

Human trafficking in 2018: on justice, freedom and responsibility.

Cleveringa Lecture delivered by
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Rector Magnificus, ladies and gentlemen,

Around 2002 in Morocco, a seven-year-old girl is given by her father to a family member: to be taken to the Netherlands. The intention is that she will live in this uncle's house, doing domestic work and taking care of his disabled daughter. Sold, as it were. She works long days and doesn't go to school. She's taught to be afraid of the police. There are people who see her, such as the doctor who visits her disabled cousin, and the home-care worker who comes to the house once a week. And although they think it's strange that the girl is always there working and never goes to school, they take no action. In 2012 – she is now 17 – she runs away and soon afterwards makes a complaint to the police. The uncle is charged with human trafficking for the period after 1 January 2005; it was only then that this behaviour was criminalised, as the offence of human trafficking.

The Hague District Court hears the case in 2016. It is known as the Cinderella of The Hague case. But it is certainly not a fairytale.¹ The accused is found guilty and sentenced to 24 months in prison. The Court finds that the uncle deprived the girl of her human dignity and personal freedom, and hence of a free and carefree childhood.²

This is not the only case of its kind.

There's also a Turkish girl, for instance, who is around ten years old when she's brought to the Netherlands by her aunt in 2000. She goes to live in an uncle's house. She too doesn't go to school. From the age of 13, she does the housework and cares for the children in the family. The Court observes that this went on for a period of seven years in total. In the grounds for sentencing, the Court finds that the uncle violated his niece's mental integrity,³ and that 'through his actions, the accused violated the victim's fundamental human rights, human dignity and personal freedom for many years.' He is sentenced to 12 months in prison.⁴

And the third case in this series: a Moroccan man brings his nephew from Morocco to the Netherlands. The 14-year-old nephew is told that he will have a better future in the Netherlands. Very soon, however, his uncle puts him to work in his drapery shop in the Amsterdam district Dapperbuurt and on the Dapper Market. He works there six days a week, for around nine or ten hours a day. The work consists of carrying rolls of fabric, loading and unloading lorries, and helping in the drapery shop. In the end, he works for his uncle for more than eight years. All that time he is living illegally in the Netherlands and doesn't go to school.⁵ 'The complainant had to perform work in the form of modern slavery,' the Amsterdam District Court finds,⁶ and imposes a 32-month prison sentence.

¹ National Rapporteur, *Vulnerability up Close. An exploratory study into the vulnerability of children to human trafficking*, The Hague 2016, p. 88.

² The Hague District Court 26 February 2016, ECLI:RBDHA:2016:1968.

³ National Rapporteur, *Vulnerability up Close. An exploratory study into the vulnerability of children to human trafficking*, The Hague 2016, p. 89.

⁴ The Hague District Court 30 January 2015, ECLI:RBDHA:2015:996.

⁵ National Rapporteur, *Vulnerability up Close. An exploratory study into the vulnerability of children to human trafficking*, The Hague 2016, p. 89.

⁶ Amsterdam District Court 3 December 2013, ECLI:NL:RBAMS:2013:8461.

The cases are similar. They all resulted in a conviction for human trafficking. And in all these cases, the exploitation began long before these actions were criminalised; in a period when the law offered no protection at all against this form of exploitation. These children's lack of freedom also consists of the same elements. Illegal and withheld from social life, but not locked up. Kept prisoner by isolation and intimidation. Finally, in these cases we see third parties, bystanders, who could have played a part in liberating these children from their situation, but did not do so.

Today we commemorate the courage of Professor Cleveringa, who 78 years ago protested against the decision of the German occupier to dismiss all of Leiden University's Jewish staff members. Among them was Professor Meijers, Cleveringa's highly and deservedly admired teacher. On the morning of 26 November 1940, Rudolph Cleveringa, the Dean of the Law Faculty, took over Professor Meijers' lecture and spoke in praise of the brilliant legal scholar that he was. In his protest speech, Cleveringa expressed with restraint his outrage at this act of the occupier, which contravened the Constitution and was a flagrant violation of international law. 'According to Article 43 of the Laws and Customs of War on Land, the occupier is required to respect the laws of the country,' said Cleveringa, and because the occupier failed to do this, its actions 'can only be regarded as unjust'. For Cleveringa, the Rule of Law was the compass by which he navigated.

The Rule of Law, justice, freedom and responsibility: what do they mean in the context of human trafficking and the fight against it? How unfree must someone be to speak of human trafficking? Who provides protection to victims and who *should* provide this protection? I hope today to offer you some insight into these questions, and at the same time to show that the answers are not clear-cut. I will start by explaining the phenomenon of human trafficking, which is still not sufficiently perceived as a problem of the here and now. I will outline the legal framework and the international background. And then I will look at freedom and responsibility, with the emphasis – in the spirit of today – on what an individual citizen can contribute to the fight against human trafficking.

What is human trafficking?

In 2000 in Palermo, the so-called Protocol on Trafficking in Persons was signed, an annex to the UN Convention against Transnational Organized Crime.⁷ After many years of differing opinions, this Protocol achieved agreement on the definition of trafficking in persons. In the Palermo Protocol, the core of 'trafficking in persons' is formed by three components: an action, a means of coercion and the purpose of exploitation. Examples of actions include recruitment, transportation and harbouring. Means of coercion can be so-called 'hard means of coercion', such as violence or threat, or can have a more manipulative, sometimes even subtle character, such as abuse of a position of vulnerability or deception. A trafficker does not, of course, engage in the actions and the use of means of coercion without good reason: the purpose of all this – the third component in the definition of trafficking in persons – is ultimately to exploit the other person. But take careful note: the exploitation itself does not need to have taken place yet for the behaviour to qualify as trafficking in persons. In practice this means, for example, that if someone has falsely told a young woman that he wants to build a future with her, and then rents a window in Amsterdam's red light district, drives her there and takes her to that room, this in itself represents a completed offence, before even one client has been anywhere near her. The Protocol's definition has been transposed almost word-for-word in the Dutch Criminal Code.⁸ In this Code, the actual exploitation is also criminalised as trafficking in persons.⁹ As a result of later conventions and EU legislation, what constitutes an offence as human trafficking in the Netherlands has been widened and modified.

⁷ <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

⁸ Art. 273f(1)1, Criminal Code.

⁹ Art. 273f(1)4, Criminal Code.

Prostitution

The most well-known human trafficking phenomenon is the exploitation that takes place in prostitution. Prostitution means making oneself available to perform sexual acts with or for another person in return for payment. This covers not only window prostitution, escort services and home prostitution, but also, for example, a 'happy ending' in a massage parlour. It is a multifaceted concept and in the Netherlands can be either legal or illegal. The majority of the human trafficking victims in the Netherlands are exploited in prostitution.

The view of prostitution was a hotly debated point in the negotiations on the Palermo Protocol: is prostitution by definition human trafficking, or is sex work actually just work and only becomes human trafficking if coercion is involved? In other words: is human trafficking defined by the nature of the work or by the presence of coercion and exploitation, regardless of the kind of work that is performed?¹⁰ This discussion is still going on at the international level, with equally fierce arguments on both sides. It is a highly morally charged debate, in which moral arguments are interwoven with arguments aimed at protection against human trafficking. Both sides of the spectrum see a correlation between the quantity of human trafficking and the policy on prostitution, but they give conflicting explanations. One side argues that legalisation or regulation of prostitution attracts human trafficking, because it maintains the demand. The other side argues with equal vehemence that a ban on prostitution or the use of prostitutes will result in sex work being no longer subject to monitoring, and will thus give free rein to the human traffickers. It is not possible, however, to support or negate a causal link with figures or well-founded research: we simply cannot say which policy on prostitution leads to less human trafficking.¹¹ The result is a distorted debate with firmly rooted positions, for which it seems scarcely possible to expect solutions.

There was also a protracted discussion in the Netherlands about whether or not prostitution always and by definition entails exploitation. This discussion seemed to have been pragmatically ended when the ban on brothels was lifted in 2000, providing a legal basis for the toleration that had already existed for more than two decades. Earning money from prostitution was no longer a criminal offence.¹² Yet lifting the ban on brothels did not, as expected, lead to criminality disappearing from the prostitution sector. Neither did it entirely silence the debate. In fact, the antagonisms seem to have only become stronger in the years since then.¹³ Prostitution is not a simple issue. It involves major dilemmas: there is always tension between autonomy and protection. It is a question of independence, but also the possibility for governments to intervene when abuse of positions of vulnerability occurs. And this is in a sector where it can be difficult to determine whether someone is a victim. It is far from easy to find the right balance in this.

I think, for several reasons, that it would be opportune to again debate the policy on prostitution in the Netherlands as well. The form taken by prostitution today bears no similarity whatsoever to prostitution before 2000. The 'emancipated Dutch prostitute', the criterion person on whom the lifting of the brothel ban was based, has virtually disappeared from window prostitution. First of all, however, I should emphasise that prostitution must not be returned to the sphere of taboo. That would do no justice at all to the autonomy of sex workers. Such a debate must in any case not be governed by terms like prudishness and 'nanny state'. Nor are those who engage in the debate either moral crusaders or progressives. A debate in which the opponent is invalidated in this way does not take account of the complexity of the problem.

¹⁰ M. Ditmore & M. Wijers, 'The negotiations on the UN Protocol on Trafficking in Persons: Moving the focus from morality to actual conditions', *Nemesis* 2003, no. 4, pp. 79-88.

¹¹ National Rapporteur, *Prostitutie en mensenhandel [Prostitution and trafficking in human beings]*, The Hague 2016, p. 58 et seq.

¹² https://www.eerstekamer.nl/behandeling/19991109/publicatie_wet_2

¹³ https://www.npostart.nl/nieuwlicht/14-10-2018/VPWON_1289243

Prostitution is vulnerable to human trafficking. The buying and selling of sexual services is moving to online marketplaces. The internet is the new window. This complicates the approach to human trafficking and also demands a different policy in order to reach potential victims of human trafficking. Opening the borders to Central and Eastern Europe led to an influx of sex workers from that region. This also entails a vulnerability. Regulations and policy on prostitution must primarily be aimed at protection of that vulnerability, and the prevention and combating of human trafficking. The government has a duty to be there for the weaker members of society. This applies for socio-economic issues, and in exactly the same way for the prostitution sector.

Exploitation outside the sex industry

In 2005, exploitation outside the sex industry was also criminalised as human trafficking. This involves all forms of forced labour or services that do not have a sexual component, and primarily comprises the exploitation of labour in the domain of work and income.¹⁴ It often relates to work in the three D sectors: *dirty, dangerous and demeaning*. The case law contains examples within the setting of the construction industry, inland shipping and mushroom farming. Unlike in the case of prostitution, the demarcation of what does or does not constitute a criminal offence is not specified in the legislation, and the interpretation is left to case law. The question here is where bad employment practice ends and exploitation begins. In 2009 the Supreme Court of the Netherlands established the framework for interpretation in the *Chinese Restaurant* judgment: remuneration is based on the criteria applicable in the Netherlands, and relevant aspects include the restrictions for the victim, the nature and duration of the work, and the economic benefit obtained by the employer.¹⁵ Nevertheless, the actual evaluation that takes place within the criminal justice process on the basis of this framework remains problematic and non-uniform.

I began by giving some examples of labour exploitation: three cases of exploitation in the family circle, behind the front door. Cases like this are difficult to identify, and the victims seem to be invisible. We actually don't know how often this kind of exploitation occurs, but it is safe to say that it is many times more than what is discovered. The cases that I mentioned were extreme, in terms of the absence of payment, the high degree of servitude, and the lack of freedom. They are at the top end of the spectrum. A combination of factors is always involved, and the interrelation among them is also important.

Besides labour, people can be forced to engage in many different services. Examples from case law are taking out mobile phone contracts and being made to collect money for a non-existent sponsored walk. The issue then is not the nature of the labour or service, but the degree of coercion. The difficulty with these cases, however, is that the actions and the circumstances under which they take place are not directly in line with the nature and seriousness of the crime, or proportional to the penalty for which the article on human trafficking provides.¹⁶ The Supreme Court has now provided clarification of this, and has thus also ensured that attention to human trafficking remains concentrated on the cases for which this classification is justified.¹⁷

¹⁴ National Rapporteur, *Tiende rapportage van de Nationaal Rapporteur [Tenth report of the National Rapporteur]*, The Hague 2017, p. 29 et seq.

¹⁵ Supreme Court of the Netherlands 27 October 2009, ECLI:NL:HR:2009:BI7097.

¹⁶ L.B. Esser & C.E. Dettmeijer-Vermeulen, 'Mensenhandel op een tweekoppig. De omgang van rechters met de ruim geformuleerde mensenhandelgedraging in de delictomschrijving van artikel 273f lid 1 sub 4 [Human trafficking at a crossroads. How courts deal with the broadly formulated human trafficking behaviour in the definition of the offence in Article 273f(1)4]', *DD* 2014/48. Cf. also National Rapporteur, *Tiende rapportage van de Nationaal Rapporteur [Tenth report of the National Rapporteur]*, The Hague 2017, p. 47 and S.M.A. Lestrade & C.R.J.J. Rijken, 'Mensenhandel en uitbuiting nader bepaald [Human trafficking and exploitation more closely defined]', *DD* 2014/64.

¹⁷ Supreme Court of the Netherlands 5 April 2016, ECLI:NL:2016:554.

A form of human trafficking that was more recently included in the legislation is criminal exploitation. A prime example is that of a grandfather who forced his grandchild to steal from a supermarket.¹⁸ In the last few years, much attention has been focused on Roma people who use their children or grandchildren to commit crimes.¹⁹ For several decades, this issue was dismissed as a cultural problem, with no consideration of these children's interests or protection of their fundamental rights. The idea that these children were possibly victims of human trafficking did not enter the picture. It seemed as if the Rule of Law did not apply for them.

Finally, there is human trafficking for the purpose of organ removal. The main issue here is the actual removal of organs, but other aspects include intermediation in trips abroad to have an organ illegally removed there, and coercing or deceiving donors.²⁰ This also occurs in the Netherlands, but to what extent is difficult to say. Dutch transplant professionals experience a conflict of duties when they see that their patient has paid for a kidney.²¹ It is prohibited in the Netherlands to give financial compensation for organ donation. But why, when it is financially or otherwise advantageous for all parties – the recipient of the kidney, the insurance company, society as a whole – could the donor not receive any kind of benefit whatsoever?²² As possible compensation, one could perhaps think of free healthcare insurance for the rest of the donor's life. It is regrettable and foolish that we never engage in this discussion at all.

Who are the victims of human trafficking? And how many are there?

We don't know exactly. Human trafficking is, by definition, a covert phenomenon. All kinds of factors can play a part in identifying victims. For example, the capacity deployed for this problem by the police, or the priority it has with the local council. Until last year, the reports of the National Rapporteur only concerned the recorded victims. Those figures are becoming less and less reliable. Privacy legislation means that many victims – especially those who are minors – are no longer recorded.²³ This development impedes adequate data collection and hence an effective approach to human trafficking. There is a conflict here between the right to privacy and the right to effective protection. For a long time, the Netherlands has been at the forefront of collecting data on human trafficking, but this position is now challenged. At the international level, there is growing recognition of the importance of knowing how many victims are involved. The Sustainable Development Goals of the United Nations now include reduction of human trafficking. And figures are needed for this. *What gets measured gets done.* The United Nations Office on Drugs and Crime (UNODC) has the task of monitoring this goal. In this context, last year – together with UNODC – I published an estimate report. These results have brought us closer, for the first time, to answering the question: how many victims are there, and who are they? In fact, the results show that in the Netherlands there are around 6,250 victims.

This amounts to 37 in 100,000 of the population, and at present only 7 or 8 of these have actually been identified as victims. The risk of being a victim is greatest in two groups. For people of non-Dutch origin, the figure is 311 victims per 100,000 of the population. And for Dutch girls aged

¹⁸ Central Netherlands District Court 9 July 2013, ECLI:NL:RBMNE:2013:2679.

¹⁹ National Rapporteur, *Vulnerability up Close. An exploratory study into the vulnerability of children to human trafficking*, The Hague 2016, pp. 72-74.

²⁰ Nationaal Rapporteur, *Zevende rapportage van de Nationaal Rapporteur [Seventh report of the National Rapporteur]*, The Hague 2009, p. 577 et seq.

²¹ J.A.E. Ambagtsheer, *Organ Trade* (dissertation), Rotterdam: Erasmus University 2017.

²² Ibid.

²³ Nationaal Rapporteur, *Slachtoffermonitor mensenhandel [Monitor of victims of trafficking in human beings] 2013-2017*, The Hague 2018.

between 12 and 17 years, there are 257 victims per 100,000. Which is 1,300 every year. Yet we have only identified 11% of these girls. That is, one in nine; the rest remain out of sight.

What does it mean to be a victim of human trafficking?

You can see the recurring images projected onto the screen behind me. This is the series 'Bought and Sold',²⁴ a photographic installation created by Kay Chernush.²⁵ They tell the story of 22 victims who were interviewed by Kay and whose story she has portrayed. The image that most impressed me is the one with the tally marks: the counting system used by children to keep track of how many days it is until their birthday. The victim explains her tally marks: '*Counting down: however long it would take, I knew I had to be smarter than them to survive this prison.*' So simple and so expressive. Of course, there are differences in the exploitation situations, and also in the severity of the victims' traumas. Yet cruelty, exploitation and violence continue to have an effect long after the exploitation situation has ended. The human response is to rather not know, to look away. Victims often have to deal with their trauma for the rest of their life.

A comparison is sometimes made with victims of torture. Helen Bamber, who – at the age of 19 – went to Bergen-Belsen after the war to help survivors, always campaigned to have human trafficking recognised as torture. Until her death in 2014, aged 89, she worked on organising treatment for victims of human trafficking. Treatment is actually not the right word: the aim is in fact to free the victims from the enduring chains with which the trafficker binds the victim. '*We find the remnants of resilience and courage to achieve creative survival.*'²⁶ '*When I was in Belsen,*' said Helen, '*the lesson I learned was to bear witness, never to pass by. It is easy to be a bystander and I vowed never to be one.*'

Human trafficking or modern slavery?

Before the Palermo Protocol was agreed, there were protracted negotiations about the terminology. No-one is actually really happy with the term *trafficking in human beings*. It can be confused with the term *smuggling of human beings*. Trafficking suggests movement, from one country to another, but this is not necessarily the case. In Anglo-Saxon countries, the term 'modern slavery' is often used instead. Modern slavery sounds more urgent than human trafficking. At the beginning I mentioned the case on the Dapper Market, where the Amsterdam District Court also used this term in its grounds for sentencing. And of course I can't prove that this played a part in the Court's decision to impose a higher penalty, but 'modern slavery' has greater connotations of deserving punishment than 'deprivation of a free and carefree childhood'. Language is important.

Are modern slavery and human trafficking the same? No, not really. Slavery, which has not actually been separately criminalised in the Netherlands, is defined by the criterion set down in the 1926 Slavery Convention: 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.²⁷ Slavery and practices similar to slavery or servitude are one aspect of the Palermo Protocol. But the scope of the Protocol is wider. From the legal perspective, then, interchangeable use of the terms 'modern slavery' and 'human trafficking' is not correct and is even restrictive, but the image evoked by the word 'slavery', and the mobilising impact of this, can certainly make its use effective.

In 2010 the judgment of the European Court of Human Rights in the *Rantsev* case seems to have almost equated human trafficking with slavery, by declaring Article 4 of the European Convention on

²⁴ <https://artworksforfreedom.org/portfolio-item/bought-sold/>

²⁵ <https://artworksforfreedom.org/kay-chernush/>

²⁶ www.helenbamber.org

²⁷ http://wetten.overheid.nl/BWBV0006262/1955-07-07#Verdrag_2

Human Rights applicable in a general sense to human trafficking.²⁸ Article 4 states that no-one shall be held in slavery or servitude. This decision is open to a number of legal objections, and indeed it has been criticised.²⁹ For instance, a very relevant question is whether and, if so, how the Court will also offer the protection of the ECHR to victims of human trafficking for the purpose of organ removal. Nevertheless, the *Rantsev* judgment was highly significant for the approach to human trafficking and the protection of victims.

The term 'modern slavery' also suggests a link to the slavery past. In the United Kingdom, this link is made most emphatically: people there are proud of William Wilberforce, whose actions led to the abolition of the slave trade. In the Netherlands, we do not have this link.³⁰ And in the Dutch context, this is completely understandable. The slave trade involved institutional and government-sanctioned acts against other peoples. Human trafficking involves the behaviour of criminals, which the government seeks to prevent. Simply equating the two would be a flagrant failure to recognise the injustice of the past. Yet I still think that making some kind of connection between the concepts of slavery in the past and human trafficking in the present could strengthen the fight against human trafficking. The slavery past is a stain on Dutch history. Our efforts today may still prevent human trafficking from becoming a stain on our history in the future.

Freedom

In the context of human trafficking, freedom can be restricted in greatly differing ways. Completely, because the door is literally locked, or through violence or threat of violence to the victim or the victim's family, which ensures that a victim has no other options. A feigned love relationship can also result in complete control over a victim. The more subtle means of coercion are often more difficult to prove, and the question then is the extent to which the victim was free to escape from the exploitation situation. This is a subjective criterion. A Romanian agricultural worker who cuts asparagus on a piecework basis and is only paid at the end of the season does not feel that he can just get on the bus back to Romania, regardless of how atrocious the exploitation situation may be. Sometimes a victim is manipulated to such an extent that she thinks she has chosen the exploitation herself. This is covered by the Protocol and hence also the law: Where coercion has been used, the victim's consent is not relevant.

The objective interpretation of the concept of freedom is a crucial aspect of the *Siliadin* case.

Henriette Siliadin was a 15-year-old girl from Togo, who was exploited as a housemaid in Paris. The people who exploited her also came from Togo. This is something we often see: that human traffickers and their victims come from the same country or the same region. In 1994 she went to work for family B. Her working day began at 7 o'clock in the morning and ended at half past 10 in the evening. She looked after the four children and did the housework. She slept on the floor near the baby, in case he woke up. She was never fed properly: a packet of cornflakes and a piece of chicken every month, she said.³¹ The family would rather throw food away than give it to her. She received no pay whatsoever. She was in France illegally. In 1998 she went to the police, with the assistance of a neighbour. The court found that her treatment did not infringe human dignity, since she had not been subjected to any threats or violence. And not having your own room is not an exceptional occurrence in Paris. The court did, however, observe a number of other offences in the couple's

²⁸ ECHR 7 January 2010, ECLI:NL:XX:2010:BL6652 (*Rantsev v. Cyprus and Russia*).

²⁹ J. Allain, '*Rantsev v Cyprus and Russia*: The European Court of Human Rights and Trafficking as Slavery', *Human Rights Law Review* 2010, no. 3, pp. 546-557.

³⁰ J.E. Overdijk-Francis, 'Slavernij vroeger en nu [Slavery in the past and present]' (symposium of the Netherlands Institute for Human Rights, 26 November 2013).

³¹ Speech given by Henriette Siliadin on the occasion of the tenth anniversary of the Warsaw Convention, Strasbourg, 2015.

actions and concluded that they should be sentenced to 12 months' imprisonment. On appeal, the couple were acquitted. The Court of Appeal considered that Siliadin, in spite of her youth, had shown a degree of independence. On Sundays she went to church, she spoke French and could find her way around Paris, for instance to take the children to school. This Court also considered that she was not in a state of vulnerability, and that no treatment incompatible with human dignity had been established. The case is then taken to the European Court of Human Rights.³² In its judgment in 2005, the European Court concludes that Siliadin was held in servitude and that violation of Article 4 of the ECHR has taken place. Unlike the French Court of Appeal, the European Court considers that Siliadin was indeed vulnerable, given her young age and the fact that she is an illegal immigrant. The European Court concludes that Siliadin had no freedom, and thus states that it is not necessary to actually be locked up in order to lose one's freedom of movement and autonomy. This was the first judgment of the European Court of Human Rights in a human trafficking case where violation of Article 4 ECHR was established. A real milestone, because the concept of absence of freedom was interpreted on the basis vulnerability and fear, rather than actual chains.

But another aspect of the Siliadin case is freedom *within* the human trafficking situation. I have spoken with Henriette Siliadin several times. She is an incredibly strong and warm-hearted woman. She is now a nurse, is married and has two children. She speaks about mental and emotional freedom, even during the years of her exploitation. She told me: 'It was the love of and for the children that gave me strength.' The children who said that their mother was unkind and that later they would take care of Henriette. Rationally, this is not very encouraging, coming from 4-year-old children, but emotionally it's a lifeline. Despite her situation, she chose to love those four little children. Is that a free choice? Viktor Frankl would say it is:

*'We who lived in concentration camps can remember the men who walked through the huts comforting others, giving away their last piece of bread. They may have been few in number, but they offer sufficient proof that everything can be taken from a man but one thing: the last of the human freedoms -- to choose one's attitude in any given set of circumstances, to choose one's own way.'*³³

But what does that choice mean, then? And how is it perceived? That the circumstances were perhaps not really so bad? If a victim in an exploitation situation makes decisions or displays behaviour that is inconsistent with the image that exists of *the* victim, this can sometimes lead to denial that the person was actually a victim. Then the freedom to choose one's own way, regardless of the terrible circumstances, will be punished, and others will wrongly not believe that you were a victim at all. An example is the case of a young woman who was manipulated to engage in prostitution by the accused, but who nevertheless went to school. Precisely that choice meant that coercion had not been proved.³⁴

Responsibility

The responsibility for combating human trafficking lies primarily with the government. But the government can't do it alone. There is also a role for private organisations, civil society and citizens. I will restrict myself today to the question of what comprises the responsibility of an individual citizen. The courageous actions of Professor Cleveringa on 26 November 1940 bear witness to what an individual citizen can do and what he can achieve when his behaviour is founded in the principles of the Rule of Law.

³² ECHR 26 July 2005, ECLI:NL:XX:2005:AU4068 (*Siliadin v. France*).

³³ V.E. Frankl, *Man's Search for Meaning: An introduction to logotherapy*, Rotterdam: Donker 1997.

³⁴ Den Bosch Court of Appeal 15 April 2009, ECLI:NL:GHSHE:2009:BI1162.

What is the individual citizen's situation? The structure of the world today, with its *information overload* and *filter bubbles*, is so complex that unless you do your best as a citizen to see what injustices are taking place, you simply won't see them.³⁵ And even when you do your best, human trafficking is difficult to detect. In the Netherlands we still mostly believe that human trafficking is something that happens far away. We trust the labels like 'fair trade', and hope that the big companies fulfil their responsibility to at least prevent child labour. But let's make a comparison: if you visit a sex worker and you know or ought to know that she is being exploited, then it should be a criminal offence to still make use of her services. In fact, it isn't, not yet, but the concept doesn't sound too illogical. Difficult to enforce, perhaps, but that should not be the decisive consideration for establishing standards. But how about when it comes to buying products that were made under conditions of exploitation, either of children or of adults? Can you know this, as a citizen? Ought you to know it? And should it be a criminal offence to buy them? The answer to this is already much more difficult. Nearly all the prawns from Thailand are fished under appalling conditions and with evident exploitation. And they are sold here. The Guardian³⁶ newspaper writes about this sometimes, 'naming and shaming' the supermarkets where you can buy them. The Dutch current affairs programme *Een Vandaag*³⁷ has also shown that the same prawns are sold in all the Asian supermarkets around Hilversum. So do you still buy them? Do you ask about their origin in the Thai restaurant? In his *21 Lessons for the 21st Century*, Yoal Noah Harari says about this:

'In a world in which everything is interconnected, the supreme moral imperative becomes the imperative to know. The greatest crimes in modern history resulted not just from hatred and greed but even more so from ignorance and indifference.' (p.226)

This, then, is where the citizen's responsibility lies. There are many different ways to draw citizens' attention to abuses, to create engagement. One way is to present figures.³⁸ The Netherlands Institute for Health Services Research (NIVEL) considers it a flu epidemic when 51 in 100,000 people have flu.³⁹ We estimate, using a reliable estimation method, that there are 37 victims of human trafficking per 100,000 of the population. That could and should have a certain shock effect. During a flu epidemic, everyone knows someone who has flu. So is it the same with victims of human trafficking?

Another way is to tell individual stories: stories that deserve to be told; that give those figures a face; that make the problem manageable. In this, citizens are assisted by CNN, Netflix, Twitter, and also newspapers like Trouw, and TV stations like the Christian evangelical EO, which increasingly tell these stories and make them easily accessible. Yet here, too, you must not only see these stories, but also incorporate them in your worldview. I will now come back to the three cases that I mentioned at the beginning. All those cases took place in an ordinary house, surrounded by other houses. The boy on the Dapper Market may not have caught the attention of a passing customer, but the market superintendent could and should have sometimes wondered why he never went to school. A home-care worker came once a week to the house of the girl in the first case, and she noticed that the little girl was always there working, but didn't think she could do anything to improve the child's life.⁴⁰ Three children who grew up without freedom, and where just one person could have made the difference.

³⁵ Y.N. Harari, *21 Lessons for the 21st Century*, London: Random House 2018.

³⁶ <https://www.theguardian.com/global-development/2018/jan/23/thai-seafood-industry-report-trafficking-rights-abuses>; <https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>

³⁷ <https://eenvandaag.avrotros.nl/item/goedkope-garnalen-door-slavenarbeid/>

³⁸ Y.N. Harari, *21 Lessons for the 21st Century*, London: Random House 2018.

³⁹ <https://www.nivel.nl/nl/nieuws/einde-langdurige-griepepidemie-nog-niet-zicht>

⁴⁰ National Rapporteur, *Vulnerability up Close. An exploratory study into the vulnerability of children to human trafficking*, The Hague 2016, p. 90.

Unfortunately, people soon forget both shocking figures and poignant stories. And so they have to be told, time after time, until they simply can't look away any more. This has worked for climate change. Human trafficking also deserves a place in the collective and individual consciousness. The government's responsibility is to set and enforce standards, but certainly also to create an environment in which ignorance and indifference are replaced by knowledge and engagement. 37 victims in every hundred thousand; 1,300 underage girls every year a victim of sexual exploitation. These are figures that demand political attention at the highest level.

Rounding off my lecture

There are many challenges in the fight against human trafficking. The recruitment of victims and selling of their services is increasingly taking place via internet, which makes it even more elusive. Migration, poverty and war situations in the world are resulting in vulnerable people, in positions of vulnerability and dependence, in which human traffickers can see a revenue model. The three cases with which I began show that we must look not only at transnational organised crime. On a small scale, minor criminals, close to home, can also see a revenue model in exploiting others. For the victims, the trauma is the same.

I have indicated some dilemmas and explained that solutions are not clear-cut. How do you protect the victims of human trafficking in the sex sector and at the same time respect the position of sex workers? Where does bad employment practice end and where does exploitation begin? Should or could people who donate a kidney be financially compensated? What is the relationship between human trafficking today and slavery in the past? What is a free choice within a situation of coercion and manipulation? What do we mean by the responsibility of the individual citizen?

I chose the individual citizen as the central focus in my discussion of responsibilities. And here I do indeed have an answer. Citizens are responsible for their own awareness of social abuses, and their choice of whether to act in response to them. Human trafficking undermines society; not only are victims directly affected, but their family and loved ones are also victims. And society as a whole, too: I, we, do not want to live in a society where people are used as disposable items, where people live without freedom. Freedom for everyone is the standard, and the responsibility for safeguarding it lies with us all.

A few words of thanks

First I would like to thank the Executive Board for the honour of my appointment to the Cleveringa chair. My thanks also go to the Board of Deans, who by proposing me emphasised that human trafficking belongs in this series of justice, freedom and responsibility. I want to thank the University for what I learned here as a student. Much more than I realised at the time. Almost 50 years ago, the professors of the various specialisations were giving the law students a 'sales pitch' just before their final examinations. We were being told why commercial law or criminal law would be such a good choice. Then it was time for Professor Drion to speak in favour of civil law. After one-and-a-half sentences, he stopped, looked at us, and said: 'You know, ladies and gentlemen, it doesn't really matter what you choose: just as long as you're brilliant.' I can still hear and see him saying that, an indelible impression. I chose private law, but in my professional life I have mainly worked with criminal law. 28 years ago, Professor Drion stood here and looked back on the 50 years since 26 November 1940. I have tried to follow his exhortation. I dedicate this lecture to him.

I would like to thank Hiltje and Theo ten Kate for so generously taking the time to speak with me about their father and father-in-law respectively.

I am happy to have been given the chance to further elucidate the topic of human trafficking from this place. Last year I stepped down as the National Rapporteur and at that time I thanked everyone who had played a part in my career, not knowing that I would have another opportunity. I will seize

this opportunity to thank Suzanne Heerdink for the groundbreaking work that she did in the estimate report that I mentioned earlier. A truly innovative use of statistics, which will help to advance the fight against human trafficking.

I also thank Luuk Esser and Femke Eisma, who read my text, sparred with me and gave me valuable advice.

And I thank the listeners for their attention.

I have spoken.