap of the intellectual and methodological terrain that it later interacts with. This chapter has conducted an analysis of the various intersecting dimensions of the research question, building a comprehensive point of departure from which a critical conversation can take hold. The next chapter begins this critical conversation by examining

[212] Chandra Talpade Mohanty, "'Under Western Eyes' Revisited: Feminist Solidarity through Anticapitalist Struggles" (2003) 28:2 Signs: Journal of Women in Culture and Society 499–535.

the socio-political environment and the stakeholders of the international abolition movement in the post-World War I era.

Chapter 3: The League of Nations and the Question of Slavery

3.1. Introduction

There is a thread that persists throughout the entropy of international law's archives that can only be characterized as the Othering of the Third World peoples and their identities, which served as a salient building block for the 1926 Convention.[213] This observation becomes central to our understanding and discussion of the institutional culture adopted by the League of Nations in shaping the international legal order of the 1920s and, by virtue of the transtemporal nature of law, the surviving legacies in today's structures. On this account, the history of international law, as its investigation reveals, is best characterized as a muddled battleground of war and tyranny, colonization and emancipation, professed moral truths and legal domination. Adopting a broader perspective that views international law as molded by the prevailing ideology of its time, facilitates our ability to examine the context in which intercontinental policy was created and influenced by prejudice.

The purpose of the League of Nations, was then, to formalize the management of this muddled battleground, where the converging political needs of the victor states could be appeased, particularly on issues that had the potential for the instigation of armed conflict, and therefore, the imperilment of international stability.[214] It becomes equally the League's purpose to devote itself to the "sacred trust of civilisation."[215] Paradoxically, within its legislative efforts towards the liberation of slaves and the abolition of slavery, their work perpetuated European exploitation and the marginalization of the victims of slavery, degrading these efforts, ultimately, to a pursuit of

[213] On Othering, see for example: Camille D Burge, "8. There Are No Signs: Feeling Black in a Post–Jim Crow America" in Yasmin Saikia & Chad Haines, eds, *On Othering: Processes and Politics of Unpeace,* (Athabasca University Press, 2024) 199.
[214] Susan Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (Oxford: Oxford University Press, 2015).See also: *The Covenant of the League of Nations, 1919 (entered into force December 1920)*.
[215] *The Covenant of the League of Nations, 1919 (entered into force December 1920) art 22*.

self-service. It is in light of this historical and political context that this chapter traces the development of international law with the formation of the League of Nations, and the broader mandate it takes on to end slavery. The League's Eurocentric ideology illuminates the colonial legacy that survives in today's modern approach to child marriage, and the purpose of this chapter is to parse out the historico-legal links to how slavery is defined, or perhaps more appropriately, how its definition necessarily excludes the most vulnerable classes of victims and reinforces the repressive socio-cultural systems that victimize them.

This chapter accordingly engages with six key ideas. Firstly, the discussion considers the development of the League of Nations, particularly in the aftermath of World War I, where the first signs of international cooperation *via* international organization emerged as an increasingly desirable possibility, laying the foundational dynamics that would later inform the political context in the aftermath of the war. The racial hierarchies that surface after the war, therefore, embed themselves into the very essence of the League, including its efforts in addressing the widespread of slavery. The discussion, then, turns its attention to the Mandate system of the League of Nations to better understand the pretext of European guardianship and paternalism *vis-à-vis* concepts of self-determination and sovereignty, which ultimately relate directly to how the European powers formulate their approach to slavery and colonized peoples. The third and fourth section of this chapter continue to overview the League's inquiries into slavery. Section four, more specifically, examines the dissonance in narratives as they pertain to the slavery of White women in contrast to that of women from the Global South. In section 5, the discussion narrows in on the formation of the Temporary Slavery Commission. It offers some critical interventions about the progressive step to include a Black man among the experts, while simultaneously, a racial biased that permeated the League's committee. The final section provides a detailed analysis of the

composition, deliberation and decisions that were made by the Temporary Slavery Commission to foreground a form of slavery rooted in Eurocentric bias. This inevitably resulted in the marginalization of colonized voices, and it would later underpin in the League's limited response to slavery.

3.2. From the Formation of the League of Nations to their Consideration of Slavery

The emergence of international law, as a convergent phenomenon of different histories, stems from the consequences of the First and Second World Wars. Both conflicts were calamitous to entire parts of the globe, resulting in millions of deaths borne from widespread disease, famine, genocide, and violence. Colonial powers, on the back of their reign and policies, enlisted countless people from their occupied territories to fight in Africa, Asia, and Europe during World War I.[216] In battle and death alike, the colonized peoples would be segregated from their White counterparts. The Commonwealth War Graves Commission, despite purporting a non-discrimination policy in their memorial practices, had a habit of differentiating the ways in which they treated deceased African soldiers.[217] Where European soldiers would be individually commemorated with headstones, African soldiers were commemorated collectively in memorials.[218] There were also vast differentiations in the record-keeping of the soldiers, and many Africans would be marked as missing even when the locale of their burial was known.[219] The egalitarian commitments of the Commonwealth War Graves Commission were limited to class and rank; race would continue to

[216] William A Schabas, "Mandates, Minorities, and the League of Nations" in (New York: Oxford University Press, 2023).

[217] *Ibid*.

[218] Michèle Barrett et al, "'White Graves' and Natives: The Imperial War Graves Commission in East and West Africa, 1918-1939" in, 1st ed (United Kingdom: Routledge, 2014) 80.

[219] *Ibid*.

be a deciding factor in the commemoration of soldiers.[220] This culture of Othering based on race was also evident in the social climate during the war. William Du Bois, who studied the deployment of African American soldiers in Europe post-war, writes, "American white officers fought more valiantly against Negroes than they did against the Germans."[221] The mistreatment of Black soldiers would also be perpetuated through "racist stereotypes, pushed by right-wing German propagandist," as false reports of sexual violence against German girls and women would be made.[222] The war was the ideal field for racism to manifest and spread further into the social and political life of Europe and, eventually, into the legal regimes that would be born out of the post-war period. William Schabas alludes to the separation of prisoners of war by nationality, enshrined in international humanitarian law, as being inspired by the proposal of British international lawyers to segregate prisoners of war by race after World War I.[223] This period provides us insight into the objectionable racial undercurrents that endured in many facets of Western life and politics. Their imprint into the League of Nations' institutions, and later, into the 1926 Convention, was thus an inevitability.

Only after having experienced the full breadth of economic and human destruction did the nation-states rally behind initiatives aimed at preserving the common peace and preventing the disaster of war, allowing for inter-nation dialogue and conflict resolution to find its place in politics and civil society. The humanitarian catastrophes of the early 20th century, in combination with emerging geopolitical dynamics and the dawn of a post-Westphalian climate, resulted in the idea of a global order that vests the diplomatic limb of nation-states in a unified international body,

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[220] *Ibid*.

[221] William Edward Burghardt Du Bois, *Dusk of dawn* (Millwood, N.Y: Kraus-Thomson Organization, 1975); William Edward Burghardt Du Bois, "An Essay Toward a History of the Black Man in the Great War" (2003) The Crisis (originially published in 1919).

[222] Schabas, *supra* note 216. See also: 'Finds Negro Troops Orderly on Rhine', New York Times, 19 February 1920.

[223] *Ibid*.

which in the early 20th century was the League of Nations.[224] The League comprised 42 founding member states that were predominately European or states under European rule, with only seven non-Western founding members, including British dominion the Union of South Africa and American-controlled Haiti.[225] It served as a stepping stone to attaining the contemporary form of international relations and regulations that constitute the legal system today, where institutions could serve as vessels distinct from the state yet made up of the sovereign. Its establishment was a concerted effort to "promote international cooperation and to achieve international peace and security"[226] in the aftermath of the war and was led by the victor states.[227] The League, as a new interlocuter in the international legal order, was to be a forum for transparency and camaraderie, whereby the threat of war against one of its members was to be threat as a threat against all its members.[228] As European countries, in particular, had faced their own economic and military fragility with battles spanning across the continent,[229] it was hoped that a union between great powers of like capability and capacity would set the stage for a gradual shift from armament and force to mediation and diplomacy.[230] It had no doubt an ambitious roadmap of goals that went beyond the objective of universal peace and extended, among others, to the alleviation of social and economic concerns so that "men's lives may become easier, happier and nobler."[231] Through a variety of initiatives and sub-bodies, its institutional arms reached into the state and its citizens to accomplish the League's vision of a just world. In this unity of sovereigns coming together as

[224] Anghie, *supra* note 109.

[225] Schabas, *supra* note 216.

[226] *The Covenant of the League of Nations, 1919 (entered into force December 1920)*, *supra* note 214.

[227] Anghie, *supra* note 109.

[228] *The Covenant of the League of Nations, 1919 (entered into force December 1920)*, *supra* note 214.

[229] Nicolas de Warren, "THE FIRST WORLD WAR, PHILOSOPHY, AND EUROPE" (2014) Tijdschrift voor Filosofie 715.

[230] "Aims & Organisation of the League of Nations" League of Nations, Secretariat of the League of Nations, (1929).

[231] *Ibid*.

one amalgam, the League's composition resembled much of the sovereign state, with the executive body being the League Council and the establishment of a judicial branch, the Permanent Court of International Justice, as its Covenant mandated the referral of conflicts to this body.[232] It is no surprise that at a time of statehood *über alles*, the League was created in the mirage of the modern state and derived its authority from the socio-psychological subconscious of Western governance. The permanent seats at the Council were held by Britain, France, Italy, and Japan.[233] The administrative organ, the Secretariat, was composed of smaller departments that handled bureaucratic and operational matters.[234] The League's first Secretary-General was the British diplomat and politician Eric Drummond.[235] The configuration of the League was, in many ways, a fortification of its European roots and philosophy.[236] Much of today's international legal framework and its corollary institutions can be traced back to the League of Nations, the initial iteration of the United Nations, which ultimately became defunct and played a role in facilitating the geopolitical conditions for WW2.[237]

3.2.1 The Mandate System at the League of Nations

The League had two spheres of operation; in Europe, it concerned itself with territorial changes and minority rights.[238] Its second program was the administration of the territories lost by Germany and the Ottoman Empire during the war.[239] The question of statehood was thus a core

[232] Ibid.

[233] Amalia Ribi Forclaz, "The League of Nations and Slavery, 1919–1926" in (Oxford: Oxford University Press, 2015).

[234] *Ibid*.

[235] James Barros, *Office without power : Secretary General Sir Eric Drummond, 1919-1933* (Oxford: Clarendon Press, 1979).

[236] Peter J Yearwood, *Guarantee of peace : the League of Nations in British policy, 1914-1925* (Oxford ; Oxford University Press, 2009).

[237] Jari Eloranta, "Why did the League of Nations fail?" (2011) 5:1 Cliometrica 27–52.

[238] Schabas, *supra* note 216.

[239] *Ibid*.

concern for the League of Nations, as it dealt with the destinies of the colonial territories of the conquered states. Drawing on the idea of General Jan Smuts, former United States president Woodrow Wilson advocated for the establishment of a Mandates system in the place of colonial occupation.[240] During the Paris Peace Conference, Britain also pushed with much enthusiasm for the trusteeship of the colonial territories – a system that would reflect its imperial administration.[241] Eventually, in its article 22, the League's Covenant adopted a reformed system of governance for these territories, whereby "peoples not yet able to stand by themselves under the strenuous conditions of the modern world" were to be under the trusteeship of the Mandatory body, composed of "advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility."[242] The article was a conditional promise of sovereignty for territories that proved themselves capable of self-governance.

Under this article, the League established a three-tier system of governance, dividing the territories into A Mandates, B Mandates and C Mandates. It considered the A Mandates as provisionally recognized nations with limited intervention, whereas B Mandates and, particularly, C Mandates required substantial tutelage by the Mandatory.[243] The League had appointed itself as the arbiter of civilization, and its self-schema was the epitome of morality. The reformation from annexation to the Mandates system was considered, by the League and its members, a moral undertaking – a philanthropic mission of sorts. The League was resolute that immediate statehood would do more harm than good, as the territories were believed to be unable to tend to the social, political and economic needs of such a system of governance and "the principle of self-

[240] Taina Tuori, "From League of Nations Mandates to decolonization: a brief history of rights" in (Cambridge University Press, 2015) 267.

[241] For a history of the pre-World War I humanitarian campaigns led by Britain and their influence on later international governance, see: Kevin Grant, *A Civilised Savagery: Britain and the New Slaveries in Africa, 1884-1926*, 1st ed (Oxford: Routledge, 2005).

[242] *The Covenant of the League of Nations, 1919 (entered into force December 1920)*, *supra* note 214.

[243] *Ibid*.

determination could scarcely be applied automatically to peoples who had not yet attained an adequate degree of political maturity, and still less to populations devoid of any real natural consciousness."[244] It thus attended to its moral compulsions over the rights of the people in the respective territories.[245] At the time, Du Bois, representing the Pan-African Congress, supported the mandate system, hoping that it would further the rights and conditions of the peoples of the colonial territories.[246] However, later, as Pan-African Congress submitted requests to the League on the despairing situation of "the condition of civilised persons of Negro descent throughout the world,"[247] the World Confederation of Negroes, objected to the League that Du Bois was "not representative of the struggling Negro peoples of the world of their intention and have no mandate from the said people to call a congress in their name."[248] In any instance, article 22 lacked clear criteria of when a territory would meet the threshold of self-governance capacity, while it postulated a prohibition of the slave trade as one of the markers.[249] Slavery was to become a principal preoccupation of the League and its various organs. Thus, with the mandates system began the civilizing mission of the League, to make the savage and the slave subservient to the European archetype of the *mensch*.

3.2.2. The Question of Slavery

[244] "The Mandates System. Origin, Principles, Application." League of Nations, Geneva (VI-A-Mandates-1945-VI-A-1_EN) (1945) 14.
[245] José Antonio Sánchez Román, "Abolitionism and Self-government. Dantès Bellegarde's Participation in the Temporary Commission on Slavery of the League of Nations" (2023) 45:6 International history review 865–883.
[246] Glenda Sluga, *Internationalism in the Age of Nationalism*, 1st ed, Pennsylvania Studies in Human Rights (Philadelphia: University of Pennsylvania Press, Inc, 2013).
[247] "Manifesto to the League of Nations" Pan African Congress, Letter from Pan-African Congress to League of Nations, WEB Du Bois Papers, (MS 312) (September 1921).
[248] "Telegram from The Secretary, World Congress of Negroes to Drummond" World Congress of Negroes to Drummond, (R39/1/13940/13940) (1 August 1921).
[249] *The Covenant of the League of Nations, 1919 (entered into force December 1920)*, *supra* note 214.

In 1922, the League of Nations started to consider the question of slavery with more purpose. Sir Arthur Steel Maitland, the Delegate for New Zealand, proposed a resolution on the question of slavery at the League's 3rd Assembly that year:

> "The Assembly resolves to refer to the appropriate Committee the question of the recrudescence of slavery in Africa in order that it may consider and propose the best methods for combating the evil."[250]

The motion was added to the League's agenda and thereafter referred to the Sixth Committee, which constituted its legal division. The Sixth Committee slightly reformulated the resolution to consider the question of slavery more generally, rather than with specific reference to Africa.[251] Once it was supported by the Sixth Committee, the Assembly decided that the question of slavery would be contemplated during its next Assembly.[252] The League's commitment to such social and economic issues brought hope to abolitionist movements and civil society organizations, who were animated to further their causes through engagement with the League.[253] During this year leading up to the 4th Assembly, members of the League had been tasked with examining slavery practices in their respective countries and colonial territories to answer two lines of questioning: First, the League wished to understand the steps, regulatory or otherwise, that had been taken by States to eradicate slavery.[254] Second, the League asked broader questions on the effects of these

[250] "Dossier R61/1/23709/23252 - XX session of the Council, Geneva 1922 (C.669.M.402) - The Question of Slavery - Council of the League - Report by Mr Quinones de Leon, a resolution to the effect that the Council decides to present a report to the IV Assembly on this question, and instructs the Secretary General to study the question and to arrange for a supply of information from governments members of the League (Adopted by the Council 26 September 1922)." League of Nations, Session of the Council, Geneva (R61/1/23709/23252) (1922).

[251] *Ibid*.

[252] *Ibid*.

[253] Erez Manela, *The Wilsonian moment : self-determination and the international origins of anticolonial nationalism* (New York, NY ; Oxford University Press, 2007).

[254] "28th Session of the Council, March 1924 - The Question of Slavery - Council of the League of Nations - Following Mr. Branting's report, adopts a Resolution for the setup of a Commission on Slavery composed of 7 member" League of Nations, Session of the Council, Geneva (R70/1/34653/34440) (1924).

measures.[255] Specifically, it wanted States to speak to the efficacy of their policies *vis-à-vis* slavery abolition, as well as the socioeconomic effects of those measures for all stakeholders.[256]

The Leagues' aim was a monumental one, and as the first of its kind, a concerted international effort to study and implement measures to eradicate a practice that undermined the kernel dignity of humankind.[257] Yet, many of the Member states, barring a few, responded to this inquiry with brief affirmations that slavery had been prohibited in their country and colonial territories.[258] Where remarks provided a more detailed elucidation of the state of slavery in each respective country, these tended to assert the states' legal embargo on the transatlantic slave trade and otherwise minimize the forms of slavery practiced in the colonial territories amongst the native population.[259] The Belgian government, in their response, claimed that slavery amongst the native population of their colonial territories – domestic slavery – was, in fact, humane and "as a general rule they [domestic slaves] do not attempt to change their condition."[260] Domestic slavery, the European states asserted, was a matter that was "deeply rooted" custom and therefore required progressive, rather than immediate, abolition.[261] Nonetheless, the inquiry's questions on efficacy and effects were largely neglected, and the Council decided that further investigation into these questions was required.[262] The determination was concurred by other organs of the League, which expressed their adamance for a closer study and scrutinization of the state of slavery.[263] During the

[255] *Ibid*.

[256] *Ibid*.

[257] Michael Rosen identifies dignity as an "inner transcendental kernel" innate to every human. See: Michael Rosen, *Dignity: Its History and Meaning* (Cambridge, MA: Harvard University Press, 2012).

[258] "The Question of Slavery" League of Nations, Geneva (A-18-1923-VI_EN) (8 October 1923) Volume ID 0673072.

[259] *Ibid*.

[260] *Ibid*.

[261] *Ibid*.

[262] *Ibid*.

[263] "Pièce A-117-1923-VI_EN - Question of Slavery. REPORT SUBMITTED TO THE ASSEMBLY BY THE SIXTH COMMITTEE. (Rapporteur : Dr. Nansen, Delegate of Norway)." League of Nations, Geneva (A-117-1923-VI_EN) (1923) Volume ID0673066.

Council's 4th session, the representative of Sweden, Hjalmar Branting, put a resolution forth to "entrust to a competent body the duty of continuing the investigation with a view to obtaining further information on the subject [of slavery], particularly from the Governments of States not Members of the League".[264] Following these resolves, the Permanent Mandates Commission was invited to appoint "experts in colonial questions"[265] – representing the Council rather than countries – who were to form a Temporary Slavery Commission, alongside a representative of the International Labour Organisation.[266]

3.2.3. The Question of White Slavery at the League of Nations

Though the diverse and intersecting identities of the people plagued by enslavement could not entirely be represented at the Temporary Slavery Commission, there is an apparent marginalization of the representation of the women. Despite the push from Western feminists, the League settled with an all-male jury, who determined to have the necessary expertise to examine the matter sufficiently. The omission of female members on questions that substantially concerned women and girls resulted in criticisms and calls for action from feminist voices of the 1920s. *The International Women Suffrage News* wrote that "the inclusion of women is an immediate and urgent necessity" given the objectives of the commission.[267] Indeed, institutional efforts were made by the Council for the Representation of Women in the League of Nations imploring the

[264] *Ibid*.

[265] "Commission for investigations into Slavery - Correspondence with Sir Frederick Lugard." League of Nations, (R70/1/35843/34440) (1925 1924).

[266] "Temporary Slavery Commission - Nomination of Mr. Louis Dantès Bellegarde." League of Nations, Geneva (R71/1/36398/34440) (5 December 1924).

[267] "THE SLAVERY COMMISSION" (1924) 19:2 The International Woman Suffrage News 19, online: <https://ezproxy.library.yorku.ca/login?url=https://www.proquest.com/historical-periodicals/slavery-commission/docview/2629279320/se-2?accountid=15182>.

League's Council to include women in the Commission. The Council for the Representation of Women in the League of Nations sought to represent the interests of women in the League's undertakings and believed itself well situated with its affiliation to a large variety of women's organisations.[268] Its honorary secretary Miss Alberti wrote to the president of the League's Council shortly after the 4th Assembly "to urge the Council to appoint a fair proportion of women to this Committee."[269] She stipulated the Council for the Representation of Women in the League of Nations' position strongly, noting that "I need scarcely remind you, Sir, that a state of slavery presses more harshly on women than on men."[270] Another letter followed shortly thereafter, reiterating the urgency in female commission members and highlighting the engendered nature of slavery: "There is no doubt that a condition of Slavery weighs more heavily on women than on men and this Council feels that the experience of women is indispensable on this Committee."[271]

In fact, the 20th century was a vibrant era for feminist voices on the matter of slavery in the Northern hemisphere. Women, at home in Europe and North America, were taking to the public to voice their concerns on their status in society – to them, their unequal standing to their male counterparts in the law was equivalent to a slave status. A quote in the newspaper *The Common Cause* in 1918 reads, "The slavery of black women is abolished in America, but the slavery of white women continues in Europe; and laws are still made by men to tyrannise over women."[272] *The Florence Times Daily* further speaks to the condition of women in Germany, who, as a result of the war, "have been made to bear the heavy burden" of manual labour and have thereby been

[268] League of Nations, *supra* note 129.

[269] *Ibid*.

[270] *Ibid*.

[271] *Ibid*.

[272] Association for Moral and Social Hygiene, "Equal Morals?", *The Common Cause of Humanity* (1 March 1918) 604.

"reduced" to slavery.[273] These narratives of inequality equalling slavery are reiterated throughout the women's suffrage movement, as one writer proclaims, "right there you have slavery, pure and simple."[274]

Midgley speaks to the complicated emergence of feminism in the Western hemisphere, whereby the anti-colonial and abolition movements were the feminists' muse while she, in contradiction, also "drew on stereotyped and often negative views of non-European peoples."[275] Western feminists would frame their cause for equality in association with, and in relation to, the abolition movement. Early feminist writer Mary Wollstonecraft, in *Vindication*, compares the White woman to "poor African slaves" to highlight their subordinate status in Britain.[276] Wollstonecraft's writing continues to draw a comparison between the savage and the White woman as she concludes that "the present state of civilized life, are in the same condition' as savages."[277] In highlighting the merciless conditions of the slaves under colonial rule, the savage is exploited as a mascot for the feminist cause. In her exploration of early feminist discourse, Midgley diagnoses brilliantly that the slave-women analogy was

> "central to the construction of feminist arguments. They help position feminism within the European cultural mainstream, enabling feminists to claim that the oppression of women is alien and anachronistic within a civilised nation and to present the emancipation of women not as an outlandish demand but, rather, as the fulfilment of Britain's destiny as a progressive nation, an achievement that will mark the final step along the road to the creation of a fully enlightened society."[278]

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[273] "The German Women", *The Florence Times* (12 July 1918) 2.

[274] W F Fries, "Woman Must Be Treated As Equals Of The Men", *The Toledo News Bee* (26 February 1919) 11.

[275] Clare Midgley, "The 'woman question' in imperial Britain" in (United Kingdom: Routledge, 2007) 23. For a discussion of the historical link of White slavery to trafficking, see: Joel Quirk, "Trafficked into Slavery" (2007) 6:2 Journal of Human Rights 181–207, online: <https://doi.org/10.1080/14754830601084576>.

[276] Mary Wollstonecraft & Eileen M Hunt, *A Vindication of the Rights of Woman*, Rethinking the Western Tradition (New Haven, CT: Yale University Press, 2014), 182.

[277] *Ibid*.

[278] Midgley, *supra* note 275.

The political outcry by the Western feminist movements focussed its efforts on equal standing of men and women, and, in doing so, these feminist conversations employed a dissonance to the chattel, domestic and other forms of slavery endured by women of the Global South. Where dialogues included mentions of the "negro" woman, it was to highlight the disenfranchisement of the white woman, in *her* abolition activism, from the white man.[279]

The dissent was also taking place amidst efforts to eradicate the trafficking of women and girls for the purposes of prostitution, then referred to as "White slavery".[280] The public outcries to protect the White woman from slavery – referring to her social and legal status, but also to the issue of trafficking – led to the implementation of the International Agreement for the suppression of the White Slave Traffic in 1904.[281] Britain and America further implemented domestic legislation against White slavery.[282] With the formation of the League of Nations, White slavery became a global concern, and a sub-committee was established to tackle the issue. The efforts of the League resulted in the International Convention for the Suppression of the Traffic in Women and Children in 1921. Pliley emphasises that the White slave narrative spiked during the Great Migration in the United States and was underwritten with racist anxieties of White woman falling prey to non-White men.[283] Interestingly enough, marriage was used regularly by traffickers to circumvent trafficking regulation and disguise the trafficking as legitimate.[284] This was also the case for cross-border marriages whereby "foreign" women, particularly young girls, would marry a European or American, who would then transport them into their respective countries for

[279] Association for Moral and Social Hygiene, *supra* note 272.

[280] Laura Lammasniemi, Jackie Jones & John Winterdyk, "International Legislation on White Slavery and Anti-trafficking in the Early Twentieth Century" in (Cham: Springer International Publishing, 2020) 67. See also: Bales & Robbins, *supra* note 152.

[281] Bales & Robbins, *supra* note 152.

[282] *Ibid*.

[283] Jessica R Pliley, "Trafficked White Slaves and Misleading Marriages in the Campaigns against Sex Trafficking, 1885-1927" (2019) 11 Federal History Journal 60.

[284] Ibid.

prostitution.[285] It is, however, in the League engaging with the transnational problem of trafficking that the language shifted from White slavery to trafficking. Pliley notes that the League preferred a "more race-neutral terminology" and, criticizing the League's response, argues that it merely caused the production of strict immigration controls and a policing of marriages, that were philosophically rooted in the control over women's sexual and moral inclinations.[286]

However, an important point to consider is the shift away from the slave narrative. Popular discourse understood that marriage, in the context of White slavery, can be a means of enslaving women. As soon as the League included in its remit the trafficking of non-White woman, the issue changed from one of slavery to one of trafficking. It leaves to wonder, were only White women of good moral standing capable of being sexually enslaved (through marriage)? In fact, officials from the United States, which took a leading role in the League's engagement with the issue (despite being a non-member state), were concerned with the marriage of "immoral" foreign women to the White man.[287] These conversations attached a moral dimension to forms of sexual enslavement and sexuality more generally. Only a White woman could, through marriage or otherwise, be considered a slave as she was of good moral acumen and held convictions of sexual purity. Within this discourse, it was thus assumed that non-White women, on the other hand, were accustomed to polygamous or otherwise deviant marriage practices of immorality. Non-White women were believed to be more sexually promiscuous, able to engage in sexual acts at a younger age and, generally, more sexually inclined.[288] Thus, they had to be distinguished from the moral White slave and "race-neutral" language served as a façade to distinguish the pious White slave from the

[285] Ibid.

[286] Jessica R Pliley, *Policing Sexuality : The Mann Act and the Making of the FBI* (Cambridge, MA: Harvard University Press, 2014) p 186-187.

[287] Pliley, *supra* note 283.

[288] Human Right Council, *supra* note 6.

sexual savage. Women who were subject to an apartheid status grounded in culture, society, and law – in the colonizing or the colonized terrain alike – were further distinguished, and distinguished themselves, in their experiences of slavery.

3.4.The Temporary Slavery Commission

The Temporary Slavery Commission was established in 1924 under the auspice of the League of Nations with the intent to investigate the question of slavery.[289] The experts were all, save for one, from European countries. Dantès Bellegarde, an expert at the Temporary Slavery Commission, was the first Black person to join any commission at the League of Nations.[290] William E. Rappard, the Director of the Mandates section at the time, writes that Bellegarde had made several requests to be appointed as a Permanent Mandates Commission member.[291] However, given the absence of available positions, Bellegarde also suggested his participation at the Temporary Slavery Commission.[292] Bellegarde was an associate of Du Bois and also maintained a relationship with fervent abolitionist and head of the Anti-Slavery and Aboriginal Protection Society, John Harris, both of whom would be accompanying figures through his career.[293] Harris was quite active in his abolition efforts and wrote in a resolution to the League in 1922 that "The total abolition of Slave-owning and Slave-trading is a reform long overdue. Its barbaric cruelty, no less than its economic folly, should make a strong appeal to the civilised

[289] The Temporary Slavery Commission is also referred to as the Commission throughout this work.

[290] Sánchez Román, *supra* note 245.

[291] League of Nations, *supra* note 266.

[292] *Ibid*.

[293] Sánchez Román, *supra* note 245.

world."[294] Although Bellegarde was, like Du Bois and Harris, in favour of the mandate system, he was a critic of the colonial practices in the mandates where "the natives are recruited in such a way and are made to work under such conditions that they are nothing better than slaves."[295] His political outspokenness would later lead to him being caught up in a public controversy following Bellegarde's publication of news articles in which he spoke about the trafficking of Haitian women in neighbouring Cuba.[296] In a complaint to the League, he was accused of exploiting his position at the Temporary Slavery Commission to intrude on the internal politics of Haiti.[297] In response, Bellegarde claimed that this was a silencing campaign led by the Haitian government in retaliation to his stance on United States incursion.[298] The League decided against any interference to maintain its neutrality as an international body.[299] The thread of Othering followed through to the only Black person on the Commission, who was also outspoken about his opposition to the United States occupation of Haiti, facing public scrutiny. The remanences of this are found in the form of snipped newspaper articles in the United Nations archives.[300]

The other members of the Temporary Slavery Commission were Mr. Gohr of Belgium, the director-general in the Ministry of the Colonies, who acted as the chairman of the commission; Mr. Freire d'Andrade of Portugal, the former minister of foreign affairs and member of the Permanent Mandates Commission, took up the position of vice-chairman; Mr. Delafosse of France,

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[294] "The question of slavery - The Anti-Slavery and Aborigines Protection Society (Mr. J. H. Harris) transmits the proof of a pamphlet entitled 'Slavery and the obligations of the League', by John H. Harris, and asks whether the Secretariat is watching the discussions which are taking place in the House of Commons upon the recrudescence of slavery." League of Nations, Geneva (R62/1/27439/23252) (23 March 1923).

[295] "Memorandum by M. Dantès Bellegarde on the question of slavery" League of Nations, Geneva (R65-1-42273-23252) (1925).

[296] Sánchez Román, *supra* note 245. See also: Mercer Cook, "Dantes Bellegarde" (1940) 1:2 Phylon (1940-1956) 125–135, online: <http://www.jstor.org/stable/272516>.

[297] Sánchez Román, *supra* note 245.

[298] Richard Pattee & Dantes Bellegarde, "Un Haitien Parle" (1935) 15:1 The Hispanic American historical review 82. See also: League of Nations, *supra* note 266.

[299] Sánchez Román, *supra* note 245.

[300] League of Nations, *supra* note 266.

former colonial governor-general, member of the French Colonial Academy; Sir Frederick Lugard of Great Britain, the former governor of Nigeria and a member of the Permanent Mandates Commission; Mr. le commandant Roncagli of Italy, the secretary-general of the Italian Geographical Society; Mr. Van Rees of Netherlands, the former vice president of the Council of the Dutch East Indies, vice-president of the Permanent Mandates Commission; lastly, Mr. H. A. Grimshaw, who represented the International Labour Organisation.[301] It was no doubt a progressive step to have Bellegarde, as a man of colour, be part of the Commission, but his presence did not balance the otherwise asymmetrical proportion of the European members, who originated from a social and political elite, habituated to stereotyping and having dominion over people of colour. In a letter, the Mandates Director Rappard responds to the suggestion of appointing Bellegarde as an expert to the commission:

> "This suggestion strikes me as interesting, and I am sorry that it did not occur to me before. It would, I believe, be sound League policy to appoint M. Bellegarde, thus giving satisfaction both to the black race and to Latin-America, besides securing the co-operation of one who might be a very valuable member."[302]

Gayatri Chakravorty Spivak provides a deep analysis of the character and complexities of representation in her prominent essay *Can the Subaltern Speak?*[303] Spivak critiques the modes within which marginalized people, particularly women, are spoken for and spoken about. Drawing on Marx's *The Eighteenth Brumaire of Louis Bonaparte*, Spivak reinterprets the concepts of *Vertretung* and *Darstellung* as methods of representation.[304] *Vertretung* encompasses the political representation of someone or a group by another, where the former's agency is vested in the representative. Spivak maintains the essence of the German word *Vertretung* when she explains it

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[301] League of Nations, Temporary Slavery Commission, *supra* note 21.

[302] League of Nations, *supra* note 266.

[303] Gayatri Chakravorty Spivak & Rosalind C Morris, *Can the subaltern speak? reflections on the history of an idea* (New York: Columbia University Press, 2010).

[304] *Ibid*.

as "tread[ing] in someone's shoes."[305] *Darstellung,* by contrast, is the symbolic depiction of the subject, and as Spivak elaborates, "the philosophical concept of representation as staging or, indeed, signification, which relates to the divided subject in an indirect way."[306] In Spivak's assessment, the subaltern is caught between these modes of representation: On the one hand, they are *vertreten* by a privileged representative, resulting in a disconnect between them and the subject.[307] On the other, their individual and group distinctiveness is *dargestellt* as one abstraction.[308] Spivak describes the "complicity of *vertreten* and *darstellen*", which often work in tandem, as "identity-in-difference as the place of practice" where the conflation of the two modes can denigrate the subject's truth.[309]

In the setting of the Temporary Slavery Commission, the subaltern was markedly caught up in these complexities. Bellegarde was a Black man in an influential position at a time of disparaging racial divides. The archives demonstrate Bellegarde's commitment to challenging the White status quo. For example, he found it necessary for the Temporary Slavery Commission not to limit itself to engagement with states and also study the question of slavery by considering information from various sources, including civil society organizations.[310] In discussing the trustworthiness of non-state sources, Bellegrade also highlighted the danger of "leave[ing] it to a Government to judge of the trustworthiness of a person."[311] Yet, to assume Bellegarde as a genuine and political proxy for the slaves of the Global South would be erroneous, and it produces a

[305] Gayatri Chakravorty Spivak & Sarah Harasym, *The Post-Colonial Critic: Interviews, Strategies, Dialogues*, 1st ed (Oxford: Routledge, 1990).
[306] Spivak & Morris, *supra* note 303.
[307] *Ibid*.
[308] *Ibid*.
[309] *Ibid*.
[310] League of Nations, Temporary Slavery Commission, *supra* note 21.
[311] *Ibid*.

simplification of the particularities of the slave identities. Spivak warns of the dangers of the subaltern's truth being subsumed, as "the ventriloquism of the speaking subaltern is the left intellectual's stock-in-trade."[312] Bellegrade's participation was indicative of this inter-play between *Vertretung* and *Darstellung;* there was powerful symbolism in his representation within a predominately White institution, yet it was amidst an environment in which the *Darstellung* of the people of colour, including at the Temporary Slavery Commission, was fashioned through hegemonic eyes. This representation stereotyped, clustered, and abstracted the particularities of the Global South peoples. Therefore, the broader political and social climate, as well as the structure of the Temporary Slavery Commission, within which Bellegrade operated, would not allow for the authentic representation of Global South peoples. The Temporary Slavery Commission, and more broadly, the League of Nations, which provided him with the space to "represent the black race" was also the very institution that restricted the representation. While these changes marked the League's attempt at inclusion and representation of people of colour, yet again, it inadvertently resulted in the Othering of the Third World. The subsequent sections demonstrate further how the act of *Othering* permeates the League's philosophies and endeavours.

3.4.1. The Colonial Conception of Slavery

The first meeting of the Temporary Slavery Commission was held on a July summer day in 1924 in faraway Geneva.[313] The Commission members elected Mr. Gohr as chairman and Mr. Freire D'Andrade as vice-chairman before moving on to their deliberations.[314] The first point of

[312] Spivak & Morris, *supra* note 303.

[313] League of Nations, Temporary Slavery Commission, *supra* note 21.

[314] *Ibid*.

action was the consideration of the scope of their work.[315] The League had defined the undertaking of the commission only vaguely, and thus, the Temporary Slavery Commission assumed that this was an intentional delegation by the League for the Temporary Slavery Commission to determine its *kompetenz*.[316] The commission members' discussion on the scope of their inquiry covered questions of methodology as well as the scope of slavery itself.[317] In the absence of a clear guide by the League, the commission members were at odds with the extent of their investigation. The slave trade had been prohibited through a variety of domestic legislation and bilateral treaties, yet they were aware that other forms of slavery persisted.[318] While a clear definition of slavery struck the commission as pre-emptive, Van Rees noted that "If this description were not given, the discussions might very well go astray."[319] Following the proposal of Sir F Lugard, the commission decided to prepare a questionnaire for governments on the condition of slavery in their countries and respective territories, through which questions of scope and definition would be answered in the process.[320] In their discussion of Sir F Lugard's draft questionnaire, the commission intuitively touched on the heart of the issue, as Van Rees noted: "It would, therefore, perhaps be desirable, first of all, to draw a clear distinction between the legal idea of slavery and the more or less disguised forms of slavery."[321] Legal slavery, as it were, constituted of (a) Slave-raiding or slave trade and the enslaving of persons; (b) Slave-dealing (including transfer by exchange, sale, gift or inheritance); (c) Slavery or serfdom (domestic or predial).[322] It is worthwhile noting that domestic

[315] Ibid.

[316] League of Nations, Temporary Slavery Commission, *supra* note 21.

[317] *Ibid*.

[318] *Ibid*.

[319] Ibid.

[320] Ibid.

[321] League of Nations, Temporary Slavery Commission, *supra* note 21.

[322] "Preparation of report of Temporary Slavery Commission to the Council on the work carried out during the 1st Session, Geneva, July 1924." League of Nations, Temporary Slavery Commission, Geneva (R71/1/37137/34440) (1924).

slavery amongst natives was listed in isolation from (a) and (b), and immediate prohibition was not recommended in the TCS's final report to the League.[323]

An archetype of the slave had been fashioned by the 20th century, and the slave was generally situated in the context of the slave trade, or one who could be bought, sold and/or inherited like property.[324] Its roots formed in the beginnings of the abolition movement, with the Quakers, a faith community, being the first organized group to prohibit the owning of slaves in their community.[325] Their prohibition eradicated the trading and ownership of African peoples, who had been subjected to slavery by the Quakers.[326] Likewise, when prohibition was enacted in England, the judge in the *Somerset* case decided that "the black must be discharged."[327] The Anglo-American abolition movement, which set the tone for global abolition,[328] was concerned with its own engagement with slavery. It considered the deprivation of liberty as constituting the *legal* ownership of one over another, oblivious to non-legal manifestations of slavery. The law had created and legitimized the slave; now, it was to free the slave. Concentrating on its own affairs, the focus of the abolition movement became largely the eradication of the transatlantic slave trade, and legal efforts had been directed towards this type of slavery, namely slavery proper. The United Kingdom, which had vast powers over the world's seas, entered into dozens of bilateral agreements to police ships on the Atlantic waterways for the trafficking of slaves,[329] and their measures

[323] *Ibid*.

[324] League of Nations, Temporary Slavery Commission, *supra* note 21.

[325] C W W Greenidge, *Slavery* (Milton: Taylor & Francis Group, 2022).

[326] *Ibid*.

[327] *Somerset v Stewart*, 1772 [98 ER 499] English Court of King's Bench.

[328] Greenidge, *supra* note 325.

[329] Jean Allain, "The International Legal Regime of Slavery and Human Exploitation and its Obfuscation by the Term of Art: 'Slavery-like Practice'" (2012) 10 Cahiers de la recherche sur les droits fondamentaux 27–42.

resulted in the liberation of tens of thousands of slaves.[330] What followed from these efforts was a legislative effort to end the transatlantic slave trade through the Brussels Conference Act of 1890 and its later substitution, the Convention of Saint-Germain-en-Laye of 1919.[331] These efforts were not problematic in themselves – the issue was that they dominated slavery discourse and made their way into the *international legal* understanding of slavery. While the European powers were quite right to recognize the abhorrence of their slave trade and human ownership systems, their frame of reference of slavery was biased to the ways in which *they* had institutionalized slavery. This bias seeped into the work of the Temporary Slavery Commission and, later, the drafting of the 1926 Convention by the League of Nations.

Accordingly, the Temporary Slavery Commission compartmentalized slavery practices, taking the slave who has been trafficked across oceans or subjected to slavery by a colonial power as the archetype slave – the African slave – and set it apart from other forms of enslavement. These other manifestations of slavery were considered "similar", "analogous", and "approximating very closely to serfdom," but they would not fall within the prefecture of slavery proper, as it was later codified.[332] In their distinction, *the other* enslaved is weighted on a scale against the archetype slave. While the commission recognized that other forms of slavery existed, they only did so against the backdrop of what was considered to be *actual* slavery. Their approach built a fallible foundation for their analysis, as an implicit burden of proof was injected into their deliberation of *the other* form of slavery. While the Temporary Slavery Commission set out in its second question,

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[330] JP van Niekerk, "British, Portuguese, and American judges in Adderley Street: the international legal background to and some judicial aspects of the Cape Town mixed commissions for the suppression of the transatlantic slave trade in the nineteenth century" (2004) XXXVII:3 The Comparative and international law journal of southern Africa 404–441.

[331] *Ibid*.

[332] League of Nations, Temporary Slavery Commission, *supra* note 21; "Report to the Council of the work accomplished during the second session of the Temporary Slavery Commission, Geneva, 1925." League of Nations, Temporary Slavery Commission, Geneva (R72/1/45241/34440) (1925).

distinct from slavery proper, "Practices restrictive of liberty of the person, or tending to acquire control of the person in positions analogous to slavery", the nature and characteristics of slavery itself are not considered independently and detached from its manifestations.[333] In other words, rather than beginning with the determination of the features of slavery and then using this as a template to identify slavery in its various forms, one particular conspicuous manifestation – the chattel slave – guided the Temporary Slavery Commission's understanding of slavery.

This positioning was confirmed in the final report of the Temporary Slavery Commission, wherein they sectioned their report into practices that required immediate prohibition – those definitively constituting slavery proper – and practices that were to be progressively eradicated.[334] The report recommended that the legality of the slave status be abolished, and with it, actions taken to suppress slave raiding and the slave trade.[335] The report evidently separated forms of enslavement that did not fit their intentions, all the while endorsing the universality of their propositions with the "primary objective [being] the complete, definite and universal suppression of the status of slavery."[336] They expressly proclaimed moral superiority as the enlightened against "the backward races" and the uncivilized natives, yet the ostensibly *international* measures against slavery were merely a reflection of their own participation in enslavement rather than a genuine conception of slavery's universal characteristics.[337]

It is not my suggestion that slavery proper, as defined by the Temporary Slavery Commission, did not exist at the hands of the peoples of the Global South – quite the opposite –

[333] Bales & Robbins, *supra* note 152.

[334] League of Nations, Temporary Slavery Commission, *supra* note 332.

[335] Ibid.

[336] Ibid.

[337] League of Nations, Temporary Slavery Commission, *supra* note 3.

slavery indeed flourished amongst the elites in parts of the African and Asian continents.[338] Slavery was, as the League rightly determined, a global concern, but that is why recognition of its diverse manifestations, relative to locale, was required for an international convention to be truly universal. Rather, I am submitting that the colonial states imposed a Eurocentric definition of slavery as universal, whether to maintain continuity with the League's established appeasement policies or to deliberately support Western economic exploitation of the colonial territories by excluding certain forms of slavery, for example, forced labour, from abolition efforts. This definition has now trickled into an international system of legal governance – from the International Bill of Rights to our international courts.

Its importance in the international legal order as a *jus cogens* norm cannot be understated, which makes its genealogy all the more problematic. While slavery proper was prevalent in the colonial territories, other forms of slavery were of equal concern, and there was no shortage of resistance from the people who had to endure it. In India, for example, debt bondage emanating from the caste system had existed for thousands of years.[339] The institution of hierarchy resulted in the enslavement of Dalits and those who fell into financial adversity under India's high castes, who would exchange loans for labour.[340] The intricacies of the loans were systematically designed to keep the labourer labouring without a genuine ability to repay the loans or otherwise leave their circumstances.[341] Jyotirao Govindrao Phule, a descendant of the gardener caste, was an outspoken advocate against the system.[342] His influential thinking rippled across India as revolutionary, and,

[338] Damian A Pargas & Juliane Schiel, *The Palgrave Handbook of Global Slavery throughout History*, 1st ed. 2023. ed (Cham: Springer International Publishing, 2023).

[339] Sarah Knight, "Debt-Bondage Slavery in India" (2012) 14:2 Global dialogue (Nicosia, Cyprus) 62.

[340] *Ibid*.

[341] *Ibid*.

[342] Basanta Kumar Mallik, "Jyotirao Govindrao Phule" in, 1st ed (Routledge, 2022) 57.

to date, his teachings are important to education in India.[343] Phule recognized the condition of debt bondage as one of slavery and, in his works, substantially criticized the inequality of the caste system.[344] This form of slavery was nonetheless not accepted as slavery proper by the Temporary Slavery Commission, and instead, discussions of debt bondage would find themselves categorized under "practices restrictive on the liberty of the person."[345]

Other forms of enslavement included, for example, the adoption of children for their labour or as currency in pre-colonial Nigeria.[346] The TCS highlighted the occurrence of these practices in some African and Asian countries, yet it was classed as a condition that was intrusive to the individual's liberty rather than slavery proper.[347] I allude to a telling passage from the Temporary Slavery Commission's second meeting:

> "M. Freire d'Andrade states in his memorandum:
>
> "While individual liberty should be respected and the principles of justice and equality for all should be upheld, we have some reason to ask whether certain philanthropic ideas are not sometimes, as applied to the negro races of Africa, likely to produce an effect contrary to that intended.'
>
> "And this applies to the native races of other countries.
>
> "M. Dantés Bellegarde has the same idea in mind when he recognises the necessity of proceeding, in certain cases, with prudence in the application of the remedies which we consider suitable for repressing the evil of slavery.'
>
> "The Chairman of the Commission says:
>
> "Although we should immediately and with all our might wage a campaign against customs which gravely infringe the essential rights of man — though taking care that the measures we introduce do not produce consequences worse than the evil itself — we should in other respects rely on the evolution of the native mentality rather than on any sort of compulsion.'"[348]

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[343] *Ibid*.

[344] *Ibid*.

[345] League of Nations, Temporary Slavery Commission, *supra* note 332.

[346] Olatunji Ojo, "Child Slaves in Pre-colonial Nigeria, c .1725–1860" (2012) 33:3 Slavery & abolition 417–434.

[347] League of Nations, Temporary Slavery Commission, *supra* note 332.

[348] "Minutes of the second session of the Temporary Slavery Commission, Geneva, July 1925." League of Nations, Temporary Slavery Commission, Geneva (R72/1/45167/34440/Jacket2) (1925).

The methodology of distinguishing between slaveries not only minimized the forms of oppression endured by countless people, but the Temporary Slavery Commission's rationale behind doing so also spoke to the monopoly on enlightenment thinking that had been sanctioned by the colonial states. This is to say, these narratives also supposed that colonized peoples had a fundamental incapacity to engage with notions of law and liberty, especially in relation to the civilized West. They were yet to evolve in ways that allowed for the cognitive comprehension of certain evils. Slavery was thereby likened to an innate mental condition.

The implication of the Temporary Slavery Commission, as well as states which claimed that domestic slavery was, in effect, voluntary, was misleading. The portrayal of the native slave as one who welcomes their condition is contrary to the historical narrative. Ideas against subordination became central to Islamic communities during their Golden Age, as converts under the clientage system were elevated from the status between slave and freeman to one of equal status to the Moslem.[349] While other forms of enslavement persisted still, the notion that colonial powers were the first to educate on liberty is deconstructed patently false, where many pre-colonial non-European civilizations, such as the Persians, emerged early on amongst non-European societies.[350] These ideas, while radical to the existing cultural and social *status quo* of the region, offered an alternative philosophical mode of reasoning that the colony states only developed much more recently, during the Enlightenment era. The Bahá'í Faith, to draw on another example, which emerged in the mid 19th century in Iraq, explicitly prohibited slavery in its writings.[351] Abolition

[349] Nimrod Hurvitz, *Conversion to Islam in the premodern age : a sourcebook* (Oakland, California: University of California Press, 2020).

[350] Nazila Ghanea notes in her *Report of the Special Rapporteur on freedom of religion or belief* that "The early antecedents of the core value of respecting the realm of conscience is reflected in ancient Indigenous cultures and in the Persian empire, and many other sources, religious or otherwise, throughout millenniums and into more recent times." See: *Landscape of freedom of religion or belief - Report of the Special Rapporteur on freedom of religion or belief (A/HRC/52/38)*, by Nazila Ghanea (United Nations Human Rights Office of the High Commissioner).

[351] Free The Slaves, *Faith in Action to End Slavery* (2016) <https://freetheslaves.net/wp-content/uploads/2016/08/Bahai-Resources-for-Ending-Slavery-July-2016.pdf>.

movements, unencumbered by British thought, formed in Africa among intellectuals "as black abolitionists distanced themselves from white missionary and colonial elites who posed as liberators but took on increasingly racist attitudes as imperialism intensified in the second half of the 19th century."[352] Likewise, in the Gold Coast and the West Indies, abolitionist conviction took hold and formed part of discourse amongst their societies.[353]

These movements spanned far and wide across the continents of the Global South, but as the European powers colonized social and political life in the name of liberation, the efforts of the non-European abolitionists were undermined and, at times, even forcefully obstructed.[354] The appropriation of such narratives, which ostensibly aimed to liberate of the Global South, granted Europeans a moral justification for their conquests in colonial territories, discarding a perhaps genuine conviction in developing meaningful humanitarian progress of civil rights in place of colonial exploitation. The internal anti-slavery movements of the Global South were pushed to the margins to allow for the saviour of the archetype slave by the colonial states. In reality, the (Anglo-American and, later, League of Nations) abolition movement was an elite and exclusionary institution in its participant makeup and its aim.

The Temporary Slavery Commission suggested that one of the most difficult tasks for the native is to accept their status as a free human,[355] but instances of individual and collective retaliation are also plentiful throughout history. One notable example is a Persian slave, in 644, who murdered his caliph captor in reprisal.[356] Moreso, high numbers of slaves escaped from the

[352] Benedetta Rossi, "Global Abolitionist Movements" in *Oxford Research Encyclopedia of African History* (Oxford University Press, 2023) publisher: Oxford University Press.

[353] *Ibid*.

[354] *Ibid*.

[355] League of Nations, Temporary Slavery Commission, *supra* note 21.

[356] Malise Ruthven, *Islam in the world*, 3rd ed. ed (Oxford ; Oxford University Press, 2006).

Gulf seeking liberation from their conditions, and slaves in Turkey were known to commit arson in resistance to their subordinate status.[357] In fact, the early 20th century saw "one of the most significant slave revolts" in history, with hundreds of thousands of slaves declaring their opposition to their conditions.[358] To the contrary of the colonial states' claim, people throughout history have protested their ill-treatment in acts of bravery and with comprehension of their kernel dignity. The bias underlying the lead-up to the 1926 Convention undermines its universality, particularly as it rules within our systems today. Ideas of abolitionism are indeed international, but, in the genesis of international law, they were constructed in the European ideal and marketed globally. Its marginalizing effects are profound, as the International Labour Organisation estimates 50 million people living under enslavement today, half of whom are subjects of forced marriage, but their subjugation is discounted from slavery proper.[359] Instead, they are considered to be subjects of modern-day slavery – the equivalent of practices restricting a person's liberty – lesser form of servitude.[360] It is no surprise – how else could the colonial states (through international law) claim their victory? If we were to recognize the inherent fallacies of slavery's definition, we would also have to recognize that slavery does, in fact, strive in our contemporary world.

3.5 Conclusive Thoughts

This chapter has examined the ideological belief systems and narratives that formed the League of Nations' institutional culture of perceived superiority over the Global South. By emphasizing the

[357] *Ibid*.

[358] *Ibid*.

[359] International Labour Organization (ILO), Walk Free, and International Organization for, *supra* note 47.

[360] Jean Allain explains that the 1936 League of Nations Committee of Experts on Slavery and the 1930 International Commission of Inquiry into the Existence of Slavery and Forced Labour in the Republic of Liberia clarified that the 1926 Convention must distinguish between slavery proper, per article 1, and lesser forms of servitude. See: Jean Allain, "11 The Legal Definition of Slavery into the Twenty-First Century" in Jean Allain, ed, *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press, 2012). See also: "Report of the Advisory Comm. of Experts on Slavery, Third (Extraordinary) Meeting of the Advisory Comm." League of Nations, May 15, 1936 (C.189(I).M.145.1936.VI.B) Publication of the League of Nations VI.B. Slavery, 1936. VI.B. 1, 27 (1936).

racial bias and stereotyping of the colonised peoples, the chapter reveals that the humanitarian aims of the League were founded on a prejudicial premise. The League's and the Temporary Slavery Commission's ostensibly humanitarian mission of assuming the "sacred trust of civilisation" was guided by a Eurocentric value system, which caused an incongruence between their aim of abolishing slavery and its subjugating manifestations. The central finding of this chapter is that the colonial institutions had developed a short-sighted understanding of what constitutes slavery as a result of their prejudicial premise from which they considered the matter. Their understanding was restricted to conceptions of slavery which formed through their own participation in the enslavement of the Global South peoples. This short-sightedness resulted in the Temporary Slavery Commission creating, what this work characterizes as, an archetype slave. This archetype of the slave, from the outset, dominated the Temporary Slavery Commission's perspectives and, eventually, their report to the League of Nations. Other forms of enslavement that were commonly found in the Global South were isolated as custom and, thus, excluded from what claimed to be a universal abolition project.

The chapter reveals that the workings of the League and the Temporary Slavery Commission were in deep entanglement with power dynamics pervasive in the Western post-war and colonial period. The identification of the institutional failures of the League and its experts, therefore, serve as a critical contextualisation of the restrictive legal definition of slavery that has subsisted in our international legal framework. In identifying these limitations, the chapter expounds on the broader systematic failures that likewise underpinned the exclusion of child marriage from the scope of slavery. The next chapter centers its investigation and analysis on the marginalization of the colonized girl to chart the reasons that have resulted in the minimization of her enslavement.

Chapter 4: Marginalized: The Exclusion of Child Marriage from the 1926 Slavery Convention

4.1. Introduction

This chapter explores further the theme of coloniality in the efforts of the early 20th century to combat the widespread occurrence of slavery. To uncover the enduring spirit of coloniality within the 1926 Convention, this chapter traces the historical exclusion of forced and child marriage in within global abolition, as it was led by the League of Nations and its Temporary Slavery Commission. The chapter is accordingly divided into four sections. The first section will begin by conducting a review of the harmful gendered practices in the colonies during the pre-colonial era. By tracing the practices of female subjugation back to the pre-colonial era and its later-to-be colonized peoples in the Middle East and Africa, we can better understand the role of the colonial powers in the evolving political and cultural shifts of early 20th century international law, which at times was the concerted effort to ameliorate conditions for enslaved female children, but often resulted in further destabilization and worsening of conditions for victims and perpetrators, creating a feedback loop that compounded the cycle of oppression.

The first section, to this end, delves into the intersecting dimensions of bridewealth, consent, and notions of honor to trace the exploitative realities of forced and child marriage, as well as the concerted efforts of colonial powers to leverage these dynamics to formulate forms of economic organization that relied on these cultural paradigms.

Next, the chapter examines the colonial powers' intervention on marital practices, drawing links between the perpetuation of female exploitation and oppression to concerted reform efforts that destabilized much more than they liberated. Relating this to the colonial hesitation of "too much freeing," the chapter highlights how the colonial narrative continuously alternated between the victimhood of non-European women as the victims of the savage Black or Brown man, and

that of the sexually promiscuous and morally corrupt Black or Brown woman. The chapter critically explores the use of stereotypes among colonial powers to ground the League's approach to the issue of slavery as being guided, fundamentally, not by the destitute conditions of women, but rather by the economic, social, and political interests of European nations.

The chapter finalizes the discussion by relating back to the 1926 Convention, critically intervening on the narrow definitions and legal scope of slavery. This final section traces a link between the 1926 Convention and the marginalization of female children who are trapped in various conditions of slavery – among them, sexual, reproductive, and domestic – to cast light on the legacy that continues to influence the contemporary efforts (or lack thereof) of eradicating this harmful practice.

4.2. Acquisition of Girls by Purchase Disguised as Payment of Dowry

In their investigation and deliberations, the Temporary Slavery Commission engaged considerably with the subject of marriage disguised as slavery. The experts were trying to determine if certain marriage practices across Africa and the Mohammedan states would sufficiently constitute slavery. During the early 20th century, marriage prevailed as a fundamental institution governing social and economic aspects of life across the peoples of the Global South.[361] Marriage customs varied considerably across the continents and countries, but despite the diversity, two commonalities existed in early 20th-century locales that were deliberated upon by the Commission. Firstly, girls were generally wed at early ages, and the betrothal or marriage could

[361] Annie Bunting et al, *Marriage by force? : contestation over consent and coercion in Africa*, 1st ed. ed (Athens, Ohio: Ohio University Press, 2016).

take place as early as infancy or as late as her pubescence years.[362] The family would promise the child to a suitor, and upon her reaching puberty, she was deemed ready for consummation, at which point she would begin her life and duties as a wife.[363] Secondly, the consent to the marriage was vested in the parents or the male kin of the child.[364] The variety in practices among communities and their dissimilarity to European marriage practices led the Temporary Slavery Commission to approach the matter with caution "for the subject is so complex that it would be difficult to do so within reasonable limits", yet they still substantially engaged with it.[365] All the while, invested in the arbitration of native life, colonial powers were profoundly occupied with questions of women's condition in marriages, and long-held marital customs would come to be heavily reshaped under their influence.[366] While some changes would come to ameliorate women's circumstances, others served to legitimize existing forms of subjugation and introduced new ones.

María Lugones in *The Coloniality of Gender* and Oyèrónkẹ́ Oyěwùmí in *The Intervention of Women,* amongst others, argue that gender as a binary category was a tool introduced by the colonial powers, which the institution of patriarchy formulated in non-European contexts. The premise of such an argument is the assumption that prior to colonial intervention, native societies would not organize themselves according to contemporary categories of gender and that women, like their male counterparts, had decision-making capabilities in the familial and public sphere.[367]

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[362] Salima Tyabji, *The changing world of a Bombay Muslim community, 1870-1945*, first edition. ed, Oxford scholarship online (Oxford: Oxford University Press, 2023).

[363] *Ibid*.

[364] Jack Goody & Cambridge University Press E-Books - York University, *The oriental, the ancient, and the primitive : systems of marriage and the family in the pre-industrial societies of Eurasia*, Studies in literacy, family, culture, and the state (Cambridge ; Cambridge University Press, 1990).

[365] League of Nations, Temporary Slavery Commission, *supra* note 348.

[366] Bunting et al, *supra* note 361.

[367] Maria Lugones, "The Coloniality of Gender" in Wendy Harcourt, ed, *The Palgrave Handbook of Gender and Development: Critical Engagements in Feminist Theory and Practice* (London: Palgrave Macmillan UK, 2016) 13. See also: Oyeronke Oyewumi, *The Invention of Women: Making an African Sense of Western Gender Discourses*, ned-new edition ed (Minneapolis: University of Minnesota Press, 1997).

These lines of argumentation, however, do not account for the discrepancies caused by social class systems and cultural values. Even if we were to accept such a proposition, only *some* women would have had the social status required to populate spaces of power, leaving *other* women on the margins. Cooper explains that some matrilineal systems "created possibilities for female initiative and collective action," but did not truly confer power to women.[368] The long-standing customs of child marriage, however, tell a different story of gendered coloniality altogether. There is no denying that colonial intervention, in part, worsened women's conditions and created new forms of violence, but, as the discussion traces throughout this work, it is crucial to recognize that the conditions of girls prior to colonial interference were certainly not one of individual liberty, let alone one of personhood relative to men.

The enslavement of girls through marriage has existed long before the Western world thought it prudent to save the native woman. This is perhaps an uncomfortable truth that some scholars of the colonial encounter abandon if not outrightly ignore. In reality, colonial powers intervened in and, in some ways, further degenerated an existing system in no way compatible with any views of natural rights. Many communities across the Middle East and Africa practiced, as customer, the genital mutilation of young girls and in some cases as an initiation into marital age.[369] Marital rape, in these instances, was and still is customary, as the sexual rights of the woman are completely transferred to the man.[370] Men would habitually inherit women as wives, who in some societies may have been direct family members, such as mothers or sisters.[371] Women's social and financial value was and, in some communities, still is measured and determined by their

[368] Cooper, Holt & Scott, *supra* note 17.

[369] Ali & Rogers, *supra* note 40.

[370] Yllö & Torres, *supra* note 45.

[371] Adis Duderija, Alina Isac Alak & Kristin Hissong, *Islam and Gender: Major Issues and Debates*, 1st edition ed (Oxford: Routledge, 2020).

virginity and their reproductive fertility.[372] In Islamic communities, it was and, in some places, still is permissible to marry girls as young as 9 years old, where the *Quran* is misconstrued to justify violent perversions.[373] In some patriarchal communities, familial and state-sanctioned execution of women in the name of honour is widely accepted and practiced.[374] One would risk the reduction of the matter to a simplistic conception by failing to acknowledge the contexts in which violence against women is normalized and widespread (including in the European nations) at the time of the abolition movement. Therefore, colonial powers gained footing and operated within a system that already sanctioned the secondary status of women, and within this system, the fragmented interventions by colonial powers destabilized custom and economy further, and at times, even legitimized the very practice they were attempting to abolish. Cooper et al. capture this sentiment concisely, noting that "British conquerors worried that too much "freeing" would diminish rather than enhance the possibilities of cash-crop production and would jeopardize a social order that depended on patriarchal authority."[375]

In other words, the social and cultural values of these societies were embedded into the economic markets and production of these non-European societies, as they typically are. Dis-embedding their economics from their social systems equally meant crippling the economic productivity and therefore destroying the very impetus behind the colonial project altogether. It was, therefore, as a matter of survival for the colonial powers that "too much freeing," though

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[372] Ali & Rogers, *supra* note 40.

[373] Quentin Wodon, "Islamic Law, Women's Rights, and State Law: The Cases of Female Genital Cutting and Child Marriage" (2015) 13:3 The Review of Faith & International Affairs 81–91, online: <https://doi.org/10.1080/15570274.2015.1075762>. Quentin notes: "At the outset, it must be very clear that neither FGC nor child marriage are "Islamic" problems. FGC and child marriage are practiced in many non-Muslim communities, and both practices predate Islam. In addition, there are many majority Muslim countries where the incidence of both practices is very limited. In no way is there a one-to-one association between the practices and Islam. Yet in some countries arguments inspired by Islamic law have been used in order to suggest that prohibiting FGC and child marriage could be "un-Islamic," and faith leaders have substantial influence on whether the practices persist or not."

[374] Manar Hasan, "The politics of honor: patriarchy, the state and the murder of women in the name of family honor" (2002) 21:1–2 The journal of Israeli history 1–37.

[375] Cooper, Holt & Scott, *supra* note 17.

morally instinctual to the colonizer, was a poor suggestion, at best. The colonizing powers, therefore, did not actively engage in freeing slaves but directed their efforts to ceasing commercial reliance on the trade and as for those instances of maltreatment, such as forced or child marriage, that they could not avoid, they conveniently recategorized them as marriage rather than slavery.[376]

This re-categorization, however, takes place within a broader cultural context where child marriage is a formalized practice with an economic dimension, governing rules akin to law, and enforceability of obligations *via* culture as the guarantor of rights and enforcer of duties. Across African and Islamic communities, marriage was thusly associated with some form of bridewealth.[377] Depending on the locale, the bridewealth could take various forms of commodity (gifts, dowry, labour, etc.), and traditional or religious customs would govern its specifics. Insofar as judgment is cast on the pith & substance of bridewealth, it seems that, at times, it acted as a cultural disguise of payment for reception of a girl or woman as a wife – the equivalent of their commodification. This was what the Temporary Slavery Commission sought to determine; whether bridewealth constituted a form of payment that, in effect, reduced girls and women to commodities that were being purchased as slaves under the guise of marriage.[378] D'Andrade, in his early remarks at the Commission's first meeting, noted that while slavery was "tending to disappear […] [it], however, was to be found in other forms – for instance, women were bought by means of a dowry."[379] The Commission saw it prudent to enquire about this practice in their questionnaire to the League member states, and it settled on it sitting under the category of

[376] Bunting et al, *supra* note 361.

[377] Sophia Chae, Victor Agadjanian & Sarah R Hayford, "Bridewealth Marriage in the 21 st Century: A Case Study from Rural Mozambique" (2021) 83:2 Journal of marriage and family 409. Jane C Diala, "Rethinking the Gender-Culture-Law Nexus through the Lens of Child Marriage and Bridewealth Payment" International Journal of African Renaissance Studies - Multi-, Inter- and Transdisciplinarity 1–23, online: <https://doi.org/10.1080/18186874.2024.2391862>.

[378] League of Nations, Temporary Slavery Commission, *supra* note 21.

[379] *Ibid*.

Practices restrictive of liberty of the person, or tending to acquire control of the person in positions analogous to slavery.[380] The descriptor on the questionnaire eventually read as *Acquisition of girls by purchase disguised as payment of dowry, it being understood that this does not refer to normal marriage customs.*[381]

4.2.1. Temporary Slavery Commission's Conception of Forced Marriage

In reference to marriage, the Commission raised a wide range of considerations that required closer examination and information. There was unanimity among them that some practices of marriage among natives often restricted the liberty of the person, and forced marriage was explicitly mentioned as one such practice.[382] This recognition is perhaps one of the earliest indications of forced marriage being understood as a human rights concern at an international institution. D'Andrade "interpreted the terms of the questionnaire as covering a barbarian native custom which involved marrying a woman against her will. The preamble of the second paragraph referred to practices restricting the liberty of the person. In the case in question, there was obviously a restriction of the liberty of the woman, who was not consulted in regard to her marriage."[383] It appeared, however, that the Commission struggled to reconcile the cultural and religious dimensions of marriage with the exploitative practices corresponding to slavery. Delafosse speaks to this challenge also afflicting the French colonial administration, where the officials had to determine the boundaries between slavery and marriage, resulting in crimes being

[380] *Ibid.*
[381] *Ibid.*
[382] *Ibid.*
[383] *Ibid.*

prosecuted as "actual offences under these [slavery] laws" within the French colonial territories.[384] This meant that forced marriage was already being recognized and treated in law, as a practice of enslavement by a permanent member of the League. It also meant that the French authorities were contending with the explicitly gendered dimension of slavery.

Delafosse, therefore, recommended "to mention the fact of fraudulent intention on the part of those conducting the [the marriage], as this would enable a distinction to be drawn between real purchase and a regular marriage according to native custom."[385] The component of intent is introduced as a means of inferring guilt. This criterion, however, fails to take hold. Delafosse then reinforces the distinction between marriage and commercial purchase towards the end of the discussion, noting, "The question of native marriage might take the Commission very far, and it would be preferable to keep the enquiry within the limits suggested by Sir F. Lugard, who held that the Commission had only to investigate the practice of purchase when it constituted a disguised form of slavery."[386] The cultural and religious components of the question were set aside in the interest of keeping the scope of the investigation manageable. The focus of the Commission was the monetary, or otherwise commercial, aspect of the marriage, and to them, bridewealth was the distinguishing factor between a moral characterization such as "barbarian native custom" and practices comparable to slavery. By attaching a commercial requirement to forced marriage, the Commission largely excluded marriage practices from their scope, and this resulted in the bride legitimately being kept in conditions equivalent to slavery. Framing these marriages as cultural and religious practices, also inadvertently legitimized forced marriages that did not have a

[384] *Ibid.*

[385] *Ibid.*

[386] *Ibid.*

bridewealth aspect to them, given that their re-categorization as a cultural phenomenon would prevent "too much freeing."

In *Defining Slavery in All Its Forms: Historical Inquiry as Contemporary Instruction*, Joel Quirk sets out a brilliant explanation to enumerate this point. Importantly, he argues that the popular scholarly focus on the trans-Atlantic slave trade has disfavoured and misconstrued our understanding of slavery as requiring a commercial gain for the master.[387] In contrast to this commonly held perspective, Quirk explains that in other locales, the financial benefit of slavery could equally be in the form of labour or the riches that would result from that labour.[388] Describing a number of slavery practices that did not have an economic or commercial feature at their core, Quirk "deflate[s] a widespread tendency to view economic exploitation and commercial calculations as the main *raison d'être* of slavery."[389] Quirk draws particularly on military enslavement to illustrate that slavery need not be a commercial transaction or have an economic dimension, but that it has had historically other significant markers, such as warfare, reproduction proceeds, prestige, and so on.[390] Militant slaves have traditionally acted in service of their master, held different and sometimes even significant ranks, never turning their guns on their captors.[391] These slaves were not any less of a slave than others, but they were victims of a different form of enslavement, coercion, and benefit.

Indeed, many similarities can be drawn between the predicament of a militant slave and that of a forced bride.[392] However, a broad definition would have proven to be contentious

[387] Joel Quirk, "14 Defining Slavery in all its Forms: Historical Inquiry as Contemporary Instruction" in (Oxford: Oxford University Press, 2012).
[388] Quirk, *supra* note 4.
[389] Quirk, *supra* note 387.
[390] *Ibid*.
[391] *Ibid*.
[392] Quirk, *supra* note 4.

for the Western powers as these colonial governments were widely active in the forced labour sector through "systematic exploitation and abuse" of the peoples of the Global South.[393] Where colonial powers and their activities in the Global South were under scrutiny by investigative commissions later, their officials would nonetheless continue to minimize practices of slavery in their reports, referring to victims for example as those held in "mild forms of slavery" and "voluntary slaves," or they would postulate that the native population simply wish to remain enslaved.[394] These commentaries were "inherently disingenuous" and a lazy attempt at justifying the continued enslavement of the native population.[395] Like the militant slave, the bride had a price and provided remuneration, but hers was not necessarily commercial. Instead, she would give to her captor her domestic and sexual labour, her children, and whatever else he seized.

4.2.2. Colonial Intervention in Marriage Practices

In non-European societies such as the Middle East and Africa, marriage was an undertaking that concerned the bride's broader social environment, and this meant that girls ordinarily had little or no choice over who, when, why or how they married. In colonial Nigeria, Igboland, Olatunji Ojo speaks to the prevalence of coerced marriages, fostered by socioeconomic conditions and "controlled by senior men and women who were averse to changes that could threaten their upper-class social status".[396] The high bridewealth that had to be paid to the girl's family would cause men to prefer slave wives to free women, as it allowed them to circumvent the economic

[393] Quirk, *supra* note 387.

[394] "Report of the Advisory Committee of Experts: Second Session of the Committee, League of Nations, Slavery." League of Nations, Geneva (C.159.M.113) (1935). League of Nations, *supra* note 360.

[395] Quirk, *supra* note 387.

[396] Olatunji Ojo et al, "Forced Marriage, Gender, and Consent in Igboland, 1900–1936" in *Marriage by force? : contestation over consent and coercion in Africa*, 1st ed (Ohio University Press, 2016) 65.

obligations attendant to the formation of an otherwise unilateral contractual relationship.[397] Particularly under colonial occupation, bridewealth served as a means for families to pay taxes, and dire financial circumstances naturally incentivized the transacting of girls.[398]

As the colonial powers prohibited slavery and where bridewealth could no longer be paid through the gifting of slaves to the girl's family, the monetary bridewealth increased up to 300 percent, becoming an insurmountable cost for most suitors. Ojo remarks that it was this increase in bridewealth, in part, that caused colonial powers to question the authenticity of bridewealth as a cultural phenomenon and to conflate the practice with the *purchase* of girls.[399] In an attempt to curb the issue, the British government fixed bridewealth in a three-tier system, with pubescent girls requiring the highest payment, followed by older unmarried women and, finally, women who had already been married.[400] The economic changes, caused by colonial intervention, institutionalized a purchase price for women that was directly linked to their sexual and reproductive worth. Another contributing factor to this system was a spike in divorce rates in the Igbo society. The colonial powers, who recognized that various marital practices infringed on women's rights, introduced courts in which women could seek divorce from their forced marriages.[401] The spiking divorce rates destabilized the bridewealth system, as, gradually, only minimal portions of the bridewealth had to be repaid to the husband.[402] Women would thus see their marriage as a means of liberation – once coercively married, they would find a suitor of their

[397] Ibid.

[398] Ibid.

[399] Ibid.

[400] Ibid.

[401] Ibid.

[402] Ibid.

choice, divorce their unwanted husbands and the cost would be borne by their chosen partner.[403] The introduction of choice resulted in a vast number of girls demanding liberty over their bodies – indicating the widespread willingness to defy culture, custom and family to assert control over their sexual and reproductive rights. Those who could not attain a divorce would flee from their conditions, and the desire for choice intensified so much that "it had become a flood by the 1920s."[404]

It was not, however, the introduction of Western ideas that resulted in these fundamental shifts in cultural dynamics and behaviour. Rather, it was the *means* of emancipation that they provided through courts, missionary organizations, and an increase in social and economic mobility of women and girls. These changes allowed for women's agency to materially manifest and "curtailed the power of men who gained most from existing practices."[405] Prior to these avenues, women would, for example, silently protest their unions by hiding the onset of their menstruation to delay the commencement of their duties as wives.[406] This is a significant indicator of their agency and desire for choice, which existed during pre-colonial intervention. Temilola Alanamu tells the tale of a young woman who, in 1856, refused her coerced marriage, proclaiming to her father "you may bind me, you may beat me, you may even kill me," but she would not be married to the chosen man.[407] These narratives pluralize the archives of this thesis to reflect women's enduring struggles for autonomy, both before and throughout the colonial era. Despite

[403] Ibid.

[404] Ibid, p. 83.

[405] Ibid, 75.

[406] Alfred Aubert, "Coutume Bambara (Cercle de Bougouni)" 2:63 Maupoil, Coutumiers.

[407] Temilola Alanamu, "'You May Bind Me, You May Beat Me, You May Even Kill Me': Bridewealth, Consent and Conversion in Nineteenth-Century Abeokuta (in Present-day Southwest Nigeria)" (2015) 27:2 Gender & history 329–348. "Special Collections, Church Missionary Society Archive Microfilm Collection, Section IV: Africa Missions, Part 4: Nigeria-Yoruba Mission, Original Papers-Missionaries:, G. F. Buhler, Journal" The University of Birmingham, Cadbury Research Library, (1844–80,CMS/CA2/O) (1856).

the long-held customs that neglected women's consent and choice of husband, they would impose their innate understanding of personhood.

A folktale from West Africa captures the yearning for choice and love that subsisted amongst women: [408] A couple who was without a child longed for the woman to fall pregnant. After many years of prayer passed, the woman fell pregnant, and the couple had a girl. Overcome by the love for their child, the couple cared for the child in every which way possible. When she flourished into a beautiful woman of marriageable age, many wealthy men would proposition marriage to her parents. The woman, however, would reject these men and asserted that she was only to marry a man of her choosing, whom she loved. The woman grew older as the years passed and she maintained her wishes to find love. Then, one day, the woman encountered a musician whom she immediately felt a great attraction towards. The woman embraced the man and proclaimed her love for him – she was to marry him. The man reciprocated her feelings and agreed to marry her, but he needed to make the necessary arrangements. The woman, so overcome by the love she had been waiting for, insisted that they marry immediately. The lovers eloped – without obtaining the consent of her parents – and the woman had finally entered into the marriage she had envisioned for herself.[409] There is indeed a very human desire for love that, alongside anthropological phenomena such as law, is transtemporal. Though marriage had engrained itself in cultural customs, it could not be isolated from women's pleas for autonomy over their bodies and desire for meaningful marital relationships. It supports the notion that aspirations of freedom from the constraints of forced marriage was not something benevolently imparted by Western

[408] Nwando Achebe et al, "Love, Courtship, and Marriage in Africa" in (Chichester, UK: John Wiley & Sons, Ltd, 2018) 119.

[409] *Ibid*.

invention, as the League's archives purport, but rather that colonial institutions facilitated the fundamental power shifts required to reassign women greater agency to act autonomously.

At the same time, however, these institutional and cultural transformations instituted a new array of hardships for girls and women. In Igboland, the prohibition of slavery shifted the attention of the market economy to the trading of women and children, indeed under the disguise of bridewealth.[410] Bridewealth changed from its former status as a social and symbolic custom meant to unify families and convey the husband's gratitude for the family's stewardship of the girl into the monetary and transactional undertaking that could cause some women to be traded into enslavement as a means of wealth production. In colonial French West Africa, where a similar system of marriage and bridewealth under the "unquestioned authority of the male household head" existed, women were subordinated to their male kinships through marriage.[411] Forced and coercive marriages, including levirate – the inheritance of a woman after her husband's death – were commonplace.[412] The economic disruptions resulted in many women and girls being pawned for their labour, and when families could not repay debts, the pawned individual would be taken as a wife by the debtor, and the debt would be settled in lieu of the bridewealth.[413] The provision of physical and sexual labour to debtor husbands was yet another emerging form of disguised slavery. Mothers who would oppose the marriage or pawning of their children would find themselves disadvantaged in custody battles as their own bridewealth had guaranteed the rights of the child to their husbands.[414] A system that was already intrusive to the personhood of girls

[410] Ojo, *supra* 123.

[411] Richard L Roberts, "Constrained Consent: Women, Marriage, and Household Instability in Colonial French West Africa, 1905–60" in Annie Bunting, Richard L Roberts & Benjamin N (Benjamin Nicholas) Lawrance, eds, *Marriage by force? : contestation over consent and coercion in Africa*, 1st ed (Ohio University Press, 2016) 43.

[412] *Ibid*.

[413] See generally: Bunting et al, *supra* note 361.

[414] Roberts, *supra* note 411.

became only more violent and conventional. While the Temporary Slavery Commission identified the existence of this issue, it refrained from addressing colonial intervention as one of its root causes. The Temporary Slavery Commission would respond by suggesting that:

> "In order to eradicate practices restrictive of liberty so far as they may occur in connection with marriage, concubinage, and adoption, the first object should be to strengthen the law so as to enable the courts to repress all abuses, and secondly and more especially, to make measures in order that everyone should be fully aware that the status of slavery is in no way recognised by law."[415]

Their response was inherently paradoxical. They had clearly distinguished the slavery of women and girls through marriage from slavery proper, and yet, they alluded to the law of slavery as an avenue for reprieve. Their suggestions indicate their acknowledgement of these marriage practices as forms of slavery; however, they were to be dealt with separately from slavery proper, requiring the "strengthening of the law" rather than their inclusion under governing and proposed abolition laws.[416] These recommendations were made at a time when the Temporary Slavery Commission and colonial governments were well aware of the happenings in their colonial territories.

4.3. Age of Consent

Forced and child marriage was a concerning topic of debate among colonial officials and organizations in the early 20th Century, where varying degrees of perversion animated the colonial perspectives on colonized peoples by virtue of the Eurocentric ideals emerging in the post-war context. Shadle uncovers the British colonial institution's distorted view of African girlhood and sexuality in his exceptional investigation into the archival materials of the Kenyan National

[415] League of Nations, Temporary Slavery Commission, *supra* note 332.

[416] Ibid.

Archive.[417] He explains that the colonial's conception of girlhood was reduced to the sexual and physiological capabilities regardless of other factors that could contribute to a girl's personhood or sexual maturity.[418] As officials determined the appropriate age of marriage in light of such conceptions of sexual maturity and personhood, the age of 12 was arbitrarily determined for African girls, in contrast to British girls, who were believed to be of sufficiently matured for marriage by age 16.[419] The belief that Kenyan girls would reach sexual maturity faster than White girls was reaffirmed by Kenyan legislation and institutionalized the commodification of girls' sexuality.[420] The sexualization of non-White women was a commonplace phenomenon throughout colonial territories, where for instance, public discourse amongst North Americans about the perceived sexual deviance of Filipina women would provoke unease among White women, who feared that their White male counterparts might be enticed by an otherwise morally corrupt race of – at their essence – sexually and socially deviant peoples.[421]

At the same time, these White women took it upon themselves, as a matter of moral and social obligation to educate Filipina girls on hygiene behaviour through the colonial school curriculum.[422] Imperial women would take coloured girls under their tutelage to engrain in them the sexual civility that reinforced the prevailing colonial narrative of the barbaric sexual native.[423]

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[417] Brett L Shadle, "Debating 'Early Marriage' in Colonial Kenya, 1920–50" in Annie Bunting, Richard L Roberts & Benjamin N (Benjamin Nicholas) Lawrance, eds, *Marriage by force? : contestation over consent and coercion in Africa*, 1st ed (Ohio University Press, 2016) 89.

[418] *Ibid*.

[419] *Ibid*.

[420] *Ibid*. Shadle notes: "In 1914, for example, the Kenya government introduced a bill to bring the law into conformity with the White Slave Traffic Agreement of 1904 and the International Convention for the Suppression of the White Slave Traffic of 1910. The wording of the bill, the attorney general explained, was taken almost verbatim from British laws, but the age of consent for white women (sixteen) and nonwhite women (twelve) differed "on the ground that a native woman as a rule arrived at maturity at an earlier age than a white woman." With no Africans in the Legislative Council until the 1940s, such racial understanding of girlhood passed without comment. Legislative council debates, Aug. 4, 1914; Criminal Law Amendment Ordinance, Ordinance 18 of 1914, section 7, Gazette of the East African Protectorate I, 380, Aug. 19, 1914."

[421] Roland Sintos Coloma, "White gazes, brown breasts: Imperial feminism and disciplining desires and bodies in colonial encounters" (2012) 48:2 Paedagogica historica 243–261.

[422] *Ibid*.

[423] Ann L Stoler, "Making Empire Respectable: The Politics of Race and Sexual Morality in 20th-century Colonial Cultures" in, 1st ed (Routledge, 2013) 417.

Still, the coloured girl would have a character of inherent deviancy from which the White woman needed to protect their men, as the construction of the uncivilized slave necessitated ethnocentric distinctions to promulgate the ideologies of racial hierarchy.[424] This translated to coloured girls possessing an intrinsic sexual deviance and immorality by virtue of their ethnic lineage. The distinction of sexual worth was also engrained in the legislation of colonial territories.

In 1926 New Guinea, for example, the rape or attempted rape of a White woman by an African man would carry corporal punishment, whereas the rape of a Black woman, regardless of whether the perpetrator was black or white, was yet to be acknowledged under the law.[425] This is yet another instance where legislation formalizes the prevailing ideological tenets that formulate colonial identity and animate the colonial projects as the active oppression, marginalization and subjugation of girls to mandates of state-sanctioned violence. Stereotypes that persisted in culture were codified by the law governing the colonized and, therefore, legitimizing existing forms of violence toward girls at a time when colonial efforts were being proposed as missionary projects of moral and political redemption of otherwise irredeemable peoples.

In recognizing the Othering of the natives, one is better equipped to understand the construction of the 1926 Convention and why it falls severely short of offering mechanisms of justice to victims who unincidentally need it the most. The racialized stereotype of the native girl would be continuously fortified through a victim-harlot paradox.[426] It is this very paradox that would seep into the undertones of the Convention and the chain of institutional actions and perspectives leading to its formation. The international legal framework on what is now recognized

[424] *Ibid*.

[425] *Ordinance of Papua, White Women's Protection Ordinance*, 1926<http://www.paclii.org/pg/legis/papua_annotated/wwpo19261934342.pdf>.

[426] Homi K Bhabha, "The other question: Stereotype, discrimination and the discourse of colonialism" in (United Kingdom: Taylor & Francis Group, 2004).

as perhaps the most salient right was not formulated in a vacuum; rather it was a product of colonial narrative, study, and perceived superiority.

Amidst this victim-harlot paradox, the Temporary Slavery Commission would vacillate between child marriage being *slavery in all its forms* and slavery proper. The chairman points out that "in the Belgian Cong, marriages took place between old men and young girls who were not of marriageable age. These marriages even took place before the birth of the child."[427] He then goes on to dismiss his concern as "this point, however, concerned the question of native marriages."[428] Sir F Lugard, in response, highlights the marriage practices in certain parts of Africa where "old women had been known to marry young girls by a process of native law in order to obtain profits by making them prostitutes and obtaining ownership of the children born."[429] The Temporary Slavery Commission recognised that some forms of "native marriage restricted the liberty of the woman" and frequently expressed that, in some instances, "there was little [difference] between slavery and marriage."[430] Yet, it would be concluded time and time again that "it would be very difficult for the Commission to undertake the examination of marriage customs among the natives."[431]

Colonial policy, nonetheless, was directly engaged with the link between child marriage and slavery, indicating, as already mentioned, an instinctual moral trepidation of complacency toward the practice. For example, the British colonial 1909 Slave Dealing Ordinance and the 1916 Slavery Ordinance in Nigeria linked forced marriages of children to slavery.[432] This is a telling

[427] League of Nations, Temporary Slavery Commission, *supra* note 21.
[428] *Ibid*.
[429] *Ibid*.
[430] *Ibid*.
[431] *Ibid*.
[432] Ojo et al, *supra* note 396.

example, as colonial territories began to consider instituting legal changes to the age of marriage, particularly after the British enforced legislative prohibitions on child marriage in India, after an 11-year-old girl died from sexual injuries with her husband who was more than three times her age.[433] Nonetheless, conversations about the eligibility for marriage would revolve strictly around her physiology, "that is, the physical ability to have sex was presumed to be accompanied by the psychological or emotional maturity to consent to sex."[434] It is necessary to emphasize that the colonial officials in question were men engaging in conversations about the sexual competency of young girls, many of whom perceived African women as an inferior race, and ready for marital consummation sooner than European girls. Shadle convincingly describes that within these narratives, "there was no cultural or social category of girlhood as there was in Britain. The line between child and adult was strictly a physiological one."[435]

Another notable instance of this ideology can be traced to South Somalia, where Italian officials restricted the movement of freed slave women to maintain control over their labour, prohibiting them from engaging in the provision of sexual services, to appropriate the labour of these women for the benefit of the colonial government.[436] These women also offered the opportunity for the colonial government to attract the labour of men on Italian agricultural land by promising one woman as incentive to each man who would work on their farms.[437] New regulations were enacted to allow men to marry women without the woman's consent or her

[433] Ashwini Tambe, "The State as Surrogate Parent: Legislating Nonmarital Sex in Colonial India, 1911–1929" (2009) 2:3 Journal of the History of Childhood and Youth 393–427.

[434] Shadle, *supra* note 417.

[435] Ibid.

[436] Francesca Declich, "Italian Weddings and Memory of Trauma: Colonial Domestic Policy in Southern Somalia, 1910–41" in Annie Bunting, Richard L Roberts & Benjamin N (Benjamin Nicholas) Lawrance, eds, *Marriage by force? : contestation over consent and coercion in Africa*, 1st ed (Ohio University Press, 2016) 109.

[437] *Ibid*.

family's knowledge.[438] It should be reiterated that, in this context, the female child is also captured by the colonial administration's legislating of proprietorship over the women. The Italian government effectively institutionalized forced and child marriage as policy mechanisms to foster their economic interests, where girls, as young as six years old, were offered in return for male labour. [439] In East Africa, a letter from the Anti-Slavery Society reads, "both officials and others – I mean Europeans – keep native women; the usual custom is to send out a police boy, (this is if an official is concerned) to find a girl who must if possible be a virgin. The wishes of the girl or the parents is not in any way considered."[440] It is evident, then, that the colonial occupiers instituted, as a matter of their colonial policies and customs, the forceful appropriation of the dignity, agency and integrity of colonized peoples, by effectively seizing female children as slaves to maintain a system of economic organization that relied on the dehumanization and commodification of non-European societies.

During the abolition movement, the bodies of Black and Brown women became a playground for Western discourse, fetishization and regulation. These conversations were deeply embedded in the structure of the colonial efforts to save Brown women from Brown men.[441] The dual representation of native women by White men and women was perplexing. On one hand, they were depicted as victims of brute violence by a savaged species of native men, whose purity could only be saved by the White knight and his ideological sword. By the same token, it was, as has been mentioned earlier, a matter of self-preservation to promote an image of sexual promiscuity among native women, to allow for the continued dominionship over female labour necessary for

[438] Ibid.

[439] Ibid.

[440] "Treatment of natives in Portuguese East Africa - Dossier concerning report by Mr. Morton. File" League of Nations, Geneva (R65/1/41255/23252) (1925 1924).

[441] Spivak & Morris, *supra* note 303.

economic prosperity of colonial administrations. Although child marriage was accompanied by other forms of slave related labour and conditions, sexual, and reproductive enslavement was conveniently perceived to be just short of slavery. We can think of this as a philosophical package, and especially one that offers a logical or jurisprudential framework of reasoning to cherry pick what forms of slavery are to be recognized and what class of victims will be offered redress, all the while a deception of moral rectitude is maintained to upkeep a system of cultural self-adulation rooted in ethnocentric belief.

In *Sara Baartman and the Hottentot Venus: a ghost story and a biography*, Clifton Crais retells the life of Sara Baartman, an 18th-century Khoikhoi woman from South Africa, and the legacies of her story.[442] Sara had been brought to Europe by Alexander Dunlop and Hendrik Ceasers, who put Sara's body on exhibition in a circus-like manner for the fascinated eyes of their White folk.[443] Sara's anatomy became representation of the White curiosity and perversion of the African woman, as her body was gazed upon by London's and Paris' middle-class onlookers. Crais elucidates the ways in which this spectacle profoundly and disturbingly shaped "scientific" discovery, seeping into the "texts produced by some of Europe's greatest thinkers" and the likes of Darwin.[444] Perverse ideas about female anatomy and the sexuality of native women would shape the Anglo-American perception of their Otherness and find footing in racist scientific doctrine. The 20th-century discourse about the woman of the Global South was rooted in a history of scientific and cultural ignorance and arrogance that continued to be filtered through this lens.

[442] Clifton C Crais & Pamela Scully, *Sara Baartman and the Hottentot Venus : a ghost story and a biography* (Princeton, New Jersey ; Princeton University Press, 2011).
[443] *Ibid*.
[444] *Ibid*.

The dominant and continuous colonial discourse is notably examined in *The Location of Culture,* wherein Bhabha locates its dependence on the notion of *fixity* "in the ideological construction of otherness."[445] Bhabha describes fixity as:

> "the sign of cultural/historical/racial difference in the discourse of colonialism, [as] a paradoxical mode of representation: it connotes rigidity and an unchanging order as well as disorder, degeneracy and daemonic repetition. Likewise the stereotype, which is its major discursive strategy, is a form of knowledge and identification that vacillates between what is always 'in place', already known, and something that must be anxiously repeated . . . as if the essential duplicity of the Asiatic or the bestial sexual licence of the African that needs no proof, can never really, in discourse, be proved."[446]

Fixity is, therefore, the synthesis of stereotyping colonial ideology, perpetuated by an ambivalence towards the colonized peoples and their conditions. Ambivalence thus allows colonial discourse to prevail in its self-proclaimed truth, even when inconsistency is revealed in the fixity.[447] This occurs through the colonizer's reinforcement of a particular characterization of the native, protected from deviation through a process of repeating falsity.[448] Stereotyping is the fantastical *process* within which the Other is created, through "projection and introjection, metaphoric and metonymic strategies, displacement, over-determination, guilt, aggressivity […]" and the conflicting claims (because they grounded in falsity) are moulded into a unity of racist narrative.[449] Bhabha's analysis, in its post-structuralist orientation and Lacanian style of psychoanalysis,[450] offers a re-description of Othering as a re-conception of the native woman by the Temporary

[445] Bhabha, *supra* note 426.

[446] *Ibid*.

[447] *Ibid*.

[448] *Ibid*.

[449] *Ibid*.

[450] Derek Hook, "The Racial Stereotype, Colonial Discourse, Fetishism, and Racism" (2005) 92:5 The Psychoanalytic review (1963) 701–734.

Slavery Commission and sheds light on the equanimity with which colonial powers' mistreated slaves, from Hottentot Venus to the sexualised Black and Brown child.

As the discussion has so far traced, the Temporary Slavery Commission, and more generally, the colonial powers, re-constructed the native girl as helpless and victimized by the stereotyped savage Black man as a means of upheaving the existing male-dominant power structures. This depiction of the girl would be conveniently reinforced through colonial interventions in marital practices within the colonial territories, in collusion with colonial legislation, and by establishing courts to adjudicate marriages and enacting minimum marriage age laws to otherwise regulate the particularities of native marriage. The fixity of the native girl further rested on the persistence of the saviour narrative by Imperial men and women alike. Fortified by the precept that native girls are uncivilized and morally unenlightened, education through missionary organizations were aimed at so-called uncivilized girls who would otherwise be left irredeemable in the absence of knowledge and morality. This portrayal of victimhood stands predicated on the psychological manipulation and reframing of context to ground a claim of authority and conceive a documentary record proving the savagery of the Black and Brown man. Without their victimizing the girl, she could only be measured by her inherent backwardness, and this would not impart sufficient moral authority to the claim being made by colonial powers. In other words, the fixity of the girl as a victim, rather than defining her by her inferior race, was analogically reliant on the Black and Brown man being an oppressor. Simultaneously, the coloured girl was a harlot, possessed by the kernel deviance of her race. These Imperial narratives were underlying the resistance to consider the native marriage as slavery, beyond labelling it as barbaric custom: The coloured girl was readily sexual and sexually ready at age 12, partaking in *her* native customs, and thus, the mentality of the uncivilized had fully developed. Bhabha captures this

sentiment noting, "For the stereotype impedes the circulation and articulation of the signi-fier of 'race' as anything other than its fixity as racism. We always already know that blacks are licentious, Asiatics duplicitous...."[451]

4.4. The Drafting of the 1926 Slavery Convention

The formulation of the 1926 Convention began shortly after the report of the Temporary Slavery Commission was submitted to the League. In 1925, the British proposed a Draft Protocol to the League – amongst its composers was the British member of the Temporary Slavery Commission, Sir Lugard – that would set in motion for the drafting of an international slavery convention. The Draft Convention was formulated by the League's Sixth Committee, a Sub-Committee consisting of several states, and a Drafting Committee, one of whose members was the Temporary Slavery Commission's chair, Mr Gohr. The British Draft Protocol proposed the definition of slavery as " [...] a status in which one person exercises a right of property over another."[452] The Draft Convention took a similar form, proposing the definition to be "Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."[453]

4.4.1. Request for the Broadening of the Scope of Draft Article 1

Despite the narrow framework outlined in the Temporary Slavery Commission's report, Mr. Gohr suggests an amendment to the definition to read, "Slavery is the status of a person over whom another person or group of persons exercises the power attaching to proprietorship; or is the holding of a pledge or who is complied to serve such other person or group of persons for an

[451] Bhabha, *supra* note 426.

[452] Allain, *supra* note 1.

[453] "Journal of the Sixth Assembly of the League of Nations, Geneva 1925, No. 3", League of Nations, (9 September 1925) 25.

undetermined time."[454] This comprehensive definition would have given recourse to incorporate slavery beyond the archetype, including forms of debt bondage, pawning of women, and certain forms of marriage. In fact, the chairman, Gohr, contended directly with the question of what he titles *Female Slavery* and shared his concerns in a memorandum shortly before the official report made to the League.[455] He denotes several concerns around the practices through which women, under the pretense of marriage, are subjected to slavery. There was a general understanding that marriage was utilised as a tool to subject women to the dominion of others that went beyond the realm of differences in cultural marriage practices.[456] Gohr emphasizes that "The question of female slavery calls for special treatment. […] Governments should, therefore, adopt more energetic measures in dealing with female slavery than with male slavery."[457] The archives reveal that the gendered dimension of slavery and the insufficient legal protections were indeed acknowledged by colonial experts on the matter of slavery, and brought to the attention of the League.

Gohr's observations identify that the legal systems did not sufficiently protect women, and even reinforced their sale into slavery: "acquisition of girls by purchase disguised as the payment of dowry seems to occur only in countries in which it has been made an offence to purchase a slave."[458] In particular, as it relates to child marriages, Gohr conclusively stated that it "should be made possible to adopt repressive measures."[459] Nonetheless, and in spite of the recognition children's enslavement through marriage, it appeared that the matter of labour would take

[454] "Slavery: Draft Protocol Text proposed by M.Gohr (as amended)" League of Nations, Geneva (A.VI/S.C.1/5) (9 September 1925) Folder R.67.D.46214 entitled La question de l'esclavage: Discussions, y relatives, de la VIe Assembleé.

[455] "Enquiry on slavery - Preparation of memorandum by Mr. Gohr. File" League of Nations, Geneva (R65/1/43898/23252) (1925).

[456] *Ibid*.

[457] *Ibid*.

[458] *Ibid*.

[459] *Ibid*.

precedence over the liberation of the female slave: "We must also bear in mind that agriculture, among primitive peoples, depends to a large extent upon female labour, and that the sudden freeing of women slaves would entail a considerable diminution if not the entire disappearance, of agricultural products required for feeding the population concerned."[460]

The continuity of practices that were akin to slavery was also a concern of the newly formed International Labour Organisation. Here begins a consideration of forced labour and its status in international law that develops in tandem with the abolitionist aim of the League. The International Labour Organisation demarcates the emergence of a new progressive socio-political cause to confront the ills of forced labour, in recognition of the elements it shares with slavery. However, Christopher Roberts traces the origins of the International Labour Organisation to an ideology afflicted by similar limitations as the League.[461] For instance, "Among the more obviously inegalitarian components of the ILO was the rule contained in article 35 of the ILO's Constitution, which gave imperial powers freedom to exempt their colonial territories from the labor standards they signed up to respect in regard to their respective metropoles."[462] article 35 is the other side of the same coin as it relates to Gohr's concerns on the agricultural consequences of freeing female slaves. As Roberts points out, during this time coercive labour practices were central to the economic interests of the colonial powers, which resulted in the marginalization of slavery-like practices that provided the necessary labour.[463] Amongst these labourers was the married girl, who, after revisions of draft article 1 was excluded from its scope, as the drafters settled on a narrow definition. This draft article was later accepted by states and encoded into the 1926 Convention.[464]

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[460] *Ibid*.

[461] Christopher M Roberts, "The Historical Concept of the Development of Forced Labor and the Open Boundries of its Definition Today" (2024) 54:1 New Mexico Law Review.

[462] *Ibid*.

[463] *Ibid*.

[464] Allain, *supra* note 1.

4.4.2. Government's Responses to Draft Article 1

After the submission of the Draft Convention to states for their comments, Germany noted that the definition was too narrow because slavery "inasmuch as the legal conception of civilized states and those of the African natives do not completely coincide."[465] Speaking to, among other practices, the trafficking of women through marriage, Germany pointed to the fact that slavery did not necessarily involve the *purchase* of a slave as other means of obtaining a person existed in tribal custom, and further, that certain slaves did not have a right of resale to them.[466] Germany's response reads, in part:

> "The native, on the other hand, also makes use of the idea of proprietorship to characterise other relationships of superiority for which he has no specific legal notions, e.g., matrimonial and parential authority, liege service, etc."[467]

This response to the draft convention is significant in the legacy of excluding child marriage, as it shifted a duty onto the drafters of the commission to actively consider and contend with Germany's observations. Slavery did, in fact, manifest in ways other than through proprietorship in law and a conclusive decision had to be made by the drafters to dismiss that fact. The intent of the League, as has been discussed throughout this work, was to combat the evil of slavery in the Global South, while also appeasing the necessary European actors in the maintenance of peace in Europe after a costly war. Yet, in the same breath, the League excluded numerous manifestations of slavery from the legal definition – selectively contending their rationale as non-interference with native custom. As the discussion has established, this assertion operated as a façade for the colonial power's stake in the colonial territories, peoples, and their lives. In their decision to dimmish the enslavement of

[465] League of Nations, *supra* note 151.
[466] *Ibid*.
[467] *Ibid*.

children through marriages, the drafters chose to exclude from their definition, in the words of the German government, "a very important class of the un-free population."[468]

Germany also suggested an alternation to article (b) so that it read "To endeavour, as far as possible, to bring about the disappearance of conditions of servitude resembling slavery, e.g. debt slavery, sham adoption, childhood marriage, traffic in women, etc."[469] Allain, a preeminent scholar of the Slavery Conventions, uncovers the deciding factor for the attachment of an ownership test to slavery in the comment made by the Union of South Africa, which was in part a response to this observation made by Germany. The Union of South Africa criticized article 2(b) as being too broad in its aim and a means of regulating social customs. Speaking to martial custom, they noted:

> "Now either such persons are *sui juris* or they are not. If they are *sui juris*, they can only become subject to domestic slavery or similar conditions by a voluntary act, and the essential element of slavery is absent. If they are not *sui juris*, they can only be subject to domestic slavery or similar conditions by the acts of those who by law are their guardians, and it is no more than a form of paternal power."[470]

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[468] *Ibid*.

[469] Ibid.

[470] "Draft Convention on Slavery, Replies of Governments, Reply from the Government of the Union of South Africa" League of Nations, Geneva (, A.10(a).1926.VI) (22 July 1926). The full comment reads: "No exception can be taken to the definition of 'slavery' and 'the slave trade' contained in Article 1. That definition puts as the test of slavery the status or condition of a person over whom all or any of the powers attaching to the right of ownership are exercised. In other words, a person is a slave if any other person can, by law or enforceable custom, claim such property in him as would be claimed if he were an inanimate object; and thus the natural freedom of will possessed by a person to offer or render his labour or to control the fruits thereof or the consideration therefrom is taken from him. The term also seems to imply a permanent status or condition of a person whose natural freedom is taken away, for from the proprietary interest of the other person in the person to whom that status attaches is implied a right of disposal of sale, gift or exchange. It follows therefore that, if slavery is to be abolished or non-recognised by any community, the right of sale, gift or disposal of persons in a condition of slavery must also be abolished or measures taken that it shall have no recognition by the laws of that community. Article 1 therefore proceeds to define 'slave trade' as including all acts involved in the capture, acquisition or disposal of a person with intent that he shall thus become reduced to slavery and therefore as including also all acts involved in selling or exchang- ing him or any trade or transactions in such persons. If the draft Convention had merely proceeded to impose on the contract- ing parties the duty to prevent within their community any person being in a condition of slavery as defined in Article 1 or to prevent or refuse to recognise trade in slaves, there would be little criticism to offer upon the draft. But in Article 2(b), the draft Convention desires to bring about the disappearance not only of slavery as defined in Article 1 but to bring about progressively the disappearance of what is called "domestic slavery and simi- lar conditions". It is obviously therefore desired to extend the definitions given in Article 1 (which makes property or rights of ownership the test) to conditions wherein no property of one person in another is recognised by law – such as the relationship by custom of heads of families to persons related to them by consanguinity or marriage or to person who are deemed by adoption to be placed in such relationships. This seems to go beyond the object of the draft Convention as set out in the Preamble. If it does not go beyond those objects, there seems no reason why the so-called domestic slavery should not be included in the definition of Article 1. The argument seems to be that the so-called domestic slavery can only be brought to an end progressively; and thus admittedly the draft Convention is asking the signatories to the Convention to interfere as opportunity presents itself in the social conditions and custom of the people forming their communi- ties. It is even uncertain as to what would thus be suppressed because to 'domestic slavery' is added 'or similar condition – an expression by which, it is explained, is meant all forms of "debt slavery", enslaving of persons disguised as adoption of children, and the acquisition of girls by purchase disguised as payment of dowry. Now either such persons are sui juris or they are not. If they are sui juris, they can only become subject to

Contrary to Germany's recognition of native customs that resulted in the condition of enslavement, the Union of South Africa pardoned child marriage through the relativistic prism of parental authority. The drafters, having considered these comments, would establish in their conversations that article 1 did, in fact, refer exclusively to slavery proper, but encouraged through article 2(b) attempts at alleviating any practices that result in slavery-like conditions.[471] This understanding was later affirmed by the League of Nations Committee of Experts on Slavery, which examined slavery practices in the 1930s, as well as in the 1956 Supplementary Convention on the Abolition of Slavery by the United Nations.[472] The ownership test made it impossible to understand child marriage as slavery, regardless of the fact that, in some cases, the conditions could equate to that of slavery proper. Likewise, to the archetype of the slave, the colonial powers would understand slavery to have a commercial dimension – this is why ownership was the deciding factor. One was a slave only if one could be bought, sold, gifted and inherited like an intimate object.

4.4.3. The Drafter's Refusal of Immediate Prohibition

Perhaps another explanation for the states' cautionary approach in article 2(b) lies in the powers it conferred to them, through the mandate system, to intervene in their colonial territories. Under article 22 of its Covenant, the League could prolong the recognition of statehood for those territories it deemed to not have sufficiently repressed slavery.[473] This, in conjunction with the

domestic slavery or similar conditions by a voluntary act, and the essential element of slavery is absent. If they are not sui juris, they can only be subject to domestic slavery or similar conditions by the acts of those who by law are their guardians, and it is no more than a form of paternal power. If, further, they have become domestic slaves or persons in similar conditions in the manner indicated, that can only be because others have acquired a right of property in them, and they are therefore slaves as defined in Article 1. There seems no reason, then, to differentiate them from the person in a condition of slavery defined in that Article. If, on the other hand, no right of property in them exists, the scope of the draft Convention seems to be extended to compel the signatories to undertake to interfere in social customs. It would seem to be desirable that these social customs which signatories are to undertake to interfere with should be more clearly defined."

[471] Allain, *supra* note 1.

[472] *Slavery, the Slave Trade, and other forms of Servitude (Report of the Secretary-General), UN Doc. E/2357*, by United Nations Economic and Social Council (1953).

[473] *The Covenant of the League of Nations, 1919 (entered into force December 1920)* art 22.

labour polices, enabled states continued economic hold and labour exploitation in the colonial territories. In including article 2(b) in the Convention, the League had created an added obstacle for colonial territories to attain statehood. It was clear to colonial officials that much work had to be done to repress slavery in all its forms and, considering the economic toll the colonial policies had already taken on the people native to the land, it would be a difficult – or at the least, a lengthy – undertaking. Such slow progress thus enabled the colonial states' control to endure legitimately in their mandates.[474] The changes also required a degree of economic stability, as it was generally expected that masters would be remunerated for the loss resulting from the emancipation of slaves. The economic disparity caused by the colonial occupation, the Great Depression and the taxation of the natives by the colonial powers left little to hope for.[475] To the good fortune of the colonial states, it was clear that B and C mandates were unlikely to attain the economic stability required for these fundamental changes to their society. In the public sphere, they would be able to continue their missionary work on the necessary civilization of the Africans and, in actuality, they would continue to reap the fruits of the land and labour of the native peoples for years to come. The colonial territories would be left with a future promise of statehood – one that was arbitrarily created to be difficult to attain. In this way, the Slavery Convention not only regulated the abolition of slavery, but it colluded with the Covenant of the League to uphold existing structures of colonial subjugation.

[474] Anghie, *supra* note 188.

[475] Bunting et al, *supra* note 361.

4.5. The Consequences of the Narrow Definition of Slavery Today

The preeminent legal definition of slavery is denoted in article 1 of the 1926 Convention as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."[476] This thesis has so far elaborated that the ownership requirement was devised in a particular and peculiar context, relative to the contemporary, and yet, this understanding of slavery remained enduring and has been reaffirmed in various international instruments and international courts since.[477] After mapping the conception and *travaux préparatoires* of the definition of slavery, this thesis concludes by briefly examining its judicial application to highlight its tangible limitations in addressing conditions akin to slavery.

Within international human rights law, two preeminent cases have had a defining effect on the legal landscape pertaining to slavery. In the 2005 European Court of Human Rights case *Siliadin v. France*, the court sustained the established characterization of slavery.[478] The applicant, a minor at the time, had been brought to France by Mr. D, a French national, ostensibly to work for him as a repayment of her airfare and to receive assistance with her immigration process.[479] However, she was forced to become an unpaid domestic worker for Mr. D, who had confiscated her passport and, at times, had lent the applicant to other individuals for her labour.[480] Despite the applicant's minor status, the coerced labour, and her inability to exit her circumstances, the court determined that she was not "held in slavery in the proper sense," as her situation lacked a "genuine

[476] *Convention to Suppress the Slave Trade and Slavery*, *supra* note 23.

[477] Annie Bunting & Joel Quirk, *Contemporary Slavery : The Rhetoric of Global Human Rights Campaigns* (Ithaca, NY: Cornell University Press, 2018). This understanding has been reaffirmed for instance, in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery and the Rome Statute of the International Criminal Court (last amended 2010).

[478] European Court of Human Rights, 07/26/2005 *Siliadin v France*, *supra* note 153.

[479] *Ibid*.

[480] *Ibid*.

right of legal ownership".[481] Unsurprisingly, a *de jure* requirement could not have been established in any circumstance as the legal right of one person over another has long been abolished. The *Siliadin* judgement further elaborates that the applicant lacked the "status of an object" as was necessary for a claim of slavery.[482] The court's judgement and reading of the Slavery Convention indicate that it found the denotation of slavery within the imagery and context of the transatlantic slave trade, and thus, it affirmed the constricted pertinency of its article.[483]

The High Court of Australia addressed this challenge in *The Queen v Tang*, wherein it noted that *de jure* ownership could be met if the *de facto* conditions of an individual would have fallen within the paradigm of legal ownership when such legal ownership was permissible by law.[484] In analyzing the "condition of a person" aspect of the article 1, Rota concurs with the High Court of Australia ruling, noting that it encompasses individuals whose conditions are equivalent to that of property, even if such status has been legally abolished.[485] In fact, the *travaux préparatoires* of the Convention support this interpretation.[486] The initial British draft protocol of the Convention omitted condition and referred exclusively to the status of slavery.[487] Its revision, however, acknowledged the necessity for a quasi-status (not in law, but in fact) of slavery.[488]

Nonetheless, the outcome of the *Siliadin* case – even if examined through the High Court of Australia's *modus operandi* – would have likely failed to meet the threshold of slavery as it is currently enumerated. Debt bondage and domestic servitude, at the time of the drafting of the 1926

[481] Ibid.

[482] European Court of Human Rights, 07/26/2005 *Siliadin v France*, *supra* note 153.

[483] Allain, *supra* note 9, p 164.

[484] *The Queen v Tang*, 2008 High Court of Australia, HCA 39. See also: Jean Allain, "R v Tang : clarifying the definition of 'slavery' in international law" (2009) 10:1 Melbourne journal of international law 246–257.

[485] Michael Rota, "On the Definition of Slavery" (2020) 86:5 Theoria: A Swedish Journal of Philosophy and Psychology 543–564.

[486] Allain, *supra* note 1.

[487] *Ibid*.

[488] McGeehan, *supra* note 180. P. 444

Convention, did not fall within the intended scope of article 1.[489] Instead, as this discussion has traced, the drafters of the Convention had fixated their abolition efforts on the slave trade and chattel slavery – the archetype slave.[490] Indeed, as Quirk remarks, "the history of transatlantic slavery have consistently dominated the way in which slavery as a more general category has come to be conceptualized and discussed."[491] As the European Court of Human Rights exemplifies, this holds true today, but it was particularly relevant to the construction of the Convention. The girl would be abandoned by a system that claimed universality, and its consequences would last far into the future.

Today, forced marriage, according to the International Labour Organisation, is the driver of 22 million women living under conditions of "modern-day" slavery.[492] Only 13 states in the United States have prohibitions on child marriage without any exceptions.[493] The United Kingdom enacted the Minimum Age Marriage Act only in 2022 after years of tireless activism by grass-roots organizations, such as the Iranian Kurdish Women's Rights Organisation and Karma Nirvana, who engage extensively with women and girls who have faced forced marriage. In the European Union, only four countries have set the marriage age at 18, with no exceptions. Many countries in the Global South have set a lower minimum age of marriage for girls than for boys.[494] Afghanistan allows marriage as soon as puberty (first menstruation) occurs, and girls in Bangladesh can marry at any age with judicial consent, to name a few. Cultural and religious marriages, outside of the purview of the judicial system, prevail in all corners of the world,

[489] Allain, *supra* note 1. See also archives

[490] Allain & Hickey, *supra* note 140.

[491] Quirk, *supra* note 4.

[492] International Labour Organization (ILO), Walk Free, and International Organization for, *supra* note 47.

[493] Unchained at Last, "Unchained started and now leads a growing national movement to end child marriage", online: *Child Marriage in the US* <https://www.unchainedatlast.org/child-marriage-in-the-u-s/>.

[494] Arthur et al, *supra* note 5.

whereby young girls are forced into a life of subjugation. Anita, who had been married when she was just 10 years old, tells her story:

> "I was out grazing the cows one day when my father said it was time to get married. He said I was getting older and there was a man interested in me. A fortnight later, the elders and circumcisers were called and a big celebration planned. I was woken up early the next morning and taken outside to be circumcised. The elders said I'd been given to a man and that he was to be my husband. He was 55.
>
> I was confused. I was only 10. My mother tried to explain that I had to live like a woman now and not like a child. But what really worried me was knowing how my mother had suffered as a wife. She got beaten a lot in front of us, and I know she wouldn't be able to protect me from my new husband.
>
> He already had two wives, and as his third I was expected to look after his goats and cows. A new hut was built for me. Nine months later, because I had still not given him a baby, he began tasking me with all the difficult jobs.
> I got the first beating after I lost one of his goats. The second was when he found me resting instead of grazing the cows. The third was because I'd run away. The next morning, after I took his goats to the graze, I decided I had to escape.
>
> I ran into the forest, but had no idea where I was going. There was nothing to eat, and at night I had to sleep in the trees to avoid the animals. After seven days, I found a homestead and was taken in by the Catholic sisters, where I met other girls who had been through the same thing.
>
> I started school in 2013. I have four brothers and four sisters, and none of them went to school; my parents never went to school, either. I hope to be a doctor and get a job to support my family, even though my father is still angry with me for leaving my husband – he had to return all the cows he'd been given as my dowry.[495]

4.6. Conclusive Thoughts

Chapter IV examined the exclusion of child marriage from the scope of slavery. It analyzed how the gendered exploitation of girls was perpetuated by colonial administrations, resulting in

[495] Anita B, "Anita B", (2017), online: *VOICES: Narratives by Survivors of Modern Slavery* <https://web.archive.org/web/20230525092709/http://antislavery.ac.uk/items/show/1684>.

their personhood being systematically compromised in their daily lives as well as in (and through) the law. This chapter synthesized its findings with the ideas developed in the preceding sections to conclude that the colonial powers' conception of slavery was deliberately shaped to align with their economic and labour needs. It also mapped out how the ostensibly humanistic mission of the colonizing people was rooted in a self-referential worldview and belief system, if not a wholly self-serving agenda.

The chapter outlined the debates that the Temporary Slavery Commission had pertaining to bridewealth being a disguised form of payment for slave dealing in women. This conclusion was coupled with caveats and reservations and, eventually, the claim that bridewealth did not constitute a commercial transaction as such. Therefore, these marriages did not meet the ownership dimension of enslavement and were considered under "slavery in all its forms" (rather than slavery proper), where only their progressive, practically ineffective, abolition would be recommended. At the same time, the chapter demonstrated the colonial administration's engagement with bridewealth in the colonial territories, which also revealed, importantly, the ways in which girls would seek liberation from their coerced situations.

Further to this, the chapter examined the racially stereotyped, fetishized, and patriarchal constructions of girlhood and sexuality, imposed by colonial administrations that permeated violence – especially sexual violence – against the girl of the Global South. The discussion made evident her commodification in the interests of the colonial powers, whether that would be for her labour, her sexual capacities, or as incentive for the colonized man. These flawed perceptions and premises about girlhood and her innate characteristics were bound to influence the consideration of the girl in the making on the Temporary Slavery Commission's report and the drafting of the 1926 Convention. It is shown that, during the drafting of the Convention, the states made a

purposeful decision to not include child marriage as a form of slavery – the consequences of which have been substantial and adverse in the human rights struggle for the emancipation and the realisation of the dignity of girls.

Chapter 5: Conclusion

The chapters of this thesis identify the historically intersecting dynamics of the social, political, and legal systems that shape the formulation of the 1926 Slavery Convention, and the failure of its mandate to abolish slavery. In doing so, each chapter of this thesis sheds light on one aspect of the framework's narrow formulation of slavery, abolishing only certain types of slavery and forsaking other forms of exploitative practices, among which the practice of child marriage has been most notable for this research. In accordance with its purpose, this thesis is an attempt at charting the alleys of a much larger footpath, retracing the forces that have shaped the current conditions of slavery that, since the conception of the 1926 Convention, continue to persist in much of the world. It was a core aim of this thesis to investigate the exclusionary character of international abolition legislation and in doing so, several critical interventions became imperative stepping stones to uncovering the colonial underbelly of the 1926 Convention. To this end, five tentative outcomes are revealed.

First and foremost, the 1926 Convention is restrictive in its reliance on the ownership requirement and actively excludes the diversity of manifestations of slavery. Its claim as an *international* treaty cannot stand, where its definition of slavery is restricted to the type of slavery that colonial powers themselves participated in, and the manifestations of slavery in large parts of the globe are marginalized.

Second, the League of Nations and the Temporary Slavery Commission and the League of Nations may have perceived themselves to be animated by the earnest cause of "combatting the evil of slavery", yet their racial disposition towards the people they sought to redeem, grounded their creed and resultant work on a problematic premise, incompatible with philosophies of innate

rights to liberty and dignity. The 1926 Convention was therefore deeply influenced by racial ideology.

Third, the colonial state justified their continued occupation of the colonial territories through this ostensibly humanistic aim – also made legitimate through the institution and the Covenant of the League. Yet, their administration would subjugate the colonized people to economic exploitation and forced labour practices, akin to slavery. Women and girls were especially relevant to agricultural labour and their freeing, so it was feared, would disrupt such operations. The economic interests of the colonizing states trumped the enslavement of the girl.

Fourth, the colonial model of girlhood was imbued with racial paradoxes that resulted in the devaluation of the harms of child marriage. In the colonial image, the girl was constructed as innately sexually promiscuous and mature, reinforcing the stereotypes that justified her exploitation by the colonizer, as well as her native folk through marriage.

Finally, child marriages, despite the recognition of their resulting in conditions akin to slavery, were eventually dismissed as cultural or social customs. It is no surprise that in spaces where colonial administrators sexualized girlhood and commodified the female child, she would be subject to androcentric policy interests. The demotion of her enslavement speaks to a wider trend in the international system from which women persist to be marginalized. It suffices to point to the 2024 United Nations General Assembly, where "less than 10 percent of the speakers were women."[496] When women are disenfranchised from the spaces that negotiate their liberties, it is inevitable that history permeates into the present.

[496] United Nations, Regional Information Centre for Western Europe, "Gender imbalance at the General Debate causes stir", (3 October 2024), online: <https://unric.org/en/gender-imbalance-in-the-general-debate-causes-stir/>.

Law is an inherently transtemporal artifact and within its antiquated coffers, it contains the key to our modern international legal system's core mechanisms and substance. A key assertion of this thesis has and continues to be that the survival of the very ideologies that created the illusion of moral redemption in systems of slavery is alive and well in the international legal system's contemporary marginalization of the voice of the female child, her rights, well-being, and very existence, as child marriage continues to occur globally. This exclusion is not merely a gap in the making of international law; rather, it is an operative product of colonial reverence, wherein, through her continued exclusion from the scope of slavery, colonial (legal) hegemony persists in its reign over the girl.

5.1. Reflections

Within the repository of international law's hegemonic legacy, kept alive in the United Nations' archives, lay catalogued pages upon pages of its muddled battlegrounds. The colonial spirit has prevailed not only on these pages, but as this thesis has demonstrated, it has survived the League of Nations and triumphs in our current international legal framework on slavery, to the existential detriment of the girl. Every year, it is the fate of millions of children to be subsumed and confined to their status as a wife. This thesis welcomes the possibilities for international law to reimagine child marriage and its conceptualization within in the 1926 Convention as being historically bounded and besieged by an underlying device of Eurocentric and ethnocentric colonial ideologies, embedded in the founding framework of the United Nations, namely the League of Nations. In fact, the discussion that accompanies the research in this project builds a theoretical framework via re-historicization from the margins, in concert with the sensibilities of a Third World Approaches to International Law. The outcome is a call for international law's

institutions to engage in critical self-reflection of its history – and the permeation of this history into its current operation – as a stepping stone toward reconstructing their approach to child marriage. Considering the systematic insufficiencies of current protections, meaningful change must be preceded by this critical self-reflective praxis, to then enable the international legal regime to reframe its responsibility to protect female children from this enslavement.

This thesis offers the hope that institutional self-reflection can potentially begin to identify and redress the current shortfalls that allows for child marriage to persist as prevalently as it does. It is called for, ever more, that we begin to conjure potential forums where these marginalized voices can begin contributing to the horrid realities that face them, so that we may learn about what mechanisms of effective change can inform the process of legislative and judicial efforts in service of the legal principle of the right to individual sovereignty. The rights to freedom from slavery, torture, and inhumane treatment serve as the very philosophical foundation for the concept of sovereignty; they are equally relevant to the individual in isolation as they are to the sect of human beings that codify the collective will into the constitution of a nation-state, guided by international law and universal principles of human dignity.

6. Epilogue

My grandmother had gotten tattoos – we call this traditional practice *xal* – at the young age of 12, in 1946, when she was married to my grandfather. Hand-poked, they graced her face, hands, and feet with a permanent concoction of breast milk and charcoal, each *xal* imbued with its own symbolism and meaning. Fertility was amongst them and the *xal*, so it was believed, would provide guardianship during pregnancy. Soon after, she would fall pregnant by her husband, who was more than twice her age, and bear their first child. Fourteen more children would follow in the course of her life, though she would lose ten of them to illness, accidents, violence, and war. My grandmother, all her life, was a custodian of life. She was a caretaker for her children, her neighbours, her community and, especially, as I would see during my visits back home, for my grandfather. Every morning, like clockwork, my grandmother would ready the breakfast for my grandfather. Following his meal, mouth-burningly hot tea would be ready, as he liked, and she would lay his tobacco and lighter next to it on the *sufra*. Naturally, she would be sure to clean up the breakfast immediately. During the winter months, she maintained her routines, moving them from the courtyard to indoors. To avoid the heat leaving the brick building, my grandmother would put blankets in the creases of the doors. Smoke filled up the rooms for the many years they were married. Though she never smoked herself, her lungs would eventually give in to the second-hand smoke.

My grandmother was also agency embodied. Illiterate; she would make electric clay ovens and vend them in the bazaar. For some time, she would walk hours into the larger city Kirkuk to sell her creations. Then, she would simply hitchhike back. She roamed the streets, selling ice cream to the neighbourhood. She helped deliver babies as a midwife. She would tell my mom to hold her

head straight when walking home from school. She would do this every day. Eventually, she would support my mother in marrying for love – a marriage not arranged by either family.

I tell this story because Leyla's story is that of many. It is a tale of subjugation and resistance; culture and protest. One that demonstrates the deep-found strength and agency in the girls that endure child marriage. When choice was not a choice, Leyla found silent modes of protest and through them, changed her conditions ever so slightly. Her bravery has rippled into our lives and subsists through the self-determination she instilled in us. She was a subject of culture and custom. More importantly, she was a rebel.

Some narratives of cultural relativism abstain from placing girls and women in context. They are so often, understandably, accounts of self-determination against colonial occupation and annexation – the White man against a peoples. They are significant studies of violence committed upon the peoples of the Global South and I have elucidated some, yet nowhere close to the full extent of the savagery of colonialism. Still, women's plight is subsumed by them. I have attempted, in this thesis, to present an inclusive and meaningful depiction of the power dynamics that have for long plagued women and girls. I have also tried to show the ways in which these women and girls would fiercely express their discontent and disobedience. Their stories lay at the heart of human rights, and they have much to teach our international legal system.

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