
Thomas Casadei: Associate Professor of Philosophy of Law at the Dipartimento di Giurisprudenza, Università di Modena e Reggio Emilia, where he teaches as well Theory and Praxis of Human Right. He is a member of the Center of Interdepartmental Research on Discrimination and vulnerability (CRID) and coordinator of the “Permanent Seminar of Law Theory and Practical Philosophy”, now in its XXI round. His research work focuses on democratic theories, social citizenship and human rights conceptions; race/racism, forms of discrimination, slavery; constitutionalism and republicanism; juridical-political ideas and cultures in Twentieth Century Italy. Among his publications: *Tra ponti e rivoluzioni. Diritti, costituzioni, cittadinanza in Thomas Paine*, Giappichelli, 2012; *Il sovversivismo dell'immanenza. Diritto, morale, politica in Michael Walzer* Giuffrè, 2012; *I diritti sociali: un percorso filosofico-giuridico*, Firenze University Press 2012, *Il rovescio dei diritti umani. Razza, discriminazione, schiavitù*, DeriveApprodi, 2016; nonché, come curatore, *Diritti umani e soggetti vulnerabili. Violazioni, trasformazioni, aporie*, Giappichelli, 2012; e *Donne, diritto, diritti. Prospettive del giusfemminismo*, Giappichelli, 2015.

Contact: thomas.casadei@unimore.it

“HUMAN WASTES”? CONTEMPORARY FORMS OF SLAVERY AND NEW ABOLITIONISM

Thomas Casadei

Università degli Studi di Modena e Reggio Emilia

DOI: 1017450/160207

Reception date 4th October 2016; Acceptance date 25th October 2016. This article is the result of research activities held at the Center of Interdepartmental Research on Discrimination and vulnerability, Università di Modena e Reggio Emilia.

Abstract

After a general overview on the “slavery of the ancients” and the “slavery of the modern”, this paper focuses on the “slavery of the contemporaries” and its characteristics. The phenomenon can be described under a global perspective, bearing in mind the relevance of universal definitions such as those of “*corps d’exception*” and “human wastes” that can help to go towards a new abolitionism.

Keywords

Slavery, *corps d’exception*, Kevin Bales, global perspective, abolitionism.

Resumen

Este artículo se centra en las formas contemporáneas de esclavitud como otra etapa después de la “esclavitud de los antiguos” y la “esclavitud de los modernos”. Aportando algunos ejemplos, hoy en día se tiene que repensar este fenómeno en una perspectiva global, siempre tomando en cuenta el hecho de que la definición de *corps d’exception* y de *human wastes* podría ayudar a ir más allá del nuevo abolicionismo.

Palabras clave

Esclavitud, *corps d’exception*, Kevin Bales, perspectiva global, abolicionismo.

Slavery evokes images from the past; from a historical point of view, some examples date back to Spartacus’ revolt or to the controversies which led to the American Civil War; from the point of view of the history of the philosophical thought, Aristotelian arguments on slavery by nature or Neo-Scholastic arguments in times of conquests are well-known. Finally, from another point of view, slavery was accepted and justified for a long time by every religion.

Slavery is today, in effect, also a question from the past –a question of *memory*. But it is not only that. On the 23rd of August, 2007, the International Museum of Slavery opened in Liverpool, being the first memorial in the world dedicated to the different aspects of the slave trade¹. In France, since 2001, slavery and human trade –in their western version– have been considered “crimes against humanity” by law. On the other side, the silence around the 200th anniversary of the 1st of January, 1808 –when the slave import was prohibited– was in certainly meaningful in the US.

Slavery imprints memory, its processes and its implications but, at the same time, strengthens silence and oblivion because its history is dark the darker is history, the most difficult is to tell, to examine, to recover from. In present times, the post at stake is, firstly, the relationship between slavery, an “embarrassing institution”², and a *specific community* (France, UK, US, Brazil, etc.); secondly, the strict relationship between this practice and the structure of modern *States* in front of the “dark mirror” on which freedom has always been reflected³. Thirdly, there is a particular *global* dimension to be underlined: my paper will focus mainly on the latter.

Since the ancient times, slavery has met transformations, new forms –such as the four-century human trade–; it has changed the face of whole continents that still bear the signs –such as Africa⁴.

With reference to the “slavery of the Ancients”, such as the Aristotelian one, the “slavery of the Moderns” needs new instruments to be justified. The American case provides an emblematic example of this justification process: when the centrality of the subject was celebrated and the owner was considered the symbol of the ‘rational’ ‘disciplined’

1. See C. Chivallon, “Discorso museografico ed esperienza schiavista”, in *Parolechiave*, 55, Carocci, Roma, 2016, pp. 121-131.

2. E. Varikas, “L’istituzione imbarazzante. Silenzi sulla schiavitù nella genesi della libertà moderna”, in *Iride*, 1, Il Mulino, Bologna, 2008, pp. 25-40.

3. See Th. Casadei, “Schiavitù”, in M. La Torre, M. Lalatta Costerbosa, A. Scerbo (eds.), *Questioni di vita o morte. Etica pratica, bioetica e filosofia del diritto*, Giappichelli, Torino, 2007, pp. 26-68; G. Turi, *Schiavi in un mondo libero. Storia dell’emancipazione dall’età moderna a oggi*, Laterza, Roma-Bari, 2012.

4. Since late XV century, more than 50 million of persons were traded from Africa to America: H. Thomas, *The Slave Trade: The History of the Atlantic Slave Trade (1440-1870)*, Picador, London, 1997. See also S. Bono, *Schiavi. Una storia mediterranea (XVI-XIX secolo)*, Il Mulino, Bologna, 2016.

and ‘responsible’, ‘prudent’, ‘happy’ and ‘beneficial’ individual, new arguments and new distinction –and exclusion– regimes were introduced⁵, based on the *racial difference*⁶.

Slavery can be examined with the “eyes of the past” in the frame of a renewed analysis on historical memories as well as through figures which provided decisive reflections: from Aristoteles to Locke, until Tocqueville, Montesquieu and the Enlightenment thinkers⁷, from Mill to Marx⁸, Paine, Wollstonecraft⁹ and the origins of feminism¹⁰. This kind of “genealogical path” allows to underline many aspects of the late debate left in the shadow, but it invites also to provide a new reading “with the contemporary eyes”, through new methods, with reference to the hidden trends (and plagues) of our society.

Data, and the materiality of bodies that they evoke, recall the imperative necessity of a new reflection: according to a research conducted by the Australian NGO “Walk Free Foundation,” there are more than 48,5 million slaves in the world¹¹.

It is necessary, therefore, to examine how the different forms of discrimination evolved in time, underlining, in particular, the dynamics and the socio-economic reasons of the “slavery of the Ancients” and “of the Moderns”, and their essential aspects¹²; but it is also necessary to develop an accurate analysis on the forms and structures of the so-called “slavery of Contemporaries”.

In present days, there are some forms which link different well-known manners, such as those connected to forced and de-humanizing labour, on a global scale¹³, to original, specific aspects: the principal example is that of women –or children– forced to

5. W. Lee Miller, *Arguing about Slavery*, Knopf, New York, 1997.

6. See F. A. Cappelletti, “Il conflitto insanabile: per una genealogia del concetto di razza”, in B. M. Bilotta (ed.), *Conflitti e istanze di giustizia nelle società contemporanee*, Giuffrè, Milano, 2014, pp. 79-100.

7. See P. Delpiano, *La schiavitù in età moderna*, Laterza, Roma-Bari, 2009.

8. See D. Ragazzoni, “Democrazia in catene: civilizzazione, schiavismo e Guerra negli scritti sull’America di John Stuart Mill e Karl Marx”, in *Rivista di storia della filosofia*, 3, Franco Angeli, Milano, 2014, pp. 475-494.

9. See in particular in chapp. IV and IX of her famous *Vindication of the Rights of Woman* (1792).

10. The emancipationist and abolitionist figure of Sarah Moore Grimké is particularly meaningful. Together with her sister Angelina, she was audited on 21 February 1838 at a Commission of the General Assembly of the State of Massachusetts to debate the problem of slavery. “It was the first time in history that two women were audited at a legislative body, and that a female discourse provoked a parliamentary debate”: see S. Vantin, “I ‘segreti di Blackstone’ rivelati. Abolizionismo, riforma dell’educazione e suffragio femminile in Sarah Moore Grimké (1792-1873)”, “Questioni di genere. Donne, cittadinanza, diritti in età contemporanea”, in *Percorsi storici. Rivista di storia contemporanea*, Bologna, 4, 2016, available from: <http://www.percorsistorici.it/numeri/26-numeri-rivista/numero-4/162-serena-vantin-i-segreti-di-blackstone.html>

11. See the *The Global Slavery Index 2015* (<http://www.walkfree.org/>). For a broader view, see J. Allain, *Slavery in International Law: Of Human Exploitation and Trafficking*, Nijhoff, Leiden-Boston, 2013. Cfr. Id. (ed. by), *The Legal Understanding of Slavery: From the Historical to the Contemporary*, Oxford University Press, Oxford, 2012.

12. As I did in Th. Casadei, *Il rovescio dei diritti umani. Razza, discriminazione, schiavitù, con un dialogo con Étienne Balibar*, DeriveApprodi, Roma, 2016, pp. 72-92.

13. I developed this question in “Sujetos vulnerables, trata y formas contemporáneas de esclavitud: el papel de las instituciones”, in E. Pérez Alonso (dir.), *El Derecho ante las formas contemporáneas de esclavitud*, Editorial Tirant lo Blanch, Valencia, 2016 (forthcoming).

prostitution and segregation: this provokes a peculiar form of *sexual slavery*, as precisely described by Catharine MacKinnon¹⁴.

Another example are migrants that, searching for a job, become victims of organized crime and are caged into forms of subjection such as the confiscation and segregation of their bodies. Another “enslavement” phenomenon, characterized by (male) gender violence, is that of early and forced marriages¹⁵.

The different aspects involving the debate about slavery can converge –preserving the peculiarities of the different perspectives (historical analysis, theoretic-juridical examination, investigation on new control and subjection systems). This represents the attempt to offer a useful contribution for the comprehension of a phenomenon that constantly reappears during human history, even with different shadows¹⁶.

This paper will finally argue that, in order to create a new abolitionism, a deep comprehension of the slave role in the different societies, and lastly in our global society, is necessary.

Looking for a definition: the “corps d’exception”

Following the previous reasoning, a brief overview of the main differences between the slavery of the past and the contemporary forms of slavery appears necessary. With reference to an almost unanimously accepted perspective, a distinction can be traced between slavery “of the Ancients” and slavery “of the Moderns”¹⁷. In this case, slavery is seen as a past institution that can, therefore, be defined in terms of timing. Exemplary models are, in this view, Ancient Greece and the Roman Empire, the US from their independence until the end of the 19th century (when the slave trade ended and slavery was formally abolished).

The basic element of those different realities, the slavery “of the Ancients” and the slavery “of the Moderns”, is that of the ascertained legal property; the slaves are object of property, a property protected by law and by the legal system that can be claimed by

14. C. MacKinnon, “Trafficking, Prostitution, and Inequality”, in *Harvard Civil Rights-Civil Liberties Law Review*, Harvard Law School, Cambridge Ma., 46, 2011, pp. 271-309.

15. Cfr. Mikhail S.B.L., “Child Marriage and Child Prostitution: Two Forms of Sexual Exploitation”, in *Gender and Development*, 1, Routledge, London, 2002, pp. 43-49.

16. As further expanded in the short essays of the recent number of *Parolechiave*, Carocci, Roma, 55, 2016.

17. P. Castagneto, *Schiavi antichi e moderni*, Carocci, Roma, 2001.

the owner. As we will see below, this is the main difference in regards to the slavery “of the Contemporaries”.

The slavery “of the Ancients” is based on a *natural* reason, discerning the “free person” from the “slave”: the former belongs to the dominant ethnical group; the latter is the defeated enemy becoming a “property”. A fracture exists between the two dimensions: the slave is “mean”, “ignorant”, “despicable”; the free person can practice the “logos” and the human virtues –according to the classical philosophy¹⁸.

In Rome, from the post-classical era (before things were different), slavery was an institute of *jus gentium*¹⁹.

In Medieval times, the concept of slavery assumed new shadows and was reproduced through a variety of dependent and subjected figures such as slaves, serfs, colonized people, which were not mutually exclusive. Slavery was not repulsed the common morality, which considered the slave as an instrument, a thing, according to the Aristotelian model²⁰.

The slavery “of the Moderns” is based on *social* reasons but, even in this case, it is not separated from juridical-normative apparatuses: strictly linked to the modernity project (the State-nation, the colonialism, the invention of a specifically *exclusive* idea of citizenship), it is also connected to the rhetoric of the “race”. Through the vicissitudes of the first modern age (colonies, introduction of a slavery-colonial system, etc.), another great paradigm is created, the model produced by the European colonialist countries²¹ and in particular by the US. With the increasing number of slaves’ arrivals in the US, slavery had been institutionalized in that “birthplace of liberties”²², joining the socio-economical level to the ideological-institutional one: in 1705, the State of Virginia collected the existing statutes about slavery producing a true *Slave’s Code*.

As it has been deeply shown by the *Critical Race Theory*, slavery was justified by the creation of “whiteness as property”²³. The slaves’ status changed: from instruments for

18. See R. Caporali, “La schiavitù in epoca antica”, in Th. Casadei, S. Mattarelli, (eds.), *Il senso della repubblica. Schiavitù*, Franco Angeli, Milano, 2009, pp. 93-110.

19. See the recent, and accurate, observations formulated in S. Pietropaoli, “Il concetto giuridico di umanità. Breve storia di un non-detto del diritto”, in M. Russo (ed.), *Umanesimo. Storia, critica, attualità*, Le Lettere, Firenze, 2015, pp. 225-279, p. 266.

20. It’s still useful on these aspects: M. Finley, “Una istituzione peculiare?”, in L. Sichirolo (ed.), *Schiavitù antica e moderna. Problemi, storia, istituzioni*, Guida, Napoli, 1979, pp. 21-39 e R. Milani, *La schiavitù nel pensiero politico. Dai Greci al Basso Medioevo*, Giuffrè, Milano, 1972.

21. See L. Milazzo, “Cecità morale e schiavitù naturale nel discorso giuridico della Conquista”, in *Ragion pratica*, Il Mulino, Bologna, 2, 2010, pp. 345-360.

22. About this fraction, hidden but reinforced by the hierarchical “racization”, see I. Belloni, “La libertà è schiavitù. Il diritto di schiavitù tra fallacie contrattualistiche e ambiguità liberali”, in *Ragion pratica*, Il Mulino, Bologna, 2, 2010, pp. 361-376.

23. Ch. I. Harris, “La bianchezza come ‘proprietà’”, in *Legge, razza e diritti. La Critical Race Theory negli Stati Uniti d’America*, pp. 85-109.

the benefit of the house, they became a "movable asset", objects of possession and marketable, goods²⁴. In the American context, slavery assumed the aspects and the forms of race. The slavery "of the Moderns" has been built upon the (alleged) "blacks' racial inferiority": the color of the skin recalls another world, "subjects-non-subjects" that can be dominated. A mass of marketable force was produced on the slave-ships –Africans were reduced to a regime of terror and violence, becoming numbers on an account register–; there even the "racial hierarchy" was produced²⁵. This tragedy amounts at a number of about twelve-fifteen millions of African children and women deported from their native countries and from their families to be boarded, "reduced to goods that can be bought, used, loaned, exchanged, bequeath".

According to Luigi Ferrajoli, even after the abolition of slavery in the US, harsh forms of apartheid and racial segregation in the South and ghettoization and discrimination in the North resisted, until the present forms of massive detention²⁶. The Declaration adopted by the EU during the third global Conference against racism (held in Durban in 2001) affirmed, in fact, that slavery and colonialism are the basis for *racism, discrimination, xenophobia and intolerance*²⁷.

It's good to remind that, in the 1930's, the colonial dominion –justified with the alleged inferiority of "indigenous" people– influenced more than 84% of the global surface of the earth. This should be beared in mind when dealing with the present migrants' "escapes" from their original countries and their government, that have deep roots in colonial and post-colonial period.

Modern slavery has still a *natural* justification, as in the Aristotelian model, but the root of difference/inequality which grounds it is, in this case, given by the color of the skin: it shapes the whole social and political order through the juridical-institutional system. An insuperable abyss distinguishes the blacks from the free persons; they are an inherited caste, defined and immediately recognizable by the "line of color": it definitely links slavery and racial discrimination, a "chattel racial slavery"²⁸.

24. On the nexus between colonial and slavery economy, and modern capitalism, it is still fundamental E. Williams, *Capitalism and Slavery*, Russell & Russell, New York, 1961.

25. It's on the ship –as Markus Rediker explains describing the period of highest expansion of the English-American slave trade (1700-1808) (*The Slave Ship. A Human History*, Viking Penguin, New York, 2007)– "that the Europeans became 'white men' and the other ethnical and cultural slave groups became 'black race'" (p. 16).

26. L. Ferrajoli, *Principia iuris. Teoria del diritto e della democrazia*, 3 voll., Laterza, Roma-Bari, 2007, vol. I, p. 326. See for a broader description of the phenomenon: M. Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, New Press, New York, 2010.

27. See C. Margiotta, "La schiavitù tra diritto, memoria e ricerca storica: il caso francese", in *Il senso della repubblica. Schiavitù*, pp. 23-31.

28. W. D. Jordan, *White over Black*, Norton, New York, 1977, p. 98.

The difference between the historical and legal forms of slavery and the (illegal) forms of contemporary slavery is the fact that nobody is claiming today a property right over the slave, because the legal forms of ownerships over human beings are not existing anymore. Even if he/she is subjected to the threat of violence and often materially chained, nobody will say that he/she is a “property”. Notwithstanding the above-mentioned difference between old and new slavery, there is no doubt that we are talking about slavery: the total power of a person over another for economic exploitation. The aspect which characterizes every form of slavery is vulnerability. Victims are “prisoners of poverty” and ignorance, they live in social and economic difficulties, which are often tragic: the lack of real alternatives pushes many persons (more or less on purpose) towards slavery.

The ethnical-racial difference is not the basic element such as in the traditional slavery, but its traces survive: the other is produced as *inferior* –the origin has its relevance– and this means to establish a *hierarchical discrimination* over which a power, or practices, or peculiar aspects of the judicial systems are justified.

From this very point, a relevant role is given to the “birth” and the continuation of the original and harsh condition of every human beings’ whole existence. Slavery is seen, therefore, as a condition developing during the whole arch of a life, it is permanent, and it produces, at the same time, a long-lasting, radical exclusion from the social life: a sort of “extended death”²⁹, in which life is bare existence.

This definition of slavery certainly applies to those forms of slavery that, from antiquity, reach modern age, forms which are said to be definitely given to humanity. Some different interpreters think, however, that no unique definition of slavery can be given in space and in time. It would be a useless illusion. Other scholars argue that such a terrible reality cannot be understood through reason, so that trying to define it univocally is impossible.

In order to combat slavery as an ordinary practice in history is necessary, I believe, to understand what is the reason of its flourishing, why it has been accepted and justified across centuries, and is justified still today –in the obscure form of invisibility. A definitory and typological effort is required.

29. O. Patterson, *Slavery and Social Death. A Comparative Study*, Harvard University Press, Cambridge (Mass.), 1982, p. 132, according to which “slavery is the permanent and violent dominion on individuals which have been alienated and deprived of their sense of honour, from their birth” (p. 13). A dramatic description is offered by Kevin Bales, when he speaks about the Thai girls segregated in brothels similar to concentration camps: K. Bales, *Disposable People. New Slavery in the Global Economy*, University of California Press, 1999, ch. 2.

According to Olivier Pétré-Grenouilleau, editor of a famous *Dictionnaire des esclaves*³⁰, thinking slavery in a *global*³¹ manner it is not only useful but even necessary, bearing in mind the diversity of the contexts and their concrete forms, such as the different ways its actors (slaves and owners) live it. The French historian affirms that, in order to examine slavery, trying to understand the will of dominion or the law system is not sufficient –even though slavery has always been more or less codified. According to him, slavery cannot be reduced even to a “social death”, as Patterson did. It can be defined instead with reference to what it is *not*. It is neither natural nor completely reducible to a form of economical production or to the idea of exploitation. It existed both in the ancient economy and in the medieval one, during commercial capitalism and during industrial capitalism. It did not disappear in the post-industrial, or post-fordist, era, as recent studies have shown³². Pétré-Grenouilleau chooses a definition based on the figure of the slave, the human being “enslaved”. By defining who the slave is, he thinks, it is possible to avoid all the problems deriving from too restrictive approaches on the concept of slavery and from those too ample definitions that have the consequence of considering every form of human exploitation or dependency as slavery.

The slave is, *strictu sensu*, “toujours un Autre ou quelqu’un transformé en un autre, et exclu d’une dimension fondamentale (il n’est pas forcément *exclu* du tout, ne serait-ce que pour éviter trop fortes tensions) dans la vie du groupe de ses maîtres”³³.

Firstly, the forms in which this *exclusion* is expressed change in times and places: according to the Athenians, the knowledge of the Greek language and the participation in political life was a crucial line; other cultures formulated different parameters: the religious or tribal belonging; the color of the skin; the language; the costumes; the economic status. Every difference was used in order to separate, to *discriminate*, slaves from owners.

Secondly, the slave is a “property” of his owner, and in this sense the juridical implications can be understood in defining what a slave has been until the present times in which other forms, beyond the law or sometimes through perverse legal procedures, can be used to perpetrate dominion, subjection, violence.

30. *Dictionnaire des esclaves*, (O. Pétré-Grenouilleau dir.), Larousse, Paris, 2010, p. 12.

31. O. Pétré-Grenouilleau, *Les traites négrières. Essai d’histoire globale*, Gallimard, Paris, 2004; Id., *Qu’est-ce que l’esclavage? Une histoire globale*, Gallimard, Paris, 2014.

32. See, *inter alia*: K. Bales: *Understanding Global Slavery*; E. Pérez Alonso, *Tráfico de personas e inmigración clandestina: (un estudio sociológico, internacional y jurídico-penal)*, Tirant lo Blanch, Valencia, 2008; Id. (ed.), “El Derecho ante las formas contemporáneas de esclavitud”.

33. O. Pétré-Grenouilleau, *Qu’est-ce que l’esclavage?*, pp. 15 and ff.

Finally, the “Other” is an object owned by another person, therefore he/she can see, defenseless, his/her humanity weakened, he/she can see himself/herself compared to a good or an animal. On the other hand, he/she remains a person and can be identified by this ambivalent contradiction between “person” and “economic-valuable-good” (like a thing, as a property).

This definition of slave allows us to affirm that slavery is still existing *strictu sensu*: it recalls the figure of the slave as “other” and “possédé” by others, a possession that can be the consequence of the agreements or (often illegal) contracts, but however binding those who are the object thereof. This is the perspective to be adopted, according to Pétré-Grenouilleau, when examining the present phenomenon of slavery³⁴.

I think that this proposal is useful, but it should be integrated with that of Sidi Mohamed Barkat³⁵, which has been used also by Étienne Balibar³⁶. To be “other” and “possédé” by others, in effect, produces a process of *de-humanization*, a reduction into a good that has always been a characteristic of slavery. From this point of view, it is important to establish and recognize, even through the legal systems, that some “corps d’exception” exist. By delimiting a line of distinction –even using the “rhetoric of the race” and of the “racization”– it is possible to justify segregation and marginalization practices, or practices of employment or extreme exploitation for economic reasons, with reference to those persons considered –as in nazi or fascist regimes– as “human wastes”³⁷.

Settings and forms of slavery «of the Contemporaries»

Slavery can, therefore, be identified every time the dominion theory is converted into a “dependency ontology”³⁸; human beings are considered in hierarchical terms, ac-

34. For other interpretations, see: A.Y. Rassam, “Contemporary Forms of Slavery and Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law”, in *Virginia Journal of International Law*, 39, University of Virginia School of Law, Charlottesville VA, 1999, pp. 303-352; F. Massias, “L’esclavage contemporain: les réponses du droit”, in *Droit et Cultures*, 1, Nanterre, pp. 101-124; E. Decaux, “Les formes contemporaines de l’esclavage”, in *Recueil des Cours de l’Académie de la Haye*, 336, Académie de Droit International de La Hay, Pays Bas, 2008, pp. 9-197.

35. S. M. Barkat, *Le corps d’exception: Les artifices du pouvoir colonial et la destruction de la vie*, Éditions Amsterdam, Paris, 2005.

36. É. Balibar, “Il ritorno della razza: tra società e istituzioni”, appendix as a dialogue in Th. Casadei, *Il rovescio dei diritti umani. Razza, discriminazione, schiavitù*, DeriveApprodi, Roma, 2016, p. 105.

37. F. Migliorino (ed.), *Scarti di umanità: riflessioni su razzismo e antisemitismo*, il Melangolo, Genova, 2010. Cfr. W.E.B. Du Bois, “Il Negro e il Ghetto di Varsavia” (1952), in *Studi culturali*, 2, Il Mulino, Bologna, 2004, pp. 355-370.

38. P. G. Solinas (ed.), *La dipendenza. Antropologia delle relazioni di dominio*, Argo, Lecce, 2005.

ording to a binary scheme: strong or weak³⁹, free or serf, pure or impure, *by nature* or due to a process of *naturalization*.

The latter can be expressed with reference to the biological level or, implicitly, acting in a condition of dependency which is seen as *eternal*, but that starts from a historical construction, as it has been shown, based on law and institutions. In this respect, no differences exist –from a theoretic-normative level– between the model of “ancient slavery” and the model of “modern slavery”; such differences do not exist between the “western slavery” and the “eastern slavery”, or the Islamic⁴⁰ or the African ones. Every model of slavery is based on the dependence and on the *vulnerability* of the dominated subject or the subject which is to be dominated⁴¹. This is the reason why slavery still exists in present times –although in a different context⁴².

In the contemporary world, slavery is a complex phenomenon, multifarious and fleeting. Notwithstanding the attempts of silencing the data, the phenomenon involves about ten million victims and provides billions of dollars to the worldwide economy⁴³. Men, but mostly women and children, are subjected to new forms of segregation and extreme violence, to violations of human rights which have different characteristics from the past ones.

About this crucial point, MacKinnon’s words are particularly meaningful:

Yet, a recent research report to the South African Law Reform Commission characterized prostitution as “a viable alternative for women coping with poverty, unemployment, failed marriages and family obligations, especially where social welfare programmes are limited.” The conditions mentioned, along with the nasty low-paid jobs in which women predominate, hardly justify the sex industry. They do show how women with no real options in a sex-discriminatory economic setting where they have no human rights are pushed into a shortened desperate life of sexual abuse-to the tune of resigned sighs by some who think and write for a living. Even if other people cannot, prostituted women can imagine a world in which their options are not limited to domestic work versus lap dancing. Some

39. See P. Cendon, “Soggetti forti e soggetti deboli”, in *Ragion pratica*, 2, Il Mulino, Bologna, 2010, pp. 409-418.

40. On slavery in Islamic world: M. Gordon, *Slavery in the Muslim World*, New Amsterdam Press, New York, 1989; W.G. Clarence-Smith, *Islam and Abolition of Slavery*, Hurst and Company, London, 2006; R. Botte, *Esclavages et abolitions en terre d’Islam*, André Versaille, Bruxelles, 2010.

41. On slavery as a relation of domination, see O. Patterson, *Slavery and Social Death*, pp. 334-342.

42. Together with the texts previously quoted, see Ch. Delacampagne, *Histoire de l’esclavage. De l’Antiquité à nos jours*, Le Livre de Poche, Paris, 2002, and J. Allain, *Slavery in International Law: Of Human Exploitation and Trafficking*, Nijhoff.

43. See C. van den Anker (ed.), *Political Economy of New Slavery*, Palgrave, London, 2003; J. Quirk, *Unfinished Business: A Comparative Survey Historical and Contemporary Slavery*, Unesco Publishing, Paris, 2009.

who have the choices women in prostitution are denied cannot seem to envision prostituted women's lives outside prostitution. The women themselves have no such trouble. They see real work, real love, dignity, and hope⁴⁴.

Having a precise idea of the global scale of the slavery phenomenon is complex, because it seems *invisible*. Being prohibited, it can exist only “in the silence” and, in effect, it is not necessary to chain the victims up, it is sufficient to *confiscate* identity cards or passports –as frequently happens to many immigrants–, so that they cannot exist anymore on a juridical basis. Those enslaved are –in the period of globalization, in which everything is apparently visible and accessible– “invisible” both for the law systems’ and for the society and the whole world’s eyes⁴⁵.

The personality of those dominated persons is completely denied, *corps d’exception*, “human wastes”⁴⁶, “disposable people”⁴⁷, like *things*. Subjection, sufferings, reclusion –in other words, a condition of *vulnerability* that becomes *segregation*– are typical features of present slavery⁴⁸. Features which are more difficult to decode because slavery is often, in western societies, hidden by *clandestinity*⁴⁹: clandestinity is the cultural arena in which cruelty develops, against the *jus migrandi* established in international documents⁵⁰. In this sense the connection –always harder– between immigration and slavery emerges, between human trade and enslavement⁵¹. Slavery develops with new scenarios and “evolves” following the great economical-social-demographical changes; what is

44. C.A. MacKinnon, “Trafficking, Prostitution and Inequality”, pp. 271-309. Thanks to Dott. ssa Serena Vantin for pointing this text out.

45. See the dossier 2015 “Piccoli schiavi invisibili - Le giovani vittime di tratta e sfruttamento” made by “Save the Children” and spread on the UN International Day for the Remembrance of the Slave Trade and its Abolition (23th August). In this document, some of the most vulnerable groups are presented. Specifically on the focus of children labour, that sometimes can be a form of slavery, see K. Scannavini, A. Teselli (ed.), *Game over: indagine sul lavoro minorile in Italia*, Ediesse, Fondazione Bruno Trentin e Save the children Italia onlus, Roma, 2014.

46. Z. Bauman, *Vite di scarto* (2003), Laterza, Roma-Bari, 2005.

47. K. Bales, *Disposable People*.

48. On the concept of vulnerability with particular reference to human rights and their violations, see Th. Casadei, “*Diritti umani in contesto: forme della vulnerabilità e ‘diritto diseguale’*”, e, più in generale, ai contributi raccolti in Id., *Diritti umani e soggetti vulnerabili*, Giappichelli, Torino, 2012.

49. For an accurate analysis of the juridical meaning of this concept: E. Rigo, “Razza clandestina. Il ruolo delle norme giuridiche nella costruzione di soggetti-razza”, in C. B. Menghi (ed.), *L’immigrazione tra diritti e politica globale*, Giappichelli, Torino 2002, pp. 107-142. See also A. Sciuoba, “Parole che discriminano: ‘clandestini’. L’invenzione di una ‘razza’”, in M. Mannoia, (ed.), *Il silenzio degli altri. Marginali, esclusi e altri invisibili*, XL edizioni Sas, Roma, 2011, pp. 71-80.

50. For a historical and theoretic analysis, see E. Vitale, ‘*Ius migrandi*. Figure di erranti al di qua della cosmopoli, Bollati Boringhieri, Torino, 2004.

51. See G. Palmisano, “Dagli schiavi ai migranti clandestini: la lotta al traffico di esseri umani in una prospettiva internazionale”, in *Ragion pratica*, 2, Il Mulino, Bologna, 2010, pp. 469-490, and Id. (ed.), *Il contrasto al traffico di migranti. Nel diritto internazionale, comunitario, interno*, Giuffrè, Milano, 2008.

not changing are the paths through which it is structured –from South to North– and the spaces in which it is given –those of the market and private economy.

The question of slavery always recalls that by *human dignity*⁵². What does human dignity require? It is not sufficient to set it forth in official documents and in international declarations in which the human value at a universal level is simply exalted by law (not without a certain degree of conceptual indefiniteness⁵³), but it is necessary to start from the *realistic* statement that some human beings are worldwide “hommes jetables”⁵⁴ or even “non-persons”⁵⁵, as the spread, and the constant expansion, of slavery states, as well as new slavery practices that cross (and cut across) the social systems, often settled in invisible angles and spaces in the cities⁵⁶.

If “capitalism did not invent slavery” –Balibar affirms– “it has generalized and perfected slavery, inside the frame of a global economy of forced labour which has been essential for its development as the market or the industrial revolution”. The enslavement practice crossed, in this way, capitalism to project beyond, such as the anthropologic and bio-political figure of the *corps d’exception*⁵⁷.

Present capitalism continues –according to Balibar– “to use old forms of slavery” where “the ethnic difference, “racialised”, represents the premise or the result” (the case of children’s labour in the South of the world, but even in the “global Europe”⁵⁸, or the case of slaves’ or semi-slaves’ import in Middle East and in European cities and States, as the sentence *Siliadin c. Francia* shows), “together with developing new forms: massive sexual tourism and migration of non-qualified workers”⁵⁹.

52. Paolo Becchi states that enslavement do not receive the proper attention in the debate about human rights, in P. Becchi, “Dignità umana”, in U. Pomarici (ed.), *Filosofia del diritto. Concetti fondamentali*, Giappichelli, Torino, 2007, pp. 154-181, p. 166.

53. With reference to the European context, see D. Morondo Taramundi, “Sull’indeterminatezza del concetto di dignità nella Carta di Nizza”, in G. Galimberti, C. Morisco, D. Morondo Taramundi (ed.), *Il concetto di dignità nella cultura occidentale*, Edizioni Studio, Pesaro, 2006, pp. 63-85.

54. B. Ogilvie, *L’homme jetable: essai sur l’extrémisme et la violence extrême*, Editions Amsterdam, Paris, 2012.

55. A. Dal Lago, *Non-persone: l’esclusione dei migranti in una società globale*. See also C. Pateman, Ch. W. Mills, *Contract and Domination*, Polity Press, Cambridge, 2007, in part. pp. 191-199, where she examines the “nonwhite women as nonpersons and noncontractors”.

56. About this question, see L. Wacquant, *I reietti della città: ghetto, periferia, stato*, S. Paone e A. Petrillo (eds.), ETS, Pisa, 2016.

57. S. M. Barkat, *Le corps d’exception: Les artifices du pouvoir colonial et la destruction de la vie*.

58. See G. Paone, *Ad ovest di Iqbal. Il lavoro minorile nell’Europa globale*, Ediesse, Roma, 2004.

59. For some analysis on concrete cases, see M. Paggi, “La nuova schiavitù degli immigrati vittime di grave sfruttamento; mezzi di tutela e problematiche applicative”, I. Gjerggi, “L’ipersfruttamento dei lavoratori immigrati nella ‘green economy’ pugliese. Risultati di un case study”, F. Perocco, R. Cillo, “Il lavoro forzato tra gli immigrati”, in L. Zagato, S. De Vido (ed.), *Il divieto di tortura e altri comportamenti disumani e degradanti nelle migrazioni*, Cedam, Padova, 2012, pp. 263-285, 287-300, 301-324. See also F. Carchedì (ed.), *Schiavitù di ritorno: il fenomeno del lavoro gravemente sfruttato: le vittime, i servizi di protezione, i percorsi di uscita, il quadro normativo*, Maggioli, Santarcangelo di R. (RN), 2010; Id. (ed.), *Schiavitù latenti: forme di grave sfruttamento lavorativo nel ferrarese*, prefazione di G. Mottura, Maggioli, Santarcangelo di R. (RN), 2014; E. Nocifora (ed.), *Quasi schiavi: paraschiavismo e super-sfruttamento nel mercato del lavoro del 21. Secolo*, Maggioli, Santarcangelo di R. (RN), 2014.

The European Court of Human Rights:

Should pronounce on the case of a young woman from Togo, brought to France by a French lady with Togolese origins, with the agreement that the girl would have worked as householder until she would have repaid the travel costs. The lady promised also to give her an education and to allow her to become a regular migrant. Her passport was instead confiscated and the girl was “loaned” to a couple needing a babysitter and a householder. In the new family the young woman worked seven days a week, fifteen hours a day, without days off nor remuneration. She slept on a mattress in the children’s room, without any moment of intimacy. After having gained her passport again, she denounced the couple thanks to a neighbor’s help. The couple was convicted to the payment of her past remuneration and the moral damages, but no violation of fundamental rights was recognized. The European Court of Human Rights stated instead that she has been enslaved and condemned France for its incapability to provide the adequate means of protection against servitude and forced labour⁶⁰.

Legal measures aiming at monitoring on the prohibition of slavery are often *not effective*. In that age which has been described as the “age of rights”⁶¹ their worst violation happens and “the deepest and unacceptable inequality”⁶², as well as the highest number of slaves in history.

Ferrajoli reasons in these terms, paying attention on the question of slavery in the context of a systematic analysis of “personal freedom”. He remarks that, with regards to contemporary forms of slavery, “the primary guarantees of damaged freedom which are to be introduced and reinforced are those directed to grant the equality of persons, their freedom of movement, their social and labour rights: in brief, those vital rights that occurs in defining what is human dignity”⁶³.

60. E. Santoro, “Diritti umani, lavoro, soggetti migranti”, in Th. Casadei (ed.), *Diritti umani e soggetti vulnerabili*, cit., pp. 227-228. See M. Roccella, “La condizione del lavoro nel mondo globalizzato fra vecchie e nuove schiavitù”, in *Ragion pratica*, 35, Il Mulino, Bologna, 2010, pp. 419-438, in part. pp. 431-433.

61. See the well-known N. Bobbio, *L'età dei diritti*, Einaudi, Torino, 1990.

62. L. Ferrajoli: *Principia iuris*, vol. II, p. 543.

63. *Ibid.* pp. 326-327. The reflections of Marina Lalatta Costerbosa are similar, arguing the impact of depreciation, “always more, more often, however”, of social and labour rights, reinforces new forms of slavery, discrimination, racism: *La democrazia assediata. Saggio sui principi e la loro violazione*, DeriveApprodi, Roma, 2014, pp. 90-92.

It is an old duty, but it is still valid form contemporary men and women. The "wrongs" of "rights" should be taken seriously, examining the roots of the constitutive ambiguity of modernity, universalism, democracy, human rights.

In order to stop a future of neo-slavery and neo-racism and their discriminating between human beings and *corps d'exception*, discriminated, de-humanized, reduced to things, disposable, a new abolitionism is not sufficient aiming at "'right to interfere' for humanitarian causes", gaining from that cosmopolitan need that lays at the basis of contemporary international law⁶⁴ (but even to its "civilizing" missions, i.e. colonizing). This is, to certain aspects and with some cautions, just a part of the job. The abolitionists of Eighteenth and Nineteenth Century argued that the values derived from their struggle could put the basis for a re-articulation of positive law⁶⁵. Today, from this point of view, the law to be rearticulated is that "counter-law" (*diritto contro*, with excluding function), producing antinomies⁶⁶, and to apply it completely when it contrast and prevent racism, discrimination, new slavery, i.e. when it is "in favor of" a complete protection and applicability of human rights, *nobody excluded*⁶⁷.

An effective prosecution of criminal activities connected, at different stages, to slavery is required, but another strategy is needed in order to accomplish different goals: to prevent the causes of immigration for economic and endemic poverty reasons; to promote equality of rights (as a *system*, therefore starting from social rights); to assure the respect for the universal right to a decent work. According to this perspective, international case law and national legislations internal to single States should mutually intervene. Examples are many.

64. This is the proposal formulated by P  tre-Grenouilleau, who studied international slavery at a global level: Abolizionismo e "diritto d'ingerenza" per cause umanitarie, in *Passato e presente*, 82, Franco Angeli, Milano, 2011, pp. 91-102.

65. Cfr. R. Blackburn, *The Overthrow of Colonial Slavery (1776-1848)*, Verso, London-New York, 1988; Id., *The Making of New World Slavery 1492-1800*, Verso, London-New York, 1997; Id., *The American Crucible. Slavery Emancipation and Human Rights*, Verso, London-New York, 2011.

66. See the laws on immigration, where, as Silvia Salardi observed, many "axiological antinomies" emerge between directives and internal laws and fundamental rights (see S. Salardi, *Discriminazioni, linguaggio e diritto. Profili teorico-giuridici. Dall'immigrazione agli sviluppi della tecno-scienza: uno sguardo al diritto e al suo ruolo nella societ   moderna*, Giappichelli, Torino, 2015, p. 112 and ff.). These antinomies are present both at a EU level and at a national level, particularly referred to immigration and right to asylum (ibid, pp. 120-125). On the latter, together with the above-quoted M. Delle Donne, *Un cimitero chiamato Mediterraneo. Per una storia del diritto d'asilo nell'Unione europea*, DeriveApprodi, Roma, 2004, see F. Mastromartino, *Il diritto d'asilo. Teoria e storia di un istituto giuridico controverso*, Giappichelli, Torino, 2012, and A. Sciarba, "Misrecognising asylum. Causes, Modalities, and Consequences of the Crisis of a Fundamental Human Right", in *Rivista di Filosofia del diritto*, 1, Il Mulino, Bologna, 2017 (forthcoming).

67. The International law recognizes every person as a human rights' holder: "everyone is a human being, everyone holds human rights, nobody is excluded, nobody is extraneous" (O. Giolo, *Diritti e culture. Retoriche pubbliche, rivendicazioni sociali, trasformazioni giuridiche*, Aracne, Roma, 2012, p. 40). This is the reason why human rights are "limitless", because "they are different from those rights of the past that were set in States' territories", given "the intrinsic un-limitation of their content and their duty, because they represent a sort of untouchable essence of human beings [...]" (M. R. Ferrarese, *Diritto sconfinato. Inventiva giuridica e spazi nel mondo globale*, Laterza, Roma-Bari, 2006, p. 103).

The Inter-American Court of Human Rights, replying to a request formulated by the State of Mexico, established that the denial of US authorities of human fundamental rights and on handling migrant employees' rights inside US (often enslaved or in similar conditions) irregularly was a violation of non-discrimination and equality principle. The explicit aim was that of contributing in “humanization of international law and in building up a new XXI-century *jus cogens*”⁶⁸.

The aim of respecting the right to a *decent work*⁶⁹ implies a structural reform in the development model, based on production, innovation and economy reconversion, and not on the extreme contraction of labour costs, the increase of control on the labour force –dynamics that seem necessary in a context of global competition and predominance of finance. I think this is, finally, the way to combat the same causes of slavery.

A new –non-invisible– abolitionism⁷⁰ needs a new discussion on what brings human beings to be considered as goods, something that can be sold, traded, wasted, discarded.

68. Inter-American Court of Human Rights, *Juridical Condition and Rights of the Undocumented Migrants*, University of Minnesota, OC-18/03 del 17th September 2003, Series A N 18.

69. See G. Bronzini, “La schiavitù nel lavoro contemporaneo. Dal *decent work* ai diritti oltre la subordinazione”, in *Parole-chiave*, 55, Carocci, Roma, 2016, pp. 49-66.

70. See R. Toscano, “La schiavitù, oggi”, in *Micromega*, 5, L'Espresso, Roma, 2016, pp. 159-167.