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From White Slavery to Human Trafficking

Each year an estimated 800,00 to 900,000 human beings are bought, sold, or forced across the world's borders . . . There's a special evil in the abuse and exploitation of the most innocent and vulnerable. The victims of sex trade see little of life before they see the very worst of life – an underground of brutality and lonely fear. Those who create these victims and profit from their suffering must be severely punished. Those who patronize this industry debase themselves and deepen the misery of others. And governments that tolerate this trade are tolerating a form of slavery.

—George W. Bush, Address to the UN, 2003

All bordering processes are a combination of ordering and othering.

—Nira Yuval-Davis, Georgie Wemyss, and Kathryn Cassidy, *Bordering*

In his February 2019 State of the Union Address to Congress, US president Donald Trump warned that 'human traffickers and sex traffickers take advantage of the wide-open areas between our ports of entry to smuggle thousands of young girls and women into the United States and to sell them into prostitution and modern-day slavery'.[1] Throughout his presidency, Trump repeatedly linked human trafficking to the need to strengthen the US border with Mexico. This trope of criminal gangs transporting vulnerable women and children across borders to prostitute them has been an enduring feature of human-trafficking discourse since the turn of the twentieth century when the first international treaties were adopted to end the 'white slave trade'.[2]

Historically, antitrafficking campaigns reflected anxieties over women's mobility and coincided with intense periods of globalisation.[3] 'White slavery' and

[1] Trump, 'State of the Union Address'.
[2] Legg, 'The life of individuals', 647–664.
[3] Day, 'The re-emergence of "trafficking"', 822.

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'trafficking' functioned, as many historians have shown, as moral panics. During these panics, states gave immigration bureaus and police the power to patrol borders and surveil the marginalised, and often racialised, women who were labelled as 'prostitutes' and 'victims' of men who were called 'traffickers' and 'pimps'.[4] Then, as now, white slavery and human trafficking functioned as cultural myths that constructed particular conceptions of migration and expressed anxieties about 'national identity, women's increasing desire for autonomy, foreigners, immigrants, and colonial peoples'.[5] Stereotypes about race, gender, sexuality, and mobility are enduring features of antitrafficking policies. But today the fear no longer is of 'white' European women being trafficked to the colonies; now, the concern is of 'non-Western' women being transported into 'Western' countries.[6]

This shift occurred in the early 1990s when many states believed the political instability caused by the collapse of the Soviet Union, economic liberalisation, and globalisation was fuelling transnational criminal networks engaged in trafficking in drugs, people, and weapons, and associated crimes such as money laundering, corruption, and possibly even terrorist financing.[7] Destination countries in Europe, North America, and Australia were also apprehensive that illegal migration and migrant smuggling were undermining national sovereignty.[8] Globalisation and mass mobility fuelled fears over border insecurity.

In 1994, when the UN discussed the need for an international convention to foster interstate cooperation to combat organised crime, the United States promoted the idea of a separate protocol dedicated to human trafficking.[9] In 2000, the United Nations General Assembly adopted the Convention against Transnational Organized Crime, which was supplemented by three specific optional protocols devoted to firearms, migrant smuggling, and human trafficking, respectively. These international criminal-law instruments were intended to address the 'dark side' of globalisation, which one UN official described as the 'unrelenting growth of cross-border illegal activities ... that threaten the institutions of the State and civil society in many countries'.[10]

[4] Hetherington and Laite, 'Introduction to the issue of trafficking', 18.
[5] Doezema, 'Loose women or lost women?', 24.
[6] Ibid., and Fukushima, *Migrant Crossings*, 40.
[7] Thachuk, *Transnational Threats*.
[8] Gallagher, *The International Law of Human Trafficking*; and Lloyd and Simmons, 'Framing for a new transnational legal order', 400–438.
[9] Charnysh, Lloyd, and Simmons, 'Frames and consensus formation', 323–351.
[10] Heine and Thakar, *The Dark Side of Globalization*. Sandro Calvani was the UN representative in East Asia and the Pacific for drug control and crime prevention, based in Bangkok.

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The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking Protocol) is the linchpin of what has become the global campaign to end modern slavery. In 2016, the UN made this campaign official when it adopted the eradication of forced labour, human trafficking, and modern slavery by 2030 Target 8.7 of its Sustainable Development Goals. Over the past twenty years, human-trafficking policy has expanded from an initial state-centred focus on using the criminal law to prosecute traffickers who transport women and children across international borders for the purpose of sexual exploitation to a multifaceted and transnational ensemble of private and public actors united by the goal of eradicating modern slavery. This global antislavery network deploys a range of governance strategies from criminal laws prohibiting the purchase of sexual services and strict border controls to supply-chain transparency and due-diligence legislation requiring large corporations to engage in social responsibility initiatives (such as reporting, social auditing, and remediation) to trade rules banning the importation of slave-made goods.

How did this governance shift happen, and what are its implications for how we understand unfree labour? To answer these questions, this chapter explores how influential public actors, especially key states such as the United States and prominent international organisations associated with the UN, framed and sought a legal solution to the problem of human trafficking at the international level. As we shall see, to accommodate sharp disagreements over the meaning of human trafficking and to facilitate the protocol's speedy adoption, the UN's definition was broad. This manoeuvre accommodated, but did not resolve, social contestation over the meaning of 'human trafficking.' The legal instability that resulted generated a policy spiral and the proliferation of governance strategies.[11]

The United States stepped in to stabilise the definition of human trafficking and steer antitrafficking policy. It constructed an apparatus to discipline states that did not follow its lead to stop transnational sexual exploitation. UN-related institutions responded by insisting on an approach to human trafficking that included labour exploitation and offered greater protection for the rights of victims. The governance strategies for tackling different types of human trafficking were deeply gendered. Sexual exploitation was seen as primarily involving women and girls, and the key issue was whether the purchase of sexual services should be abolished using criminal law. Labour exploitation, by contrast, was seen as involving mostly men, and the goal was to regulate and improve, not to abolish, this labour.

[11] Broad and Turnbull, 'From human trafficking to modern slavery', 121.

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Policy actors and stakeholders endorsed what has come to be known as a multifaceted or 'holistic' approach to human trafficking and modern slavery. This approach emphasises the alignment of different legal domains – criminal, immigration, labour, human rights, business regulation, and trade – to address different aspects of the problem of modern slavery.[12] Under this approach, different agencies and actors draw on their expertise and governance tools to tackle different aspects of the problem. Combined, they draw the borders between free and unfree labour and between sexual and labour exploitation while the legal assemblage of jurisdiction keeps these different domains from clashing .

TRAFFICKING IN HUMAN BEINGS: CRIME, PROSTITUTION, AND MIGRATION

The collapse of the Soviet Union in the early 1990s triggered fears that organised crime was threatening national security by undermining governance and territorial integrity.[13] Increasing economic integration across borders through trade liberalisation, structural adjustment policies in developing countries, and a seemingly insatiable demand for low-wage labour in developed and developing countries also fuelled the movement of people internationally. Legal and illicit cross-border flows of goods, money, and people increased, and states associated much of this cross-border movement with organised crime, which they viewed as a threat to local economies and the rule of law.[14]

Sensational media reports of women and children trafficked into prostitution by criminal gangs circulated widely in the mid-1990s.[15] Developed states, especially the United States and in the European Union, linked human trafficking to other crimes, treating it as part of a broader problem of combatting transnational crime and criminal networks.[16] Tackling the problem of human trafficking also coincided with destination countries' concern to stop irregular migrants from crossing their borders.[17]

[12] Edwards, 'Traffic in human beings', 9–53; and Gallagher, *The International Law of Human Trafficking*.
[13] Charnysh, Lloyd, and Simmons, 'Frames and consensus formation', 326.
[14] Shelley, *Human Trafficking*; and Anderson, *Us and Them?*, 139.
[15] Andrijasevic, 'Beautiful dead bodies', 24–44; and Sanford, Martínez, and Weitzer, 'Framing human trafficking', 142.
[16] Lloyd and Simmons, 'Framing for a new transnational legal order', 400–438.
[17] Dottridge, 'Trafficked and exploited', 63.

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In 1994, the UN responded to these fears by convening a World Ministerial Conference on Organized Transnational Crime. Attended by 142 countries, it led to the establishment of a group of experts with a mandate to draft a multilateral convention to promote cooperation in combatting transnational crime.[18] Optional protocols devoted to firearms, migrant smuggling, and human trafficking, respectively, augmented the transnational crime convention. The United States, which was considered a major destination country, strongly influenced the process. The international expert group operated out of the United Nations Office on Drugs and Crime (UNODC), and it, along with the Clinton administration, developed and promoted a prosecutorial and criminal-law approach to resolving the problem of human trafficking.[19]

The Clinton administration's emphasis on putting a stop to the trafficking of women and children as part of the government's violence against women agenda overshadowed its recognition that trafficking also included sweatshop labour and domestic servitude.[20] This legal and policy frame shaped the approach of the intergovernmental Ad Hoc Committee, which was charged with drafting the protocol. It resonated with existing international antitrafficking treaties and fit within the established transnational crime-policy domain. It also made human trafficking easy to 'securitize', and it could be used to justify stronger law enforcement and border regimes.[21]

The 2000 Human Trafficking Protocol was a palimpsest; a series of international treaties adopted at the turn of the twentieth century formed the gendered and racialised canvas upon which it was drawn.[22] Beginning in 1904, a handful of mostly northern European countries proposed a series of international conventions to address the problem of 'white slavery'. The spark was a panic focused on European women procured to work as prostitutes in the colonies, which erupted in the context of ongoing moral and public health crusades to stop prostitution.[23] These international laws were informed by a highly gendered notion of moral purity and a view of migration as a corrupting influence. The term 'white slavery', with its racialised

[18] Charnysh, Lloyd, and Simmons, 'Frames and consensus formation', 327.
[19] Chuang, 'The United States as global sheriff', 442; Gallagher, *The International Law of Human Trafficking*, 56–59; and Lloyd and Simmons, 'Framing for a new transnational legal order', 422.
[20] Lobasz, *Constructing Human Trafficking*, 71.
[21] Charnysh, Lloyd, and Simmons, 'Frames and consensus formation', 345. After 9-11, border security became even more important.
[22] Miller and Zivkovic, 'Orwellian rights', 33.
[23] Quirk, *The Anti-Slavery Project*, 222; and Legg, 'The life of individuals', 647–664.

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connotations, was dropped in 1921 by the League of Nations when it adopted the International Convention for the Suppression of the Traffic in Women and Children.[24] The idea behind the 1921 convention was to use the criminal law to reduce the supply of trafficked women and girls by making trafficking a criminal offence and to 'rescue' them from a life of prostitution. It was only in 1949, when the UN adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, that men were treated along with women and children as potential victims.[25] At the same time, this convention also removed the transnational dimension and criminalised all forms of procurement and exploitation for the purposes of prostitution regardless of the consent of the person involved.

The legacy of these early antitrafficking conventions on the 2000 protocol is easy to see; all are lodged in the domain of international criminal law and animated by concerns about prostitution and migration. Anxieties over women's sexuality and mobility were once again tied up with notions of national identity and sovereignty. But what distinguished the twenty-first-century protocol from its forebearers was its alignment of criminal law with women's rights and its emphasis on human rights.

Influential women's rights organisations that advocated using the criminal law to tackle sexual violence and protect women's rights were instrumental in forging the connections between sex trafficking, violence against women, and human rights in international law in the early 1990s.[26] The 1993 Vienna Declaration and Programme of Action was the first UN document to set sex trafficking within the broader frame of violence against women.[27] Two years later, eliminating trafficking in women and assisting victims of violence were planks in the UN's Fourth World Congress on Women's Action Platform in Beijing.[28] These initiatives helped to elevate human trafficking on the global policy agenda and to equate its elimination with women's rights. However,

[24] International Convention for the Suppression of the Traffic in Women and Children, adopted on 30 December 1921, 9 LNTS 415.

[25] Legg, 'The life of individuals', 647–664; Edwards, 'Traffic in human beings', 13; and Allain, 'White slave traffic', 12–13. Under the 1933 convention, the element of coercion was removed. See International Convention for the Suppression of the Traffic in Women of Full Age, Geneva, 11 October 1933, in force 24 August 1934, 150 LNTS 431; International Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 2 December 1949, in force on 25 July 1951, 96 UNTS 271.

[26] In 'Militarized humanitarianism meets carceral feminism', Elizabeth Bernstein dubs women's rights' advocates who took this approach 'carceral feminists'.

[27] UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23.

[28] Suchland, *Economies of Violence*, 49.

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they failed to address the controversial relationship between prostitution and human trafficking.

This issue is so divisive that it threatened to derail the drafting process for the protocol. The crux of disagreement was over consent in relation to the sale and purchase of sexual services, otherwise known as prostitution. States had a range of views on the treatment of prostitution, and so did social actors. The debate among self-defining feminist proponents of women's rights exemplifies the stark contrast in positions. Feminists affiliated with the Coalition Against Trafficking in Women (CATW) claimed that all prostitution, not simply coerced sexual services, was exploitative. CATW joined with Christian evangelicals and conservative groups to urge governments to criminalise the purchase of sexual services and to abolish prostitution as the best way of combatting human trafficking and protecting the rights of women.[29]

By contrast, another influential feminist group, the Global Alliance Against Traffic in Women (GAATW), distinguished between exploitative sex work that should be prohibited and sex work as a form of labour. It claimed that laws criminalising various aspects of the purchase of sexual services stigmatised sex workers and made them more, not less, vulnerable to exploitation. Indeed, GAATW and the broader Human Rights Caucus, which also included labour and human-rights advocates, initially wanted all mention of prostitution removed from the definition of trafficking. It insisted that not all sexual services were exploitative and that sexual and labour exploitation should be treated the same way.[30] However, it abandoned this position in the face of fierce opposition.[31]

The impasse over the status of prostitution was broken by the adoption of a definition of 'trafficking in human beings' that expanded 'exploitation' beyond prostitution to include forms of exploitation such as slavery and forced labour.[32] Article 3 of the Trafficking Protocol defines the crime of 'trafficking in persons' as

> the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

[29] Chuang, 'Exploitation creep', 609–649.
[30] Munro, 'A tale of two servitudes', 91–114; and Kotiswaran, *Dangerous Sex, Invisible Labour*, 36–37.
[31] Doezema, 'Now you see her, now you don't', 79.
[32] Chuang, 'The United States as global sheriff', 443–445.

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> Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.[33]

According to this definition, human trafficking consists of three elements: an action, a means, and a purpose. The *action* requires some type of movement (recruitment, transportation, transfer, harbouring, or receipt of a person). The *means* requires some form of coercion or abuse of power. But instead of defining 'exploitation', which is the *purpose* element of the crime, the protocol simply lists specific examples of exploitation, some of which are defined in other international legal instruments that function as minimum requirements.[34] The definition, which refers to both prostitution and sexual exploitation, is equivocal about the relationship between them. Essentially, the protocol's broad definition of human trafficking delegates the resolution of these controversial issues to member states.

The protocol's reference to forms of exploitation (such as slavery and forced labour) defined and prohibited in other international instruments partly allayed international human-rights institutions' and activists' concern that the international human-trafficking law was too focused on prosecuting sex trafficking at the expense of other forms of exploitation.[35] Groups and institutions such as Amnesty International, the Office of the High Commissioner for Human Rights, the United Nations International Children's Emergency Fund (UNICEF), and the International Organization for Migration (IOM) framed trafficking as a problem of victim protection and emphasised the rights of trafficked persons to work and migrate with dignity.[36]

This advocacy led to the protocol's explicit recognition of the human rights of victims of trafficking. However, unlike mandatory criminalisation of human trafficking, state obligations regarding the human rights of victims are discretionary and linked to the willingness of victims to assist with prosecuting their

[33] UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, Art. 3.

[34] The definition goes on to provide that the consent of the victim to the intended exploitation is irrelevant in cases where any of the means set out in the definition are used. In 'Exploitation creep and the unmaking of human trafficking law', Janie Chuang explains that this subparagraph was intended to ensure that traffickers would not use a victim's consent as a defence. However, the group arguing for the abolition of prostitution claimed that this provision meant that all prostitution, regardless of whether it is consensual, is caught in the definition of 'exploitation'.

[35] Gallagher, *The International Law of Human Trafficking*.

[36] Gallagher, 'Human rights and the new UN protocols', 975–1004; and Charnysh, Lloyd, and Simmons, 'Frames and consensus formation', 330.

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traffickers. States also objected to protecting victims of trafficking from prosecution for status-related offences involving illegal migration, undocumented work, and prostitution. They claimed mandatory protection would invite victims to raise such a defence, thus interfering with a state's ability to use criminal law to combat irregular migration and prostitution.[37]

The protocol's conditional and tepid commitment to the human rights of victims resulted from states' unwillingness to agree to an international legal instrument that would require them to recognise the rights of trafficking victims. These rights raised controversial questions about victims' access to public benefits and their immigration status, residency, and repatriation, questions that relate to the essence of state sovereignty. In a context where states were jealous in guarding their sovereignty, human-rights advocates regarded the explicit incorporation of the human rights of trafficking victims in the protocol as an achievement. They believed they could build on these references to construct binding obligations on states to protect them.[38]

The relationship between human trafficking and illegal migration facilitated by others, commonly known as human smuggling, was another contentious issue. States saw human trafficking as part of the broader problem of illegal migration, and they wanted to draw clear and rigid borders between victims of human trafficking, who deserved protection, and illegal migrants, who ought to be prosecuted and deported. Human-rights advocates, by contrast, were concerned that illegal migrants, who often rely on others to cross borders, are also vulnerable to exploitation. They argued that it is difficult to sort out victims of trafficking from migrants who are smuggled since, in practice, human trafficking and migrant smuggling are often entwined processes.[39]

The UN's solution was to provide two separate protocols, one that dealt with human trafficking and the other with smuggling. They were adopted by the UN General Assembly on the same day.[40] The two protocols were intended to do different things. The Trafficking Protocol protects individuals from another's predation, whereas the Smuggling Protocol safeguards the state from individuals who violate their immigration laws. Coercion is central to the definition of trafficking (it is the means element of the crime) whereas illegal

[37] Gallagher, 'Human rights and the new UN protocols', 991.
[38] Fitzpatrick, "Trafficking and a human rights violation'.
[39] Ibid.
[40] UN General Assembly, Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000.

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migration is the crux of smuggling.[41] Article 3 of the Smuggling Protocol defines migrant smuggling as 'the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident'.

But even though the Trafficking Protocol's definition of trafficking makes no reference to the migration status of the person being trafficked, its focus is transnational trafficking involving organised crime (Article 4). Article 11 explicitly calls on states to strengthen border controls and provides them with a great deal of discretion on how to implement them. It even requires commercial carriers to conduct immigration-related checks at airports outside their territory.[42] Indeed, both protocols reinforce the idea that irregular migration is a crime and affirm the right of states to control their borders and to extend their border controls beyond their national territory.[43]

The Trafficking Protocol reflects a state-centric understanding of human trafficking that diagnoses the problem as a combination of organised crime and illegal migration. In the state-dominated process of the UN, the criminal-law and immigration-control approach to human trafficking easily prevailed over approaches concerned with the human rights of victims and the need for safe migration paths. The United States insisted on this approach, key international institutions promoted it, it resonated with earlier approaches to trafficking, it fit within an existing transnational criminal-law framework, and it coincided with the interests of states to preserve their sovereignty in the face of organised transnational crime.

Yet the speed with which the protocol was negotiated, within two years, is attributable to both its soft nature (there was no oversight mechanism to ensure that states fulfilled their obligations once they ratified the protocol) and to its flexibility (the definition of exploitation allowed states to develop their own definitions of human trafficking). While these features were necessary to accommodate conflict and co-opt criticism, ensuring the protocol's rapid adoption, they shifted debate from an international arena involving nation-states and international institutions, agencies, committees, and experts to individual nation-states. The resulting legal instability meant that the problem of human trafficking could be hitched to a range of different governance agendas.[44]

[41] Gallagher, *The International Law of Human Trafficking*, 31.
[42] Rodríguez-López, '(De)constructing stereotypes', 61–72.
[43] Miller and Baumeister, 'Managing migration', 15–32.
[44] McCarthy, 'Human trafficking and the new slavery', 223; and Kotiswaran, *Revisiting the Law*, 4.

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THE UNITED STATES' WAR ON SEX TRAFFICKING: EXERCISING DISCIPLINARY POWER ACROSS BORDERS

The Trafficking Protocol was intended to provide a framework for states to implement their own criminal laws and to develop coordinated approaches with other states and international institutions to tackle a global problem. However, the broad definition of human trafficking and the absence of a mechanism to insist on human-trafficking legislation undermined that goal. The United States stepped in to fill the governance gap by putting in place an oversight mechanism designed to have a global reach. The United States' attempt to become what Janie Chuang so aptly calls the 'global sheriff' of antitrafficking law and policy, in turn, prompted UN agencies and institutions to develop their own monitoring, reporting, and ranking systems.[45] This competition over global governance led to a thickening of institutions involved in antitrafficking and a proliferation of governance strategies, mechanisms, and goals.

Just weeks before the UN General Assembly adopted the Trafficking Protocol, the United States implemented the Victims of Trafficking and Violence Protection Act of 2000 (TVPA), signed into law by President Clinton. This law was hailed as 'a shining example of bipartisan consensus'.[46] Indeed, Republican congressman Chris Smith declared that the law 'has attracted such broad support not only because it is pro-women, pro-child, pro-human rights, pro-family values and anti-crime, but because it addresses a problem that absolutely cries out for a solution'.[47] Despite its name and the Clinton administration's promotion of the 'three P approach' to human trafficking (*preventing* human trafficking, *prosecuting* traffickers, and *protecting* victims), the TVPA was primarily a criminal-law initiative, and the victim-protection elements, especially when it came to migrants, were limited to deserving victims who assisted with prosecution.[48] The TVPA profoundly shaped the global approach to human trafficking, even though its definition of human trafficking differed from that in the protocol.[49]

[45] Chuang, 'The United States as global sheriff', 437–494.

[46] Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-385, 114 Stat. 1464 (2000) (codified and amended in scattered sections of 8, 18, 22 USC); and Grant, 'Strange bedfellows', 11.

[47] Lobasz, *Constructing Human Trafficking*, 198.

[48] The protection offered to migrants was especially contentious. At the last minute, Republicans insisted that the number of visas available to victims of trafficking, who were required to assist with prosecutions to be eligible, be capped at 5,000. See Doonan, 'A house divided', 273–293.

[49] The TVPA's definition of trafficking is more limited than that provided in the protocol as it only covers serious exploitation. However, it also includes involuntary servitude, which is not

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The TVPA established a comprehensive domestic antitrafficking regime, but what distinguished it from antitrafficking laws in other countries was its extraterritorial reach. The TVPA set up a monitoring and compliance system to 'persuade' other states to introduce and enforce their own antitrafficking legislation.[50] The State Department established the Office to Monitor and Combat Trafficking in Persons (TIP Office), led since 2003 by the United States Ambassador-at-Large to Monitor and Combat Trafficking in Persons. The TIP Office began issuing annual *Trafficking in Persons Reports* (TIP Reports) in 2001, two years before the UN's Human Trafficking Protocol received enough ratifications to be brought into effect in December 2003.

From the beginning, the TIP Reports ranked countries into three tiers (they subsequently added a tier two watch category) depending on the extent of meeting the minimum standards for eliminating trafficking. These standards include a range of mostly criminal-law and law-enforcement provisions and activities, although there are references to the rights of victims and prevention.[51] Countries that fail to comply with these minimum standards or to make 'significant' efforts to bring themselves into compliance run the risk of financial sanctions. The TVPA authorises the president to withdraw US financial assistance unrelated to trade or humanitarian goals to countries the United States considers not to have complied and to oppose them if they apply for funds from multilateral financial institutions such as the World Bank and International Monetary Fund.[52] The TVPA also offers incentives in the form of hundreds of millions of dollars to finance technical assistance to other states and antitrafficking work by international and domestic nongovernmental organisations (NGOs).[53] In this way, the US government set up a global antitrafficking apparatus to discipline states that did not meet its minimum standards and to reward those states that did.

President George W. Bush launched a crusade against human trafficking, declaring that 'human life is the gift of the Creator, and it should never be for sale'.[54] Under his administration, the US TIP Reports concentrated almost exclusively on cross-border trafficking for the purposes of prostitution, which

listed as a form of exploitation in the Trafficking Protocol's definition. See Dottridge, 'Trafficked and exploited', 64.

[50] Chuang, 'The United States as global sheriff', 439; and Gallagher, *The International Law of Human Trafficking*, 480.

[51] McGrath and Watson, 'Anti-slavery as development', 26.

[52] Gallagher, *The International Law of Human Trafficking*, 484–485.

[53] Chuang, 'The United States as global sheriff', 470; Weitzer, 'Moral crusade against prostitution', 33–38; and Merry, 'Counting the uncountable', 280.

[54] Lobasz, *Constructing Human Trafficking*, 174.

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had a trickle-down effect on other states.[55] News media in the United States focused on sex trafficking, and there was a dynamic and reciprocal relationship between the media, public perception, and policymaking.[56] Narratives of women and children transported across borders for the purposes of prostitution circulated broadly in support of this agenda: 'The stereotypical image of the victim is of a young, innocent, foreign woman tricked into prostitution abroad.'[57] The media highlighted lurid cases, presenting them as typical, and NGOs in the trafficking policy field had a vested interest in attracting media attention, funding, public involvement, and government support.[58] This depiction contributed to the creation of 'hierarchies of victims who are seen as deserving or undeserving of the state's protection and enforcement resources based on whether or not they fit this ideal type'.[59]

Supported by abolitionist feminists, mainline churches, evangelicals, and conservatives, the Bush administration's stance was that prostitution was per se exploitative and should be abolished.[60] Under Bush, the US government opposed 'prostitution and any related activities', maintaining 'that these activities should not be regulated as a legitimate form of work for any human being'.[61] It also imposed what came to be known as the 'prostitution pledge', denying US government funds to any programme that advocated for the legalisation of prostitution.[62] Antiprostitution organisations and activists rejected approaches to human trafficking that regarded exploitation as a result of labour-market inequalities for fear they would have the effect of legitimising prostitution as work.[63] Consent and choice were simply irrelevant when it came to sex work, when these were the features that made other forms of labour free. Sexual exploitation and prostitution were coded in gendered terms as women and children were seen as the primary victims. Law and policy focused on vigorously investigating and prosecuting sex trafficking, punishing traffickers, and strengthening borders.[64] Through the

[55] Berman, 'The left, the right, and the prostitute', 269–294; Chuang, 'The United States as global sheriff'; and Kotiswaran, 'Beyond sexual humanitarianism', 377.
[56] Sanford, Martínez, and Weitzer, 'Framing human trafficking', 153; and Bonilla and Mo, 'The evolution of human trafficking', 201–234.
[57] Andrijasevic and Mai, 'Trafficking (in) representations', 2.
[58] Weitzer, 'New directions in research on human trafficking', 6–24.
[59] McCarthy, 'Human trafficking and the new slavery', 227.
[60] Grant, 'Strange bedfellows', 14.
[61] United States, Department of State, *Trafficking in Persons Report, June 2008*, 24.
[62] Chuang, 'The United States as global sheriff', 469; and Milivojevic and Pickering, 'Trafficking in people', 594–595.
[63] Huckerby, 'Same, but different', 630.
[64] Milivojevic and Pickering, 'Trafficking in people', 595; and Chuang, 'Exploitation creep', 618.

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TIP Reports and this system of sanctions, the United States influenced the legal status of the commercial sex industry within other states.[65]

The United States planted itself firmly at the centre of the global governance of human trafficking by providing a comprehensive disciplinary apparatus. The TIP Reports are the hub of knowledge production about human trafficking, and despite extensive criticisms of their methodology, even by the US Government Accountability Office, they continue to circulate and influence policy.[66] The sanctions and incentives that constitute the TVPA's ranking regime had a profound influence on the way states and other social actors framed the problem of human trafficking. The United States' minimum standards effectively functioned as the global antitrafficking norm. Not only were they taken up by civil-society actors, by 2013, 182 countries had criminal laws fully or partially prohibiting trafficking.[67]

From 2001 to 2009, the Bush administration steered the global antitrafficking policy towards fighting organised crime, illegal migration, and prostitution. In doing so, it amplified the criminal and immigration legal domains in the global governance of human trafficking. Prostitution policy was regarded as the key contributing factor to human trafficking, while the possible impact of migration and labour policy was ignored.[68] Sex trafficking was portrayed as a form of sex slavery, and victim protection was seen almost exclusively in terms of rescue and redemption. The UN Protocol's broad definition of human trafficking was operationalised in ways that limited it to ideal victims – women and children who were clearly coerced into sexual exploitation.[69] Human rights were narrowly conceived as belonging to deserving victims, and a centrepiece of this 'victim-centred' approach was to hold human traffickers accountable through criminal investigations and prosecutions.[70] The Bush administration drew clear borders between sexual and labour exploitation even as it collapsed the borders between a human-rights and criminal-law approach to human trafficking.

[65] O'Brien and Wilson, 'Clinton, Bush and Obama', 123–137.
[66] Merry, 'Counting the uncountable', 282.
[67] McCarthy, 'Human trafficking and the new slavery', 233; and Merry, 'Counting the uncountable', 270.
[68] McCarthy, 'Human trafficking and the new slavery', 227.
[69] Hoyle, Bosworth, and Dempsey, 'Researching trafficked women', 769–779.
[70] Peters, *Responding to Human Trafficking*.

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PROLIFERATING JURISDICTIONS: FROM SEXUAL TO LABOUR EXPLOITATION

Faced with the United States' attempt to take over the governance of human trafficking policy, the UN and related institutions established their own governance mechanisms and attempted to influence the policy agenda, emphasising their different understandings of, and approaches to, human trafficking.[71] The UNODC, the protocol's home institution, treated human trafficking as a problem of transnational crime. Other international agencies such as the Office of the High Commission on Human Rights (OHCHR), the International Organization for Migration (IOM), and the International Labour Organization (ILO) adopted a human-rights approach, which they interpreted through their own institutional lens. The UN-related institutions assembled a global antitrafficking network that adopted a multifaceted approach.

In 2004, the UN set up an oversight mechanism for the Trafficking Protocol to act as a multilateral rival to the United States' system. It broadened the mandate of the Conference of Parties (COP) for the Convention against Transnational Organized Crime (the parent convention of the human trafficking protocol) to include monitoring, information exchange, and cooperation regarding human trafficking.[72] Made up of all states that ratified the protocol, COP was coordinated by UNODC, which supported a prosecutorial and criminal-law approach to human trafficking. While considerably more accountable than the TIP regime, which was backed by unilateral US sanctions, the UN's governance regime was substantially less effective. The COP lacks sanctioning powers, and its Implementation Review, which utilises a supportive peer-review process, was only fully in place in 2020.

The OHCRC, which was established by the UN in 1946 with a mandate to protect fundamental rights and freedoms, tried to pull antitrafficking initiatives into its domain. During the drafting stage of the Trafficking Protocol, the OHCHR had played a key role in expanding the definition of human trafficking beyond sexual exploitation and stressing the need to protect the human rights of victims.[73] Once the protocol was adopted, the OHCHR continued to

[71] Huckerby, 'Same, but different', 593–645; and Edwards, 'Traffic in human beings', 9–53.
[72] Gallagher, 'Human rights and human trafficking', 185–186.
[73] UN General Assembly, United Nations Convention against Transnational Organized Crime: Resolution, adopted by the General Assembly, 8 January 2001, A/RES/55/25; Charnysh, Lloyd, and Simmons, 'Frames and consensus formation', 329; and Gallagher, *The International Law of Human Trafficking*.

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fortify the human-rights approach to human trafficking. Its high commissioner, Mary Robinson, declared that the human rights of trafficked persons should be at the centre of all efforts to prevent and combat human trafficking.[74] In 2002, the OHCHR released the Guidelines on Human Rights and Human Trafficking, designed to promote the integration of a human-rights perspective into national, regional, and international antitrafficking laws, policies, and interventions. Two years later, it appointed a Special Rapporteur on Trafficking in Persons (STRIP), who had a mandate to focus on the human rights of victims, especially those of women and children,.[75] Unlike the regular reporting requirements imposed by the TIP and the COP, the special rapporteur's role was investigatory and ad hoc, the idea being that by documenting and exposing human-rights violations governments would be more likely to be held to account.[76] The OHCHR and its successor, the UN Human Rights Council (UNHRC), produced a substantial body of soft law embedding trafficking within the broader web of international human-rights instruments.[77]

The IOM (the leading intergovernmental organization in the field of migration since 1951) stressed the immigration aspects of human trafficking. In the mid-1990s, it was concerned that women were being transported across borders to work in the commercial sex sector, confounding smuggling, which is voluntary, with trafficking, which is not.[78] During the protocol's drafting process, the IOM, along with other members of the UN interagency group, repeatedly stressed the difficulty of distinguishing between the victims of trafficking and migrants who are smuggled as well as the importance of protecting victims' rights. Highlighting the role of irregular and forced migration in creating the conditions for exploitation, the IOM called on its member states to open up more opportunities for legal migration as a way of preventing human trafficking.[79] The IOM also developed a broad suite of countertrafficking initiatives,

[74] Dottridge, 'Collateral damage', 343.

[75] The STRIP is part of a system of investigatory mechanisms, charged with monitoring, advising, and publicly reporting on a human rights situation in a specific country or on a particular issue.

[76] Gallagher and Ezeilo, 'The UN Special Rapporteur', 916.

[77] Gallagher, *The International Law of Human Trafficking*. The council is made up of forty-seven United Nations member states, which are elected by the UN General Assembly. In 2007, it set up a set of procedures and mechanisms, including a complaints procedure, to ensure states meet their obligations. The council assumed the special procedures established by the former commission, including the special rapporteurs.

[78] The IOM is not a UN institution governed by the UN constitution, although it joined the UN system in 2016. IOM, *International Response to Trafficking*; Andrijasevic, 'Beautiful dead bodies', 24–44; and Gallagher, *The International Law of Human Trafficking*, 19.

[79] Huckerby, 'Same, but different', 627.

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assisting governments and nongovernmental organisations in strengthening policies and procedures to facilitate the identification, referral, protection, assistance, and repatriation of trafficked persons.[80]

For the ILO, the Trafficking Protocol was an opportunity to focus greater attention on forced labour, explicitly enumerated in the Trafficking Protocol as an example of exploitation. Founded in 1919, the ILO is regarded as the international 'House of Labour'. It became the first specialist institution of the UN in 1946 and it is the only UN organisation that is not comprised exclusively of member states as it also includes representatives of employers and workers. An observer in the process leading up to the Trafficking Protocol, the ILO stressed the linkages between its existing conventions, especially the two on forced labour, and the proposed protocol, which it regarded as necessary for combatting transnational organised crime.[81]

Initially, the ILO regarded human trafficking as a problem of crime and illegal immigration. However, in its 2005 report, *A Global Alliance against Forced Labour*, the ILO characterised trafficking as a subset of forced labour on the ground that the definition of trafficking includes the additional element of *movement* by the action of a third party *into* forced labour.[82] Estimating that 12.3 million people were in forced labour, of which trafficking accounted for 20 per cent and an estimated US$32 billion of illicit profits, the report contributed to a flurry of efforts to quantify both the number of people exploited by human trafficking and the profits that this exploitation generated.[83] Most significantly, the ILO's report on forced labour prompted other powerful social actors to consider labour as well as sex trafficking a major cause for concern.[84] As we shall see in Chapter 3, the ILO's entry into the antitrafficking policy terrain fuelled an approach to human trafficking and modern slavery that sees exploitation as rooted in labour-market structures that are best addressed using labour and market-based tools to enhance workers' bargaining power and capacities to resist.[85]

[80] Andrijasevic and Walters, 'The International Organization for Migration', 977–999; and Vigeswaran, 'Methodological debates', 199.

[81] Andrees and Aikman, 'Raising the barr', 362.

[82] ILO, *A Global Alliance against Forced Labour*, 7, 14. The Committee of Experts, one of the ILO's key supervisory bodies, confirmed that abusive practices such as slavery and human trafficking fall within the scope of the ILO's forced labour conventions, thereby expanding the reach of the ILO's initiatives. See ILO, *Eradication of Forced Labour*, 41.

[83] Plant, 'Trafficking for labour exploitation', viii; and Merry, 'Counting the uncountable', 273–304.

[84] Chuang, 'Exploitation creep', 619.

[85] Ibid., 620–622; Shamir, 'A labor paradigm', 76–135; and Andrees and Aikman, 'Raising the bar', 359–394.

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To impose some order and cooperation among its affiliate organisations, the UN in 2007 established the Inter-Agency Coordination Group against Trafficking in Persons (ICAT). While ICAT formally broadened the international approach to human trafficking beyond the criminal law to include the United Nations High Commissioner for Human Rights (UNHCHR), the ILO, and the IOM, the UNODC was assigned the coordinating role, further reinforcing the centrality of the criminal law. However, ICAT was unable to develop an overarching strategy capable of coordinating the different approaches to tackling human trafficking. Another UN initiative, the Global Initiative Against Trafficking (UN.GIFT), a network of predominantly UN institutions funded by a large donation from the Emirate of Abu Dhabi, supplanted ICAT by financing different UN institutions' antitrafficking efforts.[86]

The UN's multifaceted approach to human trafficking did not result in a coherent division of labour among the different international institutions.[87] Even within one organisation, there were overlapping institutions with different concerns. For example, the UNHCR had appointed a Special Rapporteur on trafficking in persons, especially women and children in 2004. Five years later, the UNHCR appointed a Special Rapporteur on contemporary forms of slavery.[88] In 2010, the General Assembly of the UN adopted a Global Plan of Action to Combat Trafficking in Persons that sought to integrate states' obligations to criminalise and prosecute traffickers with their obligations to respect the human rights of victims and it added a fourth 'p', *partnerships* between actors involved in antitrafficking action, to its strategic agenda.[89] But this plan did not resolve the differences in approaches to human trafficking taken by the international institutions.[90] While the ILO treated trafficking as a subset of forced labour and identified the need to regulate labour markets, the UNODC regarded forced labour as a subset of trafficking and stressed the need to strengthen criminal laws and border controls.[91]

[86] Dottridge, 'Trafficked and exploited', 75.

[87] Kotiswaran, *Revisiting the Law*, 28; and Dottridge, 'Trafficked and exploited', 64.

[88] Human Rights Council, Resolution 6/14, Special Rapporteur on contemporary forms of slavery, 28 September 2007, https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_14.pdf.

[89] In July 2010, the United Nations General Assembly adopted Resolution 64/293, endorsing the United Nations Global Plan of Action to Combat Trafficking in Person, which called ICAT to improve coordination and cooperation amongst relevant UN bodies, including UN human rights treaty bodies and mechanisms, and international organizations.

[90] Huckerby, 'Same, but different', 593–645; Dottridge, 'Trafficked and exploited', 342–353; and Kotiswaran, *Revisiting the Law*.

[91] Merry, 'Counting the uncountable', 273–304.

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These different institutions are not only lodged in different legal domains, but they also have different understandings of the cause of the problem of human trafficking and the groups most likely to be its victims. The organised crime frame focuses on the actions of individual criminals and ignores the structural problems that may encourage migration and exploitation in the first place, whereas a labour approach concentrates on labour-market structures and imbalances of power.[92] Different governance strategies and mechanisms were adopted for sexual and labour exploitation, reinforcing, in turn, that they are different kinds of exploitation. A dense assemblage of institutions, social actors, and discourses involved in antitrafficking initiatives and policies with different agendas, priorities, and ideologies emerged at the global level.[93]

THE SHIFTING AXIS OF THE UNITED STATES' ANTITRAFFICKING GOVERNANCE STRATEGY

In 2012, President Obama embraced 'modern slavery' as the true name of human trafficking. Proclaiming January as the National Slavery and Human Trafficking Prevention Month, he drew an explicit parallel with Abraham Lincoln's Emancipation Proclamation. Although he acknowledged the country's historical 'stain' of slavery, Obama cast the United States as 'a leader in the global movement to end slavery' and a 'beacon of hope to people everywhere who cherish liberty and opportunity'.[94] By reframing human trafficking as modern slavery, his administration expanded the US governance initiatives to include forced labour, adding them to existing measures designed to tackle sexual exploitation and prostitution, thereby bringing US antitrafficking policy into alignment with the multifaceted approach adopted by UN institutions.

The Obama administration did not repeal the Bush administration's anti-prostitution pledge. In fact, it attempted unsuccessfully to defend the ban against a legal challenge brought by two NGOs that it violated their first amendment right to free speech.[95] Over time, the Obama administration

[92] Kempadoo, 'Abolitionism', vii–ix; and Shamir, 'A labour paradigm', 76–136.
[93] Gómez-Mera, 'The global governance of trafficking in persons', 302–326.
[94] Obama, 'Presidential Proclamation', 2015.
[95] *Agency for International Development v. Alliance for Open Society International, Inc.*, 570 U.S. 205 (2013). The Supreme Court struck down the ban as it pertained to domestic individuals and organizations. However, seven years later, it upheld the ban as it applies to foreign organisations on the ground that they are not entitled to protection under the US Constitution. *USAID v. Alliance for Open Society* (alternatively called *Alliance for Open Society II*), 591 U.S. (2020).

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moved away from a position that equated prostitution with trafficking.[96] Accommodating diverse groups with different policy orientations under the broad rubric of 'modern slavery' enabled the Obama administration to maintain a bipartisan consensus over antitrafficking policy in the face of growing Republican opposition to visas for trafficking victims as part of their increasingly hardline anti-immigration policies.[97]

The new elements in the US government's approach to human trafficking were its emphasis on labour trafficking in the United States and forced labour in transnational supply chains. Obama appointed Luis C. de Baca to the post of antitrafficking ambassador because of his record in prosecuting US agricultural employers for using forced labour. Together with the Department of Labour and the Equal Employment Opportunities Commission, the Office to Monitor and Combat Trafficking in Persons targeted traffickers in the United States who exploited migrant workers.[98] The Dodd–Frank Wall Street Reform and Consumer Protection Act, which was signed into law by Obama in 2010, contained a provision imposing an obligation on companies to conduct supply-chain due diligence and, where necessary, perform third-party verification to ensure that they had not sourced 'conflict minerals', which were likely to have been obtained by using forced labour, needed for the fabrication of their products.[99]

Attention to labour trafficking increased during Obama's second term. In 2012, Obama issued an executive order strengthening the protections against trafficking in federal contracting by forbidding federal contractors from charging recruitment fees to workers and confiscating identity documents. The order also required federal contractors to undertake antitrafficking compliance measures, including awareness training, whistle-blower protection, and housing and recruitment plans. Contractors who performed work abroad

[96] O'Brien and Wilson, 'Clinton, Bush, and Obama', 195, 204.

[97] Doonan, 'A house divided', 273–293. The Wilberforce Act 2008 prefigured a more accepting attitude to migrants who are victims of trafficking by protecting unaccompanied child minors and extending visas to those who were unwilling or unable to assist prosecutors.

[98] Chuang, 'Exploitation creep', 609–649.

[99] 'Conflict minerals' refers to raw materials or minerals that come from a particular part of the world where conflict is occurring and affects the mining and trading of those materials. Dodd–Frank Wall Street and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (2010), 12 USC 53. In 2010, the California legislature passed the California Transparency in Supply Chains Act of 2010, Californian Civil Code, sec. 1714.43, with the goal of informing consumers and businesses about companies 'efforts to address slavery and human trafficking in the supply chain, so that customers can consider this information when making their purchasing decisions.' The legislation does not require companies to make efforts to eliminate slavery and human trafficking.

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worth over US$500,000 had to develop human-trafficking and forced-labour risk assessments and compliance plans.[100]

The US government's focus on forced labour fuelled the efforts of labour advocates to frame their initiatives in the language of trafficking.[101] In 2015, Secretary of State John Kerry presented the 2015 Presidential Award for Extraordinary Efforts to Combat Trafficking in Persons to the Coalition of Immokalee Workers for pioneering a worker-driven governance model that eradicated labour trafficking in farms participating in its Fair Food Program.[102] That year, Congress closed the 'consumptive demand' loophole in Section 307 of the US Tariff Act, which permitted the import of products mined, produced, or manufactured wholly or in part by forced labour so long as they were not domestically produced in such quantities as to meet US consumption needs. With the removal of this clause, the import of all goods into the United States made with forced labour was prohibited.[103] This initiative led to a flurry of 'withhold release orders' barring goods such as tobacco from Malawi and cotton from Turkmenistan from entering the United States on the ground that these products were made with forced labour.[104] On the cusp of leaving office, Obama called on the United States to address forced labour in supply chains, encouraging citizens to be 'conscientious consumers'.[105]

The change in the United States' domestic antitrafficking policy under Obama was also reflected in the TIPS' naming, shaming, and sanctioning regime. The TIP Reports were no longer predominantly preoccupied with transnational sex trafficking and prostitution; they began to concentrate much more on labour exploitation.[106] With the switch in focus of antitrafficking policies, the identities of the reported victims changed as men outstripped women and children as the majority of victims.[107] Under Obama, the TIP Reports adopted a much more 'holistic approach' to the problem of human

[100] Strengthening Protections Against Trafficking in Persons in Federal Contract, Executive Order 13627, 25 September 2012.
[101] Chuang, 'Exploitation creep', 609–649.
[102] John Kerry, 'Remarks at the White House Forum'.
[103] In February 2016, President Obama signed the US Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114-125, 19 USC 4301, into law. Section 910 of the Act closed a loophole in the Tariff Act of 1930, by removing the 'consumptive demand' clause.
[104] Cimino-Isaacs, Casey, and O'Reagan, 'Section 307 and U.S. imports of products of forced labor', 7.
[105] Obama, 'Presidential Proclamation', 2017.
[106] Chuang, 'Exploitation creep', 609–649; Kotiswaran, *Revisiting the Law*, 2017; and Quirk, 'When human trafficking means everything and nothing', 69–96.
[107] Sanford, Martínez, and Weitzer, 'Framing human trafficking', 151.

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trafficking in which different types of human trafficking – such as sexual exploitation, child soldiers, and forced labour – are sorted into the appropriate legal domain.

But the US government's emphasis on labour exploitation did not survive the 2016 federal election. The Trump administration favoured criminalising the demand for sexual services, which curried favour with evangelical and conservative groups. Endorsed by Ivanka Trump, in 2018, the Fight Online Sex Trafficking Act–Stop Enabling Sex Traffickers Act (FOSTA-SESTA) was passed into law with bipartisan support.[108] By holding websites accountable for sex work facilitated on their platforms, this law was designed to disrupt the market for commercial sex.[109]

The Trump administration also sought to repeal the disclosure and due-diligence provisions in the Dodd–Frank Act, and the secretary of labour recommended slashing funding for the Department of Labor's International Labor Affairs Bureau, charged with countering human trafficking, child labour, and forced labour across the United States and the world. Meeting strong resistance, including from businesses such as Apple and Intel, the administration backpedalled on these proposals.[110]

Trade initiatives and import controls were the Trump administration's preferred methods for addressing forced labour.[111] The prohibition against forced labour in the labour chapter of the United States–Mexico–Canada Agreement, which entered into force in 2020, served to strengthen enforcement efforts relating to Section 307 of the Tariff Act, which US Customs officials were using to issue broad industry and countrywide importation ban orders.[112] The Uyghur Forced Labor Prevention Act, passed by the House in September 2020, includes a rebuttable presumption that all goods produced

[108] Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, 132 Stat. 1253, 18 USC 1 note, 47 USC 230 note.

[109] The administration's record on human-trafficking prosecutions belies its rhetoric. While there were over ten times as many federal prosecutions for sex trafficking as for labour trafficking in 2018, the number of prosecutions was minuscule: 213 federal prosecutions for sex trafficking and 17 for labour trafficking. See Krajeski, 'The hypocrisy of Trump's antitrafficking discourse', 43–65.

[110] Pilkington, 'Trump labour secretary'; and Ganesan, 'Business and human rights during Trump', 264–270.

[111] The Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 encouraged enforcement of the Tariff Act of 1930's prohibition on the importation of goods made with forced labour. Cimino-Isaacs, Casey, and O'Reagan, 'Section 307 and U.S. imports of products of forced labor', 7.

[112] United States–Mexico–Canada Implementation Agreement, 13 March 2020, Pub. L. No. 116-113, 19 USC 29; and International Labor Rights Forum, 'Trade Subcommittee Hearing'.

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or manufactured in Xinjiang are made with forced labour, and thus prohibited under Section 307.[113]

Throughout his presidency, Trump identified the problem as criminal gangs of dangerous foreigners trafficking women and children across the United States' borders for the purpose of sexual exploitation and prostitution. His administration eventually broke the two-decade-old bipartisan consensus over human trafficking: it resisted granting victims without lawful immigration status temporary visas (T-visas) to protect them from immediate deportation.[114] In 2020, eight prominent nongovernmental antitrafficking organisations, including the Human Trafficking Legal Centre and Polaris, shunned a White House summit hosted by Ivanka Trump to end 'National Slavery and Human Trafficking Prevention Month' to protest the government's antitrafficking policy. A member of the boycott, Jean Bruggeman, executive director of Freedom Network (the United States' largest coalition of antitrafficking service organisations), explained that 'it's incredibly difficult now to support, assist, and protect immigrant survivors of trafficking, who make up most of the labour-trafficking survivors'.[115] Moreover, the consenus among antitraffickng organisations that prostitution should be treated as a crime to minimise trafficking was beginning to erode. When the Supreme Court struck down the prostitution pledge for domestic organisations, the Freedom Network no longer faced the risk of defunding and it announced its support for the decriminalisation of sex work to reduce opportunities for exploitation.[116]

The Trump White House used human trafficking to further its crusade to outlaw prostitution and eradicate illegal immigration, and its solution to the problem of labour trafficking and forced labour was simply to close the US borders to goods and people. In the 2019 TIP Report, the United States stressed the need for other governments to embrace a carceral approach to human trafficking, warning them that 'penalizing human traffickers for labour

[113] Uyghur Forced Labor Prevention Act, 23 December 2021, Pub. L. No. 117-78, 135 Stat. 1525, 22 USC 6901; and Cimino-Isaacs, Casey, and O'Reagan, 'Section 307 and U.S. imports of products of forced labor', 7.

[114] The T-visa lets trafficking victims without lawful migration status stay in the country and receive government benefits. It opens a path to US citizenship.

[115] Grant, 'The Trump administration'. Under the Trump administration, the number of approvals for the specialized visas for immigrant victims of trafficking, which allows them to reside in the US, was the lowest in nearly a decade. See Grant, 'The Trump administration'.

[116] *Agency for International Development v. Alliance for Open Society International, Inc.* (2013); Kotiswaran, 'The sexual politics', 44. In 2020, in *USAID v. Alliance for Open Society International* (2020), the US Supreme Court upheld the ban on funding foreign affiliates of US organizations that supported the decriminalisation of prostitution.

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violations under employment law instead of charging them for labour trafficking, may mean that traffickers are given penalties substantially lower than those prescribed under antitrafficking law, limiting their potential deterrent effects'.[117] However, in spite of the Trump administration's call for criminal prosecution as the best strategy to deal with human trafficking, in the 2018 fiscal year, federal investigations in the Justice Department decreased from 783 to 657, and the number of defendants charged with human trafficking also fell.[118]

The election of Joe Biden as president in 2020 marked another change in US antitrafficking policy. A coalition of antitrafficking groups pushed his administration to focus more on labour than sex trafficking and to approve more T-visa applications by victims of human trafficking.[119] The shift in presidential rhetoric was stark; instead of using antitrafficking policy to vilify foreign traffickers, Biden identified the disproportionate impact of trafficking on 'racial and ethnic minorities, women and girls, LGBTQI+ individuals, vulnerable migrants, and other historically marginalized and underserved communities'. He linked antitrafficking initiatives 'to our broader efforts to advance equity and justice across our society'.[120] While efforts to eradicate sex trafficking would continue, the United States' 2021 National Action Plan to Combat Human Trafficking promised to increase efforts to investigate and prosecute forced labour and to devise means to encourage law-enforcement officials to request visas any time they encountered a foreign national likely to be a victim of human trafficking.[121]

The Biden administration also adopted what it called a 'worker-centred' trade policy, which reflects its 'commitment to use trade agreements, tools, and relationships to empower workers'.[122] Endorsing 'competition in a global market', the President's 2022 Trade Policy Agenda identified the 'exploitation of workers' as a form of unfair practice that distorts global trade at the expense of Americans.[123] The United States, Mexico, and Canada Free Trade Deal is a prime example of the President's worker-centred trade policy; it contains the 'strongest labour provisions in any trade agreement', strengthens the US ban on goods made with forced labour, and requires Mexico and Canada to

[117] United States, Department of State, *Trafficking in Persons Report, June 2019*, 8.
[118] Krajeski, 'The hypocrisy of Trump's antitrafficking discourse', 45.
[119] Murray, 'U.S. anti-trafficking groups urge Biden to shift focus from sex to labor'.
[120] Biden, 'Presidential Proclamation on National Human Trafficking Prevention Month'.
[121] US, *The National Action Plan to Combat Human Trafficking*, 2021, 47, 22.
[122] United States, Office of the U.S. Trade Representative, *The President's 2022 Trade Policy Agenda*, 1.
[123] Ibid.

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impose similar bans.[124] The extent to which this trade deal and its enforcement mechanisms actually protect workers outside of the United States is an open question.[125]

Take import bans against goods produced with forced labour, which increased under Trump and Biden, as an example.[126] The United States' 2021 antitrafficking plan justified them on the grounds they protected domestic markets from unfair competition. It stated:

> Globally and in the United States, forced labor and associated harmful employment practices hide the true cost of labor and subvert the legitimate job market, such as displacing American workers, driving down wages, and corrupting the domestic and global economy. These practices create an uneven playing field for responsible businesses that invest in measures to prevent forced labor in their product supply chains.[127]

While these bans might level the playing field for American workers, since the US import ban does not require any form of remediation to protect 'foreign' workers who work in situations of forced labour, its impact on them could be detrimental as suppliers could lose orders and dismiss or squeeze workers in response.[128]

CONCLUSION

Beginning in the early 1990s, key states and international institutions depicted human trafficking as a problem of transnational criminals who exploit women and children, which provided states with a useful metaphor for violations of their territorial borders.[129] A desire to protect their sovereignty made states willing to adopt an international protocol that encouraged them to strengthen their criminal laws. It also explains their resistance to a precise and targeted definition of human trafficking and to mandatory obligations to protect victims' rights. These ideological and political dynamics account for the choice of criminal law as the Trafficking Protocol's legal home, its broad definition of human trafficking, and the weak obligations it imposes on states

[124] Ibid., 2.
[125] LeClercq, 'A worker-centred trade policy', 732.
[126] Indeed, Biden signed into law the Uyghur Forced Labor Prevention Act (UFLPA), and see US Customs and Border Protection, *Withhold Release Orders and Findings List*.
[127] US, *The National Action Plan to Combat Human Trafficking*, 2021, 15.
[128] Fudge and LeBaron, 'Regulatory design and interactions in worker-driven social responsiblity initiatives'; and Ebert, Francavilla and Guarcello, 'Tackling forced labour in supply chains'.
[129] Hubbard, Matthews, and Scoular, 'Regulating sex work', 14; and FitzGerald, 'Vulnerable geographies', 185.

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to protect the rights of victims. A strong advocate for the international protocol and active in its drafting, the United States portrayed itself as a global humanitarian leader on the issue of human trafficking.[130] The TIP regime was effectively a form of extraterritorial governance, and it helped to propagate a dense network of criminal laws against human trafficking. The number of states making human trafficking a specific crime increased from 20 per cent in 2000 to 90 per cent in 2015.[131] This antitrafficking legal web reinforced the exercise of territorial sovereignty over national borders.

The protocol's broad definition of human trafficking provided an opportunity for states to deploy different governance strategies to deal with different kinds of human trafficking. The reference to prostitution and sexual exploitation was treated by some states, most notably the United States, as a justification for strengthening the borders between sexual and labour exploitation and providing different governance approaches to what it considered to be discrete, and highly gendered, forms of exploitation. Abolishing prostitution by criminalising demand for sexual services was seen as the appropriate solution to the problem of sexual exploitation, whereas strengthening the rights of migrant workers and enforcing labour standards were regarded by several UN organisations and the Obama and Biden administrations as the best ways to deal with labour exploitation.

Together with its companion protocol on human smuggling, the Trafficking Protocol also allocates migrants into distinct legal subcategories or statuses with different rights.[132] The borders between victims of trafficking and illegal migrants are drawn by national authorities as they sort individual migrants into their appropriate legal category and associated legal domain. Since trafficking victims are provided with better protection than migrants who are smuggled, national authorities have an incentive to identify irregular migrants as smuggled rather than trafficked.[133] Moreover, the dominant frame of trafficking, which depicts it as a matter of individual criminality, tends to obscure the broader economic inequalities and political forces that both create pressures for people to migrate across international borders and for states to strengthen borders against migration, which, in turn, make migrants vulnerable to abuse and exploitation.[134]

The ambiguous definition of trafficking spawned attempts by international institutions to reframe the problem of human trafficking through a human-

[130] Doonan, 'A house divided', 273–293.
[131] Lloyd and Simmons, 'Framing for a new transnational legal order', 436.
[132] Anderson and Andrijasevic, 'Sex, slaves and citizens', 143.
[133] Strauss, 'Sorting victims from workers', 140–158; and Fudge, 'Illegal working', 557–584.
[134] O'Connell-Davidson, 'New slavery, old binaries', 256.

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rights lens, with each institution emphasising its own capacities and rationalities. Over the past twenty years, social actors have recast the meaning of human trafficking and advocated several different policy frames and legal domains for resolving the problem. When the UN adopted Target 8.7 (ending human trafficking, modern slavery, and the worst forms of child labour by 2030) as one of its sustainable development goals, it placed the target under the broad themes of development and decent work. Labelling human trafficking a 'multifaceted crime', the UNODC endorsed a multidisciplinary approach that included criminal-law initiatives, protecting the rights of victims, and incentives for corporations to prevent human trafficking and forced labour in their supply chains.[135]

The multifaceted approach to tackling modern slavery has added legal domains and associated governance strategies to the global antislavery network. But not every legal domain or governance strategy has equal power. In the global governance network that assembled around the UN's Trafficking Protocol, criminal law has exerted a gravitational force, pulling human rights and immigration matters closer to it and out of administrative law's orbit. In the process, the human rights of trafficking victims have been narrowly construed as aids to criminal prosecution. In this context, human rights have been interpreted in carceral terms so that prosecuting criminals is seen as protecting the rights of victims, who are depicted in highly gendered terms.

Social and political forces can amplify the power of one legal domain or governance strategy over another. As the Obama administration dampened the focus on prostitution and illegal migration, the ILO and labour-rights activists were able to advocate a labour-regulation approach. But political and social forces also operated in the opposite direction. Under the Trump administration, there was an increased emphasis on sex trafficking, illegal migrants, and insecure borders, which amplified the criminal law and subsumed immigration within it. Despite the proliferation of international institutions, governance strategies, and legal domains that address human trafficking and modern slavery, global governance remains firmly anchored in the criminal law, a legal domain that can easily be galvanised by social actors to reinforce sovereign control over national borders and to vilify outsiders.

However, the effects of international lawmaking are not predetermined. Principles of state sovereignty and subsidiarity, combined with the need for most states to incorporate the norms and obligations of international law into domestic legal systems, means that there are regional, national, and

[135] UNDOC, *Global Report on Trafficking*, 18.

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subnational effects of international lawmaking.[136] As we will see, different international institutions (the ILO, in Chapter 3), different regions (the EU, in Chapter 4), and different states (the UK, in Chapters 5 and 6) are subject to diverse social and political forces. They define the crime of human trafficking in different ways, empower some governance strategies more than others, and draw the legal border between victims of trafficking and illegal migrants in different places. Moreover, the meaning and efficacy of any governance strategy depend on how it fits into the multifaceted approach adopted by the global antislavery governance network.[137] The next chapter traces the role of private actors in the global antislavery governance network and the rise of market-based mechanisms to rid global supply chains of modern slavery.

[136] Strauss, 'Sorting victims from workers', 149.
[137] Goméz-Mera, 'The global governance of trafficking', 303–326.

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