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Studying Indigenous Labor and Coercion on the Frontiers of the Spanish Empire: An Introduction

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On February 1, 2023, the United States Senate unanimously passed legislation to label January as »National Trafficking and Modern Slavery Prevention Month [...] to raise awareness of, and opposition to, human trafficking and modern slavery«. The text acknowledges that despite international treaties, national laws, and acts, nowadays there are still around 50 million children, men, and women subject to human trafficking and modern slavery.¹ These numbers are similar, if rather higher, than previous counts. A United Nations report released in 2017 estimated that 25 million human beings worked in coerced and abusive conditions, while 15 million were forcefully married. It counted 40 million enslaved people in the world up to that date.² National and international studies reveal

that human beings are being trafficked globally to be submitted to conditions of labor and sexual abuse that fell under the label of »modern slavery«.³

Such unabating persistence of modern slavery has forced authorities to legislate against all forms of human exploitation and trafficking. For instance, in 2015, the United Kingdom Parliament passed »The Modern Slavery Act« in order »to make provision about slavery, servitude, and forced or compulsory labor and human trafficking, including provision for the protection of victims«.⁴ That this was deemed necessary shows that, despite the abolition of slavery, servitude, and associated coerced forms of labor and domination relations throughout the 19th and 20th centuries, illegal

* I thank Thomas Duve for all his support in the collaborative Partner Group »Towards a renewed legal history of indigenous labor and tribute extraction in the Spanish Empire« as well as in this *Focus* dossier. The papers in this *Focus* underwent various workshops, and each author acknowledges the respective participants. I want to thank those who participated in the kickoff workshop: Diego Melo, Ángel Gordo, and Luis Rojas Donat, for their invaluable suggestions and comments at such an early stage of the Partner Group. I am also grateful to have worked with Manuel Bastias, first, and then Luisa Coutinho, who served as liaisons with the Max Planck Institute through the Glocalising Normativities (GloNo) project. My thanks go to Thomas Rothe at the Catholic University of Temuco, Chile, for his translations of earlier versions. Finally, I am grateful to the members of the Partner Group and contributors to this *Focus* Dossier: Carolina Hiribarren, Constanza López, and Mirko Suzarte.

1 »S.Res.21 – A resolution supporting the observation of National Trafficking and Modern Slavery Prevention Month during the period beginning on January 1, 2023, and ending on February 1, 2023, to raise awareness

of, and opposition to, human trafficking and modern slavery«, 1 February 2023, <https://www.congress.gov/bill/118th-congress/senate-resolution/21> (accessed 20 February 2023).

2 MARK TUTTON, »40 million slaves in the world, finds new report«, CNN, 20 September 2017, <https://edition.cnn.com/2017/09/19/world/global-slavery-estimates-ilo/index.html> (accessed 20 February 2023); STACEY YUEN, »There are 25 million workplace slaves worldwide – there's no end in sight«, CNBC, 13 October 2017, <https://www.cnbc.com/2017/10/13/there-are-25-million-workplace-slaves-worldwide-theres-no-end-in-sight.html> (accessed 20 February 2023).

3 The concept of modern slavery has a history that dates back to the early 20th century. To abolish slavery and human trafficking globally, in 1926, the League of Nations Slavery Convention, in its Article 1, defined slavery as »the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised«, and the slave trade as »all acts involved in the capture, acquisition or disposal of a person with the intent to reduce him

to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves«; League of Nations (1926). In 1956, the United Nations added and defined »Institutions and practices similar to slavery«, including debt peonage, serfdom, forced marriage, and the sale of children to the 1926 definition of slavery: United Nations (1956). See the analyses of historical and contemporary definitions of slavery in the collection of essays: ALLAIN (ed.) (2012).

4 »The Modern Slavery Act« passed by United Kingdom Parliament on 26 March 2015, http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf (accessed 20 February 2023).

human trafficking and human exploitation pervasively endure across the globe.⁵

Why is it so difficult for authorities to end modern slavery and human trafficking? The recent US law proclaimed that human trafficking is highly profitable: »Forced labor and human trafficking generates revenues of approximately \$ 150 000 000 000 annually worldwide.« The dramatic irony of this legislative attempt to publicize this global scourge is that in effect, US legislators gave human traffickers the upper hand in this worldwide fight because »the traffickers use techniques that are designed to severely limit self-reporting and evade law enforcement.«⁶ The economy of modern slavery and the legal difficulties of persecuting such practices are to be blamed for its endurance. At the time of finishing this *Focus* dossier, this law was a last effort to publicly condemn slavery and human trafficking in the 21st century. News reports, however, illustrate continued instances of »slavery-like« practices throughout the world. For instance, in March 2023, Brazilian authorities and law enforcement agents rescued 85 workers, including some minors, from modern slavery conditions in two rice plantations in western Rio Grande do Sul, near the border with Argentina and Uruguay.⁷ The persistence of such practices shows that this human catastrophe, despite being recognized as such, seems far from over.

In confronting such practices, legislators, human rights activists, and scholars face problems of nomenclature and category to classify the multi-edged manifestations of human exploitation and subjugation. Jean Allain reminded us of the difficulties in interpreting specific legal definitions of slavery in legal courts and of the need to distinguish the nuanced differences within human ex-

ploitation.⁸ Moreover, historically, slavery is predominantly associated with the institution of chattel slavery of Africans and their descendants in the Americas.⁹ Politicians, scholars, activists, and jurists thus encounter difficulties in defining modern slavery and classifying its diverse practical manifestations.¹⁰ Is slavery the right word to describe human exploitation in all its forms, or should scholars distinguish between more nuanced terms such as servitude, labor, and sexual exploitation, slavery-like practices, or forced marriages? Do juridical concepts encompass practices? How does the history of slavery and labor influence such categories? In other words, what can we learn from the juridical, historical record and (legal) historiographies in approaching modern slavery? These questions are not new. They are deeply rooted in the history of conquest and colonization of the first global empires in the late medieval and early modern periods. When we asked ourselves these questions at the Max Planck Institute for Legal History and Legal Theory, we proposed collaborative research that addressed our inquiries from legal and historical perspectives. For over two years, David Rex Galindo had been a research fellow at Thomas Duve's department in the Institute, and so we created a Partner Group between the Max Planck Institute for Legal History and Legal Theory in Frankfurt am Main and the Universidad Adolfo Ibáñez in Santiago de Chile.

This *Focus* dossier results from research conducted under the umbrella of this Partner Group. We sought to study various institutions and forms developed to extract Indigenous labor in frontier territories of the Hispanic world from the late medieval period until 1898, when Spain lost its last American and Asian colonies. In the Hispanic

5 Nations abolished slavery throughout the 19th and 20th centuries. From an international standpoint, the League of Nations in 1926 – and the United Nations in 1956, by ratifying the Slavery Convention and its amended version – defined modern slavery and other forms of human exploitation and human trafficking. Efforts have, however, been uneven and dependent on each nation and national legal systems to suppress such calamities. See note 3 for basic literature.

6 »S.Res.21 – A resolution supporting the observation of National Traffick-

ing and Modern Slavery Prevention Month during the period beginning on January 1, 2023, and ending on February 1, 2023, to raise awareness of, and opposition to, human trafficking and modern slavery«, 1 February 2023, <https://www.congress.gov/bill/118th-congress/senate-resolution/21> (accessed 20 February 2023).

7 <https://piaui.folha.uol.com.br/formiga-na-comida-e-dedos-cortados-um-relato-sobre-o-trabalho-analogo-es-craidaos-nos-arrozais-do-sul-do-brasil/> (accessed 10 April 2023). I thank Luisa Coutinho for this reference.

8 A good summary of the problems scholars, human rights activists, and legislators face with the terminology in this context is ALLAIN (2015).

9 Slavery is commonly associated with the enslavement of Africans and peoples of African descent. Scholars have also worked on »the other slavery«, namely the enslavement of Indigenous peoples in the Americas during the colonial period. See the recent study by RESÉNDEZ (2016). See also GALLAY (2002) and BROOKS (2002).

10 See, for instance, ALLAIN (ed.) (2012).

world, labor relations and the human exploitation of Indigenous peoples took many forms: slavery, *encomienda* (assigned labor or tribute from a group of Indigenous people to a conquistador), *mita* (an Inca term to define a system of mandatory and rotative labor to public works for a certain time), *repartimiento* (also a mandatory public service of community members for a defined period of time), *servicio personal* (personal servitude to an individual), and *peonaje por deuda* (debt peonage), to cite a few. We view the Partner Group as an opportunity to integrate research on the legal and ecclesiastical underpinnings behind the creation and development of Indigenous-Spanish labor relations locally with global legal approaches where nuances, differences, and similarities of Indigenous exploitation emerge.

Taking as basis several legal and ecclesiastical cases, the articles in this *Focus* pursue a normative, ecclesiastical, and social approach to the colonial exploitation of Indigenous peoples in remote regions with a weaker presence of colonial institutions. A study of the various systems of labor extraction and exploitation established by the Spaniards in frontier territories showcases institutional elasticity and the power of local agents in shaping the relationships between the invaded and the invaders. The specific terms listed above, which describe various practices of Indigenous labor and tribute collection in Spanish America, reflect the legal and practical malleability of Indigenous-Spanish relations. Scholars agree on the pivotal role of various institutions in constructing a colonial regime of domination and extraction. However, we believe that it was particularly in peripheral territories that tensions between royal and ecclesiastical authorities and local actors regarding Indigenous exploitation manifested and endured. In an unexpected way, these systems of abuse, the

processes behind their establishment, their adaptabilities to local realities, and the ensuing juridical and moral disputes precede current debates over modern slavery.¹¹

Our intention was to study coerced labor relations and regulations that expand the complexities of working practices beyond bipolar approaches to slavery and freedom. A closer look at labor relations in the Hispanic world shows the plethora of systems that thrived in four centuries of Spanish colonial rule in America and the Philippines. Indigenous slavery was abolished in all its forms in 1542 and, after reintroducing the enslavement of Caribbeans (1569), Mindanaos (1570), and Mapuches (1608), again in 1679; however, locals involved in human exploitation tried to hide slavery-like practices under new labor relations.¹² The articles in this *Focus* follow the Max Planck Institute's deliberate deviation from the traditional approach to the codified law of 19th-century legal European historiographies by connecting discourses, rules, practices, and norms of colonial labor to the broader panorama of asymmetrical dependency relations. For instance, discourses of religious, phenotypical, and ethnic distinctiveness of Filipinos, Canary Islanders, and American Indigenous peoples created relations of subordination and exclusion that conform to forms of asymmetric dependency. The restriction of rights and obligations of these groups within the larger colonial societies, such as their involvement in exclusive, coercive labor practices and discourses, exemplify the existence of dependent relations.¹³

To understand the legal underpinnings of labor relations in the Hispanic world, we look beyond the laws that emanate from the centers of power. We scrutinize the various levels of normative praxis in multi-ethnic and multi-cultural frontiers. Colonial subjects conducted their lives and interacted

11 We are following in the footsteps of legal historian Silvio Zavala, who set the course for future scholars of legal and institutional history of the *encomienda* system from a hemispheric perspective, in an exceptional tour-de-force: ZAVALA (1993 [1935]); IDEM (2006 [1935]); IDEM (1978–1980); IDEM (1984–1995). See also his edition of primary sources: ZAVALA/COSTELO (1939–1946). For a recent study of Chile, with a historiographical intro-

duction, see CONTRERAS CRUCES (2017). For New Mexico, GUTIÉRREZ (1991) and BROOKS (2002). For the Philippines, HIDALGO NUCHERA (1995).
12 The 1542 New Laws of the Indies, issued under Carlos V, banned Indigenous slavery in all its forms throughout the Spanish empire. Resistance to the laws proved strong in distant territories such as Chile and the Philippines, where Indigenous slavery was re-introduced until it was

finally banned for good in the Royal Decree of 1674, which took effect in 1679. For Chile, see Constanza López Lamerain's essay; for the Philippines, see Carolina Hiribarren's article, both in this *Focus* dossier. Andrés Reséndez referred to the various forms of Indigenous exploitation on the frontiers of the Spanish empire, particularly in northern New Spain, as »the other slavery«: RESÉNDEZ (2016).

13 DUVE (2022a, 2022b).

with each other within pre-Hispanic legal traditions, Castilian *ius commune*, moral and customary norms, and new locally or regionally emerging normativities. In such multi-normative orders, actors seeking justice relied on juridical practices that classified and assessed various situations and cases through layers of normative regulations and situational specificities. They furthermore looked at precedent (in the form of casuistry) and set jurisprudence. Local realities also shaped the normative order that regulated the daily lives of a specific territory.¹⁴

This dossier studies the juridical, religious, and institutional histories behind extracting Indigenous labor and tributes in the Spanish empire. Our goal has been to examine laws, royal decrees, and juridical and ecclesiastical cases related to Indigenous labor on the frontiers of the Spanish empire to showcase how local socioeconomic realities drove royal policies to regulate labor relationships between Indigenous communities and Hispanic colonists. We go beyond local and national (legal) historiographies to focus on four geographical areas and to expand the traditional temporal framework: 15th- and 16th-century Granada and Canary Islands, 17th-century Chile, 17th- and 18th-century northern New Spain, and 19th-century Philippines – all frontier territories where local realities of contact between independent local peoples and European and ethnically-mixed settlers shaped colonial institutions. From this broader perspective, we want to point out that there were no uniform policies but rather practical responses that reflected the diversity of the empire and the versatility of legislators and theorists.¹⁵

The dossier consists of four articles, beginning with an analysis of the forms of labor relations in the early Castilian expansion over Granada and the Canary Islands before moving on to case studies of 17th-century Chile, 17th- and 18th-century northern New Spain, and 19th-century Philippines. In the first essay, Mirko Suzarte Škarica scrutinizes the nuanced differences between captivity and slavery of Christians, Muslims and Canary Islanders on the Castilian-Granada frontier and the Canary Islands in the 15th and 16th centuries. He shows

the translation of captivity and enslaving practices in southern Spain to the Atlantic world via the Canary Islands and exposes the legal and practical blurred lines between slavery and captivity. Constanza López reviews ecclesiastic opinions on Indigenous slavery on the Hispanic-Mapuche frontier in southern Chile. The study of these opinions and their influence in the Spanish court show the flow of ideas, people, and writings to achieve the goal of legalizing slavery on the Hispanic-Mapuche frontier, which happened with the Royal Decree of 1608.

Two articles address the coerced labor of Indigenous peoples in northern New Spain and the Philippines. David Rex Galindo focuses on various forms of Indigenous labor relations on the New Mexico and California frontiers in northern New Spain. Rex Galindo explores some conceptual and etymological features of slavery forms in the Western worlds. By studying local working regimes in 17th century New Mexico, particularly the exploitation of Apache peoples, and in late colonial Spanish Alta California, he further exposes the difficulties of offering satisfactory definitions of slavery. Finally, Carolina Hiribarren addresses the practice of debt peonage in the Philippines during the 19th century. Her article shows that this institution took many coercive forms that challenge the free /slave labor dichotomy. The different working practices attached to debt peonage provoked varied situations with debtors, ranging from excessive interests to quasi-slavery conditions.

The Spanish empire thrived with the gains obtained from Indigenous labor from the late 15th through the late 19th centuries. We believe that our look at different modes of labor relations on the frontiers of empire reveals the plethora of Indigenous labor systems that colonial historiographies have submitted to in-depth analyses, as well as the levels of coercion within freedom and unfreedom. We wanted to present in a single dossier the diverse forms of Indigenous labor in various frontier settings that span from the Castilian-Granada frontier to the Canary Islands, Chile, New Spain, and the Philippines. While compulsion and abuse certainly depict many of the rela-

14 DUVE (2022a) and the essays in DUVE/DANWERTH (eds.) (2020).

15 For medieval Spain, see for instance GUICHARD (1990); GONZÁLEZ JIMÉNEZ (ed.) (2000); ROJAS DONAT (2002).

tions between Indigenous peoples and colonial settlers – Indigenous slavery being the most exorable of such relations – the distinctive character of each case study attests for the nuances of labor relations. We hope to have shown that a look at labor relations on the frontiers of the Hispanic world illustrates the tensions of equating compulsion within labor practices to slavery-like systems

while exposing the plurality of labor systems in Spanish America and the Philippines. The work presented in these contributions will hopefully continue the discussion on what constitutes a slavery-like system of labor in the early modern period. ■

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