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The UK's Crackdown on Illegal Work and Human Trafficking

The migrant is the political figure of our time.

—Thomas Nail, *The Figure of the Migrant*

Bordering constitutes a principal organising mechanism in constructing, maintaining, and controlling social and political order.

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

In 2001, David Blunkett, the UK's home secretary, released *Secure Borders, Safe Haven*, a white paper explaining the government's immigration policy, in which he promised to get 'tough in tackling, Europe-wide, the people traffickers' and 'illegal working, ending exploitation in the shadow economy and dealing with gangmasters and corrupt businesses who evade taxes and undercut fairness and decency for the rest of society'.[1] Under New Labour, which governed from 1997 to 2010, tackling human trafficking was part of the United Kingdom's strategy of strengthening territorial borders, extending borders beyond the United Kingdom's frontier, and instigating bordering practices to manage migration. As devices that act to filter, sort, and channel the movement of people, borders can take a variety of guises (territorial, technological, and classificatory, for example) and their function is institutional and normative, as borders determine membership and entitlement.[2] Along with 'associated notions of sovereign power, authority and capacity',

[1] UK, Home Office, *Secure Borders, Safe Haven*, Foreword.

[2] Mezzadra and Neilson, *Border as Method*; Balibar, *Politics and the Other Scene*; Dehm, 'Framing international migration'; Van Houtum, 'The geopolitics of borders and boundaries'; Paul, *The Political Economy of Border Drawing*; Nail, *Theory of the Border*; Longo, *The Politics of Borders*; Yuval-Davis, Wemyss, and Cassidy, *Bordering*; and Vaughan-Williams, 'Borders, territory, law'.

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borders 'are central to the relationship between Britain and the developing EU common migration and asylum policy'.[3] As we will see, New Labour's governance of human trafficking epitomised its relationship to the EU and its fixation on controlling borders.

One of the first countries to sign the UN's Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking Protocol) and a member of the European Union and Council of Europe, the United Kingdom was deeply enmeshed in a multiscalar web of legal norms and instruments pertaining to human trafficking. To take effect, however, these supranational norms had to be absorbed into national discourses and institutions. 'Human trafficking' is a floating signifier that derives its meaning from its social and political context.

How did the United Kingdom's cultural political economy come together with New Labour's vision of the United Kingdom's place in the EU and global economy to shape the government's approach to human trafficking? To answer this question, this chapter begins by describing the distinctive British conception of sovereignty and setting out the discursive, political, and jurisdictional context that shaped the United Kingdom's policy on human trafficking. Like the EU and the United States, the United Kingdom initially focused almost exclusively on trafficking for sexual exploitation, targeting migrants who engaged in prostitution and ignoring trafficking for labour exploitation. However, from the beginning, combatting human trafficking and its doppelganger, illegal working, played a critical role in the United Kingdom's governance strategy. Trafficking was paired with illegal working, and society was cast as a victim of exploitation along with individuals who had been trafficked. These identifications permeated the United Kingdom's anti-trafficking policies and persisted long after the Labour government was defeated, and modern slavery eclipsed human trafficking in the British political lexicon.

NEW LABOUR, SOVEREIGNTY, AND THE EU

A key theme in British politics has been the exercise of sovereignty through the immigration controls at points of entry rather than checks on internal movement through devices like identity cards, common throughout Europe.[4] The United Kingdom's practice is at odds with the Schengen model of waiving border checks for people entering from other EU member states. It also reflects the British political system with its centralised and powerful executive,

[3] Geddes, 'Getting the best of both worlds?', 740.
[4] Geddes, 'The politics of irregular migration', 375.

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'a largely subservient legislature and relatively weak courts'.[5] 'Losing control', the comparative immigration scholar Andrew Geddes explains, would strike 'at the legitimacy of the British state and the elected government'.[6]

Within the United Kingdom, control is institutionalised in the Home Office, where authority over immigration, security, and law and order is lodged in a single umbrella ministry that links the governance of immigration with security and criminal law.[7] The Home Office has authority over anti-trafficking policy and strategy, which falls under the portfolio of the minister for immigration. Policy formation is also restricted to the governmental policy elite, which makes it easy to ignore different perspectives and approaches and for certain discourses and solutions to dominate.[8]

Led by Tony Blair from 1997 to 2007 and Gordon Brown from 2007 to 2010, the Labour government was known as 'New Labour' to signify its amalgam of economic liberalism, defined by 'light-touch' regulation, free trade, and economic globalisation; a commitment to the British social democratic legacy of providing public services and (conditional) redistributive measures; and 'law and order' policies.[9] New Labour wanted to modernise the United Kingdom to adapt to the inexorable globalisation of the economy; it mobilised governance capacities by granting autonomy to individuals and organisations within a system of strengthened control (what Foucault calls biopower).[10] Its decisive victories in 1997 and 2001 insulated the Labour government from 'internal rebellion and attack from the opposition', which allowed it to hasten devolution and forge a new relationship with the EU.[11]

A plurinational state, the United Kingdom comprises England, Northern Ireland, Scotland, and Wales. To placate rumblings of Scottish home rule, New Labour moved further down the path of devolution, creating the Scottish Parliament and the Welsh Assembly in 1999.[12] Devolution raised complex questions about sovereignty and national identity, which would come back to

[5] Ibid.
[6] Ibid.
[7] The Home Office jurisdiction covered immigration and passports, drugs policy, crime, fire, counterterrorism, and police. In 2007, criminal justice, prisons, probation, and legal affairs were moved to the new Ministry of Justice.
[8] Broad and Turnbull, 'From human trafficking to modern slavery', 122.
[9] Faucher-King and Le Galès, *The New Labour Experiment*, 2; Hopkin, 'When Polanyi met Farage', 465.
[10] Faucher-King and Le Galès, *The New Labour Experiment*, 7. Biopower is about managing the population – establishing the 'rules of the game' (the conduct of conduct) in which the individual operates. Foucault, *Society Must Be Defended*, 259–260.
[11] Faucher-King and Le Galès, *The New Labour Experiment*, 2.
[12] Laffin and Shaw, 'British devolution and the Labour Party'.

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haunt the UK government.[13] It also resulted in a multiscalar jurisdiction over human trafficking within the United Kingdom. Criminal law and victim care are devolved matters, whereas border and immigration control, including the identification of trafficking victims, are reserved matters dealt with by the UK government. Scotland, Wales, and Northern Ireland, as devolved administrations, have responsibilities to provide care for victims of trafficking, In Northern Ireland and Scotland, responsibilities also extend to policing and justice. Immigration remains an issue reserved to the UK Parliament, and the UK Parliament has jurisdiction over criminal law in Wales and England; in England, the UK Parliament is also responsible for victim care.

New Labour sought to establish a new relationship with the EU, a form of 'instrumental supranationalism', by which it could demonstrate leadership in the EU, pursue the United Kingdom's national interest, and depoliticise the EU domestically, all to avoid the charge that the EU undermined British sovereignty.[14] Both Labour and Conservative governments retained a strong symbolic commitment to the sovereignty of the traditional British nation-state (with its ideas of parliamentary supremacy, liberal values, and strong separation between the economic and political spheres), which resulted in its 'awkward' relationship with the EU.[15] The Conservatives were riven by intraparty divisions over the EU, and a large and vocal wing of Eurosceptics were supported by the tabloid press.[16] By contrast, New Labour projected a vision of an 'Anglicised Europe', in which the United Kingdom would lead the EU to a more deregulated British neoliberal model.[17] Europe would not only give the United Kingdom access to a much larger market, it could also strengthen the United Kingdom's borders.

As the EU's competence over criminal law and immigration deepened and expanded with the adoption of series of treaties in the 1990s and 2000s, the United Kingdom negotiated a special relationship. The Maastricht Treaty (1992) incorporated immigration and transnational crime within the justice and home affairs pillar as matters of common interest. Under this arrangement, although the EU had no legislative authority, there was a commitment

[13] 'Devolved powers' are statutory powers granted to the parliaments and administrations of Northern Ireland, Scotland, and Wales, while 'reserved powers' are those decisions that remain with the UK Parliament and government, which is also responsible for legislation and policy in England on all the matters devolved to the constituent countries.

[14] Bulmer, 'New labour, new European policy?', 597.

[15] Gifford, 'The UK and the European Union', 321.

[16] Gifford, 'The United Kingdom's Eurosceptic political economy'; Simpson and Startin, 'Tabloid tales'.

[17] Gifford, 'The United Kingdom's Eurosceptic political economy', 779.

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to cooperation and coordination. The United Kingdom negotiated a flexible opt-out from justice and home affairs measures, the basis for the EU's competence over human trafficking.[18] Provisions for free movement were made within the Schengen Agreement (1985) and its implementing convention (1990). However, the United Kingdom also opted out from the Schengen acquis, retaining the right to opt in on a selective basis. When the 1997 Amsterdam Treaty brought free movement, immigration, and asylum under EU competence, the United Kingdom opted out of these provisions, again retaining the right selectively to opt in. Thus, for the United Kingdom, immigration controls remained matters for domestic policymakers, confirming 'external frontier controls as the main method to regulate entry, and executive-dominated immigration politics'.[19] And under the Lisbon Treaty (2007), the United Kingdom also held on to the right to opt out from the criminal area, which it did in total, opting into specific instruments on a case-by-case basis.

Prime Minister Blair explained the virtues of the United Kingdom's special relationship with the EU over immigration:

> There is no question of Britain giving up our veto on our border controls. In the Treaty of Amsterdam seven years ago we secured the absolute right to opt into any of the asylum and immigration provisions that we wanted to in Europe. Unless we opt in, we are not affected by it. And what this actually gives us is the best of both worlds. We are not obliged to have any of the European rules here, but where we decide in a particular area, for example to halt the trafficking in people, for example to make sure that there are proper restrictions on some of the European borders that end up affecting our country, it allows us to opt in and take part in these measures.[20]

European integration, as we saw in Chapter 4, can strengthen member states' control over their borders. Under New Labour, the United Kingdom took a leadership role in deterritorialising and extending the EU's borders by making sending-and-transit states responsible for controlling unwanted migrants.[21] In this way, New Labour sought to establish that 'sovereignty is not a zero-sum game' but rather that UK sovereignty can be augmented through the selective adoption of EU European rules.[22] There was, however,

[18] Ibid., 611.
[19] Geddes, 'Getting the best of both words?', 730.
[20] Tony Blair, 25 October 2004, quoted in ibid., 723.
[21] Geddes, 'The politics of irregular migration', 382; Bulmer, 'New labour, new European policy?', 612.
[22] Gifford, 'The UK and the European Union', 326.

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a latent contradiction between this idea of a functional sovereignty based on interdependence between the United Kingdom and EU and the British notion of absolute sovereignty that does not countenance any legal limitation on the authority of Parliament.[23]

TRAFFICKING AND MIGRANT SEX WORKERS

In *Secure Borders, Safe Haven* the government set out its immigration policy of managing migration for macroeconomic gain combined with a strong security framework to tackle unauthorised migration and reduce asylum seeking. The goal was an orderly, organised, and enforceable system of entry. Migrants who followed the rules would enjoy economic prosperity and integration into British society.[24] Those who did not would be treated as criminals to be punished or as victims to be rescued and removed. Asylum seekers would be deterred through detention and meagre benefits. Borders would be strengthened by biometric technology, deterritorialised, and extended.[25]

Secure Borders, Safe Haven framed trafficking in terms of fighting illegal immigration and organised crime.[26] It responded to anti-immigration politics fuelled by print media and the Conservative Party.[27] Peter Mandelson, a former Labour Cabinet minister, former director of Labour Party communications, and EU commissioner, explained in *The Times* on 11 June 2002: 'If we don't clamp down on illegals then the Nazi's flourish'.[28] The government sought to combine strict restrictions on the wrong type of migrants with a business-friendly system of open migration for the right kind. Hence its 2002 decision not to impose transitory arrangements on nationals of the eight states that would accede to the EU in 2004.[29]

Secure Borders, Safe Haven distinguished 'people trafficking', where someone is brought to the United Kingdom 'to be exploited', from 'people smuggling', where 'entry is facilitated with their consent'.[30] What constitutes exploitation or consent is ambiguous, even though these concepts are used to distinguish between smugglers and illegal workers, on the one hand, and

[23] Loughlin and Tierney, 'The shibboleth of sovereignty', 989.
[24] The subtitle of the report is *Integration with Diversity in Modern Britain.*
[25] UK, Home Office, *Secure Borders, Safe Haven*, 88–89.
[26] Ibid. Human trafficking is discussed in a chapter titled 'Tackling fraud: People trafficking, illegal entry, and illegal working', in which each of the activities is treated as a form of organised immigration crime.
[27] Geddes, 'The politics of irregular migration', 371; Simpson and Startin, 'Tabloid tales', 3.
[28] Geddes, 'The politics of irregular migration', 380.
[29] Balch, 'Labour and epistemic communities', 617.
[30] UK, Home Office, *Secure Borders, Safe Haven*, 75.

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traffickers and their victims, on the other. 'Exploitation' is not defined but is described as harmful, not only to the victim but to the competitiveness of law-abiding employers.[31] The overarching problem is portrayed as illegal working – work performed by people who are in the United Kingdom illegally or in the United Kingdom legally but who have no right to work.[32]

Claiming that the United Kingdom played a pivotal role in the UN's Trafficking Protocol and the EU's Framework Decisions on trafficking and the facilitation of illegal entry, *Secure Borders, Safe Haven* declared the government would strengthen the criminal law against smuggling and introduce legislation to make trafficking internationally and within the country a crime.[33] Trafficking for sexual exploitation was the government's primary target. It would move quickly 'to close the loophole that allows foreign and EU nationals of whatever sex or age to be brought to the UK for the purposes of sexual exploitation' by using the forthcoming immigration legislation to introduce a 'stopgap pending the major reform' of sexual offences law.[34]

Victims could expect only limited hospitality under the regime proposed in *Secure Borders, Safe Havens*. Support would be conditional on assisting the authorities and provided by the voluntary sector. Victims 'must be returned to their own country wherever possible' because 'to do otherwise would undermine the UK's immigration law and open the door for traffickers to exploit more victims'.[35] Trafficking into the United Kingdom would be fought beyond the United Kingdom's frontiers in source and transit countries through a network of immigration liaison officers who would work with other governments to stop criminal gangs. Through the Department for International Development and the Foreign and Commonwealth Office, the United Kingdom would fund antitrafficking projects.[36]

Legislation followed in a piecemeal fashion and distinguished between trafficking for sexual and labour exploitation and demonstrated a preoccupation with prostitution-related migration. Like the EU, the United Kingdom prioritised trafficking for sexual exploitation and focused on women as victims, which prompted a reconsideration of the regulation of prostitution. In 1999, the Home Office commissioned an influential report by two academic researchers, Liz Kelly and Linda Regan. *Stopping Traffic: Exploring the Extent of, and Responses to, Trafficking in Women for Sexual Exploitation in*

[31] Ibid., 84.
[32] Ibid.
[33] Ibid., 83.
[34] Ibid., 84.
[35] Ibid., 85.
[36] Ibid.

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the UK, appeared the next year. Its estimates of the extent of trafficking for sexual exploitation were influential, as were its focus on migrant sex workers and its broader framing of the problem.[37]

The location of sex work, the report disclosed, had shifted from the street (treated as a nuisance and patrolled) to off-street work advertised online (simply ignored), and there had been a demographic shift from domestic to 'foreign' sex workers.[38] By surveying police forces, Kelly and Regan identified seventy-one women who were trafficked into prostitution in the United Kingdom in 1998. Arguing that a hidden trafficking problem existed, they estimated that between 142 and 1,420 women were trafficked into the United Kingdom during the same period.[39] Drawing borders between trafficking in women and prostitution, they suggested, is problematic since 'trafficking in women for the purposes of sexual exploitation relies upon, and sustains, prostitution and women's inequality'.[40] They concluded that the government should create a crime of 'sexual exploitation' that would punish those who benefitted from the performance of a sexual act, with enhanced penalties for coerced prostitution that involved a vulnerable person, including a foreign national.[41] Although Kelly and Regan recognised that increased monitoring of off-street sex work could cause collateral damage, especially for migrant women, who could be deported to places with no support, they argued that no monitoring 'would be a dereliction of social and legal responsibility to limit responses to those few trafficked women who themselves come forward for help'.[42]

During the 2001 UK election, the home secretary, Jack Straw, released a consultation paper on reforming the law on sexual offences that recommended creating the offence of human trafficking for sexual exploitation. Referring to Kelly and Regan's study and the International Office of Migration's report that half a million women were trafficked into the EU in 1995, it identified human trafficking as a problem. Noting that there was no law designed to target human trafficking, the paper muddied the border between sexual exploitation and prostitution, not illegal in the United Kingdom, by recommending a trafficking offence 'that relates to the bringing of a person from one place to another for the purposes of gaining reward from

[37] Kenway, *The Truth about Modern Slavery*, 78–82; Munro, 'A tale of two servitudes', 93.
[38] Kelly and Regan, *Stopping Traffic*, 23.
[39] Ibid., 22.
[40] Ibid., 1.
[41] Ibid., 42.
[42] Ibid., 39.

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the sexual exploitation of that person or for working as a prostitute'.[43] Deception, coercion, and force would not be required for the offence but would add to its seriousness. Using financial powers to confiscate assets was also recommended. The 'white slavery' narrative linking prostitution to trafficking, once an expression of 'late nineteenth-century British imperial anxiety about population and power', provided a ready-made template for contemporary worries about national identity.[44]

As promised in *Secure Borders, Safe Haven*, the Nationality, Immigration and Asylum Act 2002 created a criminal offence (with up to fourteen years' imprisonment) called 'trafficking into prostitution'. It entailed facilitating the transportation of an individual not a resident of the United Kingdom into, out of, or within the United Kingdom for the purposes of controlling them in prostitution.[45] The legislation also added trafficking offences to the list of lifestyle offences (which included pimping- and brothel-related offences) in the Proceeds of Crime Act 2002 so that the courts, when considering a confiscation order, must assume that all assets derive from criminal conduct unless proved otherwise.[46]

This offence focused on migrants, reflecting the EU's concern that the trafficking of migrant sex workers was a problem. As shown in Chapter 4, migrant sex workers, regardless of whether their movement over borders was voluntary, exemplified the unfree, unwelcome, migrant worker. The UK legislation did not explain what 'control over prostitution' meant, a significant problem since the offence of trafficking includes anyone who facilitates the travel to, within, or out of the United Kingdom of a person they have reason to believe may be controlled into prostitution. The human trafficking offence reflected the assumption that prostitution was the problem, which was itself a form of exploitation. However, this perspective fit uneasily with the United Kingdom's mix of toleration and restriction of prostitution at the time, although historically its governance strategy tilted towards abolition.[47]

The government's second step in bringing its human trafficking laws in line with the Trafficking Protocol and the Framework Decision was extending 'human trafficking' to include persons trafficked in the United Kingdom, whether British citizens or foreign nationals, in the Sexual Offences Act, 2003. Announcing the revision, Home Secretary Blunkett linked human trafficking to prostitution, which he described as a 'sub-world of degradation

[43] UK, Home Office, *Setting the Boundaries*, 114.
[44] Devereux, 'The Maiden Tribute', 18.
[45] Nationality, Immigration and Asylum Act 2002 (2002, c. 41), ss. 145, 146.
[46] Proceeds of Crime Act 2002 (2002, c. 29), s. 10, sched. 2.
[47] Munro, 'A tale of two servitudes', 103.

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and exploitation'.[48] The Sexual Offences Act 2003 repealed the earlier offence and introduced wide-ranging offences covering trafficking into, within, or out of the United Kingdom to commit any relevant sexual offence, including arranging, recruiting, or facilitating the transportation of a person into, out of, or within the United Kingdom, with the intention to cause, incite, or control their prostitution for gain.[49] Although the offence does not specifically obviate consent as a relevant consideration, there is no requirement that a trafficked person be forced, deceived, or coerced.

The UK definition of trafficking is broader than the UN Trafficking Protocol's, which must include an element of force. The '"wrong" of trafficking activity in the United Kingdom is neither a component of control nor a component of coercion but, simply, the exploitation deemed inherent in prostitution itself'.[50] Even though the offence is not one of strict liability (to be convicted, the accused must believe or intend that the trafficked person will be sexually exploited), it makes anyone who helps sex workers migrate to ply their trade at risk of prosecution for human trafficking.[51] Essentially the Sexual Offences Act 2003 made moving a person into, out of, or within the United Kingdom for commercial sexual exploitation an offence.[52] It conflates smugglers with traffickers and forces women who migrate for sex work to move alone or with the assistance of individuals willing to run the risk of lawbreaking.[53]

By linking prostitution to human trafficking, the government justified a review of prostitution governance. *Paying the Price*, the Home Office's July 2004 consultation paper, referred to growing levels of trafficking and identified prostitution as a big part of the problem because it 'undermines public order and creates a climate in which more serious crime can flourish'.[54] It also equated prostitution with trafficking when it came to migrant women.[55]

Although the consultation document proposed measures that ranged from regulating prostitution as a form of work to increasing criminal offences and associated penalties relating to the purchase of sexual services, the government

[48] Sexual Offences Act 2003 (2003, c. 42); *Hansard*, HC, vol. 394, col. 507, 19 November 2002.
[49] Sexual Offences Act 2003 (2003, c. 42), ss. 57–60.
[50] Munro, 'A tale of two servitudes', 103.
[51] Hill, 'This modern day slavery', 107.
[52] Scoular and O'Neill, 'Regulating prostitution', 765.
[53] Hill, 'This modern day slavery', 108
[54] UK, Home Office, *Paying the Price*, 74.
[55] Despite its emphasis on exploitation, *Paying the Price* put forth a range of options – from criminalising the demand for sexual services to licensing brothels – to reform how prostitution was governed. Ibid., 75.

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simply grafted 'prostitution as a species of sexual offence . . . onto the previous policy edifice of public nuisance'.[56] Steering the governance of prostitution closer towards abolition, the government sorted sex workers into categories determined by their migrant status and location of their work. Street-based sex workers who were permanent residents or citizens of the United Kingdom would be rescued and diverted from the sex trade while off-street migrant sex workers would be rescued and removed or charged as criminals and deported.[57]

The government's approach to rescuing domestic sex workers led to new governance strategies to persuade them to change their circumstances, whereas migrant sex workers were dealt with by carceral force.[58] Despite Kelly and Regan's claim that 'it is not our intention to encourage over monitoring of this group of women', this is precisely (and predictably) what happened.[59] The police engaged in high-profile raids, occasionally inviting media crews to join them, to uncover victims of sex trafficking, and most of the migrant women detected were either returned to their home countries voluntarily, deported, or prosecuted.[60]

Although the United Kingdom made human trafficking for sexual exploitation an offence, it made no commitments regarding the victim's rights, social services, or immigration status. The United Kingdom had opted out of the EU's resident permit directive, which gives limited residence and access to social services to third-country nationals who are victims of trafficking or who have been the subject of an action to facilitate illegal immigration and who cooperate with the competent authorities.[61] A pilot project, known as Poppy, was launched to assist women trafficked into prostitution to escape their circumstances and consider testifying against their traffickers; another programme helped migrant victims return home.[62] However, any protection provided by the UK government was discretionary and depended upon a person meeting the stereotype of a helpful and deserving victim.[63]

[56] Scoular, *The Subject of Prostitution*, 69–70.
[57] Scoular and O'Neill, 'Regulating prostitution', 771–772; Hubbard, Matthews, and Scoular, 'Regulating sex work', 137.
[58] Scoular and O'Neil, 'Regulating prostitution', 764; Munro, 'A tale of two servitudes', 9.
[59] Kelly and Regan, *Stopping Traffic*, 39.
[60] Hill, 'How to stage a raid', 39; Hubbard, Matthews, and Scoular, 'Regulating sex work', 146.
[61] However, the UK was bound by EU Directive 2004/80/EC relating to compensation to crime victims, as well as by EU Council Framework Decision 2001/220/JHA, of 15 March 2001, on the standing of victims in criminal proceedings.
[62] UK, Home Office, *Tackling Human Trafficking*, 15, 18.
[63] Munro, 'A tale of two servitudes', 108; Hill, 'How to stage a raid', 108.

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ILLEGAL WORKING AND TRAFFICKING FOR LABOUR EXPLOITATION

Like migrant sex workers, migrant domestic workers – another female-dominated occupation – were seen as particularly vulnerable to human trafficking, although the Labour government's treatment of them was different. In the mid-1990s, advocacy groups invoked 'domestic servitude' and 'modern slavery' to bring attention to the exploitative conditions of migrant domestic workers who entered the United Kingdom with business people, diplomats, tourists, and returning British residents.[64] Unlike other migrant labour categories, these workers' lawful entry depended on entering the United Kingdom with their employers. To maintain their status, they had to work for their sponsors and reside in their homes. The campaign highlighted domestic workers' vulnerability to abuse on account of their gender and the requirement they live in their employers' home, and not their migrant status, which was critical to its success.[65]

In 1998, the newly elected Labour government responded to these complaints of modern slavery by granting migrant domestic workers from third countries the right to change employers if they suffered abuse at the hands of their sponsoring employer; it allowed family members to accompany them and provided them with a route to settlement. In 2002, this scheme was formally incorporated into the Immigration Rules as the Overseas Domestic Workers (ODW) Visa Scheme with stringent requirements.[66] This response was uniquely protective, in part because this was a discrete and small group of migrant workers who entered under a specific visa category sponsored by 'foreign' employers.[67] The treatment of the overseas domestic workers became emblematic of successive governments' treatment of the victims of human trafficking.[68]

With this exception, exploitation was associated with smuggling, not trafficking, which explains why the government was slow to create the offence of trafficking for labour exploitation. Instead, the government fortified its smuggling laws. The offence of 'assisting unlawful immigration' was amended by Section 143 of the Nationality, Immigration and Asylum Act 2002 to apply to any non-EU citizen, and the penalty was increased to a maximum of fourteen

[64] Anderson, 'Mobilizing migrants, making citizens', 636.
[65] Anderson, *Us and Them?*, 175.
[66] Anderson, 'Mobilizing migrants, making citizens', 636; Mullally and Murphy, 'Migrant domestic workers in the UK', 397.
[67] Fudge and Strauss, 'Migrants, unfree labour, and the legal construction', 541.
[68] Ibid., 524.

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years' imprisonment.[69] The government adopted the 2002 framework decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit, and residence.[70]

Antislavery and antitrafficking campaigners pressed for legislation to make trafficking for labour exploitation a crime. Because it opted into the 2002 EU Framework Decision on Human Trafficking, the United Kingdom had to address trafficking for both labour and sexual exploitation by 1 August 2005. Campaigners were particularly concerned about the trafficking of children into domestic service. When news of a proposed bill was released to the press, a spokesperson for Anti-Slavery International, the oldest slavery abolitionist organisation in the world, cautioned: 'Unless you have a piece of legislation that covers all conceivable forms of trafficking, there will be loopholes that will be exploited'.[71]

The government's solution was to incorporate forms of exploitation listed in Article 4 of the European Convention on Human Rights (ECHR), which included slavery, servitude, and forced and compulsory labour. One of the Labour government's first legislative acts had been to give effect to the European Convention on Human Rights in English law, through the Human Rights Act 1998, which opened the way to successful Article 4 claims by women trafficked and held in forced domestic labour.[72] Tucked into the 2004 Asylum and Immigration (Treatment of Claimants, etc.) Act (concerned with reducing asylum appeal rights and introducing penal measures pertaining to entering the United Kingdom without a passport or with a forged document) was the offence of 'trafficking people for exploitation'.[73] Unlike the international and EU definitions, the definition of 'exploitation' in England and Wales is categorical and exhaustive and does not include the phrase 'at a minimum'. Although trafficking offences relating to labour and sexual exploitation carried the same penalty, the scope of the former was much narrower, as it applied only to non-EU citizens, whereas trafficking for sexual exploitation applied to any person. Labour trafficking, unlike sex trafficking, required that services be coerced. However, the definition of

[69] Other offences concerning fraud, forgery (of documents), and false imprisonment can be used by prosecutors alongside offences of sexual and physical violence. See Immigration Act 1971 (1971, c. 77), ss. 25–25C.

[70] European Union, 'Council framework decision of 28 November 2002'.

[71] Hill, 'Child slave smugglers will face jail at last'.

[72] Human Rights Act 1998 (1998, c. 42); Anderson and Rogaly, 'Forced labour and migration to the UK', 21; Immigration Act 1971, ss. 24, 25, 26.

[73] Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (2004, c. 19), s. 4(3) includes organ removal and benefit fraud.

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exploitation in the 2004 Act, when combined with the sexual-trafficking offences in the 2003 Act, met the minimum requirements of the EU Framework Decision, which the United Kingdom adopted in 2004, and the UN Trafficking Protocol, which it ratified on 6 February 2006.[74]

Despite evidence of widespread exploitation of migrant workers – including wage withholding, illegal deductions, unsafe working conditions, and threats, all indicators of forced labour across a range of sectors, including agriculture, food processing, cleaning, catering, and construction – the government's primary concern was illegal working, not labour trafficking, and its object was to remove and deport as much as rescue migrant workers.[75] The abolition of the wage councils in the early 1990s meant that the regulation of employment in the United Kingdom, highly fragmented among different agencies and departments, had no overarching labour inspectorate for low-wage and contract work.[76]

It took a tragedy, the death by drowning of twenty-three undocumented migrant shellfish harvesters (cockle-pickers) trapped by the tide in Morecambe Bay on 5 February 2004, to provoke government into action.[77] Portraying trafficked migrants as victims of 'the modern-day slave trade', the shadow home secretary from the Conservative Party sought to embarrass the government:

> Lured to Britain with little knowledge of English, illegal immigrants are forced to work 12 hours a day, six days a week, for derisory amounts of money. Health and safety regulations don't apply. They are kept outside the confines of society and beyond the reach of the law. By doing nothing, the government is giving tacit consent [to smugglers and traffickers].[78]

In response, the government, which the year before had rejected similar regulation, seized on the Gangmasters (Licensing) Bill, a private member bill introduced in January.[79]

[74] *Hansard*, HL, vol. 667, col. 253, 29 November 2004.
[75] Anderson and Rogally, 'Forced labour and migration to the UK', 20.
[76] Balch, 'Regulation and enforcement to tackle forced labour', 21.
[77] In 2003, the Parliament Select Committee on Environment, Food and Rural Affairs (EFRA) investigated the resurgence of gangmaster activity. The Department for Trade and Industry opposed licensing and registration schemes as 'burdensome for business and public authorities'. EFRA recommended that the government revisit the relationship between the supermarkets and their suppliers. The government established an interdepartmental working group to report to the minister responsible for the Department of Environment, Food and Rural Affairs, which had overall responsibility for policy on gangmasters. EFRA, *Fourteenth Report*, para. 54.
[78] Geddes, 'The politics of irregular migration', 372, quoting *Mail on Sunday*, 15 February 2004.
[79] Strauss, 'Unfree again', 190–191.

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That bill was modelled on a nineteenth-century law that licensed gangmasters and gang labour.[80] The term 'gangmaster', used by the home secretary in *Secure Borders, Safe Haven*, dates to the mid-1800s, when labour contractors, known as gangmasters, used coercive mechanisms such as tied housing, the truck system, child labour, coercion, and restrictions on seeking work elsewhere to assemble and control workforces for farms. Moral indignation centred on the substitution of women and children for men as agricultural workers led to the Gang Act 1867.

Enacted with the government's support, the Gangmasters (Licensing) Act 2004 was designed to safeguard the welfare of workers by licensing labour providers in specified sectors (agriculture, shellfish harvesting, and processing and packaging for these sectors), enforcing the conditions of the licences granted, and ensuring that labour users do not enter into arrangements with unlicensed gangmasters. The act did not impose new standards or tackle labour exploitation directly. A new public authority would be set up by 2006 to administer a licensing regime that would impose a range of labour standards on a wide range of labour providers, including employment agencies. The act makes a worker's migration status irrelevant to the question of whether the labour provider has violated the terms of its licence, a departure from UK employment law, where migrants working without authorisation cannot enforce their rights because it is contrary to public policy.[81] Here, the distinction is that the state, not the worker, is enforcing the licence.

After the United Kingdom opened its borders to citizens of the eight eastern and central European nations that acceded to the European Union on 1 May 2004, the spectres of unbridled migration, human trafficking, and exploitation circulated widely.[82] The United Kingdom experienced an 'unprecedentedly intensive and utterly unplanned wave of immigration'.[83] The

[80] Gang Act, 1867, 30 & 31 Vict., c. 130; Strauss, 'Unfree again', 187.

[81] Gangmasters (Licensing) Act 2004 (2004, c. 11), s. 26(2): 'A person is not prevented from being a worker for the purposes of this act by reason of the fact that he has not right to be, or to work, in the United Kingdom'. And see Bogg, 'Illegality in labour law after Patel v Mirza', 257.

[82] Migrants seeking work from these countries did not require a visa but were required to register once they entered the UK if they intended to work for longer than a month. The UK government made this decision in 2002, and along with Ireland and Sweden, it waived the transition period. On 1 May 2004, the fifteen states of the European Union (EU-15) welcomed ten new Member States in what was the largest expansion in the history of European integration. The new Member States included eight countries (also called the A-8) from the former Soviet Union: Czech Republic, Hungary, Poland, Slovakia, Slovenia; and the three Baltic states of Estonia, Latvia, and Lithuania. At the same time, membership was granted to the island states of Cyprus and Malta. Lewis and Waite, 'Migrant illegality, slavery and exploitative work', 229.

[83] Bale, 'Putting it right?', 297.

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government responded to anti-immigration furore in newspapers by imposing transitional restrictions on citizens of Bulgaria and Romania in the 2007 enlargement of the EU and tightening controls for non-EU citizens known as third-country nationals.[84] Before the May 2005 election, as the Conservative Party exploited New Labour's 'weakness' over immigration, the government tried to persuade the public that the country's borders were under control.[85]

CONTROLLING OUR BORDERS

Published three months before the May 2005 election, *Controlling Our Borders: Making Migration Work for Britain* set out the first of a two-part strategy for immigration – measures designed to strengthen the United Kingdom's borders by extending them into and beyond its territorial frontiers. After it won its third-straight election, the Labour government introduced the second part, *A Points-Based System: Making Migration Work for Britain* in 2006, which proposed a system to attract the best and the brightest after employers had attempted to recruit first from within the expanded EU.[86] This Janus-faced governance strategy deployed coercion against undesirable migrants while utilising market-based criteria (such as education, language, and recognised skill level) to select desirable ones.[87] Victims of trafficking and illegal migrant workers personified the uncontrolled border.

Controlling borders was the hinge needed to make managed migration, which the government regarded as essential for continued prosperity, work. In his foreword, Prime Minister Blair declared that his government would enforce 'strict controls to root out abuse' and promised 'a new drive to prevent illegal entry, to crack down on illegal working and a tough policy of removals for those who should not be here' and 'on-the-spot fines for employers who collude with illegal immigration'.[88] Charles Clark, Blunkett's successor as home secretary, vowed that 'using new technology we will develop an integrated control before people enter the United Kingdom, at our borders, and while they are in the country'.[89] Trafficking was subsumed, along with smuggling, under illegal immigration, and it required tough new penalties and the expansion of the state's carceral apparatus.

[84] Balch, 'Labour and epistemic communities', 617.
[85] Geddes, 'Getting the best of both worlds?', 728.
[86] UK, Home Office, *A Points-Based System*.
[87] Bosworth, 'Border control and the limits'.
[88] UK, Home Office, *Controlling Our Borders*, 6.
[89] Ibid., 8.

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After the July 2005 bombings in London, Blair doubled down on the need for the United Kingdom to control its borders and adopted an increasingly coercive approach to law and order.[90] In this context, human trafficking was the perfect cipher. Vulnerable people needed to be protected from criminal gangs and predators who, in turn, needed to be punished. Tackling demand was the best way to combat the problem. For sexual exploitation, this meant eliminating prostitution; for labour exploitation, it meant making it unprofitable for employers to rely on illegal workers. The border between trafficked victims and illegal workers blurred.

The police, media, and politicians focused on human trafficking for sexual exploitation. In January 2006, the government released *A Coordinated Prostitution Strategy*, which sought to eradicate all forms of commercial sexual exploitation through a proactive and sustained approach to policing on- and off-street prostitution. The idea was to create 'a hostile environment for those who seek to traffic individuals, nationally or internationally, for the purposes of sexual exploitation'.[91]

The government established the Human Trafficking Centre (the first agency of its kind in Europe) to coordinate antitrafficking efforts by police, immigration agencies, and non-governmental organisations (NGOs), and the Police Service launched a pilot project called Pentameter I to tackle trafficking for sexual exploitation.[92] It was the first proactive policing operation in the United Kingdom and involved over fifty-five police forces in the United Kingdom and the Republic of Ireland and NGOs like Poppy.[93] Pentameter followed the 'raid and rescue' model, targeting premises associated with 'foreign' prostitutes.[94] The government considered the operation, widely reported in the press, a great success. It sparked Pentameter 2 and shaped the government's demand-reduction approach.[95]

In January 2006, the government released *Tackling Human Trafficking*, which elevated its antitrafficking strategy to the level of a moral crusade. Invoking the Slave Trade Act 1807, which brought about the abolition of the slave trade in the former British Empire, the ministerial foreword noted

[90] Bosworth and Guild, 'Governing though migration control'.
[91] UK, Home Office, *UK Action Plan on Tackling Human Trafficking*, 39.
[92] Its partners include the Crown Prosecution Service, the UK Border Agency, the Serious Organized Crime Agency, and HM Revenue and Customs.
[93] Hill, 'This modern day slavery', 91. Over a four-month period, police claimed that Pentameter 1 resulted in 232 people arrested, 134 people charged, 188 women in prostitution rescued, and 88 women as victims of trafficking identified.
[94] Ibid., 96.
[95] Ibid.

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that '2007 will see the bicentenary of that landmark Act' and went on to draw a link between that historic event and the challenge of ending human trafficking.[96] Extolling the United Kingdom's leadership role in making human trafficking a priority internationally, the ministers also claimed that the United Kingdom had driven the EU action plan on human trafficking, which endorsed an approach to human trafficking that integrated protecting victims' rights with fighting organised crime and tackling illegal migration.[97]

Despite analogising human trafficking to the slave trade, the UK government downplayed the rights of victims in the face of influential newspaper columnist complaints that immigration policy was being undermined by human rights laws and lobbyists.[98] The consultation document expressed the government's reluctance to sign on to the Council of Europe's newly adopted convention on human trafficking, which, as we saw in Chapter 4, provides the acme of human rights protection for victims of trafficking. Although it claimed to support the convention's aims, the government was concerned that 'some of the provisions, such as the automatic granting of reflection periods and residence permits for trafficking victims, may act as "pull" factors to the UK'.[99]

The consultation document also reviewed the government's approach to labour exploitation, which was treated differently from trafficking for sexual exploitation. In addition to creating the criminal offence of 'trafficking for labour exploitation' in the Immigration, Asylum and Nationalities Act 2006, the government created an offence for employers to withhold documents (genuine or nongenuine) from their employees in the Identity Cards Act 2006. The government's primary strategy was disrupting employer demand by introducing a civil penalty regime and a new offence of 'knowingly employing an illegal migrant worker' with a maximum two-year custodial sentence. The government claimed that this new system, which had a reverse onus of proof that required the employer to object, would deal swiftly and effectively with employers who were less than diligent in carrying out document checks.[100] It was supposed to

[96] UK, Home Office, *Tackling Human Trafficking*, 5.

[97] UK, Home Office undersecretary of state and Scottish executive member for justice. Ibid., and Chapter 4, this book.

[98] Geddes, 'The politics of irregular migration', 381.

[99] UK, Home Office, *Tackling Human Trafficking*, 6.

[100] Ryan, 'Employer checks of immigration status', 240. The Immigration, Asylum and Nationalities Act 2006 (2006, c. 13) and the Immigration (Restrictions on Employment) Order 2007 (2007, No. 3290) came into effect on 29 February 2009. The maximum fine was one thousand dollars per worker. See also Identity Cards Act 2006 (2006, c. 15).

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encourage employers to comply with their legal obligations without criminalising the careless.[101]

However, framing the crackdown on illegal working as an antitrafficking measure was disingenuous since the civil penalty regime simply punished employers who failed to check documentation; it did not address labour exploitation. Moreover, by targeting illegal working as part of an antitrafficking strategy, the government contributed to the idea that migrant workers were engaged in illegal activities and were not victims of exploitation.

Designed to deal with labour-market exploitation, the Gangmasters (Licencing Act) 2004 was one of two exceptions to an antitrafficking strategy based on exclusion, surveillance, punishment, and removal.[102] Housed in the Department of Environment, Food and Rural Affairs (DEFRA) because it was confined to the food sector, the Gangmasters Licencing Authority (GLA) recruited retired police officers as inspectors and worked closely with the tax authority, which, in the absence of a central labour enforcement body, was responsible for enforcing the minimum wage and payroll taxes. The GLA aligned itself with the International Labour Organisation (ILO) and used its indicators of forced labour to identify labour exploitation. It also developed a strategy of proactive inspection. The licensing regime was designed to prevent, not to remedy, labour exploitation. The GLA could impose conditions on the issuance and revocation of a licence, but it had no authority to vindicate employees' rights, such as retrieving lost wages.[103]

Organisations such as Amnesty International, the International Labour Organization, and Anti-Slavery International criticised the government's refusal to ratify the Council of Europe Convention.[104] The Parliamentary Joint Committee on Human Rights released a report in October 2006 calling on the government to place victim protection 'at the heart of the legislative framework to combat trafficking' and 'review immigration laws and policies in the context of their impact on trafficking victims'.[105] While it endorsed the government's carceral approach, applauding its investigation and law-enforcement efforts, the joint committee urged the government to ratify the Council of Europe Convention on Action against Trafficking. Referring to the

[101] The maximum amount of the civil penalty will be decided following public consultation and parliamentary debate. Balch, 'Defeating "modern slavery", reducing exploitation?', 77–78.
[102] Ibid. The other exception was the continued immigration concession for live-in migrant domestic workers.
[103] Fudge, 'Illegal working', 577.
[104] Balch and Geddes, 'Opportunity from crisis?', 31.
[105] UK, House of Lords and House of Commons, Joint Committee on Human Rights, *Human Trafficking*, Twenty-Sixth Report, para. 118.

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evidence and to safeguards contained in the convention, the joint committee rejected the government's claim that its provisions relating to reflection periods and residence permits for trafficking victims could draw those willing to make fraudulent claims of victim status to the United Kingdom.[106] It recommended a reflection period of three months, but recognising the United Kingdom was not bound by the EU Residence Directive, it advised the government to use the directive as a model and provide a residence period of six months.[107] The joint committee also urged the government to establish a UK-wide system for identifying and referring victims of trafficking.

Most significantly, the joint committee endorsed a labour approach to address human trafficking for labour exploitation, advising the government to shift its focus 'from immigration control to the prevention of exploitation of migrants and workers, and care of victims'.[108] It questioned whether the legislation concerning the employment of illegal migrants addressed the circumstances of trafficking and its victims and, instead, endorsed promoting and protecting workers' rights by enforcing labour and employment laws. Moreover, it suggested that the establishment of a single body (such as the Fair Employment Commission) to enforce workers' rights would be a desirable first step.[109]

Civil society organisations together with a group of parliamentarians put pressure on the government to adopt the Council of Europe Convention. Anthony Steen, a Conservative member of Parliament, established an all-party working group on human trafficking, which pushed the government to act.[110] A scandal relating to the release of over a thousand foreign prisoners without considering them for deportation led to the resignation of the home secretary and the appointment of John Reid, who restructured the Home Office, set up a new arms-length immigration agency, and signed on to the convention.[111]

TURNING ANTITRAFFICKING INTO A MORAL CRUSADE

In an act of pure political theatre, in March 2007 on the bicentenary of the 1807 Slave Trade Act, the home secretary signed the Council of Europe

[106] Ibid., paras. 199–200.
[107] Ibid., para. 204.
[108] Ibid., 69.
[109] Ibid., para. 109.
[110] Kenway, *The Truth about Modern Slavery*, 21.
[111] Balch and Geddes, 'Opportunity from crisis?', 30. In 2007, the government announced plans to break the Home Office into two separate departments: a Ministry of Justice and a new streamlined Home Office focused on crime, immigration, and terrorism. In April 2007, the new Border and Immigration Agency began operating. Formerly part of the Home Office, it was an arm's-length agency, providing greater operational freedom.

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Convention on Human Trafficking, on the former desk of William Wilberforce, the British politician, philanthropist, and leader of the movement to abolish the slave trade. On the same day, the Home Office, together with the Scottish Executive, released the *UK Action Plan on Tackling Human Trafficking*. By invoking the United Kingdom's leadership on the abolition of the slave trade to frame its plan of action to combat human trafficking, the government declared it would not 'forget the plight of the thousands of people who are still forced to live in slave like conditions as a result of the inhuman criminal practices perpetrated by 21st century traffickers'.[112]

The celebration of the bicentenary of the Act to abolish the slave trade was, as Ben Wellings explains, an exercise in portraying the United Kingdom as a globally engaged and moral actor at a time when the formation of a minority government in the Scottish Assembly by the Scottish National Party detracted from celebration of the 300th anniversary of the political union of Scotland with the United Kingdom.[113] This depiction resonated with the idea of British greatness associated with the British Empire. The government characterised the 1807 Slave Trade Act as an instance of humanitarian intervention, motivated by a moral Parliament 'triumphing over a social evil buttressed by economic interests'.[114] This image appeals to progressives and conservatives alike. Thus, the abolition of the slave trade was a perfect metaphor for the United Kingdom's strategy to combat human trafficking.

Citing the joint committee's concerns, the government announced that victim assistance was necessary for effective enforcement. It promised to develop a national referral mechanism for victim identification and protection and to provide a formal reflection period during which removal action would be held in abeyance for a minimum period of thirty days and residence permits would be granted in certain circumstances to identified victims of trafficking. But instead of establishing an independent agency to monitor the plan and its implementation, the government decided that the Inter-Departmental Ministerial Group (IDMG) on Human Trafficking would be the most suitable monitor, thereby consolidating control over antitrafficking policy in the executive.

The 2007 plan marked the first time the government seriously considered trafficking for labour exploitation. It did not define what it meant by labour exploitation, although it acknowledged that it was difficult to draw a line

[112] An Act for the Abolition of the Slave Trade, 47 Geo. III, Sess. 1, c. 36 (Hansard, 10 February 1807); UK, Home Office, *UK Action Plan on Tackling Human Trafficking*, 2.
[113] Wellings, *English Nationalism, Brexit and the Anglosphere*, 134–135.
[114] Ibid., 134.

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between 'poor working conditions and situations involving forced labour' and stressed coercion as an indicator of the latter.[115] Instead of taking the joint committee's advice to shift away from fighting illegal immigration towards strengthening workers' protection, the government intended to 'strengthen the legislation on the employment of illegal workers to deter trafficking for labour exploitation'.[116] To tackle the demand for trafficked labour, the government targeted employers who breached immigration laws, not those who violated labour laws. The concern was that firms using trafficked persons for cheap labour had an unfair advantage.[117] Except for the Gangmasters Licensing Authority, the action plan contained no discussion of labour regulation as a method for preventing trafficking.[118]

The attention paid to labour trafficking did not signal the government's turn away from trafficking for sexual exploitation. In fact, the government proposed to abolish the existence of all forms of prostitution, regardless of location, and shift the focus of enforcement 'onto the users and abusers, and developing routes out for those involved'.[119] This demand-centred approach was authorised by the Council of Europe Convention (Article 6) and reflected the strategy of abolishing prostitution under the guise of tackling human trafficking, which was gaining momentum in Europe.

As the government committed to protecting the rights of victims of trafficking, it placed great weight on strengthening borders. During the debate over the United Kingdom's Border Bill in February 2007, the Conservative shadow minister for immigration, Damien Green, declared: 'We don't have a barrier. We have a sieve'.[120] In response, the government made the immigration rules and border controls even stricter. The UK Borders Act 2007 increased the powers of immigration officials and the enforcement budget doubled.[121] In 2008, the government made private actors responsible for monitoring visa conditions imposed on non-EU citizens. The secondary legislation required 'sponsors' (employers and education providers such as private schools, colleges, and universities) to monitor 'foreign' employees and students, report

[115] UK, Home Office, *UK Action Plan on Tackling Human Trafficking*, 5, 40.
[116] Ibid., 10.
[117] Ibid., 94.
[118] The plan referred to the need to expand enforcement activity to assist victims of forced labour as part of its commitment to implementing and ratifying the Council of Europe's convention. Ibid., 42.
[119] Ibid., 54.
[120] Bosworth, 'Border control and the limits', 200.
[121] The UK Borders Act 2007 (2007, c. 30); Balch and Geddes, 'Opportunity from crisis?', 37.

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their behaviour to the Home Office, and dismiss anyone who breached the rules by missing lectures or taking unauthorised absences, for example.[122]

After he took over the leadership of the party and government from Tony Blair in 2007, Gordon Brown appointed Jacqui Smith, a 'staunch opponent of prostitution', as home secretary, the third in a little over a year and the first woman to hold the office.[123] She and Harriet Hartman, a former government minister and deputy leader of the Labour Party, argued that prostitution was a form of violence against women.[124] Support for this position could be found among the opposition. In November 2007, Conservative MP Philip Hollobone proposed an amendment to the Criminal Justice and Immigration Bill to criminalise paying for sex. It was rejected in committee.[125]

In 2008, Smith commissioned a six-month review to assess measures to reduce the demand for prostitution. She was concerned that 'too little attention has been focused on the sex buyer'.[126] In November, the Home Office published *Tackling the Demand for Prostitution*. Although the government favoured the Swedish model of criminalising the purchase of sexual services, stakeholders were divided over having a generic criminal offence for paying for sex.[127] As a compromise, the review proposed to make it easier to prosecute purchasers of sexual services by amending the offences of kerb-crawling and persistent soliciting to eliminate the requirement of proving persistence. It also advised the government to consider 'a specific strict liability offence of paying for sex with someone who is controlled for another person's gain' to protect vulnerable individuals who have been trafficked or exploited.[128]

The government followed through on these recommendations in the Policing and Crime Bill, which proposed two new offences. The first, 'soliciting the sexual services of a prostitute in a public place, whether the customer is in a motor vehicle or not', was uncontroversial and quickly adopted.[129] The second, 'paying for the sexual services of a prostitute being controlled for gain', led to a lengthy debate on the meaning of the phrase 'controlled for gain'.[130] The outcome was a strict-liability offence, committed if someone pays or

[122] Sponsors who failed to comply risked loss of their sponsor licence and freedom to recruit or sponsor workers or students not EU citizens. Griffiths and Yeo, 'The UK's hostile environment', 526–527.
[123] Hill, 'This modern day slavery', 73.
[124] Ibid.
[125] Mulvihill, 'The criminalisation of paying for sex in England and Wales', 179.
[126] Van Dyke, 'The UK's response to modern slavery', 53.
[127] UK, Home Office, *Tackling the Demand for Prostitution*, 15.
[128] Ibid., 15.
[129] Policing and Crime Act 2009, s. 19.
[130] Mulvihill, 'The criminalisation of paying for sex in England and Wales', 175–177.

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promises payment for the sexual services of a prostitute who has been subject to exploitative conduct of a kind likely to induce or encourage the provision of sexual services for which the payer has made or promised payment.[131] An offence is committed regardless of whether the person paying or promising payment for sexual services knows or ought to know or be aware that the victim has been subject to exploitative conduct, which goes further than the Council of Europe Convention's recommendation that the buyer have some knowledge of the exploitation. Moreover, under the new offence, it does not matter in which country the sexual services are provided.[132]

Tackling Demand for Prostitution justified taking a harder line on prostitution by linking it to trafficking for sexual exploitation, which it portrayed as a problem in the United Kingdom. It referred to a Home Office analysis that estimated that up to four thousand women had been trafficked for sexual exploitation in 2003. It calculated that this market was worth up to £275 million.[133] Referring to Pentameter 1 and 2, national police operations against sexual exploitation, the review claimed that this these figures underestimated the reality of the problem.[134]

Pentameter 2 combined demand-reduction tactics (such as awareness-raising advertisements in websites and magazines where men would look for massage parlours, saunas, or brothels) with raid and rescue.[135] It was considered a great success by the Home Office, which, together with the UK Human Trafficking Centre, disseminated 'sound-bites and pre-selected statistics' on Pentameter 2 to the media.[136] According to official police statistics, the results of Pentameter 2 were impressive: between October 2007 and March 2008, 822 establishments were raided, resulting in the rescue 167 victims of trafficking and the arrest of 528 people (later reduced to 406) on suspicion of human trafficking.[137]

However, an internal report for the UK Centre on Human Trafficking obtained and circulated by investigative journalist Nick Davies painted a

[131] Section 14 of the Policing and Crime Act 2009, inserting s. 53A of the Sexual Offences Act 2003, which requires that the person responsible for the exploitative conduct must have been acting for or in the expectation of gain for himself or herself or another person, other than the payer or the prostitute.

[132] The maximum penalty for this offence is a fine of £1,000. The offence came into force on 1 April 2010.

[133] UK, Home Office, *Tackling the Demand for Prostitution*, 6.

[134] Ibid.

[135] UK, Home Office, *UK Action Plan on Tackling Human Trafficking*, 31.

[136] Hill, 'This modern day slavery', 93.

[137] Balch, 'Defeating "modern slavery", reducing exploitation?', 80; Hill, 'This modern day slavery', 97.

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different picture. Women recovered through Pentameter 2 rarely received protection or support from state agencies. The overwhelming majority were removed from the United Kingdom, declined support, absconded, disappeared, or were charged.[138] Perhaps more damming from the government's perspective was the fact that only fifteen men and women were convicted, of which only five men were convicted of importing women and forcing them to work as prostitutes. Even then, these traffickers were not detected by the Pentameter 2 operation.[139]

Davies' account revealed the cycle of citation that transformed estimates (clearly acknowledged by their authors to be based on poor and not very reliable data) into hard facts. Commissioned and circulated by the Home Office, these estimates were picked up by Christian charities Care and the Salvation Army and an umbrella group of evangelicals called Churches Alert to Sex Trafficking Across Europe (Chaste). Chaste explicitly campaigned for an end to all prostitution and was enlisted as a specialist adviser to the police. Home Office ministers, an array of politicians, and high-ranking police officers repeated these, and even more preposterous figures, to justify devoting more resources to fighting trafficking for sexual exploitation, including further criminalising prostitution.[140] Davies noted the absence of sex workers, who disputed the claims of their widespread exploitation, from the discussion. His exposé of how the moral panic came to be had little impact as the government moved towards abolishing prostitution to prevent human trafficking.[141]

The government had a great deal of support for its approach from the Labour and Conservatives parties, police forces, and antitrafficking NGOs.[142] Its governance strategy resonated with deeply embedded narratives about white slavery, including redeeming unruly and wanton women. It was also supported by the Bush administration, the EU Parliament, and the Council of Europe. The government used its antitrafficking campaign to target a sector associated with degrading treatment and violence against women while ignoring other sectors, such as agriculture and construction, rife with exploitation.

The problem of sex trafficking gave the police licence to target migrant sex workers, raid premises throughout the United Kingdom, and criminalise prostitution, actions that were seen as bringing the United Kingdom in line with its international and EU commitments. As Angela Hill observed:

[138] Davies, 'Prostitution and trafficking'; Hill, 'This modern day slavery', 100.
[139] Hill, 'This modern day slavery', 104.
[140] Davies, 'Prostitution and trafficking'.
[141] Scoular, *The Subject of Prostitution*, 68–71.
[142] Hill, 'This modern day slavery', 111; Turnbull and Broad, 'Bringing the problem home', 200.

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> This figure of the sex slave has made immigration a threat not to British citizens, but to a certain class of migrant untarnished by the taint of immigration and asylum. This reconfiguration of the anti-immigrant stance allows the UK to be the liberator, to come to the rescue, of this deserving class of migrants while presenting restrictive immigration policies as based on the interest and protection of others.[143]

The challenge was to develop a mechanism to sort victims of slavery, whose rights should be protected, from migrant sex workers, who should be punished, removed, or deported.

In December 2008, the United Kingdom ratified the Council of Europe Convention on Action against Trafficking. The Home Office adopted a forty-five-day reflection period and the possibility of granting a one-year residence permit for victims of trafficking, both of which were longer than the minimums specified in the convention. The government used these initiatives to demonstrate its 'commitment to putting victim care and protection at the heart of our human trafficking strategy'.[144] In 2009, it established a process, known as the National Referral Mechanism (NRM), to identify victims and refer them to the proper agencies to access protections. The Home Office designated the UK Human Trafficking Centre, first housed in the Police Service and then in the Serious Organised Crime Agency, and the UK Border Agency as competent authorities for assessing trafficking victims even though the Council of Europe Convention proposed that this competence be distributed through frontline agencies. NGOs like the Poppy Project and Salvation Army were incorporated into the NRM as first responders who could refer potential victims to competent authorities for a final determination of their status. When it came to oversight, the government refused to appoint an independent national rapporteur to monitor the state's antitrafficking policies and legislation, as recommended by the convention, claiming that an 'additional layer of bureaucracy may actually hamper our efforts to combat human trafficking'.[145] The executive was unwilling to cede any control over its governance of human trafficking.

In the absence of an independent rapporteur, nine NGOs set up the Anti-Trafficking Monitoring Group (ATMG).[146] Their first report, *Wrong Kind of*

[143] Hill, 'This modern day slavery', 114.

[144] Van Dyke, 'The UK's response to modern slavery', 56.

[145] Hill, 'This modern day slavery', 115, quoting Alan Campbell, parliamentary under-secretary of state.

[146] Amnesty International UK, Anti-Slavery International, End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT UK), the Helen Bamber Foundation, the Immigration Law Practitioners' Association (ILPA), Kalayaan, the

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Victim, released in 2010, revealed how the competent authorities in the NRM sorted trafficking victims from illegal migrants and other criminals. UK and EU citizens were processed by the UK Human Trafficking Centre, which was housed in police services and had experience dealing with victims of crime; third-country nationals were processed by the UK Border Agency, primarily concerned with identifying and removing immigration offenders.[147] Evidence of delayed and discriminatory victim-identification processes and inadequate protections for trafficking victims led the ATMG to conclude that the United Kingdom was not yet meeting its commitments under the Council of Europe Convention on Action Against Trafficking.[148]

Although eastern European women are viewed as the archetypical victim, the ATMG found that only 45 per cent of referrals in 2009 were for sexual exploitation. Between April and December 2009, of the 477 people referred to the NRM, 371 were from states outside the EU (primarily Nigeria, China, and Vietnam), 72 were from the EU (excluding the United Kingdom), and 34 were UK nationals. The ATMG reported an overall positive identification as a trafficking victim in 19 per cent of the 477 cases. But the positive identification rate differed dramatically depending on the immigration status of the potential victim; the rate for UK nationals was 76 per cent and EU nationals 29 per cent, but for nationals from outside the EU, it was only 12 per cent.[149] The UK Border Service appeared to be much more adept at discovering illegal migrant workers than identifying victims of trafficking.[150]

The UK government characterised human trafficking as a foreign problem, and its solution was to stop victims from entering the United Kingdom by deterritorialising and externalising its borders.[151] In the 2007 *Action Plan on Human Trafficking*, the government declared it would extend 'the extraterritorial application of trafficking offences to cover acts of facilitation carried out overseas, irrespective of the nationality of the person carrying out the acts'.[152] The UK Borders Act 2007 also reasserted the position of the Sexual Offences Act 2003 that, regardless of the traditional territorial jurisdiction of the criminal law, trafficking offences 'apply to anything done whether inside or outside

POPPY Project, the Trafficking Awareness Raising Alliance of Glasgow Community and Safety Services (TARA), and the UN International Children's Emergency Fund (UNICEF UK). The Anti-Trafficking Legal Project (ATLEP) also consulted on the research.

[147] Balch and Geddes, 'Opportunity from crisis?', 37.

[148] Ibid., 6.

[149] Anti-Trafficking Monitoring Group, *Wrong Kind of Victim?*, 9.

[150] Balch and Geddes, 'Opportunity from crisis?', 37.

[151] FitzGerald, 'Vulnerable geographies', 181.

[152] UK, Home Office, *UK Action Plan on Tackling Human Trafficking*, 34.

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the United Kingdom'.[153] The government allowed the Crown Prosecution Service (CPS) to use powers provided in the Sexual Offences Act 2003, and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 was amended as the government promised. The CPS focused on the Caribbean, West Africa, China, and Afghanistan.[154] The government also continued to place international liaison officers in cooperating countries known to be sources or transit routes for human traffickers to advise domestic migration authorities and airlines on how to identify and stop trafficked migrants from leaving their countries of origin.[155] Development aid was deployed to stop trafficking overseas.[156] The United Kingdom's expansion of its criminal-law jurisdiction beyond its territory and the externalisation of its borders were in keeping with the EU strategy of enrolling non-EU neighbours considered 'gatekeeper' and 'buffer' states to implement control measures on behalf of EU states.[157]

As part of its commitment to ratifying the Council of Europe Convention, the government acknowledged that it would have to enforce its prohibition against labour trafficking.[158] The government's concern was illegal movement, not labour exploitation. However, human rights organisations like Liberty and Anti-Slavery International were unhappy that the prohibition in the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 only applied where there was cross-border movement involving non-EU citizens. In the face of mounting evidence of the existence of EU nationals and other migrants who may not have been trafficked but were still exploited, they pressed for measures to tackle labour exploitation outside of trafficking.[159]

The lack of enforcement of labour legislation contributed to labour exploitation. In its 2009 report on human trafficking, the Home Committee of the House of Commons recounted that outside of GLA sectors 'enforcement was at best patchy and at worst nonexistent' and suggested expanding the GLA's remit to construction.[160] Trade unions and workers' advocates campaigned to bring the construction, cleaning, and catering sectors under the GLA's

[153] FitzGerald, 'Vulnerable bodies, vulnerable borders', 238, discussing ss. 31(2) and (4) of the Act. The exploitation must take place after the victim's arrival in the UK, but facilitation may take place anywhere in the world.
[154] UK, Home Office, *UK Action Plan on Tackling Human Trafficking*, 6.
[155] FitzGerald, 'Vulnerable bodies, vulnerable borders', 236–238.
[156] FitzGerald, 'Vulnerable geographies', 191–193.
[157] O'Connell-Davidson, *Modern Slavery*, 121.
[158] UK, Home Office, *UK Action Plan on Tackling Human Trafficking*, 41.
[159] Van Dyke, 'The UK's response to modern slavery', 52.
[160] UK, House of Commons, Home Affairs Committee, *The Trade in Human Beings*, 27.

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authority. Citing the financial crisis, the Labour government refused to bring other sectors under the GLA on the ground that doing so would impose additional regulatory burdens on business.[161]

Human rights organisations turned to the courts, claiming that under Article 4 of the European Convention on Human Rights the government was obliged to criminalise forced labour and domestic servitude.[162] Several NGOs helped bring a case against a police force, arguing that its refusal to investigate an allegation of domestic servitude on the ground that no trafficking was involved was in breach of the United Kingdom's obligation.[163] The case wound up before the European Court of Human Rights, which held that the government had failed to meet its procedural duty to investigate forced labour.[164] The court elaborated that 'domestic servitude is a specific offence, distinct from trafficking and exploitation, which involves a complex set of dynamics and both overt and more subtle forms of coercion, to force compliance'.[165] With no specific offence of domestic servitude, the court concluded that the UK authorities were unable to give due weight to factors, such as the complainant's allegation that her passport had been taken, that her wages were withheld, and that she had been explicitly and implicitly threatened with denunciation to the immigration authorities – all ILO indicators of forced labour.[166]

The government baulked when human rights groups demanded it create a new criminal-law offence targeting forced labour without an element of trafficking; it claimed criminal-law provisions already outlawed such activities. When a Liberty-drafted clause that would criminalise servitude and forced labour was introduced during the House of Lord's consideration of the Coroners and Justice Bill, the government recanted. It finally agreed to address the problem of forced labour outside the context of immigration.[167] However, it substituted its own provisions for those drafted by the human rights group, arguing 'that a slightly different approach is preferable', one that

[161] Balch, 'Defeating "modern slavery", reducing exploitation?', 82; UK, *Government Reply to the Sixth Report from the Home Affairs Committee*, 4.

[162] Liberty brought a successful review against a police force for failing to investigate a case of trafficking for forced labour. Balch, 'Regulation and enforcement to tackle forced labour', 23.

[163] The Equality and Human Rights Commission and AIRE Centre intervened in *CN v. UK*, which was also supported by Anti-Slavery International, Kalayaan, and the Poppy Project.

[164] *CN v. UK* (2013) 56 EHRR 24, paras. 72, 76.

[165] Ibid., para. 80.

[166] Ibid.

[167] UK, Home Office and Scottish Government, *Update to the UK Action Plan on Tackling Human Trafficking*, 5.

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draws on 'the offence of trafficking for such purposes without the requirement that the person has been trafficked'.[168]

Section 71 of the Coroners and Justice Act 2009, which came into effect in 2010, created an offence of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour. Significantly, Section 71 did not define slavery, servitude, or forced or compulsory labour, referring instead to Article 4 of the European Convention on Human Rights, thereby delegating the responsibility for defining the scope of the offence to the European Court of Human Rights.[169] The government justified the legislation because it met the UK's positive obligation under Article 4 to 'protect those within its jurisdiction from slavery, servitude and forced or compulsory labour' and because such behaviour, in addition to causing serious harm to individuals, 'creates unfair competition amongst competing businesses'.[170]

The UK's response to the Council of Europe and EU legal instruments was selective. It was bound by the European Convention on Human Rights and, thus, had no option but to abide by the European Court of Human Rights' decisions. The government chose to ratify the Council of Europe Convention on Action Against Human Trafficking, which required it to provide more robust protection for victims. However, the human trafficking convention, unlike the European Convention on Human Rights, was not justiciable, and the only arms-length review mechanism was the Group of Experts on Action against Trafficking in Human Beings, which relies on periodic reports instead of enforceable sanctions.[171] Even as the government ratified the Council of Europe Convention on Action Against Trafficking, it opted out of an EU directive, which is justiciable, that provides undocumented migrant workers with the right to recoup unpaid wages.[172] The government adopted an approach to human trafficking that positioned trafficking as an integral part of border controls and reinforced a criminal-law jurisdiction while it avoided labour law initiatives that could be seen as 'rewarding' breaches of immigration legislation and restricted human rights to a narrow category of victims.

[168] Fudge and Strauss, 'Migrants, unfree labour, and the legal construction', 537.

[169] Coroners and Justice Act 2009 (2009, c. 25).

[170] UK, Ministry of Justice, 'Slavery, servitude and forced or compulsory labour', para. 13.

[171] For Foucault, discipline is obtained through imposing precise and detailed norms. Biopower does not displace disciplinary techniques; instead, according to him, it infiltrates and embeds itself in existing disciplinary techniques, operating on a different scale and making use of different instruments. Foucault, *Society Must Be Defended*, 242.

[172] European Union, 'Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009'. Britain opted into EU measures aimed at tackling irregular migration and opted out of measures designed to protect victims of trafficking: Geddes, 'Getting the best of both worlds?', 733.

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CONCLUSION

International and European legal instruments prompted the UK government to enter the human trafficking policy space and provided a broad legal framework. Like the EU, the United Kingdom treated human trafficking for labour exploitation very differently from trafficking for sexual exploitation. The United Kingdom moved closer to the strategy favoured by the EU and Council of Europe of combatting sexual exploitation by abolishing prostitution. For governments, migrant sex workers exemplified the problem of porous borders in the United Kingdom and Europe, where criminal laws against trafficking for sexual exploitation did little to protect migrant women caught up in antitrafficking police operations.

Despite these similarities, the United Kingdom's distinctive cultural political economy marked its human trafficking laws and policies.[173] Key elements of the British conception of sovereignty, such as controlling borders at territorial frontiers and concentrating authority within the executive, were prominent, distinctive features of the United Kingdom's antitrafficking discourse and governance strategy. The association of illegal entry and illegal working with human trafficking created an aura of criminality that spilled over to trafficking victims. The government did not want to be seen as too tender in its treatment of illegal migrants and, thus, was reluctant to commit to protecting the human rights of victims who were migrants. The gateway for victim protection was through the NRM, which in the case of non-EU citizens was lodged in the agency with jurisdiction over enforcing immigration controls. The government only grudgingly extended labour exploitation beyond the context of illegal immigration, it regarding labour exploitation first and foremost as a crime against British business and workers. To stamp out human trafficking, illegal working had to be tackled. By equating tackling human trafficking with the abolition of the slave trade, the government elevated its antitrafficking policies to a moral crusade that transcended bipartisan politics. At the same time, it consolidated its authority over the governance of human trafficking, minimising the role of Parliament and refusing independent oversight wherever possible.

New Labour's selective adoption of EU directives pertaining to human trafficking fortified the United Kingdom's external borders and preserved its control over the entry and entitlements of migrants who were non-EU citizens. But the tenson between sharing sovereignty with the EU to strengthen the United Kingdom's capacity to control its borders and pursue its national

[173] See Sum and Jessop, *Towards a Cultural Political Economy*.

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interest and the idea of parliamentary sovereignty and executive control as the 'reservoir' of sovereignty could be ignored only if the public accepted the legitimacy of political decision making and political elites tolerated EU constraints on their political freedom. Sovereignty's link with border control and immigration in the United Kingdom also contributed to the volatility of the United Kingdom's relationship with the EU. At the May 2007 Labour Party conference, Gordon Brown responded to reports that EU workers had taken jobs in the United Kingdom by proclaiming, 'British jobs for British workers'.[174]

In 2008, when the United Kingdom's liberal growth model ground to a halt and the UK economy suffered its sharpest contraction since the Great Depression, public opinion hardened against immigration, including the movement of EU citizens into the United Kingdom.[175] The fact that EU treaties trumped the UK Parliament over matters of borders and belonging not only illuminated the contradiction between the different ideas of sovereignty, it also raised the question of popular sovereignty and the political legitimacy of decision making.[176] The Lisbon Treaty, which came into effect in 2009 and was intended to increase the democratic legitimacy of the EU by limiting the power of Members States' governments and increasing the authority of the EU Parliament in the EU's legislative process, was seen by the British political elite, including Prime Minister Gordon Brown, as threatening to British sovereignty. In 2010, David Cameron (the leader of the Opposition) launched the Conservative Party's general election campaign with a promise 'to redistribute power from the political elite to the man and woman in the street'.[177] He declared the Conservatives would take control back from Brussels.[178] New Labour was unsuccessful in depoliticising the EU domestically, and sovereignty became the flashpoint in political discourse.

Instead of a rupture with the Labour government's human trafficking policy, the 2010 election, which resulted in a hung Parliament and the formation of a coalition government between the Conservative and Liberal Democratic parties, amplified the existing themes, including a focus on illegal working, a punitive and restrictive approach to immigration and prostitution, and a suspicion of alleged victims of human trafficking.[179] As we shall see in

[174] Bale, 'Putting it right?', 300.
[175] Hopkin, 'When Polanyi met Farage', 465.
[176] Gifford, 'The UK and the European Union', 326.
[177] Batty, 'David Cameron launches election campaign'.
[178] Gifford, 'The UK and the European Union', 333.
[179] Broad and Turnbull break human trafficking and modern slavery policy in the UK into two phases, from the mid-1990s to 2013 and from 2013 on: see 'From human trafficking to

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the next chapter, under the Coalition and Conversative governments, taking control of UK borders extended beyond asylum seekers and refugees to EU citizens. In 2013, the Conservative Party seized on the Labour government's linking of its antitrafficking strategy with the abolition of the slave trade to rechristen 'human trafficking' 'modern slavery'. The beauty of the modern slavery frame, from a political perspective, is that it enabled the UK government to cloak its carceral approach to protecting its borders and restoring order under a moral crusade in which Britain would re-establish itself as a global humanitarian leader. However, unlike the New Labour government, which could rely on its majority to maintain control over antitrafficking policy, the coalition government required Parliament's support. How modern slavery was mobilised in the UK governance agenda between 2010 and 2023 is the subject of the next chapter.

modern slavery', 128. While I agree that the discursive shift to modern slavery is important and that it expands to covers a greater range of unfree labour, I argue that the continuities with New Labour's emphasis on illegal working and its specific understanding of the harm of labour exploitation are as, if not, more important.

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