Contents

List of Contributors xv

Introduction 1

SECTION 1: HISTORICAL READINGS OF THE LAW OF SLAVERY

1. The Nature of Slavery, Antony Honoré 9

2. The Law of Slavery and the European *Ius Commune*, R.H. Helmholz 17

A. The *Corpus Iuris Civilis* and the *Corpus Iuris Canonici* 19
B. The Problem of Definition 21
C. Legal Developments 23
D. Conclusion 37

3. Definitions and Conceptions of Slave Ownership in Islamic Law, Bernard K. Freamon 40

A. The Emergence of an Islamic Approach to Slavery 41
B. The Islamic Legal System and its Approach to Property and Ownership 43
C. Slavery in the *Qur'an* 49
D. Slavery and Slave Ownership in the *Sunnah* 52
E. The *Fiqh* of Slavery 53
F. Conclusion 59

4. The Definition of Slavery in Eighteenth-Century Thinking: Not the True Roman Slavery, John W. Cairns 61

A. Roman, Early Modern, and Modern Definitions 61
B. Eighteenth-Century Cases and the Meaning of 'Slavery' 68
C. Roman Law and Scottish Cases 72
D. Judicial Opinions and the Nature of Slavery 78
E. Understanding the Modern Law on Slavery 81
F. Conclusion 83

5. From Consensus to Consensus: Slavery in International Law, Seymour Drescher 85

A. Before Antislavery and Abolitionism 85
B. Abolition and International Law 90
C. Conclusion 101

SECTION 2: THE AMERICAN EXPERIENCE: BLURRED BOUNDARIES OF SLAVERY

6. Slavery in the United States: Persons or Property?, Paul Finkelman 105

A. Slavery, the Common Law, and Colonial America 105
B. Slaves as Persons and Property in the Revolution 115
C. Slavery and the Constitutional Convention 116
D. Implementing the Constitution: The African Slave Trade 120
E. The Supreme Court and Africans as People and Property: *The Antelope Case* 122
F. Fugitive Slaves as Property 124
G. *Dred Scott* and Race: The Final Definition of the Slave 127
H. Conclusion: Emancipation and the Definition of Slaves 130

7. To Indent Oneself: Ownership, Contracts, and Consent in Antebellum Illinois, Allison Mileo Gorsuch 135

A. Slave or Servant? The Wrong Legal Question 136
B. Creating the Statutory Framework 138
C. Forming Contracts 140
D. Transfer and Sale of Contracts 142
E. Performance, Consideration, and Consent 144
F. Challenging Consent After Statehood 148
G. Conclusion 150

8. Under Color of Law: *Siliadin v France* and the Dynamics of Enslavement in Historical Perspective, Rebecca J. Scott 152

A. The Dynamics of Enslavement: Santiago and New Orleans 156
B. The Case of Adélaïde Métayer/Durand 157
C. Enslavement as Process 161
D. Conclusion 162

9. The Rise, Persistence, and Slow Decline of Legal Slavery, Stanley L. Engerman 165

A. The Voices of Slaves 166
B. Ending Legal Slavery 171
C. Continued Emancipation 173
D. Conclusion 176

10. The Abolition of Slavery in the United States: Historical Context and its Contemporary Application, William M. Carter, Jr. 177

A. Drafting the Thirteenth Amendment 177
B. Reconstruction and the End of Reconstruction 182
C. The Thirteenth Amendment and Contemporary Slavery 186
D. Governmental and Private Action in Support of Slavery 191

E. Redressing the Legacy of Slavery 194
F. Conclusion 196

SECTION 3: THE 1926 DEFINITION IN CONTEXT

11. The Legal Definition of Slavery into the Twenty-First Century, Jean Allain 199
A. 1922–1956—Establishing the Legal Regime 200
B. 1966–1998—The Legal Regime Gives Way 209
C. 1998 Onwards—Engaging the Legal Regime 214
D. Conclusion 218

12. Seeking to Understand the Definition of Slavery, Robin Hickey 220
A. The Drafting Process 221
B. Describing the 'Incidents of Ownership' 223
C. Ownership and Modern Slavery 232
D. Understanding Article 1 236
E. Conclusion 241

13. The Concept of Property and the Concept of Slavery, J.E. Penner 242
A. The 'Powers Attaching to a Right of Ownership' 243
B. What is Slavery? 244
C. Interpreting the Convention Definition 248

14. Defining Slavery in all its Forms: Historical Inquiry as Contemporary Instruction, Joel Quirk 253
A. Defining Slavery in all its Forms 256
B. Historical Inquiry as Contemporary Instruction 265
C. Conclusion 276

SECTION 4: CONTEMPORARY SLAVERY

15. Slavery in its Contemporary Manifestations, Kevin Bales 281
A. Defining Slavery 281
B. Estimating the Extent of Slavery 286
C. Slavery and the Global Economy 288
D. Modern Slavery in the UK and the US 299
E. The Moral Economy of Slavery 300
F. Conclusion 303

16. Contemporary International Legal Norms on Slavery: Problems of Judicial Interpretation and Application, Holly Cullen 304
A. Grappling with the 1926 Definition 305
B. Why Control is Relevant: The Idea of Slavery as Disability 318

C. How These Decisions Could Have Used the 'Powers Attaching to the Right of Ownership' More Explicitly 319
D. Conclusion 320

17. Trafficking, Gender and Slavery: Past and Present, Orlando Patterson 322

A. The Nature of Slavery: Traditional and Modern 323
B. Kevin Bales's View of 'Old' and 'New Slavery': A Critique 329
C. The Gendered Nature of Trafficking and Slavery in Traditional Societies 335
D. Trafficking, Gender and Slavery Today 343
E. Sexual Slavery Today 353
F. Conclusion 359

18. Professor Kevin Bales's Response to Professor Orlando Patterson 360

19. Rejoinder: Professor Orlando Patterson's Response to Professor Kevin Bales 373

Appendices 375
2012 Bellagio-Harvard Guidelines on the Legal Parameters of Slavery 375
1926 Slavery Convention 381
1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 386
Index 393