

EDITORIAL

Law and Slavery: An Introduction

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This special issue appears in the Dutch Slavery Memorial Year that started on 1 July 2023.¹ That day marked the abolition of slavery in the Kingdom of the Netherlands 150 years ago. True, slavery had been legally abolished in Suriname and the Caribbean islands, at the time colonies of the Kingdom of the Netherlands, ten years before. Yet, many enslaved persons did not gain their freedom because in Suriname they were forced to keep working on the plantations under supervision of the state for another ten years. The reason for this was that in this way the ‘loss caused’ by abolishing slavery could be somewhat limited for the plantation owners.

Importantly, there were apologies made for the Dutch role in slavery and the slave trade. After Prime Minister Mark Rutte offered apologies on behalf of the Dutch government in December 2022,² on 1 July 2023 King Willem-Alexander apologised for the role of The Netherlands in the history of slavery:

Slavery and the slave trade are recognised as a crime against humanity. And the Stadholders and Kings of the House of Orange-Nassau did nothing to stop it.

They acted in accordance with laws which at the time were considered acceptable. But the system of slavery illustrated the injustice of those laws.

As the Second World War highlighted more recently, you cannot hide behind laws when your fellow human beings are reduced to animals and subjected to the whims of those in power.

At a certain point you have a moral duty to act. All the more so considering that here, in the European Netherlands, slavery was strictly forbidden. What was thought normal in the colonies overseas – practised on a large-scale and encouraged, in fact – was not allowed here. That is a painful truth.

The independent study I have commissioned will shed more light on the precise role played by the House of Orange-Nassau in our country’s colonial past and the history of slavery. But today, on this day of remembrance, I ask forgiveness for the clear failure to act in the face of this crime against humanity.³

1 Slavery Memorial Year, <https://www.government.nl/>.

2 Speech by Prime Minister Mark Rutte about the role of the Netherlands in the history of slavery. Available at: <https://www.government.nl/>.

3 Speech by King Willem-Alexander at the commemoration of the role of the Netherlands in the history of slavery, Oosterpark, Amsterdam. Available at: <https://www.royal-house.nl/>.

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Despite the recent public attention to colonial slavery and important work published by historians, colonial slavery has not been a major theme within legal philosophy. International criminal lawyers will immediately point out that slavery and forced labour are practices that continue to persist to this very day, despite many international norms that prohibit them. Indeed, this has led to ‘a tragic hypocrisy: even as international criminal justice condemns slavery in no uncertain terms, it tolerates millions of people living in these conditions’.⁴ Political thinkers have been more interested, or so it seems, in slavery or servitude as the general condition of unfreedom of a collective. Étienne de La Boétie’s *Discours de la servitude volontaire* is a good example of this type of literature.⁵ Both of these themes, modern slavery and the political unfreedom of a collective, are not discussed in this special issue. Rather, the articles collected here focus on the relationship between law and colonial slavery. For while the theme of colonial slavery and its aftermath have been much discussed in the public debate and the media, less attention has been given to the relationship between law and slavery from a philosophical and social-theoretical perspective. This special issue forms a first attempt to fill this gap, in the hope that more research on this topic will follow.

One can understand the relationship between law and slavery in a number of different ways. Firstly, colonial slavery is not simply an injustice. It is a *legal* injustice, something that was made possible by and legitimized through law and part of a state-driven project of imperialism and exploitation of both human beings and the environment. Hence, even if we need historians amongst others to tell us exactly what happened in the past and who did what, slavery is a topic that also directly concerns lawyers since the law and lawyers were implicated in the establishment and persistence of colonial slavery. Secondly, colonial slavery also violates law and some of the most important and fundamental legal principles and human rights. The Dutch sociologist Abram de Swaan puts it as follows: ‘Slavery and the slave trade were an injustice, maybe the greatest injustice the Dutch ever committed. And even as they committed those deeds they knew very well that they were breaking their own religious and earthly laws.’⁶ Thirdly, law may play a role in the aftermath of colonial slavery. Law can be one of the instruments in processes of reparation and reconciliation. Indeed, since slavery is a legal injustice, the legal recognition of this may actually be crucial in order to reach a just society for all affected parties, especially the descendants of enslaved persons.

4 James Cockayne and Nick Grono, ‘Slavery and the limits of international criminal justice’, OUPBlog, <https://blog.oup.com/2016/07/slavery-international-criminal-justice/>.

5 Étienne de La Boétie, *The Politics of Obedience: The Discourse of Voluntary Servitude*, trans. Harry Kurz (Montréal/New York/London: Black Rose Books, 1997).

6 Abram de Swaan, ‘“The Pains of Victimhood and the Gains of Militancy”; 150 Years after Slavery’, (lecture held at the NiNsee Amsterdam, 30 June 2013 at the eve of the celebration to commemorate the abolition of slavery and remember the victims). Available at: <https://deswaan.com>.

1 Themes

This special issue addresses three major themes. The first of these regards the present consequences of colonial slavery and the legal remedies available to deal with slavery as a form of historical injustice. Key questions that are addressed include: How does the slavery past continue to play a role in the (Dutch) present, more specifically in discussions on migration, citizenship, (religious) violence, and the relationship between the environment and the economy? Given these ongoing consequences of and the continuous public debate on slavery, what can we learn from the work of a prominent writer and resistance fighter, such as Anton de Kom? How can tort law play a role in remedying the unjust past and its present consequences? What does litigation entail, not only for the struggle for reparations, but also for the transformative possibilities to establish a common future? A second prominent theme discussed in this special issue is the relationship between time and the legal qualification of slavery. What does it mean to legally qualify colonial slavery as a crime against humanity, from today's perspective? What is legally and philosophically at stake in such qualification? Which spatial and temporal boundaries are drawn by such a statement? Finally, the special issue also dives into slavery as a philosophical paradigm. In this respect, one could think of questions such as: Are there alternative ways to understand the condition of the enslaved person? How would this change our established views on embodiment? What would this mean for our understanding of the good life? The authors of the articles collected here address exactly these types of issues, as they discuss slavery as a legal injustice and the role of recognition and reparation, the ongoing exclusions as a result of slavery, and the meaning of slavery as a legal-philosophical concept. The contributions to this special issue exceed the disciplinary boundaries of legal philosophy, making this a truly multidisciplinary reflection on the relationship between law and slavery.⁷

2 Overview of the Contributions

In his article, Guno Jones takes his cue from Anton de Kom's famous book *We Slaves of Suriname*. Jones' aim is to reveal the formative violence of modern citizenship in the Dutch colonial context of Suriname and its contemporary inheritances in Europe. With De Kom, Jones deconstructs universalist-inclusive narratives about the law and citizenship and unveils the racialised socio-legal binary embedded in modernity. Furthermore, Jones shows how De Kom's critique can be used to contest the coloniality of Europe's migration regime and the exhaustion that has resulted from capitalist modernity with its neo-liberal subject. In her comments on Jones, Yolande Jansen makes two points. Firstly, she stresses how citizens, and especially the 'unwanted ones', are worn out in our era, 'the

7 Most of the contributions to this special issue were first presented during the Winter Meeting of The Netherlands Association for Philosophy of Law (VWR), held at the Vrije Universiteit Amsterdam on 10 February 2023. Jamila Mascot and Bert van Roermund made valuable contributions to this meeting, even if they do not appear here in written form.

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Plantationocene'. Secondly, based on work done on France, she asks whether the connection between race and religion also plays a role within Dutch colonial history.

In their contribution, Niké Wentholt and Nicole Immler investigate the transformative possibilities of tort law to address historical injustice, notably slavery. While recent years have seen an increase in civil litigation for historical and systemic injustice cases in the Netherlands, scholars have struggled to grasp the theoretical relation between tort law and historical and systemic injustice. Eschewing an approach from one discipline only, Wentholt and Immler take a socio-legal approach and argue that a synthesis of two compatible theories from the separate literatures of tort law and transitional justice, respectively civil recourse theory of tort and transformative justice, is feasible. It argues that despite difficulties, tort litigation can be a viable venue to address historical injustices such as colonial slavery. Even irrespective of the legal outcome, the litigation process itself can foster agency and inclusion. Moreover, transformative justice and civil recourse theory together can show how tort litigation can induce lawyers to take account of plaintiffs' lived realities of harm.

In his article, Wouter Veraart questions the tendency of marking colonial slavery as a crime against humanity only for us 'living in the here and now'. Interestingly, these words appeared in the apologies made by Prime Minister Mark Rutte but were absent from the later ones made by the King. Veraart distinguishes between two approaches to the legal evaluation of colonial slavery. In the first one, implicit in the wording 'here and now', the recognition of colonial slavery as a crime against humanity is muted and even deprived of its legal meaning. In the second approach, colonial slavery is seen as already violating important legal principles that were valid at the time. In this way, it opens the possibility to recognise colonial slavery as a legal crime. Accordingly, Veraart argues that only the second approach honours the personhood of the enslaved person, creates room for reparation and addresses a persistent contradiction within law itself.

Finally, Ype de Boer focuses on the Italian philosopher Giorgio Agamben and more specifically on how the figure of the enslaved person plays a central role in his work *The Use of Bodies*. For Agamben, the figure of the enslaved person ultimately and surprisingly becomes the paradigm of the good life. While historically deficient in its treatment of slavery, De Boer argues that Agamben's philosophical revaluation of the concept of the enslaved person still may be of value because it critically questions the very type of systems that have allowed for slavery. As a powerful alternative to the viewpoint of the master, the figure of the enslaved person can be a paradigm to imagine alternative ways of being human and may even give way to *la vita felice*.