

The role of the state in the construction of 'human trafficking' in the UK

Thesis submitted to the Faculty of Law at the University of Oxford

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by

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Christ Church College

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Abstract

The way in which the concept 'human trafficking' has been constructed in the UK (in the words and actions of law enforcement bodies, state-funded NGOs and courts, for example) has changed significantly since the early 2000s. Yet legal and policy definitions of trafficking have remained largely consistent. This is surprising if we expect the state, through instruments like legislation and policy statements, to authoritatively define particular concepts and categories in a way that then shapes how others think and act. This did not happen - at least not straightforwardly - in the case of trafficking. What, then, was the state's contribution to the construction of 'human trafficking' in the UK?

To answer that question, this thesis explores the three most significant state interventions relating to trafficking: a 2007 policy statement, a 2009 set of administrative rules and a 2015 piece of legislation. Each had different characteristics and was used in a different way. I argue that the state used these instruments not to authoritatively define 'human trafficking' but to shape already existing or incipient ideas and assumptions about trafficking. The state collated, codified and legitimised certain configurations of ideas and assumptions through the three instruments discussed.

To place the state's activities in context, the thesis also investigates how the state first came to recognise 'human trafficking' as an issue and what influence the concepts and categories shaped by the state went on to have. The former is addressed through identifying the ideas and assumptions that fed into the state's early efforts and tracing their historical development. The latter is addressed through examining the ways in which actors who are engaged in implementing the concepts and categories shaped by the state have had to adapt their ideas and practices in order to do so.

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Table of Abbreviations

AITCA	Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004
CEOP	Child Exploitation and Online Protection Centre
CSJ	Centre for Social Justice
CPS	Crown Prosecution Service
ECPAT	Every Child Protected Against Trafficking
ECHR	European Convention on Human Rights
EU	European Union
GLA	Gangmasters Licensing Authority
ILO	International Labour Organisation
NGO	Non-Governmental Organisation
NRM	National Referral Mechanism
NSPCC	National Society for the Prevention of Cruelty to Children
SMP	Strategic Migration Partnership
SOA	Sexual Offences Act 2003
SOCA	Serious Organised Crime Agency
UK	United Kingdom
UKHTC	UK Human Trafficking Centre
UN	United Nations

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1 Introduction

1.1 Overview

In 2000, the United Nations (UN) produced the first widely agreed definition of 'human trafficking' in a Protocol to the Convention on Transnational Organised Crime.[1] The Protocol defined trafficking as the movement of a person, either by force or deception, for the purpose of exploiting that person. Movement was defined broadly - to include recruiting someone or receiving them on their arrival, for example - as was exploitation. The United Kingdom (UK) incorporated that definition into its domestic law in two offences - sections 57-9 of the Sexual Offences Act 2003 and section 4 of the Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004.[2] The sense of the definition (though not the exact wording) was reproduced in the first policy statement to be issued on human trafficking by the Home Office, in 2007.[3] The two criminal offences were later brought together in the Modern Slavery

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1 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (signed 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

2 Sexual Offences Act 2003 (SOA); Asylum and Immigration (Treatment of Claimants, Etc) Act 2004 (AITCA).

3 Home Office and Scottish Executive, *UK Action Plan on Tackling Human Trafficking* (2007).

Act 2015, with only very minor modifications.[4]

That seems like a straightforward picture, but it becomes more complex if we look beyond legal and policy definitions at other practices and ideas, such as the activities of the police or local authorities, the content of judicial opinions or the arguments of government agencies and state-funded Non-Governmental Organisations (NGOs). We find that the way in which 'human trafficking' has been constructed has changed significantly over the 2000-2015 period in the UK, even as the legal and policy definitions have remained largely constant.

In the early 2000s, trafficking was mostly constructed (as a result of a range of expressed ideas, assumptions and practices) as the movement of foreign women into the UK for sexual exploitation - what it meant to be a 'trafficker' or 'trafficked victim' was correspondingly limited. More recently, it has been recognised that victims can be male, or British nationals, and that exploitation can include, among other things, agricultural labour, cannabis farming, forced street begging, or domestic servitude. The construction has changed.[5]

I refer to 'human trafficking' as a 'construct' - as having been 'constructed' - on the basis that the term and the idea have not always existed.[6] Before 'human

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4 Modern Slavery Act 2015 (Modern Slavery Act).

5 Again following Hacking, I use the term 'construction' rather than 'social construction' because, as he suggests, the latter term is somewhat tautologous. How else can an idea be constructed than socially? I will, however, use 'social construction(ism)' when discussing scholarship that uses those terms. Ian Hacking, *The Social Construction of What?* (Harvard University Press 1999) 40-1.

6 There are a number of concepts and phenomena that I discuss in this thesis, which I want to emphasise are constructed or which I define in a particular way. I use single quote marks to indicate that I am not taking for granted what these terms mean. In order to make the thesis more readable, I do not repeat the single quotes every time I use the terms. Instead, I mark them when I first introduce them, and occasionally in subsequent uses where I particularly want to emphasise the sense in which I understand the term and/or where there is a risk that the term might be taken to have a different meaning.

trafficking' came to be used and defined, even though behaviours that we might now think of as trafficking undoubtedly took place, it was not possible to be a 'trafficker' or a 'trafficked victim', to think of oneself as such or to be treated as such by others. Those were not, in Ian Hacking's words, ways 'to be a person'.[7]

The term was used - in the UK and internationally - prior to the early 2000s, but it was not widely employed in the UK and there was no mention of it in law or policy. When legal and policy definitions were introduced we might assume that they had a substantial influence on how trafficking was constructed, affecting who might be labelled a 'trafficker' or 'trafficked victim'. In practice, however, other ideas and assumptions, not found in law or policy, have been as important in shaping the construct 'human trafficking'. Often, they have done so by shaping one or more of the constituent categories of 'human trafficking' - such as 'trafficked victim' or 'exploitation'.

The legal and policy definitions of trafficking have not been unimportant. The way in which trafficking has been constructed through broader patterns of practices

[7] Ian Hacking, 'Making Up People' (2006) 28(16) London Review of Books 23, . Hacking distinguishes between the social construction of objects and that of ideas. A social object - such as 'the state of the economy', to use Hacking's example - is always constructed. There is no intrinsic 'state of the economy'; rather, it is determined by social and political forces. The behaviours commonly labelled 'human trafficking' are similarly constructed. The movement of people, particularly across borders, by coercion or deception into exploitation, is enabled or facilitated by political and social phenomena such as immigration policy, labour inspection regimes, the existence of diaspora communities, global communications, etc. This thesis, however, focuses on the construction of the idea of 'human trafficking'. This refers to what trafficking has been thought to be, including how the trafficked victim has been imagined, and what kinds of movement and exploitation have been thought to be involved. This thesis is about the role played by the state in the construction of that idea (as I go on to discuss in the following pages). The state also has a role in the construction of 'human trafficking' as a social object - that is, in the enabling, facilitating or constraining of certain behaviours. The most obvious example is the state's setting of immigration policy, which affects who may travel legally to the UK and with what conditions attached, in turn influencing the constraints and vulnerabilities that both legal and illegal migrants experience. This aspect of the state's role, however, though important, is outside the scope of this thesis.

and ideas has always fallen within the scope of the definitions outlined above. But nor has the conceptual influence of law and policy been straightforward. This is somewhat surprising if we think that the ability to provide authoritative constructions of a particular issue is an important source of power for a state, as we might expect it to be. It is also surprising if we think that the law is perhaps the primary instrument through which the state can do that. Writers like Anthony Honoré and John Finnis have explored the capacity of law to create, shape and naturalise concepts and categories that we then use to make sense of the world. One of the main functions of the law, says Honoré, is to create rules that 'explain how to translate actions, events, and other facts into the appropriate categories.'[8] Law is thus centrally concerned with

> the transformation of the data of ordinary life into those of a special drama with its own personages, costumes, and conventions, not to mention the invention of new personages and relationships not found in the state of nature. To set the stage for this drama the law categorizes actions, events, personalities, and conditions in a special way and then, from their subsumption into the appropriate category, draws conclusions as to the legal position of the dramatis personae and res, their possibilities of acting and suffering, and their mutual relations.[9]

Of course concepts and categories need not be defined only by the law. The state has other instruments at its disposal, such as policy statements or administrative rules. In the case of human trafficking, the 'trafficked victim' has been defined in administrative rules but not in legislation (as I discuss in Chapter 5).

Creating and shaping concepts and categories that in turn affect how others

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8 Anthony Honoré, 'Real Laws' in HLA Hart, PMS Hacker and Joseph Raz (eds), *Law, Morality, and Society: Essays in Honour of H. L. A. Hart* (Clarendon Press 1977) 112.

9 ibid 112.

think and act is a particular way of exercising power. It is not the only way. The state, for example, can do many other things: use force, distribute funds, establish organisations, and so on. But to the extent that the state does exercise power through acting on concepts and categories, trafficking suggests that its role is not as straightforward as we might imagine. What has the role of the state been in the construction of 'human trafficking'? What have its laws, policy statements and administrative rules been doing if not authoritatively defining the relevant concepts and categories?

This thesis addresses those questions through an in-depth, exploratory study of the development of the UK's anti-trafficking 'policy apparatus' (a term I define below) over the period 2000-15. The year 2000 marks the point at which the state first began to recognise trafficking as an issue and to take steps to address it; 2015 marks the passage of the Modern Slavery Act.[10] I look at the changing construction of 'human trafficking' over that period, attempting to distinguish the particular role played by the state. I do so first by exploring the way in which the state first recognised 'human trafficking' and took responsibility for addressing it. I then explore the operation and effects of the three most significant state interventions with regard to human trafficking: the 2007 policy statement mentioned above, the establishment of the victim support system in 2009, and the Modern Slavery Act 2015. The thesis is in part an exploration of how power works where the state is involved, but it is not about power in general terms. It explores a specific manner of exercising power - the creation, shaping and propagation of concepts and categories -

[10] Of course the state's contribution to the construction of 'human trafficking' did not come to an end with the passage of the Act. But the fieldwork conducted for this thesis finished in September 2015, a few months after the legislation achieved royal assent. The Act provided a convenient endpoint for the analysis presented here.

and asks what role the state plays in that. So while power is the overarching concept behind the thesis, I address only one minor aspect of it in the argument made here. In Chapter 9, I briefly return to the question of power and offer some more general reflections.

The three interventions that I focus on represent not only the most important state interventions but also the most important interventions generally into the government of human trafficking in the UK since 2000. This became clear at a very early stage in my fieldwork. Consequently, I decided to focus on them as a useful site at which to explore and interrogate the nature of the state's contribution to the construction of human trafficking. They do not represent the totality of the state's actions, but they are the most crucial elements. In order to distinguish the particular characteristics of the interventions I focus on (their origins, nature, functioning and effects), it is useful to distinguish both the interventions themselves and the actors principally responsible for them (Ministers, their advisors and officials of their Departments, for the most part) from a wide range of related activity. That includes activity carried out by other, less central, parts of the state - such as the police, immigration officials and government agencies - as well as activity carried out by actors outside of, but closely connected to, the state - such as NGOs in receipt of state funding.

In other words, I focus on a small, central part of the state in order to highlight key features of how the state as a larger entity contributes to the construction of 'human trafficking'. In order to avoid repetition, however, I will continue to use the term 'the state' throughout this thesis. When I do so, I am (unless I specify otherwise) referring to this core group of state actors. I use the term 'policy apparatus' (which I explain in detail in Section 1.1.1, below) to refer to the aggregate of this

core group, other state actors outside that group, and actors closely connected to the state - such as the NGOs mentioned. My use of this distinction between core state actors and a wider policy apparatus, of which they form a part, is empirically driven and designed purely to frame as clearly as possible the findings that I present. I am not claiming any more general theoretical validity for the distinction or any implications it may have for how we theorise the state. The latter is not the objective of this thesis, which looks at certain aspects of how the state functions rather than attempting to derive conclusions as to the nature of the state in a more general sense.

To explore the contribution of the state through focusing on these three main interventions requires a detailed historical study, using ethnographic methods. A historical approach, constructing a broadly chronological account of events, makes it possible to capture the ideas flowing into these interventions, the interventions themselves (their nature and function), and their effects. It also allows us to see how each intervention builds on the previous one. An ethnographic approach is important because many of the ideas, assumptions and practices that have been important in the construction of 'human trafficking' and that informed these interventions either have not been documented at all or are not fully described in available documents. It is also difficult to comprehend the relative significance of different ideas, practices, documents or procedures without asking people who were involved at the time. Consequently I adopt an ethnographic approach, broadly defined, in this study. I expand further on what I mean by 'ethnographic' in Section 1.4, below.

The thesis is fundamentally about the construction of the idea of 'human trafficking', but it differs in some respects from more typical social constructionist analyses. Such analyses, as Ian Hacking has noted, usually seek to call attention to something

commonly perceived to be inevitable, to question its inevitability by showing how it has been constructed, to point to the harmful consequences of the construct, and to show how those consequences could be avoided. 'The constructionist argues that the product [the thing constructed] is not inevitable by showing how it came into being (historical process), and noting the purely contingent historical determinants of that process.'[11] The point of these analyses, Hacking argues, is often to reveal the exercise of power and to emancipate those who suffer its effects: 'Constructionists are greatly concerned with questions of power and control. The point of unmasking is to liberate the oppressed, to show how categories of knowledge are used in power relationships.'[12]

This is not the approach I take here. Although I do show the historical contingency of the construct 'human trafficking', that is not my main goal. The point has already been made by many other scholars (some of whose work I discuss below), who have gone on to challenge what they see as the unjust effects of that construct. I am less interested in the construct and its effects than in the process of construction, less in the effects of power and more in the manner in which it is exercised. Hence this thesis explores not the *what* but the *how* of the constructive process. How is the state involved in it and, in particular, how do some of its primary instruments (legislation, policy statements and administrative rules) function in that regard?

These are the broader questions that this thesis addresses. By exploring the contribution of the state to the construction of 'human trafficking' and focusing in particular on the role of some of the main instruments that the state employs, I am able to propose some general functions that the state might perform in the

11 Hacking, *The Social Construction of What?* (n 5) 38.

12 ibid 58.

construction of other issues.

1.1.1 The 'policy apparatus'

As mentioned above, I explore the contribution of the state through focusing on the three main state interventions into the government of human trafficking and placing these in relation to a wider sphere of activity in order to distinguish their particular role. I refer to the aggregate group of actors, practices, institutions, ideas and assumptions - including both the core state actors I have mentioned as well as a broader group of less central state actors and non-state actors - as the 'policy apparatus'.

I have taken the term from Gregory Feldman, who coined it based on Foucault's notion of the 'apparatus' or 'dispositif'.[13] Foucault defined the 'apparatus' just once, in a 1977 interview:

> a resolutely heterogeneous grouping comprising discourses, institutions, architectural arrangements, policy decisions, laws, administrative measures, scientific statements, philosophic, moral and philanthropic propositions; in sum, the said and the not-said, these are the elements of the apparatus. The apparatus itself is the network that can be established between these elements.[14]

Clearly this is a very broad definition. Foucault was interested in the effects generated by certain configurations of power relations, without presupposing which

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[13] Gregory Feldman, *The Migration Apparatus: Security, Labor, and Policymaking in the European Union* (Stanford University Press 2012); Gregory Feldman, 'Illuminating the Apparatus: Steps toward a Nonlocal Ethnography of Global Governance' in Cris Shore, Susan Wright and Davide Peró (eds), *Policy Worlds: Anthropology and the analysis of contemporary power* (Berghahn Books 2011).

[14] Reproduced in Paul Rabinow, *Anthropos Today: Reflections on Modern Equipment* (Princeton University Press 2009) 51.

actors, objects and processes may have been involved in those relations. The 'effect' that I am interested in here is the production of the construct 'human trafficking', but I only describe one part of a potentially much broader apparatus. I do not include, for example, journalistic accounts, victim testimony, academic expertise, the architecture of immigration detention centres, or many other elements that, together, can be said to contribute to the construction of 'human trafficking'. An exploration of that full apparatus is beyond the scope of this thesis, both because of its considerable breadth and also because it is unnecessary in order to distinguish the particular role of the three interventions that I focus on. Consequently, the term 'policy apparatus' serves as a reminder that the apparatus I describe contains particular actors, objects and processes - and not others.

Discussing Foucault's concept of the 'apparatus', Rabinow saw it as giving rise to 'an overall articulated strategic intent' - a purpose or direction. The purpose or direction that emerges from the anti-trafficking policy apparatus is the UK's overall 'approach to' or 'policy on' human trafficking. Nevertheless, Rabinow argued, 'there is no overall articulator of the strategy'. Instead, he thought that individual actors within the apparatus pursue their own agendas, informed by their interests or remits, and the 'strategy' emerges as a result, unauthored by any individual or organisation.[15] Analogously, I do not identify the state (or any other actor) as individually responsible for making policy, which I instead treat as an emergent property of the activities of the policy apparatus. My goal is to explore the role of the three interventions I have identified within that complex of activities, and by exploring their operation to shed light on the contribution the state makes towards

[15] Rabinow (n 14) 52-3.

the construction of human trafficking.

1.2 Theoretical approach

1.2.1 The state

In considering the contribution made by the state to the construction of 'human trafficking' I have found it useful to draw on Foucault's ideas about the role of the state within what he termed 'government'. Foucault defined 'government' in such a way as to separate it from its traditional association with the state, suggesting that we should instead see it in broad terms as the 'conduct of conduct'.[16] Mitchell Dean has glossed 'conduct of conduct' as follows: 'government entails any attempt to shape with some degree of deliberation aspects of our behaviour according to particular sets of norms and for a variety of ends. Government in this sense is an undertaking conducted in the plural. There is a plurality of governing agencies and authorities, of aspects of behaviour to be governed, of norms invoked, of purposes sought, and of effects, outcomes and consequences.'[17]

The construction of something like human trafficking - which entails the construction of categories like trafficker and trafficked victim - is a form of government in this broad sense. The construction of these categories, with procedures for identifying them and consequences that follow on them, causes people to think and act differently to how they might otherwise. So this thesis is also a study of the state's role in 'government', understood as 'the organized practices through which we are

[16] Michel Foucault, *The Foucault Effect: Studies in Governmentality* (Graham Burchell, Colin Gordon and Peter Miller eds, University of Chicago Press 1991) 48.

[17] Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (Sage 1999) 10.

governed and through which we govern ourselves'.[18]

Many scholars since Foucault have studied government as he defined it. Often, they have emphasised the way in which Foucault deliberately decentred the state in his wider analysis of power.[19] One of, if not the main, advantage of using Foucault's approach to government is that it enables the analysis of power outside the confines of the state, where previously it had been much less visible. Consequently, many scholars have explored locally specific 'regimes of government' beyond the state.[20]

This thesis places the focus back on the state, but without denying the many sites and agencies of government outside it. The question then becomes what the role of the state is within that wider conception of government.

Bob Jessop has argued that Foucault was more interested in the state than many writers on 'governmentality' have allowed. He suggests that Foucault was concerned to move beyond the local and the micro to ask: (i) 'how do diverse power relations come to be colonized and articulated into more general mechanisms that sustain more encompassing forms of domination' and (ii) 'how are they linked to specific forms and means of producing knowledge'?[21] In other words, Jessop has Foucault saying: it is all very well exploring how government happens in various local sites, but how do the knowledges and power relations inherent in those sites come to be combined? How are they articulated into more abstract strategies?

Foucault's answer was, in part: through the actions of the state. In *The History*

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18 Dean (n 17) 18.

19 Bob Jessop, 'Constituting another Foucault effect: Foucault on States and Statecraft' in Ulrich Bröckling, Susanne Krasmann and Thomas Lemke (eds), *Governmentality: Current Issues and Future Challenges* (Routledge 2010) 57.

20 William Walters, *Governmentality: Critical Encounters* (Routledge 2012) 51.

21 Bob Jessop, 'From Micro-Powers to Governmentality: Foucault's Work on Statehood, State Formation, Statecraft and State Power' (2006) 26(1) Political Geography 34.

of Sexuality he referred to the state relying on the 'institutional integration of power relationships'.[22] He went further in *The Subject and Power*:

> It is certain that, in contemporary societies, the state is not simply one of the forms of specific situations of the exercise of power - even if it is the most important - but that, in a certain way, all other forms of power relation must refer to it. But this is not because they are derived from it; rather, it is because power relations have become more and more under state control [...] Using here the restricted meaning of the word 'government' [i.e. to refer to the state], one could say that power relations have been progressively governmentalized, that is to say, elaborated, rationalized, and centralized in the form of, or under the auspices of, state institutions.[23]

Foucault is arguing that the state is more than a locus from which power is exercised; it has a particular role, not necessarily as an authoritative source of power, but as the institutional form in which power most frequently (though not always) becomes rationalised and centralised.

In *The Birth of Biopolitics* he developed this argument further, suggesting that

> ...[t]he state is not a universal nor in itself an autonomous source of power. The state is nothing else but the effect, the profile, the mobile shape of a perpetual statification (*étatisation*) or statifications, in the sense of incessant transactions which modify, or move, or drastically change, or insidiously shift sources of finance, modes of investment, decision-making centers, forms and types of control, relationships between local powers, the central authority, and so on. In short, the state has no heart, as we well know, but not just in the sense that it has no feelings, either good or bad, but it has no heart in the sense that it has no interior. The state is nothing else but the mobile effect of a regime of multiple governmentalities.[24]

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22 Michel Foucault, *The History of Sexuality. Vol. 1: The Will to Knowledge* (Penguin 1988) 96.

23 Michel Foucault, *Power* (James D Faubion ed, Robert Hurley tr, The Essential Works of Foucault, 1954-1984, vol 3, New Press 2001) 345.

24 Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978-1979* (Michel Senellart ed, Graham Burchell tr, Palgrave Macmillan 2008) 77.

Foucault comes close here to suggesting that the state is epiphenomenal upon the activity of existing, local regimes of government. It is perhaps this that Jessop refers to when he comments that Foucault was 'concerned with the "state effect." He wanted to explain how the state can act as if it were unified, as if it had a head even though it is headless.'[25]

Clearly Foucault envisions a particular role for the state in the exercise of power. He does not specify this role in any great detail (the above quotes are all relatively isolated reflections), but his work does suggest the kind of perspective we might take. Foucault prompts us to consider how the state connects to other, perhaps more local, 'regimes of government' and what it means for a state to elaborate and rationalise those regimes. But it remains unclear what exactly the state is doing in this picture.

This is a useful perspective from which to approach the question of the state's role in the construction of 'human trafficking', and consequently in the 'government' of the individuals and behaviours involved. I do not seek to directly apply Foucault's distinction, however; instead, I draw on it as a useful analogy. Where Foucault discusses the state and its relationship with other sites of 'government' outside the state, I discuss (as noted above) three interventions primarily instituted by a small core group of state actors, and their relationship to the rest of what I have termed the 'policy apparatus', which includes both less central state actors and some non-state actors (such as NGOs in receipt of state funding). Nevertheless the analogy with Foucault's distinction is striking and, as I go on to show in Chapter 9, some of what subsequent authors have had to say about the relationship between the state

[25] Jessop, 'Constituting another Foucault effect: Foucault on States and Statecraft' (n 19) 62.

and other sites of 'government' can be applied to my research focus also.

Those authors form part of a small literature that has built on Foucault's ideas in relation to the state. I discuss that literature at greater length in Chapter 9. Here, I note just one conceptual distinction set out in that literature that I have found useful to bear in mind. That is a tripartite description of the state's role offered by Nikolas Rose and Peter Miller. They suggest that the state's role can be understood in three parts: the collation, collection and creation of knowledge, the processing of that knowledge, and the transformation of knowledge into norms or rules of some kind that are then disseminated.[26] This tripartite distinction mirrors the structure of my approach, which focuses on the ideas, assumptions and practices that feed into the three interventions I describe, the nature and operation of those interventions, and their effects.

Chapters 2 and 3 consequently explore the ideas, assumptions and practices that existed prior to the state recognising 'human trafficking' as an issue and taking some measure of responsibility for addressing it. There was no lightbulb moment when trafficking entered into the purview of the British state; instead, it progressed slowly through the corridors of government bodies, bringing with it many of the associations and connotations it had had when previously discussed and addressed. I look at two main sources of such associations and connotations: the international and European sphere over the course of the 20th century (Chapter 2) and debates about trafficking in the UK in the few years prior to it becoming a recognised policy issue (Chapter 3). Unlike Rose and Miller, I do not find much evidence that the state has created knowledge (regarding human trafficking).

[26] Nikolas Rose and Peter Miller, 'Political Power Beyond the State: Problematics of Government' [1992] British Journal of Sociology 173, 194.

Chapters 4, 5 & 6 address the second aspect identified by Rose and Miller: the processing of knowledge. In those chapters I explore the ways in which the state codified, shaped and rationalised various ideas and assumptions about trafficking. The chapters proceed chronologically, each addressing one of the instruments of the state that we might expect to be involved in the provision of authoritative definitions, and assessing what their role has actually been. Chapter 4 looks at the 2007 'Action Plan' (a policy statement) that constituted the state's first formal articulation of its anti-trafficking efforts. Chapter 5 examines the establishment of the National Referral Mechanism in 2009 - a set of procedures for identifying and supporting trafficked victims set out in administrative guidance. Chapter 6 explores the legislative process leading up to the passage of the Modern Slavery Act in 2015, which was the first piece of legislation that (despite the name) was dedicated to addressing human trafficking. These three developments constitute the three most significant state interventions in the construction of 'human trafficking'. Conveniently, they also exemplify three different instruments of state: a policy statement, administrative rules, and legislation. Each has different characteristics and was used by the state in a slightly different way. Of course the state has more instruments and techniques at its disposal than these, but these three are perhaps the most prominent of them.

The third stage of Rose and Miller's model addresses the transformation of knowledge into norms and rules and their dissemination by the state. I do not assume that the state necessarily transforms knowledge into norms and rules, but it is important to ask what happens to the ideas and assumptions that the state works on and with. That question leads to the broader issue of what impact the concepts and categories shaped by the state have on people in the world - people who come to be labelled as

'traffickers' or 'trafficked victims'. That is an important issue, but it is beyond the scope of this thesis. What I focus on is the influence that the state's workings have had on other parts of the policy apparatus. I assess how the concepts and categories shaped by the state have in turn shaped the ideas and practices of other actors who also contribute to constructing human trafficking.

Chapter 7 explores how implementing officials such as lawyers, judges and police officers receive and respond to the concepts and categories that the state has helped to shape. They have an obligation to apply those concepts and categories (where they are found in law, policy or administrative rules) but often must adapt and improvise in order to do so. Chapter 8 adopts the same perspective but focuses on the so-called regional anti-trafficking networks (a term I explain further in that chapter). These bodies have no hierarchical relationship to the state - no direct relationship at all - so they are free to draw on the concepts and categories shaped by the state in whatever way suits them. I explore how they do so to compare and contrast their reception of the state's efforts with the response of the law enforcement and court officials discussed in Chapter 7.

This extended account of the origins, operation and effects of the state's contribution to the 'government' of 'human trafficking' develops and nuances existing ideas in the literature on 'governmentality'. The main contribution I make to that literature is to show in detail some aspects of the state's role, which I discuss at length in Chapter 9. Two subsidiary contributions address limitations that Walters has noted in existing work on governmentality. First, he suggests that there is a tendency to make governance 'appear overly coherent, univocal and rational'.[27] A

[27] Walters (n 20) 74.

solution, Walters suggests, would be to give more weight to 'questions about processes of transformation, dynamics of change, and the difference made by political struggle'.[28] In other words, he says, we should strive to make contingency, contestation and inconsistency visible in our accounts of governmentality - rather than portraying an apparently homogeneous, fixed and unchanging regime of power. In fact, Walters suggests that we should be wary of any apparent example of the latter - as it may be a product of 'manipulation' or 'spin'.[29] As Gottweiss has similarly remarked, although policy may be able to temporarily create dominant systems of meaning, these don't tend to last: 'hegemonic definitions of reality tend to be short lived and become rather quickly objects of contest and destabilization'.[30] By providing a chronological account I am able to show how the nature and significance of the state's contribution to the governance of human trafficking has changed over time, and more broadly how the object of that governance - the construct 'human trafficking' - has been in a constant state of flux.

The second limitation that Walters identifies in the literature on governmentality is a lack of attention paid to 'official politics'. By that he means the formal institutions of government (Parliament, government departments) and also 'politically-orientated activity' such as social movements and the manoeuvrings of political parties.[31] Walters thinks the role of these institutions in governmentality has been under-emphasised. My thesis is able to partly address this gap through a close focus

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28 Walters (n 20) 74.

29 ibid 75.

30 Herbert Gottweis, 'Theoretical Strategies of Poststructuralist Policy analysis: Towards an Analytics of Government' in Maarten A Hajer and Hendrik Wagenaar (eds), *Deliberative Policy Analysis: Understanding Governance in the Network Society* (Cambridge University Press 2003) 262.

31 Walters (n 20) 78.

on the formal institutions of the state, such as the activities of Home Office civil servants and the structures of the legislative process.

1.2.2 Law

In this thesis I understand 'law' to refer to legislation and court judgements. The precise meaning of 'law' is of course a matter of much debate, but the utility of a narrow definition here (similar to the utility of defining the 'state' narrowly) is that it allows the role of the law to be placed in context and viewed relative to wider developments. We can thereby distinguish more precisely the particular contribution made by the law. I contextualise the role of the law by showing how its definitions have contributed to the broader constructive processes of the policy apparatus.

This perspective on law is similar in some respects to Alan Hunt's argument that law should not be treated as an autonomous and self-referential phenomenon. Instead, Hunt advocates a 'relational' approach, which questions the autonomy of law relative to other parts of society. He relates this approach to Foucault's thought, his goal being 'to explore [Foucault's] general field of governance in a way that will make use of an expanded conception of law as a significant component of these processes.'[32] Consequently this perspective on law allows me to include it as just one among many other instruments and techniques of the state in a Foucauldian perspective on government.

It may seem as if there is a paradox here. Some jurisprudential scholars have suggested that there is no place for law (understood as the command of a sovereign) in Foucault's ideas. Hunt himself takes this view, suggesting that Foucault possessed

[32] Alan Hunt, *Explorations in Law and Society: Towards a Constitutive Theory of Law* (Routledge 1993) 306.

an 'imperative conception of law' as a body of coercively enforced rules. But Hunt seeks to challenge that conception, arguing that law, understood differently, can be made to fit with Foucault's thought. We should see law, Hunt suggests, not as the command of a sovereign but rather as 'a complex of varied forms that provides some of the major mechanisms through which governance is effected'.[33]

According to some more recent scholarship on Foucault and the law, Hunt's reworking of Foucault may not be necessary. Writers like Ben Golder, Peter Fitzpatrick and Victor Tadros have suggested that Foucault's views on the law were more complex than Hunt and others have allowed.[34] Golder and Fitzpatrick argue, based on a close analysis of Foucault's work, that there are reasons to think that there can be a compatible relationship between law and disciplinary power.[35]

The debate over how exactly Foucault viewed the law is, however, moot for the purposes of this thesis, so I will not rehearse it in detail. I follow Hunt in seeing law as one component in a broader field of government, one technique at the state's disposal. I will leave to one side the question of whether that position is contrary to what Foucault himself thought (as Hunt would argue), or compatible with it (as Golder and Fitzpatrick suggest it might be).

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33 Hunt (n 32) 306.

34 Ben Golder and Peter Fitzpatrick, *Foucault's Law* (Routledge 2009); Victor Tadros, 'Between Governance and Discipline: The Law and Michel Foucault' (1998) 18(1) Oxford Journal of Legal Studies 75.

35 Golder and Fitzpatrick (n 34).

1.3 Contributions to the academic literature

I have already suggested how this project advances and nuances existing work on governmentality. In this section I outline the contribution that my thesis also makes to two other bodies of literature: work on the social construction of social problems and critical studies of human trafficking.

1.3.1 The social construction of social problems

There is an extensive literature on the social construction of social problems.[36] I will briefly outline the core assumptions in that literature before describing how my thesis contributes to it.

The principal assumption in the literature is that social problems are socially constructed, i.e. there are no objectively verifiable criteria by which something should be labelled a social problem. We should therefore study the process of problem construction rather than problems themselves. That is, we should study claims made as to whether particular conditions constitute a problem or not, and how those claims are responded to.

The literature therefore focuses on what Malcolm Spector and John Kitsuse describe as 'the activities of individuals or groups making assertions of grievances and claims with respect to some putative conditions'.[37] The word 'putative' in that definition brackets the question of the objective existence of the conditions in question: 'Thus, the significance of objective conditions for us is the assertions made

[36] This is the label generally given to the literature - hence I will use the term 'social construction' when referring to it.

[37] Malcolm Spector and John I Kitsuse, *Constructing Social Problems* (Transaction Publishers 2001) 76.

about them, not the validity of those assertions as judged from some independent standpoint, as for example, that of a scientist.'[38]

Scholars of the social construction of social problems therefore analyse 'claims' made to the effect that some condition *is* a problem. Exactly what a 'claim' is depends on the context. It could be an explicit statement by a charity to the effect that temporary homelessness (for example) is a problem that needs to be addressed. Or it could be a letter written by an individual to their local Member of Parliament asking that more money be allocated to street cleaning. Implicitly this may be understood as a claim that dirty streets are a problem - regardless of whether or not the streets are in fact 'dirty' or even whether such a description is objectively verifiable.

A common approach to the study of how social problems are constructed is to chronicle the development of a particular problem. A popular way of doing so has been to construct or to follow a 'natural history' model, which divides the development of social problems into discrete, chronological stages. Several such models have been described in the literature. Early examples were put forward by Richard Fuller and Richard Myers (in 1941) and Herbert Blumer (in 1971), and a particularly influential model was advanced by Spector and Kitsuse in 1977.[39] A recent,

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[38] Spector and Kitsuse (n 37) 76; there is a long-lasting and intricate debate in the literature about the degree to which objective conditions can or should be bracketed in a constructionist analysis of social problems, but it has limited relevance to my overall argument so I will not discuss it here. See, for example: Peter R Ibarra and John I Kitsuse, 'Vernacular Constituents of Moral Discourse: An Interactionist Proposal for the Study of Social Problems' in James A Holstein and Gale Miller (eds), *Reconsidering Social Constructionism: Debates in Social Problems Theory* (Transaction Publishers 2006); Darin Weinberg, 'On the Social Construction of Social Problems and Social Problems Theory: A Contribution to the Legacy of John Kitsuse' (2009) 40(1/2) The American Sociologist 61; Joel Best, 'But Seriously Folks: The Limitations of the Strict Constructionist Interpretation of Social Problems' in James A Holstein and Gale Miller (eds), *Reconsidering Social Constructionism: Debates in Social Problems Theory* (Transaction Publishers 2006).

[39] Richard C Fuller and Richard R Myers, 'The Natural History of a Social Problem' (1941) 6(3)

widely cited example was proposed by Joel Best in his 2007 text, *Social Problems*. The stages of his model are as follows:

1. the initial 'claimsmaking' about an issue
2. the reception and dissemination of those claims in the media
3. policymaking activity responding to those claims
4. 'social problems work' (putting into practice the policy decided upon)
5. policy outcomes (evaluations of the effectiveness of the policy, perhaps leading to new claims about the problem).[40]

Other scholars have criticised 'natural history' models for being too simplistic. Schneider, for example, has suggested that such models can lead to an excessive emphasis on sequential, rather than overlapping, processes and to the assumption that particular processes happen only at particular points.[41] Fuller and Myers acknowledge that 'stages in the natural history...tend to overlap' but they did not take that as a challenge to the use of the natural history template per se.[42] Hilgartner and Bosk further stress the importance of remembering two 'critical features' of social problems, namely that they 'exist in relation to other social problems' (so they

American Sociological Review 320; Herbert Blumer, 'Social Problems as Collective Behavior' (1971) 18(3) Social Problems 298; Spector and Kitsuse (n 37).

40 Joel Best, *Social Problems* (W W Norton & Company 2007).

41 Joseph W Schneider, 'Social Problems Theory: The Constructionist View' (1985) 11(1) Annual Review of Sociology 209, 225.

42 Fuller and Myers (n 39) 327.

cannot easily be treated in isolation) and that they are 'embedded within a complex institutionalized system of problem formulation and dissemination'.[43]

Despite these criticisms, as Best's recent work attests, natural history models continue to be popular. A common feature of these models is that they conceive of only a limited role for policymakers, or governments more generally. Spector and Kitsuse primarily envision policies as responses to claims made by others (such as a charity or newspaper) but not as claims themselves; in other words, policies do not, in their account, have any constructive role.[44] Blumer's model is similar in this regard, as is Best's.[45] Two caveats are offered by Spector and Kitsuse, though neither is treated in depth. First, they note that governmental response to claims may have some definitional power, but they are thinking here of something like a Committee of Inquiry report rather than law- and policy-making. Second, they note that 'governmental and other official agencies not only respond to expressions of popular concern, they may also define and foster them' of their own volition.[46] They do not expand on this, however.

Some writers have seen a need to focus more closely on the role of governments as active participants in the construction of social problems. Writing in 1983, Randall and Short called attention to the need for such analysis, arguing that 'Spector and Kitsuse do not explore the role of *government* in the construction of social problems' despite the fact that governments, or their component parts, 'often are powerful

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43 Stephen Hilgartner and Charles L Bosk, 'The Rise and Fall of Social Problems: A Public Arenas Model' (1988) 94(1) American Journal of Sociology 53, 55.

44 Spector and Kitsuse (n 37) 142.

45 Best, *Social Problems* (n 40) 206, 208; Blumer (n 39) 301.

46 Spector and Kitsuse (n 37) 155.

claims-making groups'.[47] Randall and Short's conception of a government's role in the construction of social problems is a direct one. Their analysis treats government claims about a particular problem as (i) explicit, (ii) active/intentional, (iii) made by clearly identifiable, discrete actors (such as a government agency) and (iv) made in the service of identifiable interests.[48] They cite related social problems work that takes a similar approach to their own - in particular work by Gerald Markle and colleagues on the construction of smoking and coffee drinking as social problems.[49]

As Wiener has argued, however, referring to Blumer's model, the formation of a government's response to a social problem may not be 'as purposeful' as this.[50] It may come about haphazardly, as the aggregate result of a complex set of activities undertaken by different government actors. As such, any governmental claims about a social problem may be implicit, unintended and difficult to identify.

More recently, work by Jared del Rosso and by Valerie Jenness and Ryken Grattet has paid more nuanced attention to policy and policymakers as participants in the construction of social problems.[51] Del Rosso analyses US Congressional and Senate debates about torture to try to understand how the torture policy discourse has

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47 Donna M Randall and James F Short, 'Women in Toxic Work Environments: A Case Study of Social Problem Development' (1983) 30(4) Social Problems 410, 411.

48 ibid 421.

49 Gerald E Markle and Ronald J Troyer, 'Smoke Gets in your Eyes: Cigarette Smoking as Deviant Behavior' (1979) 26(5) Social Problems 611; Ronald J Troyer and Gerald E Markle, 'Coffee Drinking: An Emerging Social Problem?' (1984) 31(4) Social Problems 403; Elane Nuehring and Gerald E Markle, 'Nicotine and Norms: The Re-emergence of a Deviant Behavior' (1974) 21(4) Social Problems 513.

50 Carolyn L Wiener, *The Politics of Alcoholism: Building an Arena Around a Social Problem* (Transaction Publishers 1981) 6.

51 Jared Del Rosso, *Talking about Torture: How Political Discourse Shapes the Debate* (Columbia University Press 2015); Valerie Jenness and Ryken Grattet, *Making Hate a Crime: From Social Movement to Law Enforcement* (Russell Sage Foundation 2001).

developed over time and to link that to developments in law and policy. Jenness and Grattet look at three US federal laws on hate crimes and Congressional debates surrounding their introduction to analyse how the legal categories that mark a hate crime (gender, ethnicity, sexuality) have been constructed and how that construction has changed over time. Both works focus predominantly on discourse (largely in the form of Congressional and Senate debates and hearings), asking how it has shaped the construction of these issues as objects of policy.

In this thesis I challenge the natural history model approach to social problems by showing the importance of the state - no mere responder to the claims of others, but itself actively involved in the construction of social problems. At the same time, I nuance existing critiques of the natural history approach by suggesting that the actual role of the state is more complex than simply making 'claims' (whether implicit or explicit, intended or unintended). And I extend the work of del Rosso, Jenness and Grattet in two directions: first, by looking at the state rather than at the legislature; second, by providing a chronological account that looks at the entry of ideas and assumptions into the state's purview as well as their dissemination by the state, thus contextualising the efforts of the state in processing those ideas and assumptions.

In addition to contributing to this literature, I draw in particular on one concept from within it to inform parts of my argument. That is the idea of problem 'ownership', proposed by Joseph Gusfield in his 1981 work, *The Culture of Public Problems*. He defined it as follows:

> The concept of "ownership of public problems" is derived from the recognition that in the arenas of public opinion and debate all groups do not have equal power, influence, and authority to define the reality of the problem. The ability to create and influence the public definition of a

> problem is what I refer to as "ownership." The metaphor of property ownership is chosen to emphasize the attributes of control, exclusiveness, transferability, and potential loss also found in the ownership of property.[52]

In short, ownership 'indicates the power to define and describe the problem'.[53] At various points in this thesis I suggest that the state's use of particular instruments and techniques is a way of asserting its ownership of the problem of trafficking. When I refer to problem 'ownership', however, I depart from Gusfield's concept in an important respect. I do not see problem ownership as analogous to property ownership. While problem ownership can be gained and lost, and may be transferred, I suspect that it is too simplistic to see it as exclusive to any one party. Instead, I assume that ownership is distributed among several actors and groups of actors, and that it is dynamic - such that the degree of ownership that may be attributed to any one actor is subject to change over time.

1.3.2 Human trafficking: a critical literature

Several writers have questioned trafficking laws and policies, or trafficking discourse generally, suggesting either that assertions or assumptions about trafficking found within them are inaccurate (because based on inadequate or flawed data) and/or, in a more critical vein, that they are the result of pre-existing ideologies that advance some interests at the expense of others.[54]

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52 Joseph R Gusfield, *The Culture of Public Problems: Drinking-Driving and the Symbolic Order* (University of Chicago Press 1984) 10.

53 ibid 13.

54 See , for example: Ronald Weitzer, 'The Growing Moral Panic over Prostitution and Sex Trafficking' (2005) 30(5) The Criminologist 1; Kathy Miriam, 'Stopping the Traffic in Women: Power, Agency and Abolition in Feminist Debates over Sex-Trafficking' (2005) 36(1) Journal of Social Philosophy

I will draw particularly on the work of two of these writers, Bridget Anderson and Julia O'Connell Davidson, who have each sustained a fundamental critique of 'human trafficking' as conceptually flawed (focusing largely on the UK but with an eye to the wider international context as well). I will first outline the main elements of their respective arguments before noting how my argument contributes to their work.

Davidson's main argument, advanced across a number of articles, is that 'human trafficking' and, in particular, 'trafficked victim' are arbitrary categories with unjust effects.[55] She suggests that the exploitation and suffering experienced by trafficked victims is not unique to them but shared by many irregular and regular migrants who do not meet the legal/policy criteria to have been trafficked. She has also argued that what constitutes inappropriate exploitation is a complex and highly subjective question that differs depending on the sector in which the 'exploitation' occurs; we

1; Julia O'Connell Davidson, 'New Slavery, Old Binaries: Human Trafficking and the Borders of 'Freedom'' (2010) 10(2) Global Networks 244; Julia O'Connell Davidson, 'The Making of Modern Slavery: Whose Interests are Served by the New Abolitionism?' (2014) 24(1) British Academy Review 28; Julia O'Connell Davidson, 'Absolving the State: The Trafficking-Slavery Metaphor' (2012) 14(2) Global Dialogue (Online) 31; Julia O'Connell Davidson, 'Troubling Freedom: Migration, Debt, and Modern Slavery' (2013) 1(2) Migration Studies 176; Bridget Anderson and Rutvica Andrijasevic, 'Sex, Slaves and Citizens: the Politics of Anti-Trafficking' [2008] (40) Soundings 135; Bridget Anderson, 'Sex, Slaves and Stereotypes' (2008) 8(3) Global Networks 367; Claudia Aradau, *Rethinking Trafficking in Women: Politics out of Security* (Palgrave Macmillan 2008); Bridget Anderson, 'Motherhood, Apple Pie and Slavery: Reflections on Trafficking Debates' [2007] (Working Paper No. 48) ⟨https://www.compas.ox.ac.uk/2007/wp-2007-048-anderson_trafficking_debates/⟩ accessed 31st August 2017; Ronald Weitzer, 'The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade' (2007) 35(3) Politics & Society 447; Ronald Weitzer, 'Human Trafficking and Contemporary Slavery' (2015) 41 Annual Review of Sociology 223; Alison Brysk and Austin Choi-Fitzpatrick, *From Human Trafficking to Human Rights: Reframing Contemporary Slavery* (University of Pennsylvania Press 2012).

55 O'Connell Davidson, 'Absolving the State' (n 54); O'Connell Davidson, 'Troubling Freedom' (n 54); Julia O'Connell Davidson, 'Will the Real Sex Slave Please Stand Up?' (2006) 83(1) Feminist Review 4; Julia O'Connell Davidson, 'De-canting 'Trafficking in Human Beings', Re-Centring the State' (2016) 51(1) The International Spectator 58; O'Connell Davidson, 'New Slavery, Old Binaries' (n 54); O'Connell Davidson, 'The Making of Modern Slavery' (n 54).

might intuitively expect and accept different levels and kinds of exploitation in prostitution, agricultural labour and cannabis farming, for example.[56] She has extended this argument in the context of a recent terminological shift from 'human trafficking' to 'modern slavery' in popular and political discourse in the UK (the two terms are often used to denote the same or similar behaviours). Davidson suggests that conceiving of trafficking as 'modern slavery' has privileged a particular construction of the problem, namely that it represents a limited and especially severe form of exploitation and restricted freedom. In fact, she argues, there is nothing unique about the mistreatment and restrictions that trafficked victims might experience.[57]

Bridget Anderson has similarly challenged the category 'human trafficking' as arbitrary and potentially as having unjust consequences.[58] She has noted the near impossibility of '[drawing] a line in the sand between "trafficked" and "not trafficked but just-the-regular-kind-of-exploitation" migrants'.[59] She further notes that the broader issue is 'the role of immigration controls in constructing categories of people who are vulnerable to abuse'.[60] Together with Rutvica Andrijasevic, Anderson has also argued that the concept 'human trafficking' serves to conflate and depoliticise a complex set of ideas, in particular concealing the role of the state in itself producing or facilitating circumstances of exploitation. For example, by focusing on immigration rather than on what Anderson and Andrijasevic argue is actually a continuum of forms of labour exploitation, states can avoid having to confront the

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56 O'Connell Davidson, 'New Slavery, Old Binaries' (n 54) 249-50.

57 O'Connell Davidson, 'Absolving the State' (n 54) 39.

58 Anderson and Andrijasevic (n 54); Anderson, 'Sex, Slaves and Stereotypes' (n 54); Anderson, 'Motherhood, Apple Pie and Slavery: Reflections on Trafficking Debates' (n 54).

59 Anderson, 'Motherhood, Apple Pie and Slavery: Reflections on Trafficking Debates' (n 54) 11.

60 ibid 7.

similarities between those trafficked for exploitation and those not trafficked but 'exploited' through low wage labour.[61] Or again, by focusing on trafficking, states can look at immigration as a general economic question, within which some individuals are the victim of crimes, to be treated like any others; states thus avoid considering the question of migrants' rights more broadly.[62]

What Davidson and Anderson both argue is that the category 'human trafficking' is constructed in such a way as to artificially separate out one group as deserving of our support while ignoring other, equally vulnerable and exploited, individuals. It also contributes to the overlooking of larger-scale structural causes of vulnerability and exploitation, such as poor labour market regulation and strict immigration controls. Skilbrei and Tveit have provided a useful empirical illustration of these points in their study of Nigerian sex workers in Norway. They show that the individuals they spoke to exhibit a range of forms of exploitation, coercion and vulnerability, which do not appear to be dependent on whether or not they meet the legal criteria to qualify as victims of trafficking.[63]

The critiques these authors make are aimed at what they assert to be a principal or particularly prevalent construction of trafficking. These assessments of how trafficking is constructed have tended to rely on legislative definitions, comments by politicians and NGOs, and occasional quotations from policy documents. For example, Anderson and Andrijasevic refer to the UN Protocol definition (cited above), two Home Office statements and early victim support arrangements in the UK.[64]

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61 Anderson and Andrijasevic (n 54) 141-2.

62 ibid 142.

63 May-Len Skilbrei and Marianne Tveit, 'Defining Trafficking through Empirical Work: Blurred Boundaries and their Consequences' (2008) 12(1) Gender, Technology and Development 9, 23.

64 Anderson and Andrijasevic (n 54) 136-7.

Davidson refers to politician and NGO comments[65] and, elsewhere, to the UN Protocol definition and several Home Office documents.[66]

My thesis extends and complements their work in two ways. First, I show that the state may have limited power to substantially change the way a problem is constructed. Whether and to what extent a state can do so may depend on the instruments at its disposal and the activities of individuals and organisations not entirely within its control (such as NGOs and the media, but also law enforcement bodies and quasi-autonomous state agencies). Calls to construct trafficking differently may therefore need to be carefully targeted. Second, I show that there has never been (at least in the UK) any single construction of trafficking; rather, there has been a constantly evolving process of construction, and even where the government articulates 'definitive' statements we find inconsistencies and contradictions within them. We need to pay attention to the way constructions of trafficking change, because those changes imply changes in who comes to count as a victim (or who is discounted) and who gets classified as a trafficker (or is seen 'merely' as an exploitative employer).

1.4 Methodology

In order to conduct the analysis I have outlined above, I designed a period of fieldwork that would allow me to map the formation, development and operation of the policy apparatus, elucidating the role of the state within it through focusing on the three main interventions I have identified. As mentioned above, I took an ethnographic approach, conducting 72 semi-structured interviews, reviewing a wide

65 O'Connell Davidson, 'Absolving the State' (n 54) 1.

66 O'Connell Davidson, 'De-canting 'Trafficking in Human Beings', Re-Centring the State' (n 55).

range of documentary evidence and observing several meetings and workshops. I understand 'ethnography' in the broad sense suggested by John Brewer:

> Ethnography tends to rely on a number of particular data collection techniques, such as naturalistic observation, documentary analysis and in-depth interviews. While these methods are used on their own as well, what marks their ethnographic application is that they are used to study a people in a naturally occurring setting or 'field', in which the researcher participates directly, and in which there is an intent to explore the meanings of this setting and its behaviour and activities from the inside.[67]

Where I depart from this is that I did not participate directly in the 'field' that I studied. But I did use a combination of methods to try to study the meanings that people have generated, shaped and applied in natural settings (in the day-to-day operations of the organisations of which they were a part, for example). As Brewer remarks, ethnography is less a 'particular method of data collection' and more a 'style of research' - one that is 'distinguished by its objectives, which are to understand the social meanings and activities of people in a given 'field' or setting...'.[68]

I used the data I obtained from this fieldwork to inform the empirical chapters of this thesis (Chapters 2-8). The balance of the empirical material that I rely on varies by chapter. Chapter 2 is largely a history of international developments, for which I relied on archival documents from the League of Nations, UN, Council of Europe and European Union (EU). Chapters 3-6 rely on extensive documentary records of developments in the UK - often these documents were available in online archives of organisational websites (many of which were accessible through the Internet Archive, which records historical versions of a large number of webpages, often

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67 John Brewer, *Ethnography* (McGraw-Hill Education (UK) 2000) 27.

68 ibid 59.

with document attachments included; this is helpful where these older versions of sites no longer exist or are no longer accessible).[69] I consulted documents including: policy reviews, NGO reports, legislative consultations, Parliamentary debates, statements of organisational remits, Parliamentary committee reports, media reports and judicial opinions. I used these varied documents to trace the ideas, assumptions and practices of state-connected actors, and to contextualise within them the particular role of the state.

In order to obtain a fuller, more nuanced, account, I also undertook a series of interviews with key actors. I identified people from documents that they had authored, organisational websites on which they were listed, or their being named in consultation responses or evidence hearings. The participants I approached initially would often recommend others for me to speak to and sometimes put me in contact with them. This snowball sampling method became a useful way of identifying and approaching a wide range of participants. Snowball sampling has been argued to be particularly effective when (i) the purpose of the research is predominantly exploratory and descriptive, (ii) the population in question is hard to access, as can be the case with elites such as those I targeted and (iii) a degree of trust is required in order to gain access, as was the case with some of the individuals I spoke to.[70] The participants I interviewed for this part of my research included law enforcement officers, MPs, lawyers, civil servants and NGO employees. These interviews were valuable for several reasons: my participants could shed light on the meaning of particular documents, ideas or institutional developments; they could (whether ex-

69 'Internet Archive' ⟨https://archive.org/index.php⟩ accessed 28th June 2017.

70 Rowland Atkinson and John Flint, 'Accessing Hidden and Hard-to-Reach Populations: Snowball Research Strategies' (2001) 33(1) Social Research Update 1.

plicitly or implicitly) provide information about ideas and assumptions (sometimes corroborating or nuancing documentary evidence); and they could fill gaps in the chronological account of the policy apparatus that I developed. For Chapter 2-6 this last role was perhaps the most important. My participants gave me valuable details relating to how the state interventions I explore came about and functioned.

Chapters 7 & 8 explore the dissemination of the concepts and categories discussed in the preceding chapters. For these chapters I continued to use a combination of documentary analysis and qualitative semi-structured interviews, but in a different ratio. I relied more on my participants, as they had direct knowledge of the practices and ideas that I was interested in. Some of these were well described in various documents, but that was not always the case and typically the documents that were available were more dispersed and difficult to collate than in the earlier chapters. Documents did provide useful sources of concepts and framings that linked and corroborated interview data, however. Documents included operational protocols, guidance, organisational strategies and institutional web content, again often culled from archived sites. My participants were law enforcement officials, social workers, NGO employees, lawyers and regional network operators. Again, I initially identified participants from documents and web content and then used snowball sampling to identify more.

My analysis in Chapters 2-6 is diachronic. As noted above, this focus on change over time represents a contribution to the governmentality literature. My analysis in Chapters 7 & 8 is synchronic. This is partly due to limitations of time and of access to relevant data. While I could interrogate older legal and policy developments with relative ease, relying on an accessible documentary record, it would have been much harder to attempt to understand the dynamics of implementation activities

before, say, 2010. This is largely because I was more reliant on interviews than on documents; most of the people involved before a few years ago are not any longer and it would have been prohibitively difficult to locate and contact them.

The analysis of my data was largely interpretative, combining the documents I read with interview and observation notes to compose a chronological account. This occupies Chapters 2-6. In Chapters 7 and 8, however, I identify patterns of practices, ideas and assumptions among law enforcement officials, lawyers, judges and members of the regional anti-trafficking networks. In order to do so, I applied techniques sometimes labelled 'thematic analysis' to the relevant interview notes in order to identify and make sense of aspects of what my participants had told me.

'Thematic analysis' is a loosely used and defined term in the social sciences. A convenient definition is given by Braun and Clarke: 'Thematic analysis is a method for identifying, analysing and reporting patterns (themes) within data. It minimally organizes and describes your data set in (rich) detail.'[71] Braun and Clarke usefully contrast thematic analysis with grounded theory: the former involves a very similar approach to the latter except without any commitment to theory building.[72] They then set out six stages describing a basic process of thematic analysis, which are:

1. Familiarisation
2. Generating initial codes
3. Searching for themes
4. Reviewing themes

[71] Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3(2) Qualitative Research in Psychology 77, 79.

[72] ibid 81.

5. Defining and naming themes

6. Producing the analysis

The coding stage involves identifying 'interesting features of the data in a systematic fashion' (features that may be either overt or latent) while themes involve collating groups of codes together.[73] Bryman and Burgess, in an account of a 'framework' analysis, which is structurally similar to a thematic analysis in outline, suggest that codes and themes may be derived from three sources: (i) a priori issues (thoughts that informed interview questions), (ii) 'emergent issues raised by respondents themselves' or (iii) themes that arise from 'the recurrence or patterning of particular views or experiences'.[74] The reviewing stage involves refining themes, discarding any that are unimportant or poorly supported and merging similar themes. Reviewing should be by reference both to the content of the theme (the codes it contains - asking if they form a coherent group) and to the rest of the data set (checking to see if the themes make overall sense).[75] The 'defining and naming' stage involves 'identifying the 'essence' of what each theme is about...and determining what aspect of the data each theme captures' in preparation for writing the analysis.[76] As noted above, the goal of such an analysis is not (necessarily) to build a theory or theories that can explain the data. Instead, it is to provide a concise account of the salient themes that emerge from the data.[77]

I broadly adopted this approach in the analysis of my interview notes in order

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73 Braun and Clarke (n 71) 87-8.

74 Bob Burgess and Alan Bryman, *Analyzing Qualitative Data* (First Edition, Routledge 1994) 180.

75 Braun and Clarke (n 71) 91.

76 ibid 92.

77 ibid 93.

to derive the key themes within them and thus organise my data. Mechanically, I did this in a straightforward manner by cutting and pasting within a word processor programme. The end result was a body of themes and constituent codes that I could relate to my documentary data.

1.5 Conclusions

The main finding of the thesis is that the state has played a significant role in the construction of 'human trafficking', but one that is more complex than might be expected. I show how the state first recognised 'human trafficking' and took responsibility for addressing it in the early 2000s in a fragmentary and incremental manner. Trafficking began to appear as a subordinate concern in policy statements on sexual violence, child sexual exploitation and illegal immigration - reflecting many of the associations and connotations that the term trafficking had acquired over the course of the 20th century in international and European policy activity. Those associations shaped how trafficking was initially constructed within these early state instruments.

I then demonstrate the nature and functioning of the state's three main contributions to the construction (and government) of 'human trafficking' in the UK: its 2007 policy statement, its 2009 administrative guidance establishing the victim support system, and the 2015 Modern Slavery Act. I show how the state used each to different ends, taking advantage of the particular characteristics that each possessed.

The policy statement allowed the state to codify, formalise and rationalise a range of disparate ideas, assumptions and practices into a coherent strategy that would set the conceptual framework within which much subsequent anti-trafficking

activity would take place (even activity not in any way prefigured in the policy statement). A notable feature of the policy statement was that it did not generate new ideas and assumptions about trafficking; almost everything it said involved aggregating knowledge and practices already in place or beginning to emerge. The administrative guidance introduced in 2009 allowed the state to establish a set of procedures that had a low public profile, that could accommodate significant complexity, and that could be easily and quickly iterated. It was a way for the state to assert its 'ownership' of the problem of trafficking in a formal sense (the victim support system defined who was and was not a 'trafficked victim') but without substantively committing itself to a particular view - the guidance was ambiguous as to the boundaries of the 'trafficked victim', dependent on the judgement of implementing officials for its realisation. The 2015 Modern Slavery Act was a response by the state to external critique. I show how the state used the legislative process to adopt the rhetoric and some of the ideas of its critics, while inflecting them in a manner that supported its own priorities. I illustrate the way in which the state controlled what was and was not up for debate in the legislative process, and by so doing avoided substantive discussion on points it did not want to open up. I show how the state shaped elements of the legislation apart from its provisions themselves (such as its title and related documents) so as to reconceptualise trafficking in a way that it could more closely control.

I then explore the dissemination and application of the concepts and categories shaped by the state. I show how actors such as police officers, lawyers and judges find themselves having to improvise new practices, adapt existing procedures, draw on sources of knowledge beyond their usual remit and engage in novel collaborations. I suggest this is an important influence of the state - the concepts and categories

that it propagates cause other actors in the policy apparatus to orientate their activity towards them. Chapter 8 shows that this is true for actors who are only weakly connected to the policy apparatus: the regional anti-trafficking networks. These networks choose to draw on the concepts and categories shaped by the state, though they are under no obligation to do so. They use them as they find them useful - for legitimising, justifying and making sense of their work. They sometimes care more about the existence of a category - like 'modern slavery' - than its content.

To return to Rose and Miller's tripartite conceptualisation:[78] I show how the state collects and collates ideas, assumptions and practices, then codifies, coordinates, shapes and rationalises them, and finally how the concepts and categories so shaped are disseminated and applied. I suggest, overall, that the state's role is less about authoritatively defining, labelling and categorising than it is about coordinating, shaping and rationalising. I finish by indicating future lines of enquiry to which these findings may lead.

1.6 Chapter summary

The thesis is divided into nine chapters (of which this introduction forms the first), which are summarised here.

Chapter 1. Introduction.

Chapter 2. In order to understand how the British state first became 'seized' of 'human trafficking', it is useful to start by looking at the influence of international law. The most significant international instrument to which the UK responded was

[78] Rose and Miller (n 26) 194.

the 'Palermo' Protocol. Yet the state implemented the Protocol in a complex manner in two separate offences - sections 57-9 of the Sexual Offences Act 2003 and section 4 of the Asylum and Immigration Act 2004. The reasons for that implementation become clearer if we place the Protocol in its historical context, exploring the sets of ideas and assumptions to which it responded and how those developed over time. This chapter looks at the development of law and policy on human trafficking in the international sphere - at the League of Nations, the UN, the EU and the Council of Europe - in order to do that. I show that the Protocol only partly reflected those broader currents of ideas, and that the UK's initial trafficking-related activity owes much to that broader context.

Chapter 3. Chapter 3 then focuses more narrowly on the British context and on the few years immediately prior to the state becoming 'seized' of trafficking - from the late 1990s onwards. I identify patterns of ideas, assumptions and practices related to trafficking that were already in existence in the UK prior to the state recognising 'human trafficking' as an issue and beginning to formally address it. During this period, trafficking tended not to be addressed directly, as a separate issue, but rather as a subcategory of related matters. I identify three that were significant: sexual violence, child sexual exploitation and illegal immigration. Trafficking was included as one part of a cluster of ideas within each of those. Each subsequently gave rise to a policy statement within which trafficking was also mentioned. In those policy statements, trafficking was presented (whether explicitly or implicitly) in a particular way - with certain associations and connotations related to the overarching issue. I suggest that those framings of trafficking can also help explain the early legal offences of trafficking introduced by the state.

Chapter 4. This chapter analyses the first major state intervention designed to address 'human trafficking': a policy statement published in 2007 called the UK Action Plan on Human Trafficking. I show how many of the ideas, assumptions and practices proposed in the Action Plan already existed prior to the Plan's publication. I explore how they fed into the Action Plan and how the Plan codified, shaped, legitimised and propagated them. I then investigate how the concepts and categories that the Plan helped to form were developed by other actors after the Plan's publication. I consider the Plan's functioning as illustrative of the particular characteristics of a policy statement as an instrument of the state.

Chapter 5. Chapter 5 deals with the second major state intervention: the National Referral Mechanism (NRM), a national system designed to identify and support trafficked victims, set up in April 2009. The NRM was not set out in legislation or policy; its rules and procedures were set out in administrative guidance. It is thus illustrative of a different kind of state instrument. I discuss the structure of the NRM, which was that of a network, where the state coordinated a large number of actors through distributing funds, establishing shared rules and authoritatively constructing the 'trafficked victim'. This structure has some similarities with the way in which the Action Plan coordinated various non-state actors. I then discuss the 'trafficked victim' construct in detail, arguing that it allowed the state to assert its ownership over the problem of trafficking while retaining flexibility for its officials in practice when deciding who did or did not constitute a 'trafficked victim'.

Chapter 6. Chapter 6 explores the third major state intervention and a third kind of state instrument: the Modern Slavery Act 2015. I summarise the state of the policy apparatus over the 2010-12 period, explore the events that prompted the state

to commit to introducing legislation, and then look in detail at the legislative process itself. I argue that the introduction of legislation was a way for the state to respond to external critics, who had challenged some of the core ideas and assumptions within the policy apparatus as then was. I show that the state used the legislation to rhetorically concede to that challenge while attempting to minimise any substantive changes to the apparatus. One particular tactic that the state employed was to limit which aspects of the policy apparatus were addressed in the legislation, such as by omitting any mention of victim support measures from the text of the Act. I suggest that the state was largely successful in its efforts.

Chapter 7. Chapter 7 turns from the activities of the state to its influence. I focus on the influence that concepts and categories shaped and propagated by the state have on some of the officials who are responsible for applying them: police officers, lawyers and judges. Those officials have to make sense of and operationalise difficult concepts and categories like 'exploitation', 'consent' and 'trafficked victim'. In this chapter I explore how they do that, identifying ways in which they improvise new procedures, adapt existing ones, and engage in innovative collaborations with other actors such as NGOs.

Chapter 8. Chapter 8 continues the exploration of the influence of the state's activities, but turns to focus on actors who have no direct obligation to apply the concepts and categories shaped by the state: regional anti-trafficking networks. These networks (sometimes called 'partnerships' or 'forums') are not directly connected to the state. Often led by NGOs, they coordinate and enable information sharing between a range of actors (some of whom are part of the policy apparatus, like the police, while others may not be). The networks operate on a voluntary basis. I show

that the organisational structure of the networks, as well as their typical activities, owe much to the concepts and categories the state has shaped. I focus particularly on the networks' attitude towards one of those concepts and categories - 'modern slavery' - finding that they inflect and interpret the term in a way that makes sense for them, rather than seeking to interpret it in some way accurately.

Chapter 9. In Chapter 9 I briefly conclude. The main finding of the thesis is that the state has made an important contribution to the construction of 'human trafficking', but not in a straightforward manner. It has not authoritatively created and imposed particular concepts and categories ('exploitation', 'trafficked victim'). Instead, it has codified, formalised, shaped, legitimised and propagated concepts and categories that, in most cases, were already in existence - either derived from international law or from circulating ideas and practices among government agencies, NGOs, law enforcement bodies, local authorities and other groups in the UK. The state's role has been to collate and coordinate a diverse, sometimes conflicting group of ideas and practices, to bring them together into superficially coherent strategies. It has done so while attempting to defend and increase its ownership of the problem of 'human trafficking'. I suggest that these findings may be suggestive of the state's role in the construction of social problems, and in 'government' (broadly defined), more generally. I outline potential future avenues of research to further investigate the nature of its role.

2 The development of international law and policy

2.1 Introduction

The first stage in considering the state's contribution to the construction of 'human trafficking' is to ask how the state first recognised the issue. What instruments of the state did 'human trafficking' first appear in? What associations and connotations came with the term, and where were they derived from?

The most straightforward answer to these questions is that the British state implemented its obligations under the 'Palermo' Protocol (and a subsequent EU Framework Decision that reproduced the Protocol's definition of 'human trafficking')[1] by introducing two criminal offences: sections 57-9 of the Sexual Offences Act 2003 and section 4 of the Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004.

But this cannot explain why two separate offences were introduced instead of

[1] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (signed 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319; Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings [2002] OJ L203/1.

one. Nor can it explain the way in which trafficking was treated in certain policy statements that predated the introduction of these laws.

There are two ways in which we might better explain the way in which the British state first came to recognise 'human trafficking'. The first is to place the Palermo Protocol in the context of related international and European policy activity stretching back to the beginning of the 20th century. When we position the Protocol within that context, understanding its ideas as a development of and response to historical policy activity, the significance of its definition of 'human trafficking' becomes clearer, and the way in which it was transposed into English law comes to make more sense.

The second is to look at domestic factors that also influenced the way in which the British state first came to recognise 'human trafficking'. There were a number of ideas and assumptions relating to trafficking already in circulation in the UK in NGO reports, media coverage and law enforcement activity, for example. Many of these paralleled the ideas and assumptions found in the historical international and European policy activity mentioned above.

This chapter concentrates on the first of these two. In it, I describe the historical development of international and European policy activity that has addressed either a phenomenon explicitly labelled 'human trafficking' or behaviours that fall within the definition of trafficking set out in Palermo. The inclusion of the latter is to capture some ideas and assumptions that have been influential in how trafficking is commonly understood today - even if the behaviours referred to have not always been understood as trafficking in the past.

The Palermo Protocol defines trafficking (Article 3) as the movement of an individual, whether by force or through deceiving them, for the purpose of exploiting

them. The offence is broadly written: movement can include recruitment, transport, receipt or harbouring (for example); deception might include a fraudulent job offer; exploitation covers 'at a minimum' slavery and sexual exploitation, among other behaviours.

By providing a history of this international and European policy activity I am able to show the different ways in which trafficking has been constructed and how such constructions have changed over time. I point to recurring patterns of assumptions relating to trafficking and show their institutional development. I demonstrate similarities in understandings of trafficking between the institutions of the League of Nations, the UN, the EU and the Council of Europe. Finally, I briefly summarise some early uses of 'human trafficking' in the UK to show they partly parallel the ideas and assumptions I identify in the international sphere.

Chapter 3 focuses on the second approach mentioned, looking in more detail at the British context in the years immediately preceding the emergence of the policy apparatus (the mid-1990s onwards). I show how the ideas and assumptions that I discuss in this chapter were partly paralleled in early constructions of trafficking in the UK. Consequently I do not devote much attention to the UK in this chapter.

The below table lists the major international instruments to address 'trafficking' or related behaviours from 1900 onwards.[2] I have divided the instruments into three

[2] I have not included two conventions on forced labour introduced by the International Labour Organisation in 1930 and 1957, respectively. Although 'forced labour', as defined in those Conventions, can be said to include some behaviours defined elsewhere as 'trafficking' or 'slavery', the issue of forced labour does not seem to have attained particular prominence in debates about 'human trafficking' during the period under discussion here. Any associated ideas and assumptions do not seem to have had any significant influence, at least that I have found. Consequently, I have not discussed the two Conventions here. Convention (No 105) Concerning the Abolition of Forced Labour (signed 25 June 1957, entered into force 17 January 1959) 320 UNTS 290; Convention Concerning Forced or Compulsory Labour (signed 28 June 1930, entered into force 1 May 1932) [1930] CO29.

groups, arranged thematically rather than chronologically. This is for convenience only; there is substantial overlap in the ideas and assumptions that each group of instruments, and related policy activity, illustrate. I refer back to this table in the following discussion. The reason for going back more than a century into the historical record is that some of the ideas and assumptions I discuss emerged some time ago, and have retained a remarkable degree of continuity since; it is consequently useful to consider their origins.

Table 1: List of international instruments

Date	**Title**	**Reference**
	Trafficking	
1904	International Agreement for the Suppression of the White Slave Traffic	1 LNTS 83
1910	International Convention for the Suppression of the White Slave Traffic	211 Consol TS 45
1921	International Convention for the Suppression of the Traffic in Women and Children	9 UNTS 415
1933	International Convention for the Suppression of the Traffic in Women of Full Age	150 LNTS 431
1951	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	96 UNTS 271
	Human Rights	
1948	Universal Declaration of Human Rights	GA Res 217 A (III)

Date	Title	Reference
1966	International Covenant on Civil and Political Rights	999 UNTS 171
1966	International Covenant on Economic, Social and Cultural Rights	993 UNTS 3
1979	Convention on the Elimination of All Forms of Discrimination Against Women	1249 UNTS 13
1989	Convention on the Rights of the Child	1577 UNTS 3
	Slavery	
1919	Treaty of Saint-Germain-en-Laye	8 LNTS 26
1926	International Convention to Suppress the Slave Trade and Slavery	60 LNTS 253
1953	Protocol Amending the Slavery Convention Signed at Geneva on 25 September 1926	182 UNTS 51
1956	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	266 UNTS 3

2.2 International policy activity addressing 'trafficking' (or related terms)

The earliest activity to target 'trafficking' was directed at a problem termed the 'white slave traffic' or 'white slavery'. This referred to a perception that young

white women were being lured abroad in order to be sexually exploited.[3]

Concern seems to have arisen first in the UK, resulting in the establishment of the National Vigilance Association in 1885 (an umbrella group for concerned charities), before subsequently spreading to Europe.[4] The white slave traffic did have some basis in fact, although not a great deal. Scully suggests the historical roots of the idea were 'real, if limited',[5] while Walkowitz has commented that 'the evidence for widespread involuntary prostitution of British girls at home or abroad is slim.'[6] Public concern was maintained, at least in part, through sensationalised media accounts.[7]

The period covering the late 19th century and the first two decades of the 20th saw a variety of inter-state initiatives to combat the white slave traffic. Five main instruments were established (Table 1). A number of international conferences were also held: the London Congress (1899), two Paris Conferences (1902 & 1910), the Madrid Congress (1910), the Brussels Congress (1912), the London Conference (1913), and the International Conference at Washington (1919).

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3 Edward Bristow notes that the meaning of the term 'white slavery' was initially somewhat flexible, used to refer either to prostitution itself, to the state regulation of prostitution, or to the migration of prostitutes. However, in England at least, it quickly became about English girls taken and exploited abroad following revelations stemming from a case in Brussels in 1879. Edward J Bristow, *Vice and Vigilance: Purity Movements in Britain since 1700* (Gill and Macmillan 1977) 86.

4 Bristow (n 3) 171-2; Eileen P Scully, 'Pre-Cold War Traffic in Sexual Labor and Its Foes: Some Contemporary Lessons' in David Kyle and Rey Koslowski (eds), *Global Human Smuggling: Comparative Perspectives* (JHU Press 2011) 13.

5 Scully (n 4) 118.

6 Judith R Walkowitz, *Prostitution and Victorian Society: Women, Class, and the State* (Cambridge University Press 1982) 247.

7 Annuska Derks, 'From White Slaves to Trafficking Survivors. Notes on the Trafficking Debate.' (Working Paper, Centre for Migration and Development Working Paper Series, Princeton University, #00-02m, May 2000) ⟨http://www.walnet.org/csis/papers/CMD-0002M.PDF⟩ accessed 22nd August 2017, 3.

2.2. INTERNATIONAL POLICY ACTIVITY ADDRESSING 'TRAFFICKING' (OR RELATED TERMS)

Discussion of the white slave traffic, and the wording of international instruments introduced to address it, portrayed the phenomenon in a particular way. First, as Jo Doezema has argued, the stereotypical victim of the white slave traffic was constructed as entirely helpless and passive. Victims were often figured as young, virginal and either forced, deceived or drugged into prostitution. Traffickers were constructed as a menacing 'other' - non-white, foreign, often Jewish.[8] Another feature of the white slave traffic was the comparison to black slavery, as the term indicates. Irwin notes that explicit parallels were made at the time, but that white slavery was seen as morally more abhorrent because of the gender and innocence of the victims and because of the purpose involved (sexual exploitation). Thus the term was meant to distinguish the two forms of slavery but also to establish parallels between them. Some campaigners adopted abolitionist rhetoric and even the label 'The New Abolitionists'.[9]

A third interesting feature of the white slave traffic is the way it was defined in international instruments. The 1910 Convention defined trafficking as consisting of three main elements: leading away of the woman, by various means, for 'immoral purposes' (Articles 1 and 2). This tripartite definition is remarkably similar to the Palermo Protocol's three elements: movement, means and purpose. The behaviours explicitly covered in the 1910 Convention are far narrower than those included within the Protocol's definition. Nevertheless, the structural similarity is clear.

After the First World War, the issue of trafficking was picked up by the League of Nations. It was no longer labelled the 'white slave traffic', however. Article 23 of

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8 Jo Doezema, 'Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women' (2000) 18(Winter) Gender Issues 23, 28-30.

9 Mary Ann Irwin, *"White Slavery" as Metaphor: Anatomy of a Moral Panic* (Commercial Sex Information Service 1998) 3-4.

the League's Covenant stated that Parties 'will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs' (Article 23(c)). Despite the change of terminology, trafficking was still constructed in a similar way. The League defined it as: 'the sending of women and girls particularly, but also of children, from one nation primarily for the sexual pleasure of individuals in another nation'.[10]

The white slave traffic phenomenon in the UK in the early 20th century had focused on the movement of women from the UK to continental Europe. The League's treatment of the issue adopted a broader perspective. A 1927 investigation undertaken by a specially appointed Body of Experts (which interviewed thousands of traffickers and victims over four years) mapped a traffic in white women from Europe to the Americas and North Africa.[11] Scully has remarked that despite the official abandonment of the 'white slavery' label, focusing on the movement of Western women into prostitution abroad 'remained the only effective point of access into the conscience and consciousness of Western metropoles' with regards to sex traffic.[12]

One development of note in the report of the Body of Experts was the suggestion that the traffic with which it dealt now largely involved women who were already prostitutes, rather than 'innocent' women and girls. Noting this development, the League's Traffic in Women and Children Committee began to lean towards advo-

10 William F Snow, 'The Program of the League of Nations Advisory Committee on the Traffic in Women and the Protection and Welfare of Children and Young People' (1926) 12(1) Proceedings of the Academy of Political Science in the City of New York 411, 412.

11 Austen Chamberlain, 'Report of the Special Body of Experts on the Extent of the International Traffic in Women and Children' (1927) 8(C.52.M.52.1927.IV 4) League of Nations Official Journal 378.

12 Scully (n 4) 121.

cating for the general abolition of prostitution as a means of tackling trafficking.[13]

By 1933, three international conventions and one international agreement on trafficking had been passed (see Table 1), alongside a substantial amount of ancillary activity, much of it under the aegis of the League of Nations. Consequently, in 1937, a convention to consolidate these four existing international instruments was proposed and drafted, but the outbreak of war precluded it from being discussed and adopted by the League. This Convention was resurrected after the war to serve the purpose of transferring to the UN the powers and functions that had previously been possessed by the League with regards to trafficking. It did not merely repeat the provisions of the instruments it consolidated, however; it made important amendments to them. Its expressed purpose was to 'fill the gap left in the former Conventions by protecting persons of full age and of either sex against procuration for profit, even when they consent and are not taken abroad, and also against any other form of exploitation of their prostitution.'[14]

Two key changes are introduced here: to make the Convention cover men as well as women and to remove the need for the movement involved to be cross-border. In fact, the Convention went further than this: Article 1.2 called on States to criminalise anyone who 'Exploits the prostitution of another person, even with the consent of that person'. Movement - of any kind - was no longer a necessary element. As such, and with the irrelevance of consent re-emphasised (something that had been stated

[13] Traffic in Women and Children Committee, 'Work of the Traffic in Women and Children Committee During its Sixth Session (C. 221. M. 60. 1927. IV)' (1927) 8(7) League of Nations Official Journal 901 (Annex 971).

[14] Advisory Committee on Social Questions, 'Work of the Sub-Committee Entrusted with the Drawing-Up of the Second Draft of a Convention for Suppressing the Exploitation of the Prostitution of Others, Paris Session (C.331.M.223.1937.IV)' (1937) 18(12) League of Nations Official Journal 950 (Annex 1665), 951.

in the definition of trafficking in the 1910 Convention), the 1951 Convention would have effectively obliged States to criminalise prostitution. Indeed, the drafters of the Convention in 1937 had described it as an 'abolitionist' instrument.[15] Many States criticised the Convention on account of this, in some cases because they operated a regulated system of prostitution and felt that the Convention ought to have concentrated on 'the more serious, coercive forms of sexual exploitation'.[16] Consequently, the Convention only attracted 25 ratifications within its first ten years, ensuring that it had relatively little impact.

The 1951 Convention was the last major international instrument explicitly intended primarily to address 'trafficking' until 2000, but various parts of the UN machinery continued to produce declarations and reports on the subject in the intervening period. Some of these were connected to the 1951 Convention; from 1951, Member States of the UN were encouraged to submit biennial reports on matters connected with the Convention. The wording of the questionnaire to which Member States were to respond specified that traffic was to be understood as 'including all aspects of commercialized prostitution, especially procuring, enticing or leading away by any means whatsoever, of persons, of either sex, for the purpose of prostitution.'[17]

A follow-up study was undertaken by the UN's Department of Economic and Social Affairs in 1959. That report advocated abolishing systems of regulated prostitution, describing prostitution as 'at the very root of the traffic in persons'.[18] It

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15 Advisory Committee on Social Questions (n 14) 955.

16 Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 61.

17 ECOSOC, Social Commission: Report of the Seventh Session: Supplement No.12 E/1982 [1951] 26.

18 Department of Economic and Social Affairs, *Study on Traffic in Persons and Prostitution* (ST/SOA/SD/8, United Nations 1959) 4, 6.

suggested that trafficking now mostly involved prostitutes moving within a country rather than across borders.[19]

In 1982, the UN's Economic and Social Council passed a resolution requesting the establishment of a Special Rapporteur to 'make a synthesis of the surveys and studies on the traffic in persons and the exploitation of the prostitution of others that have been or are being carried out within the agencies in the UN system or outside the system'.[20] That Special Rapporteur produced a report in 1983 in which trafficking was treated alongside prostitution, and an abolitionist position on the latter adopted. The Rapporteur remarked that 'even when prostitution seems to have been chosen freely, it is actually the result of coercion'.[21] In other words, all prostitution is trafficking.

The profile of these reports and studies should not be overstated, but they do serve to show how the framing of trafficking as equivalent to prostitution was gaining prominence and becoming more explicit.

Alongside and subsequent to this activity, trafficking began to be included in instruments and declarations that had to do with human rights, particularly women's rights. In 1975, the first World Conference of the International Women's Year was held in Mexico. In the report of that Conference, a call was made that 'Specific legislative and other measures should be taken to combat prostitution and the illicit traffic in women, especially young girls'.[22] Trafficking was seen to refer to the sexual

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19 Department of Economic and Social Affairs (n 18) 4-5.

20 ECOSOC, Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others Res 1982/20 (4th May 1982) UN Doc E/RES/1982/20.

21 ECOSOC, Report of Mr. Jean Fernand-Laurent, Special Rapporteur on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (17th March 1983) UN Doc E/1983/7 8.

22 ECOSOC, Report of the World Conference of the International Women's Year (1976) UN Doc

exploitation of women and girls; prostitution was seen as an almost equal evil, and to be abolished.

Following this, trafficking was mentioned in Article 6 of the Convention to End all forms of Discrimination Against Women (1979), which obliged States to 'suppress all forms of traffic in women and exploitation of prostitution of women'. Article 35 of the Convention on the Rights of the Child (1989) later obliged States to suppress 'the abduction of, the sale of or traffic in children for any purpose or in any form.'[23]

Trafficking was implicitly presented in these instruments as one among many forms of exploitation that particularly targeted women and children. Declarations from several international conferences continued this emphasis.[24] A 1997 report by the Special Rapporteur on Violence Against Women evinced a similar pattern of understanding.[25]

What is remarkable is that core ideas and assumptions about what trafficking was run through nearly all the policy activity discussed, from the 1880s to the 1990s. Trafficking was consistently thought to involve the movement of women and girls into sexual exploitation, usually against their will. The emphasis was typically placed

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E/CONF.66/34 31.

23 It was felt during the drafting of this Convention that there was a need to separate out sexual exploitation (covered by Article 34) from trafficking (Article 35) as the latter was broader in scope - children could be trafficked not only for sexual exploitation but also for economic exploitation or adoption. Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers 1999) 599.

24 UN, Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, Kenya, 15 to 26 July 1985 (1986) A/CONF.116/28; UNGA, Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its second session, held in Vienna from 8 to 12 March 1999 (25th March 1999) UN Doc A/AC.254/11; UNGA Res 48/104, Declaration on the Elimination of Violence Against Women (20th December 1993) UN Doc A/RES/48/104.

25 UNCHR, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences (12th February 1997) UN Doc E/CN.4/1997/47.

on prevention and victim support. Two broad changes can be detected, however. First, the emphasis on cross-border movement diminished, leading to the increasing equation of trafficking with prostitution in many documents. Second, instead of being discussed and addressed as a separate phenomenon, trafficking came to be seen as just one form of exploitation suffered by women and children. Both these changes diminished the specificity of trafficking in comparison to how it was constructed in policy activity in the early part of the 20th century.

A third change began to occur in the 1990s. In 1994 a General Assembly resolution (titled 'Traffic in women and girls') understood trafficking to constitute 'the illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations, for the profit of recruiters, traffickers and crime syndicates'.[26] Trafficking was once again linked with immigration - this time, with immigration from developing countries to Western states. I discuss this shift in more detail in Sections 2.4 and 2.5, below.

2.3 Slavery and the slave trade

The history of policy activity relevant to understanding the UK's anti-trafficking policy apparatus today is not limited to documents explicitly addressing 'trafficking' or related terms. It also includes activity addressing 'slavery'. International policy activity on slavery in the early part of the 20th century (Section 2.3.1, below) addressed some behaviours that are now commonly understood as trafficking,

[26] UNGA, Traffic in Women and Children (23rd December 1994) UN Doc A/RES/49/166.

in the process evidencing ideas and assumptions that would be influential in the drafting of the Palermo Protocol. More recently, from the 1950s onwards, some UN documents began to explicitly categorise trafficking as a form of slavery and the two were sometimes addressed together (Section 2.3.2, below).

2.3.1 Slavery under the League of Nations

The League of Nations is a useful starting point from which to begin tracing the origins of international policy activity on slavery. The most authoritative definition of slavery (frequently referred to since) was that set out in the 1926 International Convention to Suppress the Slave Trade and Slavery. Article 1 of the Convention defined slavery as follows: 'Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.'

We get a clearer idea of what the drafters intended by this wording if we look at the rather broader definition that had earlier been advanced by the League's Temporary Slavery Commission. Established in 1924, the Commission had been tasked with proposing what action the League should take with regard to slavery; their recommendations led to the adoption of the 1926 Convention. The Commission had not set out to define slavery but did 'draw up a systematic enumeration of the various subjects which might be regarded as coming within the scope of its enquiry'. This constituted a broad list, including 'practices restrictive of the liberty of the person' as well as compulsory labour.[27] '[P]ractices restrictive of the liberty of the person' comprised: (a) 'Acquisition of girls by purchase disguised as payment of dowry, it being understood that this does not refer to normal marriage customs';

[27] Temporary Slavery Commission, Report to the Council (12th July 1924) A.17.1924.VI.B.

(b) 'Adoption of children, of either sex, with a view to their virtual enslavement or the ultimate disposal of their persons'; (c) 'All forms of pledging or reducing to servitude of persons for debt or other reason'.[28]

What is notable about this list is that it seems to target (what were perhaps perceived to be) established cultural practices common to some non-Western countries that were not members of the League. As (a) and (b) in the above quote demonstrate, the 'victims' of those practices would have frequently been women and children, suggesting a parallel with the construction of trafficking discussed above. Additionally, some of the behaviours defined as slavery - particularly the 'Acquisition of girls by purchase' - seem likely to have encompassed trafficking as it was defined by the League.

Targeting non-Western cultural practices in this way was of a piece with the League's general attitude towards slavery and the slave trade, both of which were seen to be properties of backwards, uncivilized nations. In proposing a convention, the Temporary Slavery Commission had explicitly noted that it would be of little use for most League States as practically all had outlawed slavery already. Hence it would be imperative to encourage non-Member States to sign, in particular 'certain Asiatic countries' (Tibet, Nepal) and 'most of the Mohammedan States of the East' (Afghanistan, Hejaz,[29] and others).[30] The Commission further remarked that 'The League of Nations might perhaps decide to admit [to the League] only such States as had clearly shown a desire to abolish slavery; the imposition of this preliminary

[28] Temporary Slavery Commission, Report to the Council (n 27).

[29] The Hejaz is a region in the west of what is now Saudi Arabia.

[30] Temporary Slavery Commission, Letter from the Chairman of the Commission to the President of the Council and Report of the Commission (25th July 1925) A.19.1925.VI.B.

condition would without doubt have good results.'[31]

Slavery was thus employed as a 'standard of civilization'[32] in such a way that it affected the status and treatment accorded to particular nations. In 1922 it was proposed by Frederick Lugard, British Member of the Permanent Mandates Commission, that Ethiopia be placed under a shared Mandate precisely because it seemed unable to suppress the slave trade. Subsequently, a 1930 enquiry into slavery in Liberia resulted in the resignation of both the President and the Vice-President.[33] And in 1935 Italy attempted to use the suppression of slavery as an excuse for its invasion of Ethiopia.[34]

This framing of slavery suggests another parallel with the treatment of trafficking in contemporaneous policy activity. Perpetrators of the white slave traffic were thought to be foreign, of a different ethnicity and religion, and the exploitation that they carried out took place abroad - whether in continental Europe (from the British perspective) or in less developed parts of the world (from the perspective adopted by the League). The act of trafficking was a property of 'others'. Slavery was thematically similar insofar as it was also something that 'others' did and that was a marker of barbarity. At this stage, the parallels I have outlined between slavery and trafficking are suggestive but do not necessarily imply a close relationship between them; they were still discussed and addressed as separate social problems. Neverthe-

31 Temporary Slavery Commission, Letter from the Chairman (n 30).

32 Jean Allain, 'The Legal Definition of Slavery into the Twenty-First Century' in Jean Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press 2012) 202.

33 International Commission of Enquiry in Liberia, Communication by the Government of Liberia dated December 5th, 1930 transmitting the Commission's Report (1930) C.658.M.272.1930.VI.

34 John T Picarelli, *The "Modern Day" Trade in Human Beings: How Historical Experience Influences the Contemporary Trafficking in Persons* (ProQuest 2008) 38.

less, their similarities may have laid the groundwork for their increasing conflation from the 1950s onwards, as I discuss below.

2.3.2 Slavery under the UN

Following the establishment of the UN, an Ad Hoc Committee was set up to consider how best to incorporate the 1926 Convention into the UN's legal regime. The Committee concluded that 'substantial changes in the general situation and attitude related to slavery and other forms of servitude have occurred since 1926', citing Article 4 of the Universal Declaration of Human Rights as an example.[35] Article 4 reads as follows: 'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.'

The inclusion of 'servitude' and 'all their forms' makes this a broader definition than that in the 1926 Convention. The Committee decided not to amend the 1926 definition, however, deciding that 'slavery is so various in its forms that it hardly admits of a strict definition and that there is little prospect of formulating a definition of it which will be so precise and comprehensive as to embrace all types of servitude in all societies'.[36]

Consequently, the 1926 Convention was incorporated into the UN, but in addition, the Committee recommended the introduction of a supplementary convention, in which were to be included an additional six types of 'servile status'.[37] This became

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35 ECOSOC, Report of the Ad Hoc Committee on Slavery (Second Session) (1951) UN Doc E/1988 E/AC.33/13 60; UNGA, Universal Declaration of Human Rights [1948] 4.

36 Report of the Ad Hoc Committee on Slavery (Second Session) (n 35) 7.

37 Protocol Amending the Slavery Convention Signed at Geneva on 25 September 1926 (signed 7 December 1953, entered into force 7 December 1953) 182 UNTS 52; Social Commission Report (1951) (n 17) 8.

the 1956 Supplementary Convention, in which the proposed types of 'servile status' were listed as 'institutions and practices similar to slavery'.[38] They comprised: debt bondage, the legal status of serfdom, the purchase or sale or inheritance of a woman into marriage, and the giving of a child by its parents or guardian to another person for the purpose of exploiting the child or its labour. The list has clear parallels with the definition of slavery adopted by the Temporary Slavery Commission in 1924.[39] Again, the concern is with established cultural practices thought to be common to certain non-Western countries. Again, the implicit victim would frequently (though not always) have been a woman or child.

The 1956 Convention marks the last major international instrument to set out to address slavery (much as the 1951 Convention marked the last major international instrument aimed at addressing trafficking until 2000). Like trafficking, slavery continued to be discussed within the UN machinery, but in a lower-profile manner. There are two developments to highlight in the ongoing treatment of slavery subsequent to the 1956 Supplementary Convention: first, there was an expansion in the definition of slavery (not in law, but in various institutional statements); second, trafficking came to be categorised as a form of slavery.

The expansion in how slavery was defined took place through the activities of the Working Group on Contemporary Forms of Slavery, established in 1974, pursuant to a recommendation by Mohammed Awad, who had been appointed Special

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38 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (signed 7 September 1956, entered into force 30 April 1957) 266 UNTS 4 Preamble.

39 Although the 1926 Convention seemed to refine and replace the broader understanding of slavery evidenced in the work of the Temporary Slavery Commission, in fact that broader understanding continued to be influential after the Convention was introduced. It was employed, for example, by the International Commission of Enquiry in Liberia, mentioned above, which investigated the existence of slavery in that country in 1930. International Commission of Enquiry in Liberia (n 33).

Rapporteur on Slavery in 1963.[40] The Working Group continued to operate until 2007, when it was succeeded by a 'Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences'.[41]

In his report recommending the establishment of the Working Group, Awad had introduced the term 'slavery-like practice', presumably intended to correspond with the phrasing 'institutions and practices similar to slavery' in the 1956 Convention. But Awad's term was used by some members of the Working Group in an attempt to include issues such as apartheid and colonialism as types of 'practices similar to slavery'. Jean Allain has shown that the Working Group was heavily influenced by this debate, declaring that it would not be bound by the 1926 definition of slavery and discussing topics including organ removal and incest.[42] Joel Quirk has referred to this as a process of 'rhetorical inflation' involving 'a politically motivated effort to make slavery synonymous with human bondage as a whole'.[43]

Part of this 'rhetorical inflation' appears to have involved the inclusion of trafficking as a form of slavery (although, unlike apartheid, it was not difficult to argue that trafficking fell within the legal definition of slavery). In his original 1966 report, Awad had been at pains to point out that he 'avoid[ed] dealing with matters covered by the Convention for the Suppression of Traffic in Persons and the Exploitation of Prostitution of Others'.[44] Nevertheless, the slavery questionnaire distributed to

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40 Mohamed Awad, *Report on Slavery* (E/4168/Rev.1, United Nations 1966) 307-9.

41 See: 'Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences' (2017) ⟨http://www.ohchr.org/EN/Issues/Slavery/SRSlavery/Pages/SRSlaveryIndex.aspx⟩ accessed 16th May 2017.

42 Allain (n 32) 209-13.

43 Joel Quirk, 'Defining Slavery in All Its Forms' in Jean Allain, *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press 2012) 262.

44 Awad (n 40) 6.

Member States of the UN (on which the report was based) included a question relating to 'traffic in persons of servile status'.[45]

When the Working Group was established in 1974, trafficking appears to have been included within its remit.[46] This focus seems to have continued through the Working Group's existence, at least up until 2004.[47] In a 1988 report, for example, the Working Group set out to discuss 'the prevention and suppression of slavery-like practices, the traffic in persons and the exploitation of the prostitution of others, as well as other contemporary forms of slavery'.[48]

This does not seem to have been a simple case of institutional over-reach by the Working Group. Individuals and institutions concerned more directly with trafficking adopted a similar view. In 1983, the then Special Rapporteur on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others understood trafficking specifically as 'the exploitation of the prostitution of women and children, excluding other forms of exploitation or slavery'.[49] The implication was that trafficking was one form of slavery among others. Similarly, the 1985 Report of the Third World Conference on Women saw forced prostitution (which it took trafficking to represent) as a form of slavery, while a 1997 report by the Special Rapporteur on Violence against Women characterised the exploitation to which trafficking leads as

45 Awad (n 40) 4.

46 Report of Mr. Jean Fernand-Laurent, Special Rapporteur on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (n 21) 4.

47 See: UNCHR, Special Rapporteur on Trafficking in Persons, Especially in Women and Children (1st April 2004) UN Doc E/CN.4/DEC/2004/110.

48 ECOSOC Res 1988/34, Working Group on Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (1st July 1988) UN Doc E/RES/1988/34 para 8.

49 Report of Mr. Jean Fernand-Laurent, Special Rapporteur on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (n 21) 3.

constituting 'slavery-like conditions'.[50]

It is perhaps unsurprising that trafficking came to be seen, within parts of the UN machinery, as a form of slavery. The similarities in ideas and assumptions between the two social problems, as well as the overlap in the behaviours with which they were concerned, certainly made a conflation possible, perhaps likely. The important point to highlight is that slavery was the umbrella concept. Its legal definition, as well as the way it was constructed in broader policy activity, was consistently broader than definitions and constructions of trafficking; consequently it was to be expected that the conflation of the two would see trafficking classified as a subcategory of slavery. However, during the drafting of the 2000 Protocol, discussed in Section 2.5, this relationship was reversed.

2.4 Europe

At the European level, in the institutions of the EU and the Council of Europe, policy activity on trafficking does not seem to have begun before the mid-1980s. The ideas and assumptions visible in that activity partly parallel and continue those in earlier international policy activity and partly develop them in new directions. Various binding and non-binding instruments and resolutions were issued, each emanating from a particular institution within the machinery of either the EU or the Council of Europe. I discuss those here, showing the variety between them and drawing out the continuities and developments that they represent.

Activity in the EU began with the European Parliament, which issued four res-

[50] A/CONF.116/28 (n 24); Report of the Special Rapporteur on Violence against Women, its Causes and Consequences (n 25) 19.

olutions dealing with trafficking in the late 1980s and early 1990s.[51] The resolutions show an increasing level of specificity and detail, clearly illustrated by their titles: Resolution on Violence against Women (1986); Resolution on the Exploitation of Prostitution and the Traffic in Human Beings (1989); Resolution on Trade in Women (1993); Resolution on Trafficking in Human Beings (1996). In the first of the four, trafficking was included as one form of sexual violence to which women could be subject. By the fourth resolution, detailed measures were called for in prevention, law enforcement and victim support.

Certain key ideas and assumptions are common to all four resolutions. Each constructed trafficking as the movement of women into sexual exploitation; other kinds of victim and exploitation were not compassed. It was emphasised that trafficked victims should be treated as such, and not as illegal immigrants; for example, they ought to be able to come forward to the police without fear of deportation. Indeed, they should be granted legal residence in cases where repatriation to their country of origin might be dangerous or could lead to them becoming exploited again. Implicit here, but important to highlight, is the idea that trafficking involved the movement of women from elsewhere into the EU in a clandestine manner. This represents an important shift from the discourse of the white slave traffic and the work of the League of Nations, in which trafficking had involved the movement of women *from* Europe *to* other parts of the world. Once this shift had occurred, trafficking became an issue linked to immigration, and particularly illegal immigration. The Parliament implicitly recognised this in their arguments that exceptions to immigration control

[51] European Parliament Resolution on Violence against Women [1986] OJ C29/73; European Parliament Resolution on the Exploitation of Prostitution and the Traffic in Human Beings [1989] OJ C32/352; European Parliament Resolution on Trade in Women [1993] OJ C36/141; European Parliament Resolution on Trafficking in Human Beings [1996] OJ C39/88.

should be made in order to provide appropriate support to trafficked victims. Also worth noting is that the 1989 resolution labelled trafficking 'one of the most degrading forms of slavery to which individuals can be subjected', while both the 1993 and 1996 resolutions also referred to trafficking as 'a form of slavery'.[52]

From 1996, the European Commission and the Council of the European Union also began to produce documents dealing with trafficking. The European Commission issued two Communications (in 1996 and 1998), while the Council of the European Union issued two Joint Actions (in 1997 and 1998).[53] The former constitute non-binding commentaries on a particular policy area, while the latter are binding instruments of a type no longer in use in the EU. The purpose of Joint Actions was to establish common actions by Member States within the area of the common foreign and security policy.

The 1996 Commission Communication was a lengthy overview of and action plan on trafficking, running to 51 pages. It defined trafficking as 'the transport of women from third countries into the EU (including perhaps subsequent movements between Member States) for the purpose of sexual exploitation'; it hinted at awareness of

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[52] Resolution on the Exploitation of Prostitution and the Traffic in Human Beings (n 51) Preamble, P; Resolution on Trade in Women (n 51) Preamble, D; Resolution on Trafficking in Human Beings (n 51) Preamble, N.

[53] Communication from the Commission to the Council and the European Parliament on Trafficking in Women for the Purpose of Sexual Exploitation COM(96)567 [1996]; Commission Communication of 9 December 1998 to the Council and the European Parliament Proposing Further Action in the Fight against Trafficking in Women COM(98)0726 [1998]; Joint Action of 29 November 1996 Adopted by the Council on the Basis of Article K3 of the Treaty on European Union, Establishing an Incentive and Exchange Programme for Persons Responsible for Combating Trade in Human Beings and the Sexual Exploitation of Children [1996] OJ L39/7; Joint Action of 24 February 1997 Adopted by the Council on the Basis of Article K3 of the Treaty on European Union Concerning Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children [1997] OJ L40/2.

some other kinds of trafficking, but did not discuss them.[54] It noted that trafficking left women in 'conditions which are akin to slavery', and presented a raft of recommended measures to tackle the problem, including through police and judicial cooperation and victim support.[55] Where the Communication differed from the Parliament resolutions was in its recommendations on providing temporary residence to trafficked victims. The paragraph on that point was somewhat inconsistent. It noted that women residing illegally may struggle to escape their traffickers and that fear of repatriation may prevent them from coming forward to the police. It then implied, however, that a temporary residence permit should be issued mostly or only so that a victim may participate in the prosecution of their trafficker (rather than being a longer-term measure or linked to the safety of their potential repatriation).[56] This indicates a decreasing tolerance for trafficking to constitute an exception to conventional immigration rules, perhaps because the framing of trafficking as a form of illegal immigration was gaining prominence.

The Commission Communication of 1998 defined trafficking in the same way and hardened the approach to granting victims residence. It simply noted that '[trafficked] victims are often in an illegal situation' and that the Commission intended to bring forward legislation mandating the provision of temporary residence permits for those victims willing to testify. No mention was made of any broader reason for permitting victims with illegal immigration status to remain in the European state in which they found themselves.[57] Similarly, the 1997 Hague Ministerial Declaration

54 Commission Communication of 20 November 1996 (n 53) para 4.

55 ibid 4 & ff.

56 ibid para 12.

57 The full text of the 1998 Communication is not available in English, but an official summary, from which the quote is taken, can be found online: http://bit.ly/2x8KXK0. Commission Communica-

made it clear that a temporary residence status should be granted to victims 'during criminal proceedings pursuant to having been victim of trafficking', and not in general terms because of the possible dangers of repatriation.[58]

The two Joint Actions confirm this general impression. Both were law enforcement instruments; the 1996 Joint Action established a programme of exchange for law enforcement agents working on the issue of trafficking, while the 1997 Joint Action primarily called on Member States to criminalise and establish jurisdiction over the behaviours involved in trafficking.[59] In the 1997 document, very little attention was given to victim support, and a mention of temporary residence for the purposes of assisting with prosecution echoed the 1998 Commission Communication and the 1997 Hague Ministerial Declaration.[60]

These are small points of detail in texts that are (with the exception of the Joint Actions) non-binding, but they point to how what had been constructed as a problem of violence against women (such as in the various human rights declarations and instruments discussed above) was steadily coming to be seen more as an issue of organised crime linked to illegal immigration. This was never a binary choice, of course - elements of both perspectives were present in all the above instruments - but there was a definite shift in emphasis over time, particularly during the 1990s, corresponding to the increasing prominence of European states' concerns with immigration generally (which both gave rise to and were no doubt shaped by the process

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tion of 9 December 1998 (n 53).

58 'The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation' (Ministerial Conference under the Presidency of the European Union, 24th April 1997, The Hague).

59 Joint Action of 29 November 1996 (n 53); Joint Action of 24 February 1997 (n 53).

60 Joint Action of 24 February 1997 (n 53) para F.

of drafting the Convention on Transnational Organised Crime).

The Council of Europe also produced several documents dealing with trafficking during the late 1980s and 1990s, in the form of Parliamentary Assembly Recommendations and Committee of Ministers Recommendations. In aggregate, these documents seem to evince three broad perspectives on trafficking (all three are found in most documents, but each is emphasised to a greater degree in some and a lesser degree in others).

A Parliamentary Assembly Recommendation in 1987 and a Committee of Ministers Recommendation in 1991 were concerned with the 'trade in children'.[61] The main concern, particularly in the 1991 document, was with child sexual exploitation, of which trafficking was thought to be just one part. Trafficking was implicitly framed as an immigration issue: the measures that the 1991 Recommendation called on Member States to take only address instances where children are moved across borders.

A later Parliamentary Assembly Recommendation, in 1993, addressed the issue of 'clandestine migration', facilitated by traffickers and other organised criminals.[62] Rather than discussing trafficked victims, the document suggested that many clandestine migrants opt to use the services of traffickers in order to facilitate their illegal entry into the destination country, albeit they may then be exploited in a manner equivalent to 'disguised slavery'. Member States were called on to tighten entry controls and enter into bilateral or multilateral agreements for the repatriation

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61 Parliamentary Assembly Recommendation 1065: Traffic in Children and Other Forms of Child Exploitation 1987; Recommendation No R (91) 11 of the Committee of Ministers to Member States Concerning Sexual Exploitation, Pornography and Prostitution of, and Trafficking in, Children and Young Adults 1991.

62 Parliamentary Assembly Recommendation 1211: Clandestine Migration: Traffickers and Employers of Clandestine Migrants 1993.

of clandestine migrants.

A final Parliamentary Assembly Recommendation, in 1997, addressed 'Traffic in women and forced prostitution'.[63] A Committee of Ministers Recommendation from 2000 adopted a similar focus.[64] The 1997 Recommendation focused on the trafficking of women for sexual exploitation, suggesting that they often find themselves in conditions 'bordering on slavery'. An explicit definition of trafficking was provided: 'any legal or illegal transporting of women and/or trade in them, with or without their initial consent, for economic gain, with the purpose of subsequent forced prostitution, forced marriage, or other forms of forced sexual exploitation.' No mention was made of women choosing the services of traffickers to gain entry to a destination country, and the definition presented them as the objects of trafficking activity rather than as active agents. Nevertheless, a call for victim support was attached to their cooperation in the prosecution of their trafficker(s) and it was assumed that they would return home after rescue.

There are important continuities from earlier and contemporaneous international policy in the EU and Council of Europe documents discussed here - particularly the focus on sexual exploitation, viewing trafficking as an instance of violence against women and categorising it as a form of slavery. There are also important changes in emphasis, particularly with regard to the increasing prominence of immigration concerns.

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63 Parliamentary Assembly Recommendation 1325: Traffic in Women and Forced Prostitution in Council of Europe Member States 1997.

64 Recommendation No R (2000) 11 of the Committee of Ministers to Member States on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation 2000.

2.5 Preparation of the UN Protocol

The final part, chronologically, of the international policy activity discussed here concerns the development of the UN Palermo Protocol as part of the UN Convention against Transnational Organized Crime, completed in 2000. The process of negotiating that Protocol, alongside its companion Protocol on human smuggling, illustrates important continuities and developments in the ideas and assumptions discussed above.

The first proposal for a Convention to deal with transnational organised crime was put forward in 1994.[65] An intergovernmental panel of experts was appointed in 1997 to prepare a draft, and the 1998 report of that group shows that trafficking in women and children was one of the elements that were being considered for inclusion - though in a protocol to the Convention, rather than in the text of the Convention itself.[66] It seems that the inclusion of trafficking was motivated, at least in part, by a push from Argentina to have trafficking in children considered seriously as a (transnational) criminal matter, rather than as an issue of human rights.[67]

From 1998, the drafting process began in earnest. Negotiating states were responsible for drafting Protocols to be attached to the Convention. However, instead of one trafficking Protocol draft being presented, there were two. I discuss each in turn here to illustrate the similarities and differences in the concerns that motivated their drafters.

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65 Gallagher (n 16) 68.

66 ECOSOC, Report of the Meeting of the Inter-Sessional Open-Ended Intergovernmental Group of Experts on the Elaboration of a Preliminary Draft of a Possible Comprehensive International Convention against Organized Transnational Crime (18th February 1998) UN Doc E/CN.15/1998/5.

67 ibid 14.

The first draft was introduced jointly by Argentina and the United States of America (USA). Each had previously produced their own, separate, proposals, but these had had much in common, and were consequently combined.[68] The resultant joint draft was titled 'Revised Draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, Supplementing the UN Convention against Transnational Organized Crime'.[69]

Argentina's motivating concern, as mentioned above, was with child trafficking. Argentina had been '[f]rustrated with the slow pace of the Convention on the Rights of the Child' and so wanted to increase the prominence of the issue of child trafficking by incorporating it within the discourse of security.[70] As Abiri has argued, framing a topic in terms of its implications for national security can be a way of raising its profile.[71] Meanwhile, the USA during the Clinton administration was active on efforts to stem trafficking in women and children. A March 1998 note from President Clinton to various senior officials in his administration directed them to undertake special measures to combat trafficking in women and children, and in May 1998 the

68 UNGA, Consideration of the Additional International Legal Instruments against Trafficking in Women and Children: Draft Elements for an Agreement on the Prevention, Suppression and Punishment of International Trafficking in Women and Children, supplementary to the Convention against Transnational Organized Crime: Submitted by Argentina (15th January 1999) UN Doc A/AC.254/8; UNGA, Draft Protocol to Combat International Trafficking in Women and Children supplementary to the United Nations Convention on Transnational Organized Crime, Proposal Submitted by the United States of America (25th November 1998) UN Doc A/AC.254/4/Add.3.

69 UNGA, Revised Draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Proposal Submitted by Argentina and the United States (22nd February 1999) UN Doc A/AC.254/4/Add.3/Rev.1.

70 Dimitri Vlassis, 'The Global Situation of Transnational Organized Crime, the Decision of the International Community to Develop an International Convention and the Negotiation Process' (2002) ⟨http://www.unafei.or.jp/english/pdf/PDF_rms/no59/ch24.pdf⟩ accessed 15th August 2017, 89.

71 Elisabeth Abiri, 'Migration and Security from a North-South Perspective' in David Graham and Nana Poku (eds), *Migration, Globalisation and Human Security* (Taylor & Francis 2000) 72.

USA and Italy agreed to establish a joint working group for the same purpose.[72]

Pursuant to these preoccupations, the text of the joint USA/Argentina proposal defined trafficking using the tripartite structure familiar from the 1910 International Convention for the Suppression of the White Slave Traffic: the movement of an individual, by means of deception or coercion, for the purposes of sexual exploitation. Trafficking was conceived of as something done to particular vulnerable groups (women and children) for particular exploitative purposes. Consequently, the main focus of the draft was on activities to prevent trafficking and support victims (although it also had a strong emphasis on law enforcement measures to combat trafficking). Up to this point, the draft clearly had much in common with existing ideas, assumptions and definitions in earlier international policy activity. The tripartite definition, the focus on women and children, the focus on sexual exploitation, and the emphasis on supporting victims were all familiar elements in discussions of trafficking, as Section 2.2 (above) illustrated.

At some point during the drafting process, however, the USA/Argentina proposal developed so that it came to cover trafficking in persons, not just women and children, and to include a wider variety of kinds of exploitation - beyond just sexual exploitation. Unfortunately, the available records of the negotiating process do not show why these two changes occurred. In some respects the changes diluted the distinctiveness of the concerns animating the USA/Argentina proposal, creating a

[72] William Clinton, 'Executive Memorandum of March 11, 1998 for the Secretary of State, The Attorney General, The Administrator of the Agency for International Development, The Director of the United States Information Agency on "Steps to Combat Violence against Women and Trafficking in Women and Girls," Washington, D.C., March 11, 1998.' (1998) 3(4) Trends in Organized Crime 20; Office of the Press Secretary, 'Office of the Press Secretary, "U.S.-Italy Seek to Stop Trafficking in Women and Children," The White House, Washington, D.C., May 6, 1998.' (1998) 3(4) Trends in Organized Crime 35.

much broader and vaguer definition of the problem of trafficking. The motivating spirit of the Protocol remained in its title, however: Protocol for the Prevention and Suppression of Trafficking in Persons, *Especially Women and Children* (my emphasis).

The inclusion of a broader range of forms of exploitation led to the reversal of the slavery-trafficking relationship noted above. Here, 'slavery or practices similar to slavery' were included as one of the forms of exploitation to which trafficking could lead, rather than trafficking being seen as a form of slavery.

The second proposal for a trafficking protocol was introduced by Italy and Austria, and was titled 'Draft elements for an international legal instrument against illegal trafficking and transport of migrants'.[73] This proposal was animated largely by concerns about border security and illegal immigration. Both countries wanted to reduce the flow of illegal immigrants across their borders. From 1990 onwards, there had been a large increase in the number of women trafficked to Western Europe from Central and Eastern European countries.[74] Because of Austria's location it was heavily affected by this, in particular the illegal trafficking of women for prostitution. Italy experienced a similar expansion in the trafficking of women for prostitution after 1990, with Albania and Nigeria being the principal source countries.[75] Their concerns should be seen against a background of increasing efforts to

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[73] UNGA, Draft Elements for an International Legal Instrument against Illegal Trafficking and Transport of Migrants, Proposal Submitted by Austria and Italy (15th December 1998) UN Doc A/AC.254/4/Add.1.

[74] International Organisation for Migration, 'Migration Information Programme, "Trafficking in Women to Austria for Sexual Exploitation," International Organization for Migration, Budapest, Hungary, June 1996.' (1998) 4(3) Trends in Organized Crime 30.

[75] International Organization for Migration, 'Migration Information Programme, Trafficking in Women to Italy for Sexual Exploitation' (1998) 3(4) Trends in Organized Crime 32.

control immigration by the governments of developed countries at the time.[76]

It is worth noting that, although this proposal was animated by border security concerns, the kinds of trafficking identified as problematic tended to involve the movement of women into sexual exploitation. The proposal was in this respect similar to the USA/Argentina draft. The perspective taken, however, gave far less prominence to victim support or preventative measures. The focus of the proposal was on improving law enforcement responses to the act of procuring illegal entry into a signatory State, and in particular the trafficking of migrants by sea (Italy's concern). Consequently, trafficking was defined in this proposal as the act of procuring illegal entry alone - the use of deception or coercion, and the (exploitative) purpose intended, were not mentioned.[77]

At their introduction, as noted, both draft protocols had the word 'trafficking' in their title. The way in which the term was used, however, differed. The USA/Argentina proposal specifically referred to 'trafficking in women and children', while the Austria/Italy proposal referred to 'illegal trafficking and transport of migrants'. The titles emphasise what the above discussion makes clear: while the Argentina/USA proposal closely related to existing constructions of trafficking, the Austria/Italy proposal was more firmly located in the discourse of transnational crime and illegal immigration. Up until this period, it had not been common to view trafficking in this way. It seems reasonable to assume that the process of establishing a Convention against Transnational Organised Crime was influential in

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[76] See, for example: O Waever and others, *Identity Migration and the New Security Agenda in Europe* (St Martin's Press 1993); David T Graham and Nana K Poku, 'Introduction' in David T Graham and Nana K Poku (eds), *Migration, Globalisation and Human Security* (Taylor & Francis 2000) 2.

[77] Draft Elements for an International Legal Instrument against Illegal Trafficking and Transport of Migrants, Proposal Submitted by Austria and Italy (n 73) A.

encouraging this perspective. Ultimately, the USA/Argentina draft kept its title and became the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (known subsequently as the 'Palermo Protocol'), while the Italy/Austria proposal became the Protocol Against the Smuggling of Migrants by Land, Sea and Air. The terms 'trafficking' and 'smuggling' distinguished the two approaches - but it is important to note that both began life as instruments addressing 'trafficking'.

The Palermo Protocol defined trafficking similarly to the initial USA/Argentina draft: the movement of a person, through coercion or deception, for the purpose of exploiting them. Movement was defined to include not just transportation but also recruitment, transfer, harbouring or receipt. Coercion included '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'. Exploitation was defined non-exhaustively to include slavery, practices similar to slavery, servitude, forced labour or services, sexual exploitation and organ removal.[78] The Smuggling Protocol defined 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'.[79] The key difference was that smuggling was thought to end at the border, and not to involve any exploitative intent. It was constructed as a purely commercial arrangement - payment for facilitating the illegal crossing of a border. Whereas trafficking was de-

[78] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (n 1) art 3.

[79] Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (signed 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507 art 3.

fined as movement for the purpose of exploitation, with the relationship between trafficker and victim continuing after a border crossing.

Although the Palermo Protocol retained a greater emphasis on victim support and protection than did the smuggling Protocol, there was still widespread concern among interested NGOs and many international organisations that there was too much emphasis on law enforcement and migration control within it. Their worry was that the idea of trafficking as fundamentally a violation of human rights was getting lost. The perceived risk was that there would be an insufficient emphasis on the protection and support of victims. There was a significant degree of involvement from international organisations and national and international NGOs in the Convention drafting process - to a degree unusual with regard to criminal matters in the UN.[80] Several of the published submissions from those organisations are accessible. They demonstrate a concerted effort on the part of the UN High Commissioner for Human Rights, the UN Children's Fund, the International Organisation for Migration and the International Labour Organisation to attempt to include as many human rights elements as possible within the final text of the Convention and its Protocols, including stronger provisions on victims' rights with regards to protection and support.[81]

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80 Gallagher (n 16) 71.

81 Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime: Fourth Session, Informal Note by the United Nations High Commissioner for Human Rights (1st June 1999) UN Doc A/AC.254/16; Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime: Eighth Session, Note by the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and the International Organization for Migration on the Draft Protocols Concerning Migrant Smuggling and Trafficking in Persons (8th February 2000) UN Doc A/AC.254/27; Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime: Fourth Session, Note by the International Labour Organization on the Additional Legal Instrument against Trafficking in Women and Children (16th June 1999) UN Doc A/AC.254/CRP.14.

Gallagher argues that on the whole these organisations were relatively successful in their efforts, and that the eventual form of the trafficking Protocol owed something to their advocacy. Specifically, she notes the expansion of the trafficking definition beyond sexual exploitation, references to international human rights law, refugee law and humanitarian law, an anti-discrimination clause and 'the protection of rights as a principal objective'.[82] However, in the final text of the trafficking Protocol, the provisions on victim support are hortatory, while those on law enforcement are mandatory. The overall balance of the Protocol does not seem heavily weighted towards human rights concerns. We may read this as the influence of the concerns with immigration and border security that had largely motivated the Convention on Transnational Organised Crime.

2.6 National context

Prior to the late 1990s (a period discussed separately in Chapter 3), there was almost no policy activity in the UK explicitly directed either at 'human trafficking' or the behaviours defined by Article 3 of the Palermo Protocol. There was no history of 'human trafficking' as a social problem in the UK, by which I mean explicitly defined and with specific efforts made to address it, with the exception of the white slave traffic concern at the beginning of the 20th century. There does not appear to have been any continuity of that concern through the middle of the century, however, for which reason I am disregarding it here.[83]

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[82] Gallagher (n 16) 72.

[83] Much has been written about parallels between efforts to combat the 'white slave traffic' and contemporary anti-trafficking activity, however. Elizabeth Bernstein has summarised scholarship focusing on parallels in the US context: Elizabeth Bernstein, 'The Sexual Politics of the "New

Despite the lack of history as a specific social problem, the term 'human trafficking' was nevertheless used occasionally in political debate, in which context it accrued a general pattern of usage and certain connotations. I briefly discuss the usage of the term here to show how it partly aligned with some of the ideas and assumptions discussed above - particularly paralleling the framing of trafficking as a form of illegal immigration.

The choice of how far back to go in tracing the use of the term 'human trafficking' (or near-equivalents) in political debate must always be somewhat arbitrary. A convenient starting point, however, is the debates that accompanied the introduction of the 1971 Immigration Act, s.25 of which introduced an offence of facilitating illegal entry into the UK.[84] What those debates show is that 'trafficking' was used (at points interchangeably with 'smuggling') to refer straightforwardly to illegal immigration.

An example is then Home Secretary Reginald Maudling, speaking in debate a year before the Act was introduced: 'I intend in the forthcoming Bill to deal with the question of penalties in this sphere of illegal immigration, particularly in respect of those who are making a profit out of trafficking in illegal immigrants...'.[85] Maudling later commented, with regard to Part III of the Bill, that 'The main provision [i.e. what would become s.25] is to put severe new penalties on people who engage in trafficking in illegal immigrants. I am sure that the House will agree entirely with our objective. I regard trafficking in illegal immigrants as being almost on a par with trafficking in dangerous drugs. People who make money out of this activity

Abolitionism"' (2007) 18(5) differences: A Journal of Feminist Cultural Studies 128; Jo Doezema has addressed both the European and the US contexts: Doezema (n 8).

84 Prior to these debates, the term 'trafficking' appears only in scattered and isolated mentions.

85 HC Deb 25th November 1970, vol 807, col 482.

should be severely punished, and that is the purpose of the Bill.'[86] James Callaghan for the Opposition agreed wholeheartedly.[87] The focus of debate was largely on the traffickers, rather than their victims, and the measures discussed were strictly to do with law enforcement. Trafficking was clearly seen as a kind of organised crime.

That said, the plight of trafficked victims was acknowledged at various points in the debate on Clause 25 of the Bill (to become s.25 of the Act). Supporting the heavy penalties proposed for the offence, Lord Balfour commented that: 'There have been appalling cases of people coming in as illegal immigrants (not only to this country, but to other countries), where they have been through the most frightful conditions. They have paid enormous sums of money - often before they have come here, or when they have arrived - and they have no redress if anything goes wrong, because they have been carrying out an illegal action'.[88] Lord Denham, for the Government, agreed: '[trafficking] is a trade which leads to misery and hardship for the immigrants themselves'.[89] The language used is important: individuals who have been trafficked are still 'immigrants' and not yet 'victims'; they are people who have committed 'an illegal action'. The implied solution to the problem is not to support those who have been trafficked but to prevent their illegal entry in the first place. There is no sense in which trafficking should be understood as a kind of violence directed against a specific group and I have found no discussion of the appropriateness of providing specific support and protection to victims. The assumption seems to have been that those trafficked/smuggled into the UK would simply be deported unless their

86 HC Deb 8th March 1971, vol 813, col 54.

87 ibid col 75.

88 HL Deb 2nd August 1971, vol 323, col 983.

89 ibid col 984.

assistance was required for the prosecution of their trafficker/smuggler. Throughout these debates, 'trafficking' and 'smuggling' were used somewhat interchangeably. Lord Windlesham referred both to 'those who traffic in human misery' and also 'those who engage in the smuggling of immigrants into this country', referring to the same group.[90]

Although these debates took place some considerable time before the trafficking/smuggling distinction was enshrined in the two Protocols to the Convention on Transnational Organized Crime, we might still suggest that the lack of that distinction (or of any felt need to establish such a distinction) was facilitated by the peripheral nature of the victim to the debates. If the focus is on the act of facilitating illegal entry to the UK, with little regard to the purposes for which such facilitation takes place, then there is no need to employ different terms to distinguish the straightforward facilitation of illegal entry from facilitation intended to lead to exploitation.

The reason that 'trafficking' was referred to so frequently in 1970 and 1971 was the prominence accorded to efforts to control immigration (both legal and illegal) at the time. The 1971 Act capped a series of legislative efforts from the early 1960s onwards aimed at reducing immigration (especially from the Commonwealth).[91] Trafficking was mentioned much less - barely at all, in fact - in political debate over the next two decades.

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90 HL Deb 1st December 1970, vol 313, col 418.

91 Immigration from the Commonwealth had been relatively free until the 1960s. During the 1960s and subsequently, avenues for Commonwealth citizens to migrate to the UK were steadily restricted, a process completed in 1981 with the passage of the British Nationality Act. The Act created for the first time a category of British citizenship, relegating most citizens of the Commonwealth either to local citizenship (if they were able to obtain it) or to a rump category of British Overseas Citizenship, which carried no right of abode in the UK. Randall Hansen, *Citizenship and Immigration in Postwar Britain* (Oxford University Press, USA 2000) 212-14.

This is partly because, while the evasion of immigration controls was raised as an issue during this period,[92] the focus of media and political debate tended to be on the racial dimension of immigration.[93] Nevertheless, instances of illegal immigration continued to be widely reported in the media as part of a general anti-immigrant sentiment; as Ann Dummett and Andrew Nichol put it, 'half a dozen Asian 'illegals' landing on the coast would receive main headlines as the most important news story of the day.'[94]

Writing in 2000, Randall Hansen suggested that immigration and asylum enjoyed a far lower profile in political debate from 1980 onwards.[95] In part this was because voluntary migration into the UK had largely been curtailed, through the 1971 Act and other associated legislative instruments. Very few legal migration avenues were left available.

One consequence of this was that, as Bloch has remarked, 'refugees and asylum seekers [became] the largest single category of people coming to the UK after transit passengers and visitors.'[96] This became significant from the late 1980s onwards, when the numbers of people applying for asylum began to rise steeply,[97] once again prompting concern with immigration levels, but this time with asylum as the focus. Three pieces of legislation were produced during the 1990s in an attempt to make the asylum process more restrictive: the Asylum and Immigration Claims Act 1993, the

92 Hansen (n 91) 140-41.

93 See: ibid pp. 25ff.

94 Ann Dummett and Andrew Nicol, *Subjects, Citizens, Aliens and Others: Nationality and Immigration Law* (Law in Context, Weidenfeld and Nicolson 1990) 235.

95 Hansen (n 91) 211-12.

96 Alice Bloch, *The Migration and Settlement of Refugees in Britain* (Springer 2002) 44.

97 Hansen (n 91) 234.

Asylum and Immigration Act 1996, and the Immigration and Asylum Act 1999.[98]

In the context of this specific concern with asylum, 'trafficking' was once again perceived to be an issue and, as before, tended to be seen straightforwardly as the action of facilitating illegal immigration. In oral Parliamentary questions in 1998, then Parliamentary Under Secretary for State at the Home Office Mike O'Brien commented: 'We are determined to tackle the people-traffickers who make vast amounts of money from illegal immigration.'[99] Early in 1999, O'Brien was asked what the Government was doing to tackle the problem of asylum seekers entering the UK illegally. He responded: 'We shall tackle the problem of illegal immigration rather than specifically asylum seekers. We are developing increased European and international co-operation to crack down on traffickers.'[100]

It is difficult to prove a negative, to show that there was no more awareness of 'trafficking' or related behaviours than this prior to the late 1990s in the UK. Perhaps there were individuals or organisations who were more active. However, in terms of visible policy activity, it seems fair to say that while the term 'trafficking' was occasionally employed, it did not achieve the status of a separate social problem. It was instead seen as part of the problem of illegal immigration - an aspect of that issue that did entail suffering for those trafficked, but that was fundamentally to be dealt with through improved immigration control and law enforcement activity. These connotations of the term 'trafficking' were likely influential in the early development of the anti-trafficking policy apparatus, not least because they align with the increasing emphasis on the immigration framing of trafficking that we can

98 Hansen (n 91) 234-5.

99 HC Deb 13th July 1998, vol 316, col 5.

100 HC Deb 15th February 1999, vol 325, col 592.

observe in international and European policy activity during the 1990s.

2.7 Conclusions

This brief history has illustrated the most prominent patterns of ideas and assumptions about 'human trafficking' and related behaviours in international, European and (to a lesser extent) British policy activity over the course of the 20th century. I have shown how they influenced the Palermo Protocol, noting the distinctive contribution that the Protocol made and demonstrating how in some respects it represented a departure from existing constructions.

The most prominent pattern of ideas and assumptions identified is that of trafficking as the movement of women and children across borders for the purpose of sexual exploitation. In this telling, trafficking is about a dreadful wrong done to vulnerable individuals by criminal exploiters. Protection and support of the victims is urged. More recently, this construction of trafficking has been included within an international human rights discourse, where trafficking is just one of many forms of exploitation suffered by women and girls across the world.

From the early 1990s, trafficking began to be seen, additionally or alternatively, in a different light. More emphasis was given to the need for strong and coordinated law enforcement efforts to tackle it. It was seen as an aspect of a wider problem of illegal migration, compromising the national security of developed states, albeit an aspect that had an unfortunate impact on certain individuals - 'victims' of trafficking. Although the increasing prominence lent to the immigration and law enforcement framing of trafficking (at least on the international stage) is relatively recent, it has parallels with earlier ideas and assumptions. Notably, earlier ideas about the white

slave traffic and about slavery tended to involve some notion of the 'other' - whether the trafficker or the culture in which slavery could exist. To view trafficking as part of illegal immigration was once again to locate it outside of our borders, to frame it as something done by foreign criminals (though this time their victims were also thought of as foreign).

A sub-theme running through the policy history discussed here has been the conflation of trafficking and slavery. Trafficking was frequently referred to as a subcategory of slavery, and treated accordingly in institutional terms at the UN. This seems to have continued until the drafting of the Palermo Protocol, at which point, for reasons that are still unclear, trafficking switched from being a subcategory to becoming an umbrella category, within which slavery was a subcomponent. The relationship between the two concepts is important to bear in mind in light of the recent shift in terminology (in the UK) from 'human trafficking' to 'modern slavery', discussed in Chapter 6.

The next chapter shows the influence that these ideas and their connotations had on the emergence of the anti-trafficking policy apparatus in the UK. Although, ostensibly, the earliest legal and policy responses to trafficking in the UK were prompted by the need to implement the UK's obligations under Palermo, in practice they took a more complex form than that would logically have entailed. Part of the reason for that is that they were responding not simply to Palermo but to a long legacy of international law and policy on trafficking. Many of the connotations and associations generated by that history were implicit within Palermo. Both the way in which the Palermo definition was transposed into English law and additional anti-trafficking measures that began to appear prior to and alongside the early legislation show the influence of those connotations and associations.

3 The state recognises 'human trafficking'

3.1 Introduction

In the last chapter I highlighted the apparent oddity of the British Government introducing two criminal offences of 'human trafficking' to comply with its obligations under the Palermo Protocol and the 2002 EU Framework Decision.[1] I suggested that there was more to the entry of trafficking into the purview of the British state than a straightforward narrative of compliance with international obligations could capture.

In this chapter I move from the international sphere to the UK, and from 20th century history to the few years immediately prior to the introduction of the first policy and legislative instruments to mention trafficking. I begin by setting out the first criminal offences to be introduced and showing in detail how they differ from the Palermo Protocol and EU Framework Decision definition of trafficking. To explain

[1] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (signed 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319; Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings [2002] OJ L203/1.

why they differ, I then explore ideas and assumptions about trafficking that were already circulating within the UK before the offences were introduced. I trace three key debates within which those ideas and assumptions can be found - concerning sexual violence, child sexual exploitation and illegal immigration. Trafficking was discussed as a subordinate aspect of each, and framed accordingly. The state issued a policy statement regarding each of the three issues and trafficking was included within those statements. Thus trafficking entered into the purview of the state embedded in existing issues and accompanied by associations and connotations related to them. Contemporaneous law enforcement and NGO practices echoed the patterns of ideas and assumptions found in those debates and statements. I suggest that the reason why two criminal offences were introduced to comply with the UK's international obligations is largely to be found in the developing ideas and assumptions that I map out.

This chapter argues that human trafficking thus entered the purview of the state in a fragmentary and disconnected way. I show that this reflected and amplified some inconsistencies in the way in which, in aggregate, trafficking was constructed by the policy apparatus at this early stage. I argue that the early state activity I discuss is suggestive of the state's later role in the policy apparatus, explored in Chapters 4-6. The state did not seek to define human trafficking through a careful deliberative process; instead, it implicitly lent the idea of trafficking recognition and legitimacy through writing it into the three policy areas that I describe. In the process, it absorbed many of the associations and connotations that 'human trafficking' had already acquired.

3.2 Trafficking in law

3.2.1 English law

The initial legislative provisions introduced to criminalise trafficking in the UK were contained within the Nationality, Immigration and Asylum Act 2002 (NIA),[2] the Sexual Offences Act 2003 (SOA) and the Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004 (AITCA). The NIA was used to introduce a 'stop-gap' offence of trafficking for the purposes of controlling prostitution, before the introduction of the Sexual Offences Act in 2003.[3] The NIA trafficking offence was replaced by that introduced in the SOA 2003, sections 57-9. I will not discuss it further here since it was in force so briefly and was similar in most respects to the SOA offence.

The offence introduced in sections 57-9 of the SOA covered arranging or facilitating the entry into, travel within, or departure from the UK of a person while either intending to commit or believing that another person was likely to commit a relevant offence in respect of that person. The relevant offence in question was any of a range of sexual offences - principally those under Part I of the SOA, including rape, assault and child sexual offences. Section 57 reads:

1. A person commits an offence if he intentionally arranges or facilitates the arrival in the United Kingdom of another person (B) and either—

   (a) he intends to do anything to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant

[2] Nationality, Immigration and Asylum Act 2002 (Nationality, Immigration and Asylum Act).

[3] Home Office, *Protecting the Public: Strengthening Protection Against Sex Offenders and Reforming the Law on Sexual Offences* (White Paper, Cm 5668, 2002).

offence, or

(b) he believes that another person is likely to do something to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence.

2. A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Sections 58 & 59 are the same, except that they replace 'the arrival in' with 'travel within' and 'the departure from' respectively. This conception of trafficking focuses on the movement of an individual, whether internationally or not, in the knowledge that they are likely to be subjected to sexual exploitation on arrival at their destination. The trafficker does not have to be the person doing the exploiting. In other words, trafficking is here little more than the appending of movement to existing offences of sexual exploitation, including offences of causing, inciting or controlling prostitution for gain.[4]

The third domestic legislative provision introduced was section 4 of the AITCA. Where the SOA provision covered only trafficking for sexual exploitation, the AITCA provision covered trafficking for a wider range of exploitative purposes. It defined the offence of trafficking people for exploitation as the arrangement or facilitation of the arrival into, travel within or departure from the UK of an individual where

[4] Sexual Offences Act 2003 (SOA) s 52-3.

the person doing the arranging or facilitating either intends to exploit the passenger or believes that another person is likely to do so. Where the travel is within the UK, the arranger/facilitator must also believe that the passenger has already been trafficked into the UK. Exploitation was defined broadly in section 4(4), as follows:

4. For the purposes of this section a person is exploited if (and only if)—

   (a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour),

   (b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ Transplants Act 1989 (c. 31) or the Human Organ Transplants (Northern Ireland) Order 1989 (S.I. 1989/2408 (N.I. 21)),

   (c) he is subjected to force, threats or deception designed to induce him—

      i. to provide services of any kind,

      ii. to provide another person with benefits of any kind, or

      iii. to enable another person to acquire benefits of any kind, or

   (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that—

      i. he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and

      ii. a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.

The main difference between this and the 2003 offence is of course the broader definition of exploitation. A second key difference is that international movement

must be involved - internal trafficking is not compassed.

3.2.2 International Law

In Chapter 2 I referred to the UN Protocol (the 'Palermo Protocol') introduced in 2000 to tackle trafficking, alongside a sister Protocol on human smuggling.[5] The Palermo Protocol offered a definition of trafficking, which was subsequently reproduced in a 2002 EU Framework Decision.[6] As noted above, a single trafficking offence could have been introduced in English law to comply with these international obligations, but instead two were created. It is not at first obvious what the SOA offence contributes, since the AITCA offence could have been construed to include sexual exploitation. In practice, however, it was not. And a House of Commons Library document suggested that the SOA and the AITCA provisions together complied with the UK's international legal obligation, implying that the SOA was perceived as a necessary element.[7]

I have already described the definition of trafficking provided in Article 3 of the Palermo Protocol, but I set it out in full here so that it can easily be compared to the two English offences:

> a "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other

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[5] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (n 1); Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (signed 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507.

[6] Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings [2002] OJ L203/1 (n 1).

[7] Sally Lipscombe and Jacqueline Beard, *Human Trafficking: UK Responses* (House of Commons Library Standard Note, Home Affairs SN/HA/4324, House of Commons Library 2014) 6.

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. 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;

b The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

c The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

d "Child" shall mean any person under eighteen years of age.

This definition is very broad. As already noted, the movement part includes not just physical transportation but also recruiting, receiving on arrival or harbouring (which presumably does not require any movement at all).[8] The means element includes not only coercion but also 'fraud' and 'deception' and so is correspondingly broad. The purpose - 'exploitation' - is not defined exhaustively, suggesting that it might encompass a very wide range of behaviours.

[8] The term is not further defined in the guidance issued by the UN Office of Drugs and Crime. United Nations Office on Drugs and Crime, *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crimes and the Protocol Thereto* (United Nations 2004).

The Protocol was adopted on 15 November 2000, entering into force on 25 December 2003. The UK signed it on 15 December 2000 but did not ratify it until 9 February 2006. Prior to this, on 19 July 2002, the EU Council Framework Decision on Combating Trafficking in Human Beings was introduced. Its principal contribution was to reproduce the Protocol's definition of trafficking (in large part identical, though not verbatim) and mandate its criminalisation by Member States as well as minimum penalties. Where the Framework Decision differed from the Protocol was in the absence of a requirement that the movement in trafficking be cross-border.[9] Internal trafficking was not explicitly mentioned but was implicitly included. The Framework Decision entered into force for all Member States on 7 August 2002.

3.2.3 Transposition into English law

The AITCA offence seems designed to transpose the UK's obligations deriving from the Palermo Protocol. It includes a wide range of forms of exploitation; the tripartite structure of the offence (movement, means and purpose) is the same; and internal (that is, in-country) movement is only contingently included (when attached to prior cross-border movement). The SOA offence is much less clearly related to the Protocol. Its definition of trafficking is narrower, focusing only on sexual exploitation. Yet it is also broader, insofar as it explicitly allows for internal movement rather than solely the cross-border kind and it does not require any 'means' element (such

[9] Article 4 of the Protocol specifies that it applies only to offences that are transnational in nature and involve an 'organized criminal group'. It is to some extent arguable whether or not this necessarily applies given the definition of trafficking in Article 3 of the Protocol - which includes 'harbouring' or 'receipt', types of movement that are by definition not cross-border. In other words, it is not necessary to be involved in transnational movement, or even an organized criminal group, to traffick someone. However this may be interpreted, the EU Framework Decision makes no such limitation, so it is not present in English law.

as fraud, deceit, etc.). The inclusion of internal movement is in line with the EU Framework Decision, but the non-inclusion of a 'means' element is not. The pattern of behaviour the SOA offence captures is more to do with combating sexual exploitation than it is tackling trafficking (if we understand trafficking according to the Protocol's definition). We might see it as to some extent reflecting the spirit of the Protocol (as reflected in its title) but otherwise it is a different offence altogether.

The question is why the SOA offence was introduced separately and took the form that it did. I suggest that it reflected the most prevalent ideas and assumptions about trafficking that were already in circulation in the UK, and that these paralleled many of the key ideas and assumptions identified in Chapter 2.

3.3 Three main framings

3.3.1 Sexual Violence

The topic of sexual violence gained prominence during this period thanks to a wide-ranging review of existing sexual offences law announced by the Government in 1999.[10] The review was published in 2000 as *Setting the Boundaries: Reforming the law on sex offences (Volume 1)*.[11] Chapter 7 of *Setting the Boundaries* dealt with sexual exploitation, consisting of the 'three different but interlinked topics' of trafficking for sexual exploitation, commercial child sexual exploitation and adult sexual exploitation. This was seen as a 'growing area of transnational organised

[10] For a summary of the wider political and ethical debate on prostitution/sex work in the UK and its relation to trafficking discourse, which is beyond the scope of this thesis, see: Johanna Kantola and Judith Squires, 'Discourses Surrounding Prostitution Policies in the UK' (2004) 11(1) European Journal of Women's Studies 77.

[11] Home Office, *Setting the Boundaries: Reforming the Law on Sex Offences, Volume 1* (2000).

crime'.[12]

The chapter's main objective regarding trafficking was to examine the adequacy of existing legislative provisions under which law enforcement could proceed against traffickers. It concluded that there was mixed evidence for the effectiveness of the legislation that was most commonly relied upon - sections 30 & 31 of the Sexual Offences Act 1956, section 25(1) of the Immigration Act 1971, and the common law offences of fraud, forgery, false imprisonment, and related offences of physical and sexual violence.[13] The pattern of offences used gives an indication of the construction of trafficking evinced by law enforcement practices at the time - involving illegal immigration, control over prostitution, and physical violence. (Although this would have been implicit; there was almost certainly no explicitly formulated concept of trafficking until the first legislation introduced in 2002.)

The review proposed a new offence of 'trafficking for sexual exploitation', which would consist of moving someone for the purpose of commercial sexual exploitation in the expectation of gain. It stated that 'the fact of trafficking should be sufficient to prove the offence'.[14] Factors such as deception or coercion should be aggravating rather than essential. The implication was that anyone moved for the purposes of working in prostitution was to be seen as a victim of trafficking.[15]

This perspective was echoed in the White Paper that constituted the official

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12 Home Office, *Setting the Boundaries: Reforming the Law on Sex Offences, Volume 1* (n 11) 105.

13 ibid 106.

14 ibid 114.

15 Some of those consulted during the review took a different perspective; these tended to be those in favour of legalising and regulating prostitution rather than abolishing it. They consequently argued that instead of a narrow focus on law enforcement there should be a broader consideration of the regulation of the sex industry. At least one organisation implied that greater attention was being paid to the protection of foreign sex workers than British ones, something they argued should not be the case. See: ibid 126.

Government statement of its intentions on the reform of sexual offences - *Protecting the Public*. 'Many adults are *exploited* in prostitution. Some may have been trafficked to this country explicitly for the purposes of *exploitation* while others may have become subject to *exploitation* within this country, through being enticed by a pimp or for whatever other reason' (my emphasis).[16] At least in the context of trafficking, prostitution was constructed as intrinsically exploitative.

This was not necessarily true generally. Johanna Kantola and Judith Squires have identified two main discourses dealing with prostitution in the UK in the early 2000s: the public nuisance discourse and the moral order discourse.[17] The public nuisance discourse largely concerned street prostitution, seen to be an issue of moral hygiene, and for which the (female) prostitutes were blamed, rather than their kerb-crawling customers. The moral order discourse was closely linked to trafficking, and constructed the prostitute as an 'innocent victim' in need of protection.[18] Clearly the way in which prostitution has been constructed by different parties at different points is very complex. For present purposes, I want only to identify the influence that it had on how trafficking was viewed, which is in line with the moral order discourse that Kantola and Squires identify. I will not discuss other perspectives on prostitution.

The review dealt only with trafficking for sexual exploitation on account of its remit. At various points in the review, however, this is referred to simply as 'trafficking', perhaps indicating that all (or at least most) trafficking was thought to involve sexual exploitation. A 2001 report from the NGO End Child Prostitution and Traf-

16 Home Office, *Protecting the Public* (n 3) 30.

17 Kantola and Squires (n 10).

18 ibid 80.

ficking (ECPAT) showed that there was at least some awareness of other forms of exploitation, so it cannot be concluded that trafficking for sexual exploitation was the only kind known.[19] However, this was the only form of trafficking to have any prominence in this review, as in the policy documents that I discuss in the following sections. *Setting the Boundaries* also reinforced the presumption that trafficking involved the (illegal) movement of foreign women into the UK - albeit the phenomenon of internal trafficking (movement within the UK) was briefly acknowledged.[20]

3.3.2 Child sexual exploitation

Child sexual exploitation was addressed within *Setting the Boundaries* and work on the topic influenced the review, which was able to 'draw on the expertise and specific knowledge of problems related to the sexual exploitation of children and trafficking given both by the children's charities and academics involved in the review'.[21] Nevertheless, the concern with child sexual exploitation had, to some extent, its own separate identity, with its own organisations, actors and documents. In contrast to the concern with sexual violence, where the review led directly to a white paper, the issue of child sexual exploitation, as a separate concern, is found in a combination of law enforcement activity, media coverage and NGO reports. However, the ideas and assumptions found in these documents and activities did make their way into a 'National Plan' document (discussed below).

A series of early child trafficking cases predated the policy developments dis-

19 ECPAT UK, 'What the Professionals Know: The Trafficking of Children into, and through, the UK for Sexual Purposes' (2001) ⟨http://bit.ly/2vlMp9W⟩ accessed 6th November 2013, 22.

20 Home Office, *Setting the Boundaries: Reforming the Law on Sex Offences, Volume 1* (n 11) 111.

21 ibid 108.

cussed in the previous section. The first of these began on 27 August 1996, when Imina Esohe was reported missing from West Sussex Social Services. Imina had arrived at Gatwick from Lagos in 1995, giving her age as 17, and had been granted asylum together with a residency permit for one year. Over the following years more West African girls began to go missing from care in similar circumstances. Some media interest was generated around Christmas 1997 with a Meridian TV programme, 'Home for Christmas', highlighting the cases of five such girls. Shortly thereafter, Sussex Police launched Operation Newbridge to investigate the disappearances.[22]

The cases all followed a similar pattern. A West African girl would arrive at Gatwick and claim asylum, giving her age as under 18. After being granted asylum and taken into care, an unknown person would make contact with her and she would disappear. It was thought that many were subsequently taken to Italy and forced into prostitution. By September 2000, five years after Imina's arrival, a total of 27 children were known to have gone missing from West Sussex social services.

By that point, however, Operation Newbridge had come to an end after two traffickers were arrested. One was prosecuted, the other deported. The outcome was seen by some as an indication that existing legislation was inadequate to deal with trafficking.[23]

Operation Newbridge led to the establishment of a Joint Protocol. The Protocol established a framework for joint working and information sharing between local police, social services, NGOs and the Home Office. A group of representatives from those organisations met 'each time a girl went missing to discuss strategy'.[24] The

22 National Missing Persons Helpline and Juliet Singer, 'No Title' (2003).

23 ibid.

24 ibid 7.

Protocol produced an 'at-risk' profile of the typical victim they encountered, which included among the features listed: male or female; aged 11-28; likely West African origin (though Chinese was also included as a possibility).[25] The Protocol group was the first such group convened in the UK in response to trafficking; the profile it created was likely an important contributor to early assumptions regarding what a trafficked victim might look like.

As the pattern of missing children continued, West Sussex was referred to in several Parliamentary debates - in particular, on 25 April 2001, a debate called by Tim Loughton, then MP for the area, raised concerns about the resource implications for the social services involved.[26] Loughton alleged that dealing with the issue was costing West Sussex social services £1 million per year. There was also a BBC documentary made called Lost Girls - aired first on BBC South and then nationally on 5 April 2001.[27]

This concern around child trafficking should be understood in the broader context of a debate on children and sex that gained particular prominence from the mid-1990s onwards. A number of actors were arguing for the reframing of that debate such that what had previously been thought of as 'child prostitution' should be relabelled as 'child sexual exploitation'. There was a feeling among several major NGOs that there had previously been too much emphasis on the agency of the child involved; they sought instead to portray the child as a victim of adult exploiters. A 1995 report by the Children's Society said:

> Evidence shows that the vast majority of children involved in prostitution

[25] National Missing Persons Helpline and Juliet Singer (n 22).

[26] HC Deb 25th April 2001, vol 367, cols 92-115WH.

[27] 'Homeground' (2001) 308(4022) Radio Times 107.

> have had severely disrupted lives. The vast majority of clients are adult men. Yet, all too often, it is children themselves that have been defined as the problem, not the adults that abuse them, nor the social, economic, legal and cultural conditions that increase young people's vulnerability to exploitation and contribute towards their involvement in prostitution.[28]

The report argued that child prostitution should be treated as a form of exploitation, with the children involved to be protected, rather than criminalised. By 1998 it was felt by the children's charity Barnardo's that this argument was beginning to encounter some success.[29] There had been various national and international initiatives in support of its basic contention.[30]

Coincidentally, child abuse had at that time a high profile both politically and publicly in the UK due to a spate of recent revelations concerning the mistreatment of children in care homes. This culminated in the publication of the Utting Report in 1997, which advocated for wide-scale reform of safeguarding procedures.[31]

This context is significant because trafficking was frequently linked to the wider issue of child sexual exploitation; it was sometimes seen as just one among many forms of child abuse. A second 1995 report - authored jointly by a group of children's charities including Barnardo's, Childline and the National Society for the Prevention of Cruelty to Children (NSPCC) - argued that child pornography, child prostitution and child trafficking should all be seen as falling under the umbrella of

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28 Mark Lee and Rachel O'Brien, *The Game's Up: Redefining Child Prostitution* (The Children's Society 1995) 7.

29 Dr Barnardo's, *Whose Daughter Next?: Children Abused through Prostitution* (Dr Barnardo's 1998).

30 Janet Féat, 'Whose Daughter Next? Children Abused Through Prostitution. Barnardo's, London, 1998. ISBN 0 902046 51 9.' (1999) 8(5) Child Abuse Review 349.

31 Department of Health, *People Like Us: Report of the Review of the Safeguards for Children Living Away from Home* (, Stationery Office Books 1997).

child abuse.[32] Adopting a slightly different categorisation, the first specific research on child trafficking in the UK, some six years later, employed the following definition of child trafficking: 'Any behaviour which facilitates the entry into, transit through, residence in or exit from any territory, for the purposes of sexual exploitation.' Sexual exploitation was defined as 'the use of a child in prostitution or the exploitative use of a child in other sexual practices, including the use of a child in pornography and forced marriage'.[33]

By 2001 the Government was framing the issue in a similar way in its National Plan for Safeguarding Children from Sexual Exploitation:

> The term commercial sexual exploitation is interpreted widely in this document to include the prostitution of children and young people; the production, sale, marketing and possession of pornographic material involving children; the distribution of pornographic pictures of children over the internet; trafficking in children; and sex tourism involving children.[34]

Child trafficking was, then, seen as part of the newly conceived problem of child sexual exploitation. It was particularly understood in light of Operation Newbridge, the most prominent example of child trafficking through the late 1990s and early 2000s. The way it was constructed in this arena envisioned an innocent, vulnerable child subject to sexual exploitation (rather than any other kind). It was a subcomponent, in some respects, of the discourse on sexual violence, but it also had its own distinctive identity - through particular cases, organisational structures, reports and

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32 Liz Kelly, *Splintered Lives: Sexual Exploitation of Children in the Context of Children's Rights and Child Protection* (Dr Barnardo's 1995).

33 ECPAT UK (n 19).

34 Department of Health and Home Office, *National Plan for Safeguarding Children from Commercial Sexual Exploitation* (White Paper, 2001).

advocacy efforts.[35]

3.3.3 Illegal immigration

The third set of concerns influential in the formation of the anti-trafficking policy apparatus was that surrounding illegal immigration. Trafficking was (and is still) often conflated with human smuggling and/or illegal immigration more generally.[36] We can see this in various Parliamentary debates that touched on trafficking in 2000 and 2001. A few examples (the italics are mine):

David Lidington MP: '*illegal immigration* remains a serious challenge for this country. Attempts at illegal immigration are frequently assisted by organised criminals who *traffic* in human beings, much as they might traffic in drugs or other contraband goods.'[37]

Lord Howell: 'a world-wide surge of legal and illegal immigration, with a great expansion of *trafficking* in human beings - or *"people smuggling"*, as it is sadly and more popularly known.'[38]

Barbara Roche MP: 'The Government are co-operating closely with Eurotunnel and the French authorities in sharing intelligence and information to prevent *clandestine entry and human trafficking.*'[39]

Kevin Barron MP: 'The action taken on *human smuggling* and its awful conse-

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35 When I use the term 'discourse' I am not employing it as a term of art. I am simply referring to the dictionary definition - an 'interchange of words', spoken and written. 'discourse, n.' *OED Online* (2017).

36 The difference between the two was set out in Chapter 2, Section 2.5.

37 HC Deb 30th October 2000, vol 355, col 539.

38 HC Deb 22nd March 2001, vol 365, col 574.

39 HC Deb 29th March 2001, vol 365, col 1162.

quences has been mentioned this afternoon. I refer not only to the deaths in Dover but to *human trafficking* around the world. We, along with many other countries, must deal with the problem of people exploiting others for money.'[40]

Trafficking is understood in these debates as the illegal movement of an individual across a border. Considerations such as whether exploitation occurs on arrival and whether deception or coercion occur are held to be relevant, but they do not find themselves reflected in a clear terminological distinction between trafficking and smuggling. At points those two words are used interchangeably. As such, trafficking is seen as a subcategory of illegal immigration - trafficking inside a country's borders is not considered.

Government Ministers at the time shared this view. In interview, one referred to 'volunteers who want to be trafficked' alongside different modalities of involuntary trafficking.[41] Another Minister suggested that asylum seekers were 'by definition trafficked in' although did suggest that there were some who 'weren't really being trafficked', the distinction being that they were not exploited on arrival.[42] Clearly a distinction resting on the presence or absence of exploitation was being made, but a terminological separation between trafficking and smuggling was not. Trafficking was used as a term that encompasses the illegal movement of people and tended towards including exploitation following the movement - but did not always do so.

The Government's official policy statement on migration - in the 2002 White Paper *Secure Borders, Safe Haven* - was more nuanced. This policy asserted that a majority of illegal immigrants in the UK were here through the operations of

40 HC Deb 9th March 2001, vol 623, cols 497-8.

41 Interview with Minister (Retired)(No. 52) (Phone, 30th April 2015).

42 Interview with Minister (Retired)(No. 40) (Phone, 24th March 2015).

organised criminal groups and that a majority of those individuals were smuggled in.[43] Trafficking was seen as a distinct and much more minor concern, a sub-category of migrant smuggling. It was thought of as necessarily involving exploitation - the emphasis being almost entirely on sexual exploitation, although other kinds were acknowledged.[44]

These assumptions tended to reinforce two main ideas. First, they supported the notion that trafficking was a cross-border phenomenon. Second, by conflating trafficking with smuggling, they helped to create an ambiguous image of the victim - as an illegal entrant to the UK, and therefore a criminal, and at the same time as a victim of exploitation. Such an ambiguous image of the victim created a tension between two possible responses - deportation and protection - which was to continue through the subsequent development of the anti-trafficking policy apparatus.

This ambiguous construction of the 'trafficked victim' and consequent tension over how to treat victims was also reflected in *Setting the Boundaries*, showing the overlap between the two sets of concerns relating to sexual violence and illegal immigration:

> Although there have been calls to grant permanent residency status to victims if they wish for it, this raises large questions of the evasion of immigration control, and whether it is right for those who may knowingly have been involved in immigration offences to have a right to stay. The likelihood of being allowed to remain in the UK if discovered may, ironically, give those seeking to recruit women an additional incentive to offer them.[45]

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43 Home Office, *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain* (White Paper, Cm 5387, 2002) 75.

44 ibid 82-3.

45 Home Office, *Setting the Boundaries: Reforming the Law on Sex Offences, Volume 1* (n 11) 112.

It is important to note that both White Papers discussed above - *Secure Borders, Safe Haven* and *Setting the Boundaries* - were authored by the Home Office, which became the Department with main responsibility for trafficking. (The *National Plan* was authored by the Department of Health). The prominence of asylum in political and media debate at the time may have been particularly influential in ensuring the Home Office's lead.[46] That asylum focus tended to reinforce a relatively simple understanding of trafficking, emphasising in particular the illegal immigration aspect. A Minister with some oversight of trafficking policy at the time commented that it was difficult to get the civil service (the Home Office in particular) to adopt a particularly nuanced view of trafficking during the early 2000s simply because there was so much of a focus on reducing asylum numbers. Senior officials were regularly summoned to 10 Downing Street to report on their progress in doing so.[47] Between 2001 and 2004, then Prime Minister Tony Blair 'called more meetings to discuss the issue of asylum than any other issue except Iraq'.[48] This may suggest that the framing of trafficking as a form of illegal immigration was particularly prominent at this time.

3.4 Practical developments

Trafficking entered the purview of the state not as an isolated issue but as part of the three sets of ideas and practices noted above, each of which led to trafficking

46 Interview with Minister (Retired)(No. 40) (n 42).

47 ibid.

48 Matthew Gibney, 'Asylum Policy' (*The Migration Observatory*, 29th March 2011) ⟨http://bit.ly/2w6I3Yj⟩ accessed 14th August 2017, 2; Sarah Spencer, 'Immigration' in Anthony Seldon (ed), *Blair's Britain 1997-2007* (Cambridge University Press 2009) 359.

being written into an official policy statement and framed accordingly. Alongside the policy statements and the activity preceding them, a range of other activity was also underway that was aimed in whole or in part at addressing trafficking, and that tended to construct trafficking in a similar way. I will mention three kinds of activity that were important, relating to law enforcement, victim support and stakeholder engagement.

With regards to law enforcement, a national level intelligence-gathering and co-ordination strategy called Reflex had been established in 2000 to combat organised immigration crime, within which trafficking was a minor element. Reflex's four main priorities were:

- Identification and disruption of organised immigration crime involving one or more designated nationalities.
- Identification and disruption of organised trafficking in women and children to and via the UK for sexual or other exploitation.
- Support to improve systems and procedures within the UK, EU, at designated key nexus points and source countries designed to prevent people smuggling and human trafficking to the UK.
- Identification and disruption of organised immigration crime impacting on national security including private and public sector corruption.[49]

Reflex's main focus was illegal immigration - hence the emphasis (when discussing trafficking) on foreign victims brought to or through the UK. There was

[49] Metropolitan Police Authority Secretariat, 'MPA: Committees: Planning, Performance and Review reports (8)' (9th November 2006) ⟨http://policeauthority.org/metropolitan/committees/x-ppr/2006/061109/08/index.html⟩ accessed 23rd September 2015.

no particular reason for it to focus on trafficking for sexual exploitation, however, except for the prevalence of that construction of trafficking at the time. Trafficking was not a high priority within Reflex. Although the strategy was well funded, nearly all of that funding went towards tackling human smuggling, which was a Ministerial priority. In general, many people thought that trafficking was not something that would happen in the UK.[50]

Reflex was the national strategy; Operation Maxim was, for the London Metropolitan Police Service, the mechanism that put it into practice. At this lower operational level (and a few years further on), assumptions about trafficking tended to be slightly more nuanced. Reports on Maxim's progress are available from 2003. These show a distinction being made between a 'trafficker' and a 'facilitator' as well as an awareness of the different forms of exploitation that trafficking can involve.[51]

Despite this more nuanced perspective, however, the main focus of discussion in the reports remained on sexual exploitation. Sexual exploitation was the only form of exploitation discussed at any length and the only context in which the word 'victim' appeared. This may be because the only victim support available was for those who had been sexually exploited (see below).

The 2004 Maxim report noted as its outcomes arrests made (15) and illegal entrants deported (31), giving an indication of its priorities. Again the trafficking focus was on sexual exploitation together with some discussion of unaccompanied minors. The majority of the specific operations reported to have been carried out

[50] Interview with Police Officer (Retired)(No. 32) (Sheffield, 19th February 2015).

[51] Metropolitan Police Authority Secretariat, 'MPA: Committees: Planning, Performance and Review reports (09)' (8th May 2003) ⟨http://policeauthority.org/metropolitan/committees/x-ppr/2003/030508/09/index.html⟩ accessed 23rd September 2015.

did not involve trafficking at all.[52]

In 2003 the first provision was made for supporting trafficked victims once they had been identified. A pilot programme was established (the Poppy Project) under the management of the violence against women charity Eaves, on 10 March of that year.[53] Funded by the Government, it had 25 residential spaces available for women who had been subject to trafficking for sexual exploitation. Its criteria for accepting a victim were:

a That she had been brought to the UK;

b That she had been forcibly exploited;

c That she was working in prostitution (in the UK);

d That she was willing to co-operate with the authorities.[54]

One final organisational structure, in some respects less central, was a stakeholder group founded in 2002 by the National Missing Persons Helpline that brought together police, NGOs and social services, with occasional state representation.[55] This group emerged out of the Joint Protocol agreed under Operation Newbridge. It

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52 Metropolitan Police Authority Secretariat, 'MPA: Committees: Planning, Performance and Review reports (11)' (12th February 2004) ⟨http://policeauthority.org/metropolitan/committees/x-ppr/2004/040212/11/index.html⟩ accessed 23rd September 2015.

53 HC Deb 10th March 2003, vol 401, col 3WS.

54 These criteria are taken from a 2006 image of the Poppy Project website as no earlier version is available. The wording of a Ministerial statement announcing the establishment of the service implies that these criteria were in place from the inception of the project. 'Accommodation and Support' (*Eaves4Women*, 19th June 2006) ⟨https://web.archive.org/web/20060619121723/http://www.eaves4women.co.uk/POPPY_Project/Accommodation_and_Support.php⟩ accessed 23rd September 2015; HC Deb 10th March 2003, vol 401, col 3WS.

55 Carron Somerset and Muireann O'Briain, 'Trafficking in Children for Sexual Purposes. Update Country Report: United Kingdom' (January 2004) 3-4.

was called the Counter Trafficking Steering Group. It functioned largely as a forum for the NGOs to air particular concerns they had about Government activity on trafficking. The focus of the main group was initially on the trafficking for sexual exploitation of women and children in London and the home counties: '...it has been agreed that other areas of exploitation will not be ignored, but that at the earlier stages of the groups [sic] work, only sexual exploitation will be directly focused on.'[56]

A sub-group, the Victim Support Group, composed of NGOs and social services, decided to 'look at the issue of trafficking in a wider context, rather than just sexual exploitation, but that overall the issue of sexual exploitation would be the focal point'.[57]

These organisational structures and practices reinforced the most prevalent ideas and assumptions about trafficking from the debates and policy statements noted above. Those were, in short, that trafficked victims were foreign women and children, brought to the UK for purposes of sexual exploitation. Adult victims also tended to be constructed as illegal immigrants, leading to a tension between deportation and support. Child victims were more often constructed as vulnerable victims.

This pattern of ideas and assumptions is most likely responsible for the introduction of the offence in the Sexual Offences Act 2003. Not strictly necessary in order for the UK to comply with its international obligations, the offence was a statement of existing domestic concerns. It is worth noting that ideas of trafficking for other kinds of exploitation than sexual, or of British nationals, or of male victims (all of which were encompassed by the definition in the Asylum and Immigration Act) are almost nowhere to be found in the early 2000s, with a few exceptions that I discuss below.

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56 'Minutes of the Counter Trafficking Victim Support Group' (14th April 2002).

57 ibid.

It is hardly surprising that the 2004 offence was overlooked and infrequently used. It was thought by lawyers to be 'convolutedly drafted'[58] and by the police to be 'very difficult'[59] to use. It was absent from both Blackstone's and Archbold[60] - standard criminal law texts.[61] Part of the reason for those sentiments must be that trafficking for sexual exploitation was the only kind of trafficking generally compassed during this period.

3.5 At the margins

I have so far provided an account of how 'trafficking' first entered the purview of the state and why it was framed as it was when it began to do so. I have shown that a significant influence on the construction of trafficking in law and policy was a prevalent set of ideas and assumptions already in circulation, in which trafficking tended to be understood as the illegal movement of foreign women and children into the UK for the purposes of sexual exploitation. It is important, however, to emphasise that the policy apparatus was far from homogeneous at this early stage. Other ideas and assumptions about trafficking can be found, though rarely with any prominence accorded to them.

The legislative debates preceding the introduction of the SOA offence contain several examples. In general, the SOA trafficking provisions generated more debate

58 Interview with Lawyer (No. 25) (Phone, 4th February 2015).

59 Interview with Police Officer (Retired) (No. 43) (London, 1st April 2015).

60 The most recent editions of each are: Matthew Dyson (ed), *Blackstone's statutes on criminal law : 2016-2017* (Oxford University Press 2016); Richardson, PJ, *Archbold: Criminal Pleading, Evidence and Practice 2017* (Sweet & Maxwell 2017).

61 Interview with Lawyer (No. 19) (Phone, 23rd January 2015); Interview with Police Officer (No. 26) (Phone, 4th February 2015).

than section 4 of AITCA, and they were welcomed as 'long overdue' by then Home Secretary David Blunkett MP when he introduced the Bill to the House of Commons at second reading.[62] The Public Bill Committee also saw extensive debate on the Bill's provisions.[63]

Yet several of the MPs who spoke to the trafficking provisions during the second reading debate on the SOA (such as George Osborne, Sally Keeble and Neil Gerrard), implicitly challenged aspects of the way the offence constructed trafficking, such as by stressing the importance of recognising other forms of exploitation (domestic servitude was one example given).[64] Similar points were made in the Public Bill Committee.[65]

It was accepted that a broader offence reflecting these concerns would be outwith the remit of the SOA. In the Public Bill Committee Hilton Dawson MP commented that: 'I firmly believe that there is a long way further to go, but it is outside the scope of the Bill to deal with trafficking for purposes of domestic servitude, which is a huge issue.'[66] Neil Gerrard MP, similarly, regretted that the provision was not within 'a criminal justice Bill, as that would have allowed us to deal with trafficking for labour'.[67]

Oddly, these points do not seem to have been raised in the legislative debates that prefigured the introduction of the AITCA offence. This may have been because only limited Parliamentary time was available, restricting the opportunity for debate

62 HC Deb 15th July 2003, vol 409, col 186.

63 ibid cols 275-86.

64 ibid cols 177-246.

65 Sexual Offences Bill Deb 18th September 2003, cols 281-89.

66 ibid col 275.

67 ibid col 279.

on section 4. It may also have been because less importance was accorded to section 4 relative to the SOA trafficking offences. A letter published by the Government announcing its proposals for the AITCA Bill (on 27 October 2003) made no mention of the trafficking provisions.[68] The Home Affairs Select Committee Report, published on 9 December, emphasised that: 'We are...surprised that two of the provisions in the Bill, those for a new criminal offence in relation to people trafficking and for electronic tagging of certain asylum seekers, were not mentioned in the announcement on 27 October.'[69] We may compare that to the long review process that proceeded the SOA, including a specific roundtable on trafficking for sexual exploitation as part of the review consultation process.[70]

Clause 4 of the AITCA Bill (to become section 4 of the Act) was discussed very briefly in Standing Committee.[71] Neil Gerrard MP commented that it had 'been widely welcomed', despite the lack of publicity.[72] That sentiment was also repeated in the House of Commons Library Research Paper for the Bill.[73] Otherwise, little was said about it.

It may be that the offence was uncontroversial because interested MPs had been calling for it (or for something similar) since the SOA debates. Equally, however, there are some indications that the behaviour covered by section 4 was seen as less

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68 Home Office Immigration and Nationality Directorate and Department for Constitutional Affairs, *New Legislative Proposals on Asylum Reform* (2003) ⟨http://bit.ly/2vl6SRe⟩ accessed 28th August 2017.

69 House of Commons Home Affairs Committee, *Asylum and Immigration (Treatment of Claimants, Etc.) Bill. First Report of Session 2003-4* (HC 109, 2003).

70 Home Office, *Setting the Boundaries: Reforming the Law on Sex Offences, Volume 1* (n 11) 347-59.

71 SC Deb (B) 13th January 2004, cols 142-7.

72 ibid col 142.

73 Ross Young and Arabella Thorp, *Asylum and Immigration: the 2003 Bill* (House of Commons Library Research Paper 03/88, House of Commons Library 2003) 4.

severe. Humfrey Malins MP noted that 'Trafficking for the purposes of prostitution is, perhaps, more serious, in that there is a position of domination over the person being trafficked. We grade the offences in our mind. We regard all forms of trafficking as appalling, but we might regard trafficking for prostitution as a harsher, nastier business than trafficking per se for the purposes of seeking asylum or settlement.'[74]

The general pattern of debate around these two offences would seem broadly to reflect assumptions about trafficking found in existing policy activity. The SOA offence is accorded more significance and judged to be more severe, which fits with the pattern of particularly prevalent assumptions about trafficking discussed above. The AITCA offence received far less attention. Nevertheless, there was a surprising amount of interest in (and awareness of) non-sexual forms of trafficking in the debate preceding the introduction of the SOA offences.

Similar, somewhat marginal, mentions of other aspects of trafficking can be found elsewhere as well. For example, *Setting the Boundaries* included explicit mention of internal trafficking, although it acknowledged that this was not the usual interpretation of the term:

> 7.5.1 Trafficking for sexual exploitation involves several elements. Firstly it requires the recruitment of people from one place to work in another. Traditionally this has been understood to bring people in from one country to another, but there is no reason why the movement of people within a country from one geographical location to another (say Newcastle to London) should not be considered to be a form of trafficking. The recruiting process may involve deception.[75]

The phrasing 'no reason why...[it]...should not be considered to be a form of

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74 Sexual Offences Bill Deb 18th September 2003, col 276.

75 Home Office, *Setting the Boundaries: Reforming the Law on Sex Offences, Volume 2 - Supporting Evidence* (2000) 111.

trafficking' suggests that there is no real claim that internal trafficking is happening - only that it is something that could potentially happen.

Similarly, ECPAT's 2001 survey of child trafficking knowledge found that 'The majority of the respondents believed that the children were brought into the UK for purposes of sexual exploitation, either within the UK, or in Southern Europe' (with the UK as a transit country). Yet

> ...[t]he interviewees also understood that children were trafficked for other reasons, such as, credit card fraud, drug trafficking, domestic service, adoption and forced marriage. However, all those who stated other reasons, had little evidence to support this, and stated only possibilities.[76]

Again, there is no substantive claim here that other forms of exploitation are taking place - only a suggestion that they ought to be considered.

There is, however, one example of a publication in which a more nuanced construction of trafficking was advanced in a cohesive manner (rather than as a caveat to more prevalent assumptions). This was a 2003 online Government document setting out guidance on tackling trafficking. Entitled 'Trafficking in People', it was published in 2003 by the Home Office as one of its Crime Reduction Toolkits.[77] A series of these were available on a central website, providing comprehensive guidance on various crime types to practitioners (such as law enforcement officers).

There are two points worth noting about the guidance. First, it can be seen as a comprehensive attempt to diagnose the problem of trafficking and prescribe an

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76 ECPAT UK (n 19) 22.

77 Home Office, 'Crime Reduction Toolkits: Trafficking of People' (*Crime Reduction*, 8th June 2003) ⟨http://web.archive.org/web/20030608113806/http://www.crimereduction.gov.uk/toolkits/tp00.htm⟩ accessed 2015.

appropriate policy response. It was more programmatic than any similar document until the 2007 Action Plan (the first comprehensive statement of the Government's approach towards trafficking).[78] Yet it was not prominent and did not form an official statement of the Government's policy. Second, certain assumptions made within it about trafficking were of the marginal or divergent type - but here given more prominence rather than included only as caveats or digressions.

The 'Aims' section of the document contained a number of features indicative of its comprehensiveness. It acknowledged adult male victims alongside women and children; it explicitly addressed 'other forms of labour exploitation' alongside sexual exploitation; it explicitly adverted to internal trafficking; and it was open about the lack of data and consequent uncertainties around trafficking.[79]

It was not immune to the prevalent assumptions about trafficking discussed above, tending to see all victims as illegal immigrants and giving more weight to sexual exploitation, but overall it did present a much more nuanced construction of the problem. The document acknowledged the blurred boundary between trafficking and smuggling, while holding the concepts distinct; it paid a great deal of attention to the motivations of those trafficked and confronted the complexity of victims who may have embarked voluntarily; it noted the risks of exploitative gangmasters a year before the tragedy of Morecambe Bay;[80] it went into some depth on the psychology of victims experiencing exploitation; and the emphasis overall was very much on

78 Home Office and Scottish Executive, *UK Action Plan on Tackling Human Trafficking* (2007).

79 Home Office, 'Crime Reduction Toolkits' (n 77).

80 In early 2004 23 Chinese cockle pickers drowned while working in Morecambe Bay. I discuss this in more detail in subsequent chapters. 'Morecambe Bay Cockling Tragedy: Gangmaster and his Cohorts are Deported' (*The Visitor*, 5th February 2014) ⟨http://www.thevisitor.co.uk/news/local/morecambe-bay-cockling-tragedy-gangmaster-and-his-cohorts-are-deported-1-6417846⟩ accessed 22nd March 2014.

victim protection as the main priority, with law enforcement secondary.

A feature of the guidance was its wealth of narrative detail, avoiding simplistic description:

> Some [child victims] enter as unaccompanied asylum seekers at airports, and sea ports...it has been suggested that some enter on student visas, as language students or on tourist visas. Children are also brought in by adults who state that they are their dependants, or are met at the airport by an adult who declares themselves to be a relative. It has been suggested that children have been brought in via Internet transactions, foster arrangements, and contracts as domestic staff.
>
> [...]
>
> It is important to realise that women may be punished or in danger if pimps, agents, and/or 'owners' find them with referral or assistance information in their possession. It may be useful to have contact information for referral services written on a small card that she may take and keep hidden for future reference if and when she decides she needs it. Such information needs to be available in a variety of languages.[81]

The way the guidance portrayed trafficking was based on a careful consideration of everything known at that time about the phenomenon. It did not proceed, as to an extent the legislation and policies introduced did, based on an assessment of where trafficking fitted into existing concerns. Instead, it looked at trafficking independently and attempted to produce a separate understanding of the phenomenon.

The consequence of this approach is that the prescriptive element of the guidance was idealised. It included suggestions for activity that lacked a suitable institutional framework to be taken forward. In particular, it advocated a multi-agency approach to combating trafficking which was at odds with the fragmented and domain-specific

[81] Home Office, 'Crime Reduction Toolkits' (n 77).

approach that characterised activity at the time. A Minister with some oversight of trafficking policy in the early 2000s implied that the fragmented domestic approach to trafficking was, to an extent, intentional, a product of the view that different forms of exploitation represented different problems needing different policy responses, and that it would be unproductive to view trafficking as a single problem.[82] This may explain why the guidance did not have more influence over contemporaneous legislation or institutional activity.[83]

The utility of this document is twofold. First, it emphasises that the policy apparatus was far from homogeneous, even at this early stage. Second, it shows one approach to constructing the problem of trafficking that could have been adopted more broadly, but was not. I would suggest that the reason for this lies in the way in which trafficking was taken up as an issue by the Government of the time. The anti-trafficking policy apparatus grew incrementally, in a fragmentary and complex manner. Trafficking was incorporated into different existing policy statements and laws and constructed differently in each. There was no organised attempt (this document being the sole exception) to get to the bottom of what trafficking was, according to what was known at the time. There was little debate over how the problem ought to be defined, perhaps because the Palermo definition was taken to be authoritative. Consequently, there was room for divergent opinions about trafficking - its nature, its causes, and how to tackle it - but these ideas were unable to achieve much prominence.

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82 Interview with Minister (Retired)(No. 52) (n 41).

83 It is also plausible that this Minister's attitude was a result rather than the cause of the domestic approach to trafficking. Another Minister commented that government tended to struggle to provide the degree of inter-departmental coordination that a problem like trafficking required. Interview with Minister (Retired)(No. 40) (n 42).

3.6 Conclusion

In this chapter I have shown how the issue of 'human trafficking' first entered the purview of the state, through a complex and fragmentary process. It was incorporated into three primary areas of concern, finding concrete expression in policy statements on each: sexual violence, child sexual exploitation and illegal immigration. Each area of concern came with its own ideas and assumptions that influenced how trafficking was constructed within it. Consequently there was some inconsistency to the aggregate shape of the policy apparatus at this early stage. Despite that inconsistency, a general pattern of assumptions about trafficking can be discerned. It was commonly thought to involve the illegal movement of foreign women and children into the UK for the purposes of sexual exploitation. There was, in regards to adult victims, a tension between viewing them as a vulnerable victim and as an illegal immigrant. Child victims tended to be constructed more sympathetically.

The offence of trafficking for sexual exploitation (sections 57-9 of the Sexual Offences Act 2003) responded to this general pattern of assumptions. The offence of trafficking generally (section 4 of the Asylum and Immigration Act 2004) more directly responded to the UK's international obligations stemming from the Palermo Protocol and the EU Framework Decision.

The main point to highlight from this discussion is that the state did not become seized of 'human trafficking' through a careful process of deliberation. Circulating ideas and assumptions with a long historical pedigree shaped the absorption of 'human trafficking' into policy statements regarding well-established concerns. By writing trafficking into its policy statements in this way, and subsequently into the law, the state recognised 'human trafficking' to be a social problem, reifying it and

lending the concerns of those worried about it the stamp of legitimacy. The state was not in the business of generating ideas, actively constructing the problem of trafficking or challenging existing interpretations. It was rather a kind of conduit for existing ideas - but by acting as a conduit it had an effect on those ideas. It lent them status, legitimacy and widespread recognition. It lent its imprimatur to the most prevalent pattern of ideas and assumptions identified above when it wrote trafficking into policy statements on sexual violence, child sexual exploitation and illegal immigration. By doing so, it also linked trafficking to existing organisational structures (law enforcement, immigration control), which had the effect of involving some organisations and not others, some practices and not others, in the emerging anti-trafficking policy apparatus.

4 The Action Plan

This chapter explores the first of the three instruments of the state that I investigate - the policy statement. In 2007, the Home Office published the UK Action Plan on Human Trafficking; updates were published in 2008 and 2009.[1] The Action Plan was the first comprehensive statement of anti-trafficking policy by the Government. By the time of its introduction, four years after the 2003 offence of trafficking for sexual exploitation and seven years after Palermo, there was already a substantial amount of activity in the UK aimed at combating 'human trafficking', involving a diverse range of actors. That activity embodied, responded to or expressed (implicitly or explicitly) many of the ideas and assumptions identified in the previous chapter. What, then, was the role of the Action Plan in shaping the construction of human trafficking? How did it relate to existing concepts and categories (such as 'trafficked victim' or 'exploitation')? Did it transform them, or generate new ones? In this chapter, I explore those questions, looking at the practices, ideas and assumptions about trafficking that pre-dated and fed into the Action Plan, those expressed in the Plan itself, and those that occurred subsequent to its introduction and in some

[1] Home Office and Scottish Executive, *UK Action Plan on Tackling Human Trafficking* (2007); Home Office and The Scottish Government, *Update to the UK Action Plan on Tackling Human Trafficking* (2008); Home Office and The Scottish Government, *Update to the UK Action Plan on Tackling Human Trafficking* (2009).

way responded to it.

I show that many of the ideas and assumptions in the Plan were not new, but were instead drawn from existing policies, consultation responses and contemporaneous institutional developments. In drawing these diverse ideas together, the Action Plan provided a construction of trafficking that was not entirely consistent. But the Plan did not only collect existing ideas about trafficking; it also made an important contribution of its own. It codified, formalised and rationalised a diverse set of ideas into a (superficially) coherent strategy. The Plan's coherence was superficial insofar as its breadth and internal inconsistency contributed to legitimising a wide range of activity, not always closely aligned, that arose out of a variety of individual initiatives and institutional imperatives. Consequently, the Plan can be said to have legitimised, but not dictated, much of the development of the policy apparatus up until at least 2010.

4.1 The Action Plan

The Action Plan gathered together in a single document an unusually wide range of ideas about trafficking (relative to what we find in previous policy activity). The Plan attempted to link these various ideas, and the diverse organisations and practices from which they originated, into a coherent whole.

The Action Plan was produced by a Home Office team within the Organised and Financial Crime Unit who oversaw trafficking policy, initially as just one part of their remit (subsequently the team would expand, gain some independence, and trafficking would become its sole remit). When the team was first formed, around 2004, they saw trafficking as a comparatively minor issue relative to their other

work.[2] This began to change from 2005 onwards, as international and domestic political activity on the subject increased. 2005 saw the completion of the Council of Europe Convention on Trafficking in Human Beings and, on 9 December, the publication of an EU Action Plan designed to improve efforts to tackle trafficking.[3] Publication of the latter took place under the UK Presidency of the EU, which ran from July to December 2005; 'people trafficking' was one of the British Government's policy priorities during that Presidency.[4]

Domestically, Parliament was beginning to look towards the 2007 bicentenary of the abolition of the slave trade, and human trafficking was raised in that context.[5] During 2006, a large number of Parliamentary questions were asked. Two particularly active MPs - Anthony Steen and Peter Bone - alone accounted for 35 questions. Anthony Steen was also responsible for founding the All Party Parliamentary Group on Human Trafficking on 9 July 2006.[6] Additional Parliamentary pressure came in the form of an inquiry by the Joint Committee of Human Rights into the UK's anti-trafficking activities; their report was published on 13 October 2006 and was quite critical of the Government's actions to that point.[7]

Consequently, from late 2005 onwards there was a recognition within the Home

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2 Interview with Civil Servant (Retired) (No. 54) (London, 26th May 2015).

3 Council of Europe Convention on Action against Trafficking in Human Beings (signed 16 May 2005, entered into force 1 February 2008) CETS 197; Council of the European Union, 'EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings' [2005] OJ C 311.

4 'Presidency Priorities - UK EU Presidency 2005' (*UK Presidency of the EU 2005*, 2005) ⟨http://bit.ly/2gjEsQN⟩ accessed 5th October 2015.

5 HC Deb 13th December 2005, vol 440, col 411WH.

6 These figures are from a search of digitised Hansard records. Search facility provided by www.theyworkforyou.com.

7 Joint Committee on Human Rights, *Human Trafficking, Twenty-Sixth Report of Session 2005-6, Volume 1* (HL Paper 245-I / HC 1127-I, 2006).

Office team that a national policy statement on trafficking was needed.[8] Previously, as discussed above, trafficking had been included in policy statements on other issues but there had not been a statement dedicated to trafficking. A consultation was undertaken in early 2006 on what such a policy statement should contain; following collation of the responses, the Action Plan was published in March 2007, followed by updated versions in 2008 and 2009.[9]

The 2007 Action Plan articulated a vision of trafficking that departed quite significantly from the most prevalent pattern of assumptions in the earlier stages of the policy apparatus. It acknowledged the internal trafficking (within the UK) of British nationals - mostly connected to child sexual exploitation;[10] it recognised that (foreign) victims may enter the country legally and should in any case be treated as victims rather than immigration offenders;[11] and it suggested that 'Up to now, our effort has focused mainly on trafficking for sexual exploitation. We now need to move beyond this and also spotlight other forms of trafficking for increased attention, such as child trafficking and trafficking for forced labour.'[12] It further acknowledged the limits of existing data, suggesting that 'We do not have sufficient evidence regarding trafficking for purposes other than sexual exploitation to make a full assessment as yet of whether this poses a significant problem for the

8 Interview with Civil Servant (Retired) (No. 54) (n 2).

9 Home Office and Scottish Executive, *Tackling Human Trafficking - Consultation on Proposals for a UK Action Plan* (2006); Home Office and Scottish Executive, *Tackling Human Trafficking - Summary of Responses to the Consultation on Proposals for a UK Action Plan* (2006); Home Office and Scottish Executive, *UK Action Plan* (n 1); Home Office and The Scottish Government, *Update to the UK Action Plan on Tackling Human Trafficking* (n 1); Home Office and The Scottish Government, *Update to the UK Action Plan on Tackling Human Trafficking* (n 1).

10 Home Office and Scottish Executive, *UK Action Plan* (n 1) 4.

11 ibid 7.

12 ibid 5.

UK.'[13] The authors acknowledged the concerns expressed by the Joint Committee of Human Rights in their 2006 enquiry that there was an excessive focus (in UK anti-trafficking policy in general) on trafficking as organised immigration crime and insufficient emphasis on the prevention and victim protection aspects.

We should not see the Action Plan's innovative presentation of trafficking as the independent product of the Home Office team, however. What the Action Plan did was to pull together and articulate into a (near-)coherent whole a range of recent and ongoing developments, and to present them as the Government's 'human trafficking policy'. Several of those developments, as I outline below, implicitly or explicitly challenged previously prevalent constructions of trafficking - hence the innovative character of the Action Plan.

4.1.1 Origins of the Plan

The consultation exercise, carried out in 2006, garnered a wide range of responses from NGOs, law enforcement and various parts of government. Overall, respondents to the consultation pushed for a broader construction of trafficking than had previously been prevalent (as discussed in Chapter 3). Several respondents argued for the recognition of internal trafficking, of victims who may have entered the UK legally, of male victims, and of the need for more work to be done on forced labour and child trafficking.[14] Other respondents (mostly NGOs) also argued that an organised crime frame was inappropriate - and that trafficking should be seen from other perspectives, such as through the broad lens of labour exploitation (albeit this was not

[13] Home Office and Scottish Executive, *UK Action Plan* (n 1) 15.

[14] Home Office and Scottish Executive, *Tackling Human Trafficking - Consultation on Proposals for a UK Action Plan* (n 9) 7-10.

adopted as such by the authors of the Action Plan).[15]

The list of consultation respondents offers an interesting insight into the voices to which the Government was exposed at the time. Of the 138 respondents, 21 were NGOs whose focus was women or prostitution and 60 were Church-based organisations often implicitly concerned with women's issues (many were sisterhoods). Perhaps as a result, despite calls for an appreciation of the variety of forms that trafficking can take, there was an underlying preoccupation with trafficking for sexual exploitation. A consultation question on how best to reduce trafficking demand, explicitly focusing on forced labour, elicited responses that largely talked about reducing demand for prostitution. Some respondents answered the question by calling for more prosecutions under the Sexual Offences Act 2003.[16]

Another source of ideas close in time to the Action Plan was a Ministerial NGO Stakeholder Group. This group was a successor to the Counter Trafficking Steering Group discussed in the previous chapter. A July 2006 meeting focused specifically on labour exploitation, with the then Minister, Vernon Coaker MP, noting 'the need to distinguish between those who are willingly working here legally or illegally in poor working conditions and those that have been forced'.[17] He also commented that the only available data was anecdotal. Some NGOs at that meeting expressed concern that the continued enforcement focus on victims of trafficking for sexual exploitation meant that victims of other forms of trafficking were not being identified

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15 Unfortunately, it is generally not possible to disaggregate these respondents individually and attribute particular positions to them. The summary of consultation responses does include a list of all respondents, but it does not name individual respondents when discussing the responses involved. Home Office and Scottish Executive, *UK Action Plan* (n 1) 7; Home Office and Scottish Executive, *Tackling Human Trafficking - Consultation on Proposals for a UK Action Plan* (n 9).

16 Home Office and Scottish Executive, *UK Action Plan* (n 1) 26-7.

17 'Minutes of the Ministerial NGO Stakeholder Group' (11th July 2006) 2.

appropriately and were as a consequence being deported too quickly.[18] Separately, the Joint Committee on Human Rights, in a 2006 report, noted the lack of data on trafficking for labour exploitation as well as what they saw as the inadequate punishment available for the crime.[19]

No doubt this current of ideas was partly responsible for the decision by the Home Office team to address the issue of trafficking for labour exploitation. (The Action Plan refers to both 'labour exploitation' and 'forced labour' - I use 'labour exploitation' as the more general term.) It is not entirely clear what was meant by the terms as used in the Action Plan. They seem to have referred, broadly, to any kind of trafficking that does not involve sexual exploitation. Certain specific examples were mentioned, such as domestic servitude and organised street crime, but little individual attention was paid to these examples. In general terms, it was acknowledged that not enough was known about trafficking for labour exploitation and that work needed to be done to remedy that ignorance.[20]

Responding to this concern about trafficking for labour exploitation, the Action Plan committed the Home Office to undertaking a literature review on the topic, which was duly produced later in 2007. Overall the review found little information but did produce some basic general findings as well as a few recommendations. From the literature examined,[21] the authors concluded that: victims trafficked for labour exploitation may be EU nationals and may have entered the UK legally or

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18 'Minutes of the Ministerial NGO Stakeholder Group' (n 17).

19 Joint Committee on Human Rights (n 7) 40.

20 Home Office and Scottish Executive, *UK Action Plan* (n 1) 32.

21 136 references were assessed for relevance; only 9 studies (research carried out either by academics or NGOs) were found to be relevant. A further 47 pieces of literature were drawn on to inform the report, but not reviewed fully. Samantha Dowling, Karen Moreton and Leila Wright, *Trafficking for the Purposes of Labour Exploitation: A Literature Review* (10/07, Home Office 2007) 4.

illegally; internal trafficking of victims trafficked for labour exploitation does occur; and victim identification may be helped by a focus 'initially on exploitative working conditions, rather than assessment in terms of illegal/legal entry'.[22]

The Action Plan's recognition of trafficking for labour exploitation, not just sexual exploitation, was its major innovation. Also worth noting is its treatment of immigration.

The feeling that trafficking was basically an immigration issue was established within the Home Office and, as discussed in the previous chapter, in various policy statements in the period up until 2006.[23] One civil servant active at the time suggested that there was a persistent view within the Home Office that trafficking should be understood as an immigration issue. Internal trafficking was felt to take place only at the end of an international trafficking chain (in line with the wording of the 2004 offence).[24] The potential impact trafficking might have on levels of migration to the UK was a frequent concern. An example is the Poppy Project's eligibility criteria governing who could benefit from their support. In a discussion of those criteria in asylum policy guidance (in force from at least 2005), it was noted that: 'Originally the [Poppy Project] scheme excluded asylum applicants, but was extended to include these as well provided asylum had not already been refused.'[25] If asylum had been refused - and thus no other legal route of remaining in the UK was available - then support should not be provided. Women who had exhausted

22 Dowling, Moreton and Wright (n 21) iii.

23 Interview with Civil Servant (Retired) (No. 54) (n 2).

24 ibid.

25 Home Office, 'Victims of Trafficking - Guidance' (1st March 2005) ⟨http : / / webarchive . nationalarchives . gov . uk / 20050301194027 / http : /ind . homeoffice . gov . uk / ind / en / home / laws___policy/policy_instructions/apis/victims_of_trafficking.html⟩ accessed 29th July 2015, 1.

all asylum claim stages were barred in order to 'prevent the Scheme being used as a last resort attempt to remain in the UK when the asylum process has been fully explored'.[26] This framing of trafficking is closely linked to a conception of the victim as an illegal migrant.

But this immigration framing came in for increasing criticism from 2006 onwards. Examples of explicit comments can be found in the 2006 Joint Committee on Human Rights report and the 2009 Home Affairs Committee report. The Joint Committee argued that

> 'Acknowledging the reality that many victims of trafficking have entered the UK legally is important, not only in terms of ensuring an appropriate response that accords with their entitlements, but also in terms of preventing a misguided diversion into talk of illegal migration in the context of people trafficking'.[27]

It suggested that it was important to view victims as victims rather than as illegal immigrants.[28] The Home Affairs Committee openly stated that victims could be legal or illegal immigrants or UK nationals.[29] They were concerned about conflating trafficking with immigration crime, both because of potential mistreatment of (foreign) victims and because of the possibility of ignoring British victims.[30] Several respondents to the Action Plan Consultation also argued that trafficking needed to be approached from a human rights perspective rather than 'through the prism of

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26 Home Office, 'Victims of Trafficking - Guidance' (n 25) 2.

27 Joint Committee on Human Rights (n 7) 32.

28 ibid 41.

29 Home Affairs Committee, *The Trade in Human Beings: Human Trafficking in the UK. Sixth Report of Session 2008-09. Volume I.* (HC 23-I, 2009) 8.

30 ibid 35.

organised immigration crime'.[31]

The Action Plan acknowledged the Joint Committee's concerns and implicitly accorded them a degree of validity.[32] Later in the Plan, the authors stressed their desire to 'ensure that victims are treated first and foremost as victims of crime rather than as immigration offenders'.[33] However, throughout the Plan, the rhetoric used tells a different story. Trafficking is frequently discussed as one kind of organised immigration crime. Phrases like 'organised immigration crime offences (including trafficking)' and 'trafficking and related immigration crime' are common.[34] The Plan appeared to be arguing that, while trafficking was usually a form of organised immigration crime (even if, as it acknowledged, it did not always involve crossing borders), it was important to accord victims the appropriate support and not treat them as, or only as, immigration offenders. The underlying attitude appears to have been one of wanting to do the right thing for victims but without fundamentally changing the way trafficking was understood. Most of the time, the Plan made clear, trafficking involved organised illegal immigration.

These two streams of ideas - an increasing recognition of trafficking for labour exploitation and an unresolved debate about the relationship between trafficking and immigration - informed some of the Plan's pronouncements. In addition to these streams, various institutional developments occurred either shortly prior to or alongside the drafting and publication of the Plan. When collated and coordinated by the Plan, they became part of the policy apparatus and contributed to shaping

31 Home Office and Scottish Executive, *UK Action Plan* (n 1) 4.

32 ibid 4-5.

33 ibid 7.

34 ibid 20, 21.

the way in which human trafficking was constructed, in aggregate, by the apparatus.

4.2 Institutional developments

4.2.1 UK Human Trafficking Centre

The principal institutional development was the establishment of the UK Human Trafficking Centre, a specialist law enforcement unit with a national focus on trafficking.

The Centre was not an inevitable development. Until 2006, police intelligence coordination for trafficking had been the responsibility of the National Criminal Intelligence Service, but in early 2006 that agency, together with several others, was subsumed into the new Serious Organised Crime Agency (SOCA), established on 1 April of that year.

With no national or regional trafficking teams operational at that point, SOCA would seem to have been the logical home for any trafficking coordination that was required. However, two interested senior officers put together a proposal for a new body - the UK Human Trafficking Centre (UKHTC) - and the Association of Chief Police Officers put it forward as a suggestion in their response to the Action Plan consultation.[35] The officers responsible persuaded the then Parliamentary Under Secretary of State with responsibility for serious and organised crime, Paul Goggins MP, of this idea by arguing its cost-effectiveness. They identified an underspend in the budget of Reflex (discussed in Chapter 3, Section 3.4) that would cover the

[35] Home Office and Scottish Executive, *UK Action Plan* (n 1) 34.

Centre's costs for its first year of operation.[36] From the Government's perspective, it was essentially cost-free and provided the perfect delivery body for many of their Action Plan commitments.

The UKHTC was established on 3 October 2006; the Action Plan was not published until March 2007. The Centre was based in Sheffield, with responsibility for: progressing the Action Plan, coordinating future anti-trafficking activity for all forms of exploitation, and acting as a point of reference and training body for other law enforcement agencies and NGOs. The UKHTC was staffed with individuals who already had firsthand experience (whether operational, intelligence or policy) of combating trafficking.[37] The Centre's mandate and staffing may help explain why it exhibited a broader set of assumptions about trafficking than were to be found in higher-level policy statements such as those issued by the Serious Organised Crime Agency.

The Centre quickly began to encounter victims who were not eligible for admission to the Poppy Project (the only Government-sponsored form of victim support in operation at the time, discussed in Chapter 3, Section 3.4). These victims had to be accommodated on an ad hoc basis. The Centre developed contacts with various NGOs who were able and willing to take on some victim support responsibilities. Many of these contacts were fortuitous - for example, a member of the UKHTC staff happened to be a lay preacher and so knew of the Salvation Army and Medaille Trust, two of the early NGOs to get involved in trafficked victim support.[38]

The Centre was not just important for its encounters with victims trafficked

[36] Interview with Police Officer (Retired)(No. 32) (Sheffield, 19th February 2015).

[37] ibid.

[38] ibid.

into non-sexual forms of exploitation. It also maintained that trafficking was not fundamentally to do with immigration.[39] This was something of a departure from prevalent law enforcement framings of trafficking at the time. The Serious and Organised Crime Agency categorised trafficking as an aspect of organised immigration crime (comprising trafficking and people smuggling), which was one of its operational priorities.[40] This was a well established law enforcement categorisation of trafficking - it had been the case in the police National Intelligence Model in the early 2000s and would continue to be the case in policy statements at least until the law enforcement white paper *Extending Our Reach* was published in 2009.[41]

The chief argument put forward by the UKHTC in disagreeing with this common framing was the importance of recognising the occurrence of internal trafficking, where the movement element of the trafficking offence takes place within a particular country. It might therefore involve a British teenager moved from Birmingham to London for the purposes of sexually exploiting him or her. In addition to pressing the argument in meetings with other government agencies the Centre did much to publicise the issue. They released a film called My Dangerous Lover Boy in 2008, in partnership with local organisations, to highlight the problem of internal sex trafficking in the UK. They also ensured they were involved in child sexual exploitation cases (such as Operation Retriever in Derby, which led to prosecutions in 2010) where they felt a trafficking aspect might be at play.[42]

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39 Interview with Police Officer (Retired)(No. 32) (n 36).

40 Serious Organised Crime Agency, 'SOCA Annual Plan 2006/7' (2006).

41 Interview with Police Officer (Retired)(No. 32) (n 36); Home Office and Cabinet Office, *Extending Our Reach: A Comprehensive Approach to Tackling Serious Organised Crime* (White Paper, Cm 7665, 2009).

42 'Child Sexual Exploitation' (*Derby City Council*) ⟨http://www.derby.gov.uk/health-and-social-care/safeguarding-children/child-sexual-exploitation/⟩ accessed 26th December 2014.

Although the Government had explicitly referred to internal trafficking in the Action Plan, a police officer involved felt that the UKHTC faced a degree of hostility from some parties towards its advocacy.[43] This was probably for two broad reasons, the first being that the recognition of internal trafficking in the Plan was embedded in a rhetoric that still saw human trafficking as a form of organised immigration crime, as discussed above.

The second reason was institutional conflict. The Centre was keen to push for the recognition of internal trafficking because it could help to separate trafficking from immigration considerations. But an officer involved felt that some other actors interpreted this as the Centre attempting to expand its remit.[44] This may have been aggravated by differences of opinion over how certain behaviours should be categorised - particularly those involving the sexual exploitation of children. The term 'internal trafficking' did not have a single agreed meaning and others besides the UKHTC sought to use it to advance their goals. The sex worker advocacy organisation CROP wanted to rebadge child sexual exploitation as internal child trafficking. Both the police (apart from the UKHTC, that is) and the Home Office were reluctant to do so - the police particularly so because child sexual exploitation was thought by them to be a powerful and widely understood concept that they did not want to dilute.[45]

Further support was provided for this position by the newly established Child Exploitation and Online Protection Centre (CEOP), a police body that had been set up in April 2006 and by November of that year had lead responsibility for child

43 Interview with Police Officer (Retired)(No. 32) (n 36).

44 ibid.

45 Interview with Researcher (No. 15) (London, 15th January 2015).

trafficking. CEOP stated that:

> This long established form of exploitation [child sexual exploitation] has recently been labelled as 'internal trafficking'. Whereas this helps to bring more focus to a previously underestimated problem, this new categorisation as trafficking leads to confusion in the UK context. There are many UK children who are groomed and otherwise coerced into sexual exploitation; however, by making a distinction between those who are moved and those who are not, an arbitrary focus on the transportation part of the problem rather than the actual abuse is caused.[46]

The movement aspect, in their view, was 'merely a means to enable the exploitation'.[47]

When the UKHTC's establishment was announced in the Action Plan, it was described as having 'as one of its central tenets the development of a victim centred human rights based approach to tackling human trafficking',[48] implying that it would go some unspecified way towards combating accusations that the UK's approach to trafficking treated victims more as immigration offenders than as victims. It was also stressed that the Centre's remit would include trafficking for labour exploitation and internal trafficking.[49] The Plan mentioned that 'CEOP will work in partnership with the UKHTC in order to ensure that the overall response to human trafficking includes the necessary specialised focus on child protection'.[50] I suggest we should see this as the Plan writing the UKHTC into its strategy, incorporating in broad terms

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46 Child Exploitation and Online Protection Centre, 'Strategic Threat Assessment: Child Trafficking in the UK' (April 2009) ⟨http://www.ceop.police.uk/Documents/ceopdocs/Child_Trafficking_Strategic_Threat_Assessment_2009_NPM_Final.pdf⟩ accessed 30th October 2013, 11.

47 ibid 51.

48 Home Office and Scottish Executive, *UK Action Plan* (n 1) 5.

49 ibid 6-7.

50 ibid 9.

the main features of the Centre's activities and ideas, without specifying them in too much detail. The mention of cooperation with CEOP, for example, left open what that cooperation might look like in practice; without that flexibility, presumably the conflict that did occur would have been less likely. So the UKHTC was legitimised by the Plan and was included within the Home Office's rationalisation of the anti-trafficking policy apparatus as it was at that point, but without the specific detail of its activities being overly-prescribed. Thanks to its inclusion in the Plan by the Home Office, the Centre's activities nevertheless contributed to shaping the policy apparatus.

4.2.2 Gangmasters Licensing Authority

Another significant institutional actor was the Gangmasters Licensing Authority (established on 1 April 2005). The Authority was set up in response to the deaths of 21 Chinese cockle pickers at Morecambe Bay in February 2004.[51] It was designed as a regulatory agency whose purpose was to license casual labour providers in the agriculture and shellfish industries.[52] Trafficking was not initially a formal part of its remit, nor was it much discussed within the organisation early in its operation. One employee I spoke to retrospectively recognised the Morecambe Bay incident to be an example of trafficking but implied that he would not have done so at the time.[53]

But trafficking did gradually become a part of the Authority's work. In response to the UKHTC's work and the increased profile of trafficking generally, the Authority

51 'Death in a Cold, Strange Land' (*BBC*, 24th March 2006) ⟨http://news.bbc.co.uk/1/hi/england/4582470.stm⟩ accessed 14th October 2015.

52 Gangmasters (Licensing) Act 2004 s 3.

53 Interview with Civil Servant (No. 21) (Nottingham, 28th January 2015).

added the identification and referral of trafficked victims to their protocols and began to take more of an interest in the area.[54] Trafficking began to figure more frequently in their work as the organisation shifted from a focus on licensing offences to intelligence and enforcement work.[55] When exactly this began to occur is difficult to pinpoint, but by the time the Action Plan was published the Authority already had a memorandum of understanding with the relevant police authorities.[56]

The nature of the Gangmaster Licensing Authority's work was that it dealt with exploitative conditions in the workplace. It did not itself deal with criminal or immigration enforcement (although it cooperated with the relevant agencies). As a consequence, it did not approach trafficking as an immigration issue; rather, trafficking was an aspect of its main work, which was tackling labour exploitation.

As with the UKHTC, the GLA and its activities were written into the Action Plan, which noted that 'we have established...the Gangmasters Licensing Authority (GLA)' (even though the Authority was set up before the Action Plan was conceived).[57] Language of this kind established the Authority as an intended element of the state's anti-trafficking policy, and legitimised its efforts to combat trafficking as part of a wider strategy. The Authority's general activities were described elsewhere in the plan.[58] Implicitly, the Authority's ideas and practices were sanctioned by the Plan - reading the Plan, we infer that the Authority's views on trafficking have some weight. We can think of this as the state lending the GLA a degree of conceptual

54 Interview with Civil Servant (No. 21) (n 53).

55 ibid.

56 Home Office and Scottish Executive, *UK Action Plan* (n 1) 9.

57 ibid 9.

58 ibid 16.

authority - in distinction to the kind of authority involved in creating and coercively enforcing an explicit definition. Given that what the Authority saw of trafficking was almost entirely to do with labour exploitation, this must have had some effect on the overall construction of trafficking within the policy apparatus.

4.2.3 Migrant Domestic Workers

The Action Plan referred to the trafficking of migrant domestic workers, an issue that had not previously been included in trafficking-related policy statements.[59] This kind of trafficking was thought to affect those brought into the UK while employed as a domestic servant and exploited while in the UK (such as by being denied pay, imprisoned within the employer's house, or subjected to sexual assault). The issue had been pressed prior to the Action Plan's introduction by the main UK charity representing migrant domestic workers: Kalayaan.

Prior to 2006 Kalayaan had not applied the label 'trafficked victims' to workers that they assisted, as they were keen not to prioritise one form of exploitation over others (not all their clients would have met the legal criteria to have been trafficked). The organisation was convinced to engage with trafficking policy during 2006, however. In part this was because of a visit from an Anti-Slavery International employee who argued that nearly all Kalayaan's clients would legally qualify as trafficked victims, and in part it was because the invocation of trafficking seemed a useful tool to aid in Kalayaan's advocacy efforts at the time.[60] Those efforts were directed at counteracting a government proposal to change the immigration rules

[59] Home Office and Scottish Executive, *UK Action Plan* (n 1) 23-4.

[60] Interview with NGO Employee (No. 16) (London, 16th January 2015).

with respect to migrant domestic workers.

The rules that were in place at the time dated back to 1998, when the Labour administration had introduced a new visa specifically for migrant domestic workers. That visa permitted any such workers who had an established relationship with their employer to accompany that employer to the UK for a 6-12 month period, which could be extended. They were permitted to change employer while in the UK, as long as they remained within the sector. They were allowed to apply for permanent residence after having worked in the UK for five years and they could sponsor dependants. The visa was introduced in recognition of the abuse to which migrant domestic workers were often subject, the logic being that if they could change employer they would be less vulnerable to such abuse.[61]

In 2006 the Government proposed a substantial restriction of those permissions, suggesting that employers should be looking within the UK or EU for unskilled labour (which included domestic work).[62] The proposed changes would have restricted the maximum length of stay for migrant domestic workers to six months, removing their right to change employer and the possibility of applying for permanent residence.[63] That proposal was not included in the white paper on immigration reform published in early 2006, but was instead presented directly to Kalayaan by the Immigration and Nationality Directorate of the Home Office in a meeting on 10 March of that year.[64]

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61 Interview with Minister (Retired)(No. 52) (Phone, 30th April 2015).

62 HC Deb 10th May 2006, vol 446, cols 105-6WH.

63 Melanie Gower, *Calls to Change Migrant Domestic Worker Visa Conditions* (House of Commons Library Research Paper, SN/HA/4786, House of Commons Library, Home Affairs Section 2015) 15.

64 Home Office, *A Points-Based System: Making Migration Work for Britain* (White Paper, Cm 6741, 2006); Kalayaan and Kate Roberts, 'UK Immigration Law and the Position of Migrant Domestic

The report in which Kalayaan first condemned these proposals is also their first (at least of those publicly available) to use the term 'trafficking'. They labelled the reforms as 'legalising trafficking for labour exploitation' and commented that 'If the proposals come into force MDWs [migrant domestic workers] will be outside of the managed migration system...They will have no option to change employer during this time, or to renew their visa. This will make it virtually impossible to challenge any maltreatment or abuse, and indeed will encourage it. This is in direct contravention to the Home Office stated policy to protect victims of trafficking.'[65]

The use of the trafficking label was a helpful tool because Kalayaan could argue that the Government was being inconsistent - arguing for the importance of protecting trafficked victims, on the one hand, while, on the other, simultaneously disadvantaging one group of trafficked victims. Ultimately Kalayaan's efforts were successful; the Government did not introduce the visa change.

This advocacy took place at the same time as the consultation for the Action Plan. Several respondents to the consultation mentioned the issue and as a consequence a section of the first Action Plan was devoted to discussing it.[66] Little by way of concrete action was committed to, however. The plan only held the Government to conducting some vaguely specified 'research and analysis' to consider whether there were any 'particular risks' associated with migrant domestic workers or other categories of trafficked victim.[67] This materialised in June 2009 with a Home Office literature review on the issue. The review found that, despite a limited evidence

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Workers' ⟨http://www.kalayaan.org.uk/wp-content/uploads/2014/09/UK-immigration-law-and-the-position-of-MDWs.pdf⟩ accessed 22nd August 2017.

65 Kalayaan and Kate Roberts (n 64) 7.

66 Home Office and Scottish Executive, *UK Action Plan* (n 1) 23-4.

67 ibid 24.

base, there were clear indications of abuse but no data to reliably suggest the scale on which it was occurring.[68]

The issue of migrant domestic workers differs from the UK Human Trafficking Centre and the Gangmasters Licensing Authority. In the case of those two organisations, their inclusion within the Action Plan lent legitimacy to their ideas and practices in a fairly implicit way, incorporating them within the state's anti-trafficking strategy and thus giving them influence over the shape of the policy apparatus. In the case of migrant domestic workers, by contrast, the Action Plan more explicitly set out its recognition of them as trafficked victims. Nonetheless, the Home Office cannot be said to be responsible for generating that idea. Kalayaan put forward the argument and the Home Office accepted it, largely as a political compromise.

These three institutional developments seem to have reinforced the legitimacy of trafficking for labour exploitation - challenging previous assumptions about what a 'trafficked victim' might look like and about what 'exploitation' involved. They also seem to have challenged the association of trafficking with (illegal) immigration, though the point was far from settled; as the Action Plan itself demonstrates, there was a continuing unresolved debate on that issue.

4.3 After the Action Plan

These institutional developments were not one-off events; the organisations in question continued their efforts directed against trafficking after the Action Plan had been published. Just as the Action Plan did not mark the beginning of the ideas,

[68] Kevin Marsh and others, *A Review of the Literature on the Abuse / Exploitation of Overseas Domestic Workers in the UK* (Research Report, Home Office 2009) ix.

assumptions and practices it described, neither did it mark their end. I want to highlight two developments subsequent to the Plan's publication that illustrate the kind of conceptual influence it had. The first - a new offence of slavery, servitude and forced labour, introduced in 2009 - was conceptually in line with the Action Plan's emphasis on recognising trafficking for labour exploitation, but challenged its attitude towards the association of trafficking and immigration. The second - a continuing emphasis on trafficking for sexual exploitation in much law enforcement activity - appears to show the limits of the Plan's influence on operational practices.

4.3.1 The introduction of a slavery, forced labour and servitude offence

In 2009, section 71 of the Coroners and Justice Act introduced a new criminal offence of holding a person in slavery or servitude or requiring them to perform forced or compulsory labour.[69] Previously, non-sexual exploitation in the context of trafficking was defined in the 2004 offence discussed in the previous chapter (Section 3.2). For the purposes of that offence, trafficking within the UK could only be prosecuted if connected movement into the UK had occurred first[70] and the Act itself was primarily to do with controlling immigration. What the 2009 offence did was to create an offence that effectively took the 'exploitation' part and removed from it any need for movement at all, thus divorcing it from the immigration context.

It is not immediately obvious that the offence introduced was connected to the anti-trafficking policy apparatus. I will argue that it was, however. In order to do

69 Coroners and Justice Act 2009 (Coroners and Justice Act) s 71.

70 Asylum and Immigration (Treatment of Claimants, Etc) Act 2004 (AITCA) s 4(2).

so, I first discuss the origins of the offence, to illustrate the gap in the law that it was thought to fill and the way in which its relationship to trafficking was implicitly constructed.

The immediate origins of section 71 lay partly in case law from the European Court of Human Rights (ECHR) and partly in the advocacy of NGOs in the UK. The key ECHR case was *Siliadin v France*, decided in October 2005.[71] The applicant was a Togolese woman living in Paris and working as a domestic servant. She had been unpaid for years and had had her passport confiscated. Her claim was that French criminal law did not afford her sufficient protection against the 'servitude' or at least 'forced or compulsory labour' in which she claimed to have been held and against which she had a right to protection under Article 4 of the European Convention on Human Rights. Article 4 reads as follows:

a No one shall be held in slavery or servitude.

b No one shall be required to perform forced or compulsory labour.

c For the purpose of this Article the term "forced or compulsory labour" shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

[71] *Siliadin v France* (2006) 43 EHRR 16 .

(c) any service exacted in case of an emergency or calamity threatening the life or wellbeing of the community;

(d) any work or service which forms part of normal civic obligations.

The court found in her favour, concluding that the conditions under which she was working did constitute both 'forced or compulsory labour' and 'servitude' (but not 'slavery') and ruling that the French Government had failed to offer specific and effective protections in law against behaviour contravening Article 4.[72]

On 24 January 2008 a similar application was lodged with the ECHR against the UK. The applicant was a Ugandan national, Ms. C.N., who had come to the UK on a false passport claiming to have fled a situation in Uganda where she had been subject to multiple rapes. Once in the UK she claimed to have been denied payment and effectively imprisoned by those who employed her. After she escaped, she claimed asylum but was rejected. She complained that the UK was in breach of its Article 4 obligations by not having in force, at the time of her alleged ill-treatment, legislative provisions making illegal forced labour or servitude. The final judgement of the Court was not issued until 23 February 2013, but some early indications suggested that the UK may have been vulnerable to a finding against them (as indeed subsequently proved to be the case). The applicant's solicitor claimed that, at a meeting with the Metropolitan Police on 11 March 2009, 'a police officer indicated that it was the Metropolitan Police's provisional view, given expressly without formal authority, that there was no offence in English criminal law which applied to the facts of

[72] *Siliadin v France* (n 71) paras 148-9; although as of March 2011 it did not appear that France had substantially altered its criminal legislation in response: 'Execution of Judgment Siliadin v. France (73316/01) : Are the General Measures Satisfying? [Updated]' (*European Court of Human Rights News*, 1st March 2011) ⟨https://echrnews.wordpress.com/2011/03/01/siliadin/⟩ accessed 22nd August 2017.

the case'.[73] However, the facts were complex and the outcome was not certain. The Government argued that the applicant's treatment did not amount to the conditions prohibited under Article 4 (and in any case that existing offences covered those conditions). Significantly, the specialist trafficking unit of the Metropolitan Police and the UK Human Trafficking Centre had both been of the opinion that there was no evidence of trafficking in C.N.'s case.[74]

It was in this context, based on the *Siliadin* judgement, that an employee of Anti-Slavery International decided, early in 2009, to make the case that there was a gap in UK law that needed to be filled. Their argument was that certain situations in which exploitation occurred without movement attached were not well covered by existing criminal law.[75]

Together with another NGO (Liberty), Anti-Slavery International lobbied for the introduction of a new offence, arguing three points: that the 2004 offence (of trafficking for non-sexual exploitation) only applied if a cross-border movement element was present, that other existing UK law did not adequately cover servitude or forced or compulsory labour, and that the UK was therefore vulnerable to a similar challenge to *Siliadin*.[76] They also commissioned a legal briefing from Ken MacDon-

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73 *CN v The United Kingdom* (2013) 56 EHRR 24 , para 24.

74 ibid paras 15-17.

75 Liberty and Anti-Slavery International, 'Liberty and Anti-Slavery International Joint Briefing on the Coroners and Justice Bill for the Report Stage of the House of Lords: Servitude and Forced Labour Amendment' (October 2009) ⟨https://www.liberty-human-rights.org.uk/sites/default/files/joint-liberty-asi-report-stage-briefing-on-forced-labour-lords.pdf⟩ accessed 22nd August 2017.

76 Ken Macdonald QC and Helen Mountfield QC, 'In the Matter of Article 4 of the European Convention on Human Rights and Whether an Offence of Servitude or Forced Labour Is Required to Give Effect to It and an Amendment to the Coroners and Justice Bill. Further Opinion.' (12th October 2009) ⟨https://www.liberty-human-rights.org.uk/sites/default/files/2nd-matrix-legal-opinion-on-servitude-and-forced-labour.pdf⟩ accessed 22nd August 2017.

ald QC (previously Director of Public Prosecutions) and Helen Mountfield QC that similarly concluded that the UK was not compliant with Article 4 under its existing legal regime.[77]

The vehicle chosen by the two charities for the attempted insertion of a new offence was the Coroners and Justice Act 2009. Although nothing in the Bill (which had had a long gestation period, beginning in 2006) touched on trafficking or exploitation offences, it was a substantial piece of legislation proceeding through Parliament at the time. Anti-Slavery International and Liberty lobbied particularly in the Lords (which the Bill had reached by the time the MacDonald and Mountfield opinion was produced on 8 July 2009); as a result, Baroness Young of Hornsey introduced an amendment to give effect to their proposition at the Lords Committee stage of the Bill on 9 July.[78] There was initially some resistance from the Government, who felt that existing offences would adequately cover the behaviour in question, but over the summer recess their position changed.[79] Lord Bach, who was piloting the Bill through the Lords for the Government, met with Anti-Slavery International and Liberty to hear their arguments, the most well received of which was that the Gangmasters Licensing Authority supported the introduction of a new offence.[80] Further meetings with the UKHTC, the Authority, the Association of Chief Police Officers, and the Crown Prosecution Service (CPS) followed.[81] The likelihood of C.N. finding the ECHR favourable to her application may have been an additional

77 Ken Macdonald QC and Helen Mountfield QC (n 76).

78 HL Deb 9th July 2009, vol 712, cols 851-4.

79 ibid cols 861-2.

80 Interview with NGO Employee (No. 44) (London, 16th April 2015).

81 HL Deb 28th October 2009, vol 713, cols 1181-2.

influence, and a similar application was lodged with the ECHR by Elizabeth Kawogo on 14 October 2009.[82] The Government therefore introduced their own version of the amendment at report stage when Parliament reconvened in the Autumn and it passed into law as section 71 of the Act later that year.[83]

Even though *Siliadin* and *C.N.* were arguably trafficking cases, and trafficking is referred to in Macdonald and Mountfield's legal opinion,[84] 'trafficking' was not mentioned in the offence. Similarly, although the applicant in *Siliadin* had argued that she had been trafficked, the Court did not itself use the term in its judgement. Nevertheless, it seems clear that the section 71 offence was closely related to the anti-trafficking policy apparatus. In the debates on the offence in the House of Lords, the most frequently discussed example was that of migrant domestic workers. As noted above, abuse of migrant domestic workers was commonly understood in connection to trafficking at that time.[85]

Retrospectively, section 71 has come firmly to be seen as one of three trafficking offences in UK law (the first two being those in the 2003 and 2004 Acts, discussed in the previous chapter, of trafficking for sexual exploitation and trafficking for other forms of exploitation). That is apparent from its inclusion in the Modern Slavery Act 2015 and in the CPS's online guidance on 'Human Trafficking, Slavery and Smuggling'[86]: 'The section 71 offence will be relevant where the victim has been

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82 *Kawogo v the United Kingdom* App no 56921/09 (ECtHR, 3rd September 2013).

83 HL Deb 28th October 2009, vol 713, cols 1181-2. The text of the offence is set out in Appendix A.

84 Ken Macdonald QC and Helen Mountfield QC (n 76) 1.

85 Interview with Police Officer (No. 30) (London, 13th February 2015); HL Deb 9th July 2009, vol 712, cols 852-3,857; HL Deb 28th October 2009, vol 713, col 1184.

86 As of November 2015. Subsequently the guidance was modified to take account of the passage of the Modern Slavery Act, discussed in Chapter 6. Section 71 was incorporated into that Act so was no longer separately discussed in the CPS guidance.

subjected to behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour) but was not trafficked, or the trafficking element cannot be proved to the criminal standard.'[87] It was also referred to by a serving police officer I interviewed as one of the existing trafficking offences.[88]

The section 71 offence should therefore be seen as part of the anti-trafficking policy apparatus. As such, its introduction clearly weakened the association of trafficking with migration, as the previous developments discussed above had also begun to do. The offence is an example of a development that was certainly within the conceptual scope set out by the Action Plan, but was arguably somewhat inconsistent with it on account of its implications for the association of trafficking with immigration. The Action Plan's ambiguity and complexity allowed for developments of this kind - pushing in perhaps unexpected directions while still able to be labelled as part of the policy apparatus.

4.3.2 The continuation of older ideas about trafficking

The more prevalent assumptions about trafficking identified in Chapter 3 (that trafficking typically involved the movement of foreign women and children into the UK for sexual exploitation) continued in some operational practices, in contrast to statements of policy such as the Action Plan. This may suggest that that policy rhetoric was changing more rapidly than ground-level practices.

As already noted, the only official, Government-funded victim support prior to

87 Crown Prosecution Service, 'Human Trafficking, Smuggling and Slavery: Legal Guidance' (*Crown Prosecution Service*) ⟨http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/index.html⟩ accessed 26th December 2014.

88 Interview with Police Officer (No. 30) (n 85).

2009 was the Poppy Project, which accepted only female victims of trafficking for sexual exploitation. This state of affairs with regards to victim support implicitly influenced wider Government policy, a good example being the victims of trafficking guidance published by the Home Office in 2005. The guidance implicitly equated 'victim' with someone eligible for support by the Poppy Project, i.e. a woman who has been trafficked for sexual exploitation. Yet earlier in the guidance it was noted that those 'trafficked for purposes other than prostitution (domestic slavery, forced marriage, etc.)' are barred from the Poppy scheme, clearly recognising that trafficking did not only involve sexual exploitation.[89] This inconsistency may be simply an oversight in the guidance document, but it may also reveal an underlying inconsistency in assumptions. Trafficking for purposes other than sexual exploitation was acknowledged, but it was only victims of sex trafficking who were deemed worthy of support (or perhaps it is more that only trafficking for sexual exploitation was thought to be a real issue).

The decision to give priority to trafficking for sexual exploitation continued in later guidance, albeit less explicitly and without the mention of people excluded from support. The 2007 Operational Enforcement Manual for the Border and Immigration Agency, in its Chapter 42 'Identifying Victims of Trafficking for Sexual Exploitation', stated that: 'Officers should be aware that victims of trafficking for sexual exploitation are likely to be classified as vulnerable persons and detention will not normally be appropriate'.[90] The date of this guidance is approximate but it

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89 Home Office, 'Victims of Trafficking - Guidance' (21st January 2013) ⟨http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/cross-cut/protecting-vulnerable/04-victimstrafficking?view=Binary⟩ accessed 15th October 2013, 2.

90 Border Immigation Agency, 'Operational Enforcement Manual, Chapter 42' (October 2007) ⟨https://web.archive.org/web/20151119105909/http://www.atlep.org.uk/wp-content/uploads/2012/02/Archived-policy-no-longer-in-force-C42-Operation-Enforcement-Manual.pdf⟩ accessed

was in force from at least 2007, if not earlier. There was no mention of other kinds of victim, the omission continuing to imply that they are either less vulnerable or not really victims at all. Annex A to the guidance was devoted to suggestions on how to act and approach victims when visiting possible prostitution premises - visits to other kinds of premises do not appear to have been considered.[91]

The major police operations of this period also chose mostly to concentrate on trafficking for sexual exploitation. Pentameter I was the first national trafficking operation to take place in the UK. The operation ran

> from February to May 2006 in every police area in the United Kingdom scoping the off-street prostitution market. It sought to widen public awareness as well as act as an enforcement tool. It recovered 84 trafficked women, including 12 children. 44 of these women were recovered in London. Some 134 persons have to date [9 November 2006] been charged in relation to the management of brothels, trafficking and kindred offences throughout the UK.[92]

Pentameter II, launched on 3 October 2007, followed closely on Pentameter I, adopting much of that operation's design and publicity materials.[93] Perhaps partly as a consequence it had a very similar emphasis to Pentameter I. It was described, here in a government news bulletin, against the background of a fairly broad understanding of trafficking:

> Human trafficking victims are brought to the UK and sold as commodities for the purposes of sexual exploitation, domestic servitude or forced

19th November 2015.

91 Border Immigation Agency (n 90) 12.

92 Metropolitan Police Authority Secretariat, 'MPA: Committees: Planning, Performance and Review reports (8)' (9th November 2006) ⟨http://policeauthority.org/metropolitan/committees/x-ppr/2006/061109/08/index.html⟩ accessed 23rd September 2015.

93 Interview with Police Officer (Retired) (No. 53) (Skype, 20th May 2015).

> labour. In the fight to make the UK a hostile environment for trafficking and protect victims and potential victims from this abhorrent crime police carried out six months of targeted operations.'[94]

Yet it focused exclusively on trafficking for sexual exploitation and was coordinated, like Pentameter I, by the Association of Chief Police Officers spokesperson on prostitution and vice related matters, Chief Constable Tim Brain.[95]

Operation Acumen, in 2008, was an attempt to assess the scale of trafficking in the UK (rather than the Pentameter operations which were aimed at disrupting it while gathering general intelligence). Acumen was originally designed to include both forced labour and sexual exploitation, as well as foreign and British victims; its scope was then narrowed to include only sexual exploitation and only foreign victims. The restricted scope may partly have been due to resource constraints but also likely reflects this continued understanding of trafficking.[96]

As late as 2009 the Home Affairs Committee, in its own report on trafficking policy, requested the Government 'to confirm that clear instructions have been issued to all immigration case workers that the reflection and recovery period applies to all victims of human trafficking, not just those forced into the sex trade...'.[97] The Committee also noted that trafficking for sexual exploitation was in some respects the 'archetypal form' of trafficking, even if it was not necessarily the most common.[98]

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94 Home Office, 'Major Police Probe into Trafficking Leads to 528 Arrests' (*WiredGov*, 2nd July 2008) ⟨http://bit.ly/2vXX1Qz⟩ accessed 14th October 2015.

95 ibid.

96 Interview with Police Officer (Retired)(No. 32) (n 36); for the full report of the operation, see: Keith Jackson, Jon Jeffery and George Adamson, 'Setting the Record. The Trafficking of Migrant Women in the England and Wales off-Street Prostitution Sector.' (August 2010) ⟨http://bit.ly/2vl72rO⟩ accessed 28th August 2017.

97 Home Affairs Committee (n 29) 38. I explain the 'reflection and recovery period' in Chapter 5.

98 ibid 9.

4.4 Changing conceptions of the victim

The more prevalent assumptions about trafficking in the early stages of the apparatus suggested that the typical 'trafficked victim' was foreign, female, sexually exploited, probably subject to physical coercion, generally vulnerable and passive (in the sense of not being attributed much agency). This image was fostered by the ideas discussed in Chapter 3: that trafficking was cross-border, that it involved sexual exploitation, and that it should be approached as an issue of law enforcement. Of course other factors were also important - particular cases receiving political and media attention tended to confirm this victim image.

During the 2005-9 period, as I have shown in this chapter, certain of the core assumptions about what trafficking involved - particularly the form that 'exploitation' might take and the relationship with immigration - were challenged and lost some of their force. They were not, however, displaced entirely by new ideas and framings. This affected how the category 'trafficked victim' was constructed. But it was not a case of one construction giving way to another. Instead, what had been a category constructed in loose terms on the basis of certain prevalent assumptions and little practical engagement became far more complex.

The emphasis on trafficking for labour exploitation and the profile of the migrant domestic worker issue, in particular, helped to suggest alternative conceptions of the 'trafficked victim', such as the idea that some victims may not consider their conditions exploitative and may therefore not see themselves as victims.[99] But they did not displace the idea that most trafficked victims conformed to the established

[99] Dowling, Moreton and Wright (n 21) 7.

image sketched above.

The operational experiences of specialist units was another important contributor. Operations highlighted specific cases of trafficking that did not fit with earlier patterns of assumptions about the problem. For example, the UK Human Trafficking Centre advised on the first widely publicised case of a male British national trafficked abroad - in this case, to Norway for labour exploitation. That example was included as a case study in the White Paper *Extending Our Reach* in 2009, lending it a significant profile.[100]

As a result of this more detailed empirical appreciation of victim needs, officers who worked on trafficking understood some of the difficulties involved. They were keen to obtain interviews with the victims in order to get the evidence for their investigations, but they appreciated that this could be difficult, for example because of the victims' distrust of authorities in their country of origin. They also had a good understanding of coercion and consent, recognising that the Clubs and Vice Unit would often struggle to get trafficked victims to come forward from brothels because of 'control strategies' employed by their traffickers (such as sending fake police officers into the brothels in order to test the victims' loyalty).[101]

As well as its increasing complexity, the figure of the victim also became more prominent within the policy apparatus during this period. In the earlier years of the apparatus, when trafficking was generally understood as organised illegal immigration, the victim did not have a central role to play. Little formal support was provided for them by the state. But during the Action Plan Consultation, some NGOs objected to this approach, arguing that 'the focus throughout [the Plan] is

100 Home Office and Cabinet Office (n 41) 29.

101 Interview with Police Officer (No. 37) (Phone, 13th March 2015).

on techniques aimed at tackling a crime against the state, such as smuggling, rather than a crime against the person: exploitation through trafficking'.[102] A civil servant involved in trafficking policy at the time suggested this was a fair criticism, insofar as there was an attitude within the Home Office that trafficking was best tackled through effective prosecutions; the victim merely had the misfortune to be caught up in what was essentially a criminal matter.[103] Which is not to say that the Home Office was unsympathetic to victims. The same civil servant expressed sympathy for victims and awareness of their needs, but he saw the trafficking as a crime to be investigated and prosecuted.[104]

An increasing number of anti-trafficking NGOs were established from 2004 onwards; they advocated for what they saw as the trafficked victim's needs. Examples are: Hope for Justice (2004), Trafficking Awareness Raising Alliance (2004), Medaille Trust (2006), Stop the Traffik (2006), Unchosen (2008) and Unseen UK (2008). The establishment of so many new organisations likely increased the prominence of victims within the trafficking policy apparatus as the NGOs lobbied the Government. Ministerial NGO stakeholder group meetings were often quite 'adversarial' as a result of the NGOs' criticism of the Government's (as they saw it) insufficiently sympathetic approach to victims and a perceived bias towards immigration and law enforcement goals rather than an approach more orientated towards human rights concerns.[105]

Their lobbying does seem to have influenced state officials. One civil servant

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102 Home Office and Scottish Executive, *Tackling Human Trafficking - Summary of Responses to the Consultation on Proposals for a UK Action Plan* (n 9) 14.

103 Interview with Civil Servant (Retired) (No. 54) (n 2).

104 ibid.

105 Interview with Researcher (No. 15) (n 45).

recognised that victims were the 'pinchpoint' of the whole issue in terms of the Home Office's relationship with parties outside government.[106] A participant in the Ministerial NGO stakeholder group meetings commented that trafficking was almost 'the acceptable face of immigration' (because there were 'victims' involved as opposed simply to 'illegal immigrants') and the Government consequently wanted to show itself to be sympathetic towards those victims.[107]

The changes I have noted here in the construction and prominence of the 'trafficked victim' do not particularly involve the state. But they are significant for the state's role. What they suggest is that the constructive process is continuous and dynamic. It does not involve the creation and dissemination of fixed concepts and categories; in the case of trafficking, at least, these are constantly up for debate. So it matters when concepts and categories experience more subtle changes: growing (or decreasing) in complexity, or increasing (or diminishing) in prominence. This has implications for the role of the state. Much of the Action Plan's role involved granting legitimacy to the practices of particular organisations, and increasing the profile of certain ideas and assumptions. That has an important influence on the constructive process.

4.5 Conclusions

The Action Plan is the first state instrument dedicated solely to addressing 'human trafficking' and the first explicit contribution by the state to the construction of 'human trafficking'. But many of the most important ideas, assumptions and practices

106 Interview with Civil Servant (Retired) (No. 54) (n 2).

107 Interview with Researcher (No. 15) (n 45).

discussed in the Plan were not initiated by the Home Office civil servants who wrote it. They were already circulating in policy statements, or they emerged from public consultation or contemporary institutional developments. What the Plan did was to pull those various ideas, assumptions and practices together - a challenging task on account of their number and diversity. It codified them, formalised them, and rationalised them as part of a coherent strategy to tackle human trafficking - one organised into sections and subheadings and trackable action points. In doing so, the Plan implicitly advanced a construction of human trafficking that was not always consistent. For example, its recognition of internal trafficking and of the importance of treating trafficked victims as victims rather than as illegal immigrants did not square neatly with the Plan's repeated assumption that trafficking was one form of organised illegal immigration. The reason for that inconsistency is that the Plan was aggregating and coordinating a group of ideas, assumptions and practices that originated in diverse organisations and individuals and consequently did not always agree.

The Plan was not just a document in which already existing 'regimes of government' were written down together, however. It did have an important influence. It shaped the diverse ideas, assumptions and practices that it found, attempting to reconcile them and incorporate them within a single logic. In doing so, it legitimised the actions and positions of certain organisations - like the UKHTC and the GLA. Yet it could not entirely control what those organisations went on to do. Similarly, the Plan lent what I have termed conceptual authority and prominence to a construction of trafficking that did depart from previously prevalent assumptions, notably in its recognition of trafficking for labour exploitation. That conceptual authority must at least have facilitated the introduction of the offence introduced as section

71 of the Coroners and Justice Act. But the Plan's inconsistencies and ambiguities allowed other actors scope to continue to promote, both implicitly and explicitly, a more conservative construction of trafficking centred on sexual exploitation.

Consequently, the Plan stamped the state's conceptual authority on the problem of 'human trafficking' but allowed substantial scope within its terms for the policy apparatus to develop according to the diverse imperatives of the various individuals and institutions involved.

5 The National Referral Mechanism

5.1 Introduction

After the Action Plan, the next major contribution by the state to the construction of 'human trafficking' was the establishment of the National Referral Mechanism, usually referred to as the NRM, which began operating on 1 April 2009. The NRM was - still is - a national system designed to identify and support trafficked victims. Unlike the Action Plan, which was published as a policy paper, the rules and procedures governing the NRM were set down in various administrative guidance documents. They do not appear in any policy paper or piece of legislation. The key contribution made by those documents to the construction of human trafficking was their establishment of definitional criteria by which it could be decided whether an individual was or was not a 'trafficked victim'.

In this chapter I explore the origins, structure and operation of the NRM, investigating the role played by the state within it. I address why the state chose to design the NRM in the way that it did, how it related to the other actors involved in the NRM, and what the significance of the 'trafficked victim' construct was.

I show that the NRM allowed the state to establish its ownership over a key aspect of human trafficking - the way in which the victim was to be constructed. 'Ownership', in this context, meant that the state, by establishing the NRM, claimed for itself the sole authority to decide who was or was not a victim of trafficking. Yet the way in which the figure of the victim was constructed within the NRM was ambiguous, permitting state officials considerable flexibility in deciding who to admit as a victim - and consequently deserving of state-funded support - and who not. The victim construct within the NRM has consequently been something of a moving target, yet one around which many other actors (NGOs, the police) have been compelled to orientate their own activities - often so as to pursue their particular institutional objectives.

5.2 The origins of the NRM

The origins of the NRM are somewhat complex. I discuss them in detail here in order to highlight the challenges faced by the Home Office in designing the NRM. The governance and operation of the NRM (which I discuss below) are best understood as a response to those challenges.

In 2005, as discussed in Chapter 4, the Council of Europe Convention against Trafficking in Human Beings was signed.[1] The UK ratified the Convention in early 2007. The Convention's provisions defined trafficking (echoing the definition from Palermo)[2] and introduced obligations to prosecute and prevent it, to cooperate in-

[1] Council of Europe Convention on Action against Trafficking in Human Beings (signed 16 May 2005, entered into force 1 February 2008) CETS 197.

[2] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (signed

ternationally in anti-trafficking efforts, and to protect and support trafficked victims. Of these elements, the only provisions that had a substantial impact on the UK were those to do with victim support, set out in Chapter 3 of the Convention. Signatory States were obliged to introduce the following measures of support and assistance for victims:

- Secure accommodation;
- Emergency medical treatment;
- Translation and interpretation services;
- Legal advice;
- Access to education for children.[3]

Signatories were also obliged:

a To allow in law for a reflection and recovery period of at least 30 days to be provided to anyone in respect of whom there are reasonable grounds to believe that they are a victim. During this period no expulsion order may be made against a victim.

b To allow in law for the issuance of a renewable temporary residence permit to any victim where -

(a) it is considered necessary owing to their personal safety;

15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

[3] Council of Europe Convention on Action against Trafficking in Human Beings (n 1) art 12.

(b) it is considered necessary for their cooperation in investigative or criminal proceedings.[4]

The UK was already compliant, in the Government's view, with most of the other provisions of the Convention.[5] It was only the victim support provisions that gave them pause, chiefly because of the recovery and reflection period. As discussed in the previous chapter, trafficking had previously been seen as part of organised illegal immigration. A trafficked victim may have been eligible for some support but ultimately, if an illegal immigrant, would be deported if application to the usual asylum procedures was unsuccessful. The recovery and reflection period required by the Convention challenged established immigration rules, introducing an exception - in effect, a new temporary residence category for a group often thought largely to consist of illegal immigrants.

The Immigration and Nationality Directorate[6] of the Home Office were initially opposed to the UK signing the Convention on exactly those grounds - that it would establish an exception to existing immigration rules.[7] When the issue came up at a Ministerial NGO Stakeholder Group meeting in September 2005, the presiding Minister commented that 'a decision had not yet been taken' on whether or not the UK 'could' sign. A representative of the Directorate explained that they were

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4 Council of Europe Convention on Action against Trafficking in Human Beings (n 1) arts 13-14.

5 Home Office: Border and Immigration Agency, *Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings* (Impact Assessment, 248, 2008).

6 The Directorate was replaced by the Border and Immigration Agency on 1 April 2007, which subsequently became the UK Border Agency on 1 April 2008, and then UK Visas and Immigration in 2013. I will refer to each in the ensuing discussion. The Border and Immigration Agency and the Border Agency were executive agencies, under the oversight of the Home Office but with their own management structure and budget.

7 Interview with Civil Servant (No. 23) (Phone, 30th January 2015).

looking at how to meet victim needs 'while ensuring that the potential for abuse of immigration controls is minimised'.[8] Their concerns were eventually offset by the offer of handing implementation of the Convention to a team from within the Directorate, all of whom had asylum experience.[9] It is hardly surprising that at least one NGO complained of the UK adopting a position during the Convention negotiations that appeared to be 'immigration led, rather than victim support led'.[10]

The mechanism chosen to implement the victim support provisions of the Convention was the National Referral Mechanism (NRM). Although the Convention does not mention that term, it was a well known policy concept that had been proposed by the Organisation for Security and Cooperation in Europe in 2004.[11] The purpose of such a mechanism was to establish a process by which suspected victims of trafficking could be referred to qualified government officials ('competent authorities') who would assess their claims to victimhood and, if found to be credible, grant them access to specialised support for a set period. A significant part of the Home Office's policy activity on trafficking from early 2007 to late 2009 was concerned with designing, consulting on, establishing and evaluating the UK's NRM.

In designing the NRM, the immigration aspect was perhaps the most difficult for the state to address. The Home Office team responsible had to balance the UK's obligations under the Convention with existing immigration rules; they were keen to

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8 'Minutes of the Ministerial NGO Stakeholder Group' (13th September 2005).

9 Interview with Civil Servant (No. 23) (n 7).

10 This was read from Anti-Slavery International's 'Trafficking Network Update' at a meeting of the Counter Trafficking Victim Support Group on 6 September 2004. 'Minutes of the Counter Trafficking Victim Support Group' (6th September 2004).

11 Organisation for Security and Cooperation in Europe, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (OSCE Office for Democratic Institutions and Human Rights (ODIHR) 2004).

ensure that the apparent exception to those rules that the Convention established was kept as controlled as possible. That meant that the NRM had to construct the 'trafficked victim' in such a way that victims were viewed as vulnerable individuals in need of support but also, in many cases, as illegal immigrants who ought to be deported.

A comment from April 2009 by a Home Office civil servant discussing the provision of residence permits for trafficked victims is revealing: 'The competent authority considering a case will look at the need for residence permits, and it will be asking [the victim] for other human rights concerns that are relevant to their case. The Convention did not set out to provide a mechanism for all victims of trafficking to be provided with residence permits: it is not meant to be an immigration route. Persons can suffer harm and return home safely. The right route will be one in which services assist the return.'[12]

That comment was made in a Ministerial NGO Stakeholder Group meeting; many trafficking NGOs wanted the NRM separated from immigration considerations; they wanted the 'trafficked victim' seen as *only* a victim. This, according to one civil servant active at the time, was naive. The NRM was clearly part of the immigration system, he said, in part because it was only there that the 'necessary skill base' to act as a competent authority existed. But he thought that the NGOs involved had not really grasped that. He implied that if the NGOs had had their way then it would have resulted in a 'weakness' in the country's border control, even while he acknowledged the importance of supporting victims.[13]

Differences of opinion also surfaced among government agencies. The UKHTC,

12 'Minutes of the Ministerial NGO Stakeholder Group' (22nd April 2009).

13 Interview with Civil Servant (Retired) (No. 54) (London, 26th May 2015).

as discussed in Chapter 4, argued in favour of the recognition of internal trafficking - trafficking within the UK. Others, such as the Child Exploitation and Online Protection Centre (another law enforcement body), disagreed, in the Centre's case because it wanted to keep domestic child sexual exploitation a separate issue. Consequently there was some opposition to including UK citizens within the NRM's criteria as (potentially) 'trafficked victims'.[14]

The state had to balance these competing perspectives. At the same time, as one of the civil servants involved pointed out, the NRM had to be affordable, able to accept and coordinate the input of various different organisations, and designed so as to ensure that control over victim identification remained within the Home Office. The main reason for this was that to do otherwise would have been to illegally fetter the Home Secretary's discretion on a decision (whether or not someone was a victim) that had an impact on that individual's immigration status (because of the recovery and reflection period).[15]

Finally, the NRM also had to make sense of and incorporate existing support arrangements for trafficked victims. Formally, the Government funded some limited support for female victims of trafficking for sexual exploitation through the Poppy Project, as discussed in Chapter 3. The Convention required that support be extended to all victims of all forms of trafficking, but nascent support of that kind was already beginning to emerge on an informal basis.

This was raised in Chapter 4 in the discussion of the UK Human Trafficking Centre (Section 4.2). The Centre developed links with NGOs such as the Salvation Army and the Medaille Trust on an ad hoc basis, in order to find support for par-

14 Interview with Police Officer (Retired)(No. 32) (Sheffield, 19th February 2015).

15 Interview with Civil Servant (No. 23) (n 7).

ticular victims. This was an informal arrangement, based on personal links, with no dedicated funding available. The contacts that the UKHTC had established were, however, used in early tests of what would become the NRM, specifically as regards support for victims of trafficking for labour exploitation.[16] A pilot operation, Operation Tolerance, was launched on 1 May 2008.[17] Based on this pilot together with stakeholder consultations, the NRM's structure was designed.

There were thus various competing imperatives that the Home Office team had to meet in their design of the NRM. The design process would have been a major policy focus in any circumstances, but additional weight was given to it because of the high profile with which the UK announced its signature of the Council of Europe Convention. When the decision was taken to sign, it was announced by Prime Minister Tony Blair on 22 January 2007, at a Downing Street reception to mark the bicentenary of the abolition of the slave trade.[18] The physical signing was arranged by then Home Secretary John Reid to take place in the main Home Office building on the desk once used by William Wilberforce. Those announcements, coupled with a rapid implementation process - from signature on 23 March 2007 to ratification on 17 December 2008 - added considerable political pressure.[19]

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16 Interview with Police Officer (No. 26) (Phone, 4th February 2015).

17 Home Office and The Scottish Government, *Update to the UK Action Plan on Tackling Human Trafficking* (2008) 21; Home Office and The Scottish Government, *Update to the UK Action Plan on Tackling Human Trafficking* (2009) 5.

18 'Blair to Sign Trafficking Treaty' (*BBC*, 23rd January 2007) ⟨http://news.bbc.co.uk/1/hi/uk_politics/6289083.stm⟩ accessed 5th May 2015.

19 'Home Secretary Signs Vital Anti-Trafficking Convention' (*Home Office*, 17th April 2008) ⟨http://web.archive.org/web/20080417013110/http://www.homeoffice.gov.uk/about-us/news/convention-against-trafficking⟩ accessed 5th May 2015; Interview with Civil Servant (No. 23) (n 7).

5.3 How the NRM worked

5.3.1 Governance

The NRM represented a high-profile and complex challenge for the state, which had to design a mechanism that set out firm criteria governing who was or was not a 'trafficked victim' in such a way that it meshed with existing arrangements, was affordable, met the UK's legal obligations and accommodated the divergent interests of various organisations.

The Border and Immigration Agency team responsible for designing and establishing the NRM (the team that had originally been part of the Immigration and Nationality Directorate) chose not to introduce new legislation in order to accomplish this. Part of the reason for that choice must have been the very tight timescale for ratification of the Council of Europe Convention (the NRM had to be up and running for ratification to take place). The responsible Home Office Minister set the goal of late 2008 for ratification. Legislation was presumably judged unnecessarily time-consuming and resource-intensive.

Consequently, the workings of the NRM were formulated in various overlapping pieces of guidance produced by the Home Office for its own staff - both those within the main Department and those working in what was (from April 2008) the UK Border Agency. The principal pieces of guidance that governed the operation of the NRM were the following:

- UK Border Agency, Chapter 9 of Enforcement Instructions and Guidance [four available versions: 2008-9; 2009-12; 2012-13; 2013-]

- UK Border Agency, Supplementary guidance for deciding if an individual is

eligible for the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings [in force from at least 2010]

- Home Office, Victims of trafficking: guidance for frontline staff [one version in force from 2010 to 2012; an updated version in force from 2012 onwards]
- Home Office, Victims of Human Trafficking - Competent Authority Guidance [in force from at least 2013 but probably earlier]
- Criminal Justice System, Trafficking of People: Tackling Trafficking Toolkit [2010-]

Other paperwork was also involved - principally the victim referral forms. I cannot be sure that this is an exhaustive list of guidance documents. The dates are often approximate because they mark when a particular document appeared on the relevant Government website, and when it was subsequently taken down. These uncertainties demonstrate the difficulty in clearly locating and identifying the sources of the NRM's mandate and operation. Not only are there multiple, overlapping documents in this potentially incomplete list, but in addition there are some sections of the documents that are redacted for reasons of confidentiality. Nevertheless, there is enough available information to suggest a relatively clear picture of how the NRM has operated.

As well as the tight timeline, another reason for designing the NRM in this way may have been that it allowed the state to achieve the necessary compromises with a large number of organisations, each with disparate motivations, in a relatively low-profile way and in a form that could (as the number of iterations of key documents indicate) be rapidly and flexibly adjusted.

Several features of the documents listed support this. First, there have been several, long documents, in contrast to, for example, a single piece of legislation. Rather than a clear, concise set of rules, these documents provide space for complexity and ambiguity. In this respect they are similar to the Action Plan - but a key difference is the multiplicity of the documents involved. Second, their frequent iteration illustrates how easily the Home Office was able to change what was in them. Several of the documents include lists of dates at which revisions were made by officials. So the documents tell a story of complexity frequently re-elaborated and refined - useful when constructing a category like 'trafficked victim' that was complex and contested. Third, the process of producing the documents is inaccessible. Whatever drafting procedures went on, involving whichever officials, and whatever process of consultation may have been used, it is very difficult to ascertain exactly how the documents were put together, what logics underpinned them and what assumptions shaped them. Finally, the documents themselves are difficult to access. I was only able to compile the full list thanks to the work of an NGO called the Anti-Trafficking Labour and Exploitation Unit, which had helpfully trawled through archived government websites - some no longer available - to establish a chronological record and collection of relevant guidance. The relative lack of visibility and accessibility may have helped the NRM retain space for experiment and compromise.

The NRM has no formal appeal system, although on occasion NGOs may write directly to officials in order to contest decisions as to whether or not an individual is a trafficked victim. Unlike a policy statement or a law, it is harder to hold the state to account against rules and procedures set out in this guidance, which is difficult to access and readily changed. It is hardly surprising that some NGO employees I

spoke to argued that the NRM should have been put on a statutory footing.[20]

The documents are, then, complex, at times inconsistent, dynamic and in some respects elusive (in terms of their origins and authorship, for example). These features may have supported the state in its efforts to build a compromise system that coordinated diverse actors around the notion of the 'trafficked victim'.

5.3.2 Operation

The manner in which the NRM operated highlights the complexity and flexibility that were its two key characteristics.[21] It has gone through at least three major iterations since its establishment. I discuss those here in order to show its functioning and contextualise the role of the state within that.

The NRM began operating formally on 1 April 2009. Initially, it was managed through the continuation of the government contract already in place with the Poppy Project. The latter had previously only supported female victims of sexual exploitation; the NRM required them to also extend support to male victims of a wide variety of forms of exploitation. One observer remarked that this changed the balance of power amongst anti-trafficking NGOs - because the Poppy Project was not set up to support men, other NGOs became involved, such as the Medaille Trust and Migrant Help (of course many of these NGOs had already been involved informally through their connection with the UKHTC). The victim support landscape started to become more diverse, with a greater number and variety of (non-governmental)

[20] Interview with NGO Employee (No. 11) (London, 16th December 2014); Interview with NGO Employee (No. 20) (Skype, 23rd January 2015).

[21] Flexibility from the point of view of the state. The NRM may well have appeared much more rigid to, for example, an NGO attempting to navigate it on behalf of their clients.

organisations involved.[22]

The contract for the NRM was retendered by the Home Office in 2011. I have not found the rationale for that decision, but it seems reasonable to speculate that it has to do with the Poppy Project's reputation as a difficult operating partner, as well as a desire to cut costs. One civil servant suggested the Poppy Project were problematic to work with because they were reluctant to stop supporting individuals who were found, by the NRM's competent authorities (see below), not to be victims of trafficking.[23] A police officer working on trafficking when I spoke to him in 2015 noted that the Poppy Project would often seek to sue the police if an individual they referred was not found to be a trafficked victim.[24] Another civil servant referred to a conflict between the Poppy Project and the Home Office over the length of the recovery and reflection period, which the former judged to be too short.[25] Whatever the merits of the Poppy Project's arguments, a basic disagreement with the operation of the system they were contracted to deliver must have made the relationship difficult.

When the contract was retendered in 2011, the Poppy Project lost out to the Salvation Army, who put in a substantially lower bid; the Poppy Project did not think adequate support could be provided for the lower amount of money.[26] Where the Poppy Project had provided victim support within their own organisation (either

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22 Interview with Researcher (No. 15) (London, 15th January 2015).

23 Interview with Civil Servant (No. 23) (n 7).

24 Interview with Police Officer (No. 30) (London, 13th February 2015).

25 Interview with Civil Servant (Retired) (No. 54) (n 13).

26 Patrick Butler and Alan Travis, 'Sex Trafficking Charity Loses out to Salvation Army over £6m Contract' *The Guardian* (11th April 2011) ⟨http://www.theguardian.com/society/2011/apr/11/eaves-housing-trafficking-salvation-army⟩.

directly accommodating victims or supporting them through their outreach work), the Salvation Army approached the task differently. Although the state funding went to them, they then redistributed a large portion of it (around 75%) to a variety of other NGOs who were responsible for carrying out the direct victim support.[27] The Salvation Army's role was one of coordination, quality assurance and monitoring. The basic idea behind that was that 'funding will follow the victim' rather than being attached to individual NGOs such as the Poppy Project.[28]

In 2014, the Home Office reviewed the workings of the NRM. Subsequent to the completion of that Review (in October 2014),[29] a pilot scheme was established to consider implementing the Review's findings. The outcome of the pilot and the subsequent reorganisation of the NRM occurred after the end of the fieldwork conducted for this thesis (which finished in September 2015). Consequently, what I describe here is largely how the NRM operated from 2011-15.

The process began with the suspicion that an individual had been trafficked. We can imagine, hypothetically, a man who went to his local police station, or a local NGO or GP surgery, complaining of maltreatment of some kind and seeking support and advice. A police officer or NGO employee (or nurse or GP) might suspect that the man had been trafficked. The person or people who first encountered the suspected victim may well not have been authorised to make an official 'referral'

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27 Sally Lipscombe and Jacqueline Beard, *Human Trafficking: UK Responses* (House of Commons Library Standard Note, Home Affairs SN/HA/4324, House of Commons Library 2014) 11; Ministry of Justice and Salvation Army, 'Agreement Relating to Adult Human Trafficking Victim Care Coordination and Contracting Funded by Ministry of Justice and Home Office' (6th June 2011).

28 HM Government, *Human Trafficking: The Government's Strategy* (2011) 11.

29 Home Office, *Review of the National Referral Mechanism for Victims of Human Trafficking* (2014) ⟨http://webarchive.nationalarchives.gov.uk/20141202113128/https://nrm.homeoffice.gov.uk/documents/2014/11/nrm-final-report.pdf⟩ accessed 25th January 2016.

into the NRM - that had to be done by one of the list of accredited 'first responder' organisations maintained by the Home Office (a list mostly comprising government law enforcement or immigration agencies, but also including some NGOs). The man had first to be passed to one of those organisations.

The 'first responder' organisation was authorised to complete a referral form indicating that the man was a suspected victim of trafficking (the form could only be submitted with the individual's consent, unless they were a child). The form reproduced certain information about the man, some of which was provided in the form of a tick-box list of 'indicators' of trafficking. The form, once completed, was submitted to one of two 'competent authorities' - one a group of staff in the Home Office, the other a similar group in the UK Human Trafficking Centre.[30] If the suspected victim was from within the European Economic Area, he was referred to the Human Trafficking Centre; if from elsewhere, he was referred to the Home Office.

The task of the competent authority staff was to assess whether there were 'reasonable grounds' for believing the individual in question to be a victim of trafficking, and to do so within five days of having received the initial referral form (in practice it usually took longer than this).[31] In making that assessment the competent authority could have regard to the information on the referral form as well as any other information available, for example from asylum interviews that had been carried out with the individual or from officials with knowledge of the case. The test at the

[30] As discussed in Chapter 4, this Centre was the national police coordinating body on human trafficking.

[31] Group of Experts on Action against Trafficking in Human Beings, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom* (GRETA(2012)6, Council of Europe 2012) 49.

'reasonable grounds' decision was 'I suspect but cannot prove' that the individual in question was a victim.[32]

If the reasonable grounds assessment was positive, the potential victim was allotted a 45 day recovery and reflection period, during which s/he was given accommodation and access to certain services such as counselling and medical treatment. Further information was also gathered by the competent authority so as to make a conclusive decision (in theory by the end of the 45 day period) as to whether the person had been trafficked or not. The test at this stage had a higher threshold, requiring a balance of probabilities assessment, i.e. that it was more likely than not that the person was a victim of trafficking. In practice, many conclusive decisions took three months or more; where the decision took longer than 45 days the recovery and reflection period was extended accordingly.[33]

Once the conclusive decision was reached, whether positive or negative, the victim's eligibility for support under the NRM ended. If the victim had a right of residence in the UK, they were simply let go. If the victim was an illegal immigrant, a positive decision meant that they could (but did not have to) be granted 'leave to remain' in the UK, or assistance to return home. There was no special category of leave to remain that could be granted to trafficked persons - they were eligible for the same consideration as other migrants but their victim status was an additional factor to be taken into consideration.[34] If the decision was negative, a victim who was an illegal immigrant was returned home.

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32 Group of Experts on Action against Trafficking in Human Beings (n 31) 49.

33 ibid 49.

34 Between 1 April 2009 and 27 October 2011, some 70% of non-EU trafficked victims were granted some form of leave to remain, using existing routes: asylum, humanitarian protection, discretionary and indefinite leave to remain, as well as ad hoc routes. See: ibid 66.

One point to highlight from this description of how the NRM works is the number and diversity of the organisations and individuals involved: groups of staff in the UK Border Agency and the UK Human Trafficking Centre, 'first responder' organisations, NGO employees, police officers, immigration officials or medical staff who encountered victims - the list is a long one. The interactions between those organisations and individuals were complex: under the Salvation Army scheme, it was entirely possible for a 'first responder' NGO to encounter and refer a suspected victim - and for that victim to then be allocated by the Salvation Army to a different NGO for support provision.[35] This despite the fact that the referring NGO would in many cases already have been supporting the victim while the referral was made.

The NRM consequently had a fragmentary feel to it, similar to that of the texts that govern it. It was designed to be so; one civil servant I spoke to noted that the original intention for the NRM was to establish a multi-agency identification process where NGOs, law enforcement, local authorities and others would talk to one another in order to carry out the assessment of victim status, ensuring all relevant information was shared prior to reaching reasonable or conclusive grounds decisions.

In practice, however, the only source of evidence was often victim testimony; other organisations had little input to offer, meaning that the competent authorities were effectively the sole deciders.[36] Perhaps unintentionally, this meant that the NRM has been a more centralised and unified system than its design had suggested. More power went to the competent authorities, who were officials working either in the UK Border Agency or in the UK Human Trafficking Centre (overall, more victims were assessed by the Home Office than by the UK Human Trafficking Centre), than

[35] Interview with NGO Employee (No. 38) (London, 16th March 2015).

[36] Interview with Civil Servant (No. 23) (n 7).

went to local authorities or other public bodies.

This highlights the second key point: the state was able to assert authority through retaining for itself ownership of the identification process. But this was not the authority of an explicitly defined and clearly enforced category, as Section 4 (below) makes clear. At the heart of the system were the competent authorities - in terms of numbers, the Home Office competent authority was the more important of them. The state positioned itself so that information was fed into it from a wide range of actors; it processed that information, deciding whether or not someone qualified as a 'trafficked victim' (in a rather opaque process not subject to appeal); and, as a result of the state's judgement, other actors then arranged themselves accordingly (providing support with NRM funding, or perhaps with another source of funding, or not at all; deporting someone, or not).

In the introduction I defined the state only as consisting of government Ministers, their political advisors, and their officials - employed by government departments. I suggested that it did not include government agencies. Here I have to caveat that definition, since it seems sensible to treat the UK Border Agency as part of the state. The team responsible for designing the NRM were initially based in the Home Office but, during the design process, their part of the department was split off to become the Borders and Immigration Agency, subsequently the UK Border Agency. Consequently, the UK Border Agency was responsible for producing some of the guidance governing the NRM, and it would be difficult to make a meaningful distinction between its role and that of the Home Office, at least in the case of human trafficking.

The state established the criteria by which an individual could be labelled a 'trafficked victim', and the procedures by which the application of those criteria

could be adjudicated, as well as allotting organisational roles and relationships and disbursing funds. By doing so, it caused a number of other actors - NGOs, law enforcement bodies, local authorities, government agencies - to adjust their behaviour. But it did not call these other actors into being. They had already existed and been engaged in addressing 'human trafficking'. They had already had their own ideas and practices related to trafficking. The state corralled and coordinated these actors, causing them to orientate themselves according to its construction of the trafficked victim.

5.3.3 Networked structure

It was not inevitable, however, that the state should have coordinated and integrated the ideas and practices of a number of existing organisations. The Home Office could have established new organisations, staffed with dedicated officials whose only duty would have been to identify and provide support to trafficked victims. Of course, that would have been prohibitively expensive, would have made no use of already established procedures and expertise, and would still have necessitated some kind of links with referring organisations. But it is useful to draw this contrast, because it is a reminder that every actor involved in the NRM also had other goals, responsibilities and motivations. Consequently, in a way that parallels the Action Plan discussed in Chapter 4, the NRM did not straightforwardly determine the actions of all those 'governed' by it.

The difference between the NRM and the Action Plan, however, is that conformity with the conceptual framework of the former brought access to funding and expertise. By choosing to be involved, it was possible to obtain recognition and support for 'trafficked victims'. But in order to do so, individuals and organisations had

to play by the NRM's rules and recognise its criteria for who constituted a 'trafficked victim'. The actors that were involved in the NRM had varying degrees of freedom of choice regarding their involvement. Some (the NGOs) could refuse to participate entirely, if they wished. Some, such as law enforcement officials or employees of the Gangmasters Licensing Authority, had a degree of freedom as to how they participated. Others - Home Office employees - were more narrowly constrained; they could be hired or fired depending on whether or not they enacted the NRM as they were paid to do.

Consequently it is the NGOs that provide the best example of contingent engagement with the NRM - adopting its 'trafficked victim' construct only to the extent that it suited them. Some NGO participants recognised only a very limited advantage to using the NRM. One employee of an NGO working with child victims suggested that the NRM was not of much use.[37] Local authorities have statutory responsibilities to care for unaccompanied children that they do not have for adults. The support available under the NRM was therefore less helpful to a child victim. But the NRM may have other uses - such as the additional advice and guidance on how to deal with victims that come along with the referral process (perhaps from the UK Human Trafficking Centre).[38] Another NGO that works with trafficked children told me that they do use the NRM but only because it delays deportation long enough to allow conventional child protection processes to come into play.[39] A social worker confirmed this, suggesting that while the NRM has little impact on child care it can make a difference to immigration matters. If the NRM decision

[37] Interview with Social Worker (No. 35) (London, 6th March 2015).

[38] ibid.

[39] Interview with NGO Employee (No. 14) (London, 12th January 2015).

is negative (or not applied for) then the usual immigration issues will be raised, leading to deportation for the child when they reach the age of 17.[40] Additionally, a positive NRM decision can also help persuade local authorities to provide more secure accommodation for the child (otherwise they may be placed in a conventional children's home, from where it is easier for their trafficker to find them).[41]

With respect to adult victims, an NGO working with victims of trafficking for labour exploitation noted that a positive NRM decision can offer credibility to the victim (for example with law enforcement or in the courts) and sometimes accommodation, but not much else - and some victims may refuse accommodation, or support in general, because they want to be able to work and will not be able to do so if moved elsewhere and isolated (as can happen if they enter the NRM - victims are often moved for their own safety).[42] For some victims such as these, and for others such as those who have suffered sexual exploitation, the NRM may be viewed not as a potential advantage but with some hostility. Trafficked sex workers sometimes give false names to the police or to NGOs and refuse referral because of, for example, threats against their families, against themselves, or the prospect of relocation.[43] They may believe that if they leave the exploitative situation their family back home could be hurt, or that they themselves would be if found later. Victims that do enter the NRM may be moved some distance away from their exploitation (for good reasons) but as a result become harder to contact[44] and less likely to want

40 Interview with Social Worker (No. 42) (London, 28th March 2015).

41 Interview with NGO Employee (No. 49) (Phone, 24th April 2015).

42 Interview with NGO Employee (No. 16) (London, 16th January 2015).

43 Interview with NGO Employee (No. 22) (Coventry, 29th January 2015).

44 Interview with Police Officer (No. 30) (n 24).

to cooperate.[45]

This contingent engagement with the NRM casts light on an important characteristic of the system. The Home Office, through its guidance and funding, set out to articulate a strategy for the identification and support of trafficked victims, coordinating the actions of a number of diverse organisations - most of whom were already involved in some, often informal, capacity. But the 'trafficked victim' construct enshrined in the NRM's guidance excluded some individuals whom many of the NGOs involved either did or would support (whether because they implicitly constructed the 'trafficked victim' differently, or simply because they wanted to help vulnerable individuals and were less concerned with how they were labelled). The Home Office had to place limits on who would qualify as a 'trafficked victim' as it had limited time and resources and needed a system that was logistically manageable at the same time as not constituting a significant exception to established immigration rules.

The result of this was that NGOs have often provided support to individuals outside the scope of the NRM - individuals whom the NGOs would, in many cases, dub 'trafficked victims'. NGOs will often provide some sort of housing to victims while the reasonable grounds decision is being made, for example (which might take a week or two).[46] If that decision is negative, an NGO may refer the 'victim' to other services, whether statutory or otherwise. It might be Eastern European men, for example, who fail the reasonable grounds decision; an NGO may in their case talk to the Gangmasters Licensing Authority to try to find them alternative work (which

45 Interview with NGO Employee (No. 47) (Phone, 22nd April 2015).

46 Group of Experts on Action against Trafficking in Human Beings (n 31) 50.

the men may prefer to other kinds of support).[47] Another organisation noted that most NGOs are preparing for a negative NRM decision from the moment of victim entry, trying to give victims the skills they need to get back on their feet rather than just giving them boilerplate assistance.[48] Often, NGOs may provide support to victims after their conclusive grounds decision (whether positive or negative).[49]

The Home Office had little option but to design the NRM in the way that it did. As one official noted, the scope of the problem (providing support to trafficked victims) had to be rendered manageable, such as through establishing criteria for entry to the NRM. The trade-off was that some vulnerable individuals would miss out.[50]

This speaks to the complex relationship between the Home Office and the members of the NRM network. But the NRM's influence extends beyond those organisations involved in its operation. Actors who are not part of the network at all (NGOs supported by non-state funding, for example) may still have to understand and, to a degree, recognise the NRM's claims about the trafficked victim - what that victim looks like and what support s/he requires. The same applies to actors who are part of the NRM at times when they are operating in an independent capacity (such as contracted NGOs providing support outside the scope of the NRM). The NRM has become a crucial part of the landscape that a wide variety of actors seek to navigate.

47 Interview with NGO Employee (No. 34) (London, 5th March 2015).

48 Interview with NGO Employee (No. 38) (n 35).

49 NGO employee (Human Trafficking Law and Policy Forum, 2015, London).

50 Interview with Civil Servant (No. 21) (Nottingham, 28th January 2015).

5.4 The construction of the 'trafficked victim'

What, then, is the nature of the construct 'trafficked victim' that the NRM establishes and through which the state coordinates the activities of a diverse range of actors? The NRM's victim identification criteria were set out in the various pieces of guidance listed above. The identification process was complex not only because of the variety of characteristics a trafficked victim may possess, but also because you cannot simply ask someone if they are being or have been trafficked. Many who conform to the legal definition of a trafficked victim will not understand the word or the concept, often because of cultural or linguistic differences but also because of widespread ignorance of the phenomenon of trafficking. Even if they do understand what trafficking is, they may not self-identify as victims for a number of reasons, ranging from social stigma to fear of possible consequences.[51] Lists of supposedly more objective criteria were therefore created to aid staff in identifying victims.

> If they will not identify themselves as a victim, you must consider if there are any objective signs. Such indicators help you identify potential victims of trafficking. It is important you do not rely on victims to identify themselves, but instead know how to recognise and identify the signs of trafficking.[52]

The list of such indicators given in the 2012 UK Border Agency guidance was substantial, spanning three pages (which is understandable given the variety of victims they had to identify).[53] They included physical, sexual health and psycholog-

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51 Home Office, 'Victims of Trafficking: Guidance for Frontline Staff' (24th July 2012) ⟨http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/trafficking-guidance?view=Binary⟩ accessed 6th January 2016, 35.

52 ibid 35.

53 ibid 31-3.

ical indicators. The individual indicators were often very general (e.g. cardiovascular symptoms or post traumatic stress disorder). This section of the guidance also included a separate set of indicators taken from the International Labour Organisation (though intended to cover all forms of trafficking - not just trafficking for labour exploitation). The International Labour Organisation indicators were more situationally specific (e.g. distrust of authority, a story that sounds rehearsed, limited English) and related more directly to the circumstances of being trafficked than to general signs of vulnerability and/or exploitation.[54] However, it is not clear how they were supposed to be balanced against the other indicators provided.[55]

The point here is that the outline of the victim of trafficking provided in these guidance documents is, to say the least, blurred. It is also expansive, covering a wide range of potential kinds of victim. No doubt, in practice, patterns of judgement by the relevant officials built up over time to establish a more clearly defined image of the victim. But the way in which the 'trafficked victim' was constructed by the administrative rules governing the NRM remains vague.

The quote above suggests that victims were not expected to identify themselves. More than this, however, the Home Office's guidance to its competent authority staff noted that the testimony of victims who see their current situation as temporary or even tolerable ought to be ignored. 'Many victims do not recognise themselves

54 Home Office, 'Victims of Trafficking: Guidance for Frontline Staff' (n 51) 31-3.

55 International Labour Organisation, 'Operational Indicators of Trafficking in Human Beings: Results from a Delphi Survey Implemented by the ILO and the European Commission' (September 2009) ⟨http://bit.ly/2u7gU7E⟩ accessed 3rd August 2017, These indicators came from a project carried out jointly by the European Commission and the International Labour Organisation. They surveyed trafficking experts across Europe - policy officials, frontline workers and researchers - to obtain a list of indicators, which the same experts were then asked to prioritise.

as such, but rather as migrants who happen to be in a 'difficult' situation.'[56] Consequently, rather than relying on victims' own accounts, 'objective indicators such as the seizure of identity documents or use of threats by the employer or exploiter' should be used.[57] It was also noted that children may not understand what trafficking means or may have a different cultural understanding of childhood by which they see themselves as 'young adults responsible for earning money for their family'[58] and therefore as making a personal sacrifice in order to do so. In other words, even if an individual insisted that they were not a victim of trafficking, that testimony would count for little.

The Home Office's guidance thus clearly acknowledged that the victim's subjective perceptions of their own situation may not align with the Government's assessment. The criteria were a way of overriding or bypassing the victim's experiences in favour of the imposition of a construct upon them. One implication of this is that the term 'victim' took on, in the NRM, a technical meaning that is distinct from its lay usage. Some of those not eligible for its support may have been thought of by others as victims, and may think of themselves similarly. Likewise, some who are eligible may not be thought of as victims or think of themselves in that way. The guidance addresses this point directly:

> In the context of the Council of Europe Convention on Action Against Trafficking in Human Beings, 'victim of human trafficking' is a legal concept that triggers certain rights and measures. It is not a quality or condition of a person so you must not expect that person to feel or

56 Home Office, 'Victims of Human Trafficking - Competent Authority Guidance' (2013) ⟨http://www.airecentre.org/data/files/Comic_Relief_Materials/Bristol_Page/Research/UKBA_-_Guidance_for_Competent_Authorities.pdf⟩ accessed 22nd August 2017, 66.

57 ibid 65.

58 ibid.

> behave as a 'victim' (in the sense of being totally dependent on help and protection from someone else).[59]

Yet some of the NRM guidance also showed a fairly nuanced consideration of trafficked victims' subjective experiences. An example from the 2012 UK Border Agency guidance is representative; I quote it here at length to give a sense of its complexity:

> It is not uncommon for victims to feel both relief at having been identified and yet fear and suspicion toward an identifying front line statutory responder, particularly from the police or immigration services. This is often linked to their fear of being returned to their trafficking situation, many having been told by their traffickers that the authorities would simply return them should they try to escape. It is also not uncommon for negative feelings (fear and suspicion) to give way to those of relief once the victim felt safe and came to trust the identifying officer.[60]

Such a nuanced understanding was also present in the earlier 2010 UK Border Agency guidance and the 2013 Home Office Competent Authority guidance.[61]

There is an obvious tension here in the need to reconcile sensitivity towards the victim's own experiences with the imposition of objective identification criteria that may conflict with those experiences. Guidance from the 2010 Criminal Justice System Trafficking Toolkit encapsulated this in a phrase: 'Believe, test and confirm

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59 Home Office, 'Victims of Human Trafficking - Competent Authority Guidance' (n 56) 66; almost the same quote is found in Home Office, 'Victims of Human Trafficking - Guidance for Frontline Staff' (26th July 2013) 35.

60 Home Office, 'Victims of Trafficking: Guidance for Frontline Staff' (13th October 2010) ⟨http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/trafficking-guidance?view=Binary⟩ accessed 6th January 2016, 14.

61 See for example Home Office, 'Victims of Human Trafficking - Competent Authority Guidance' (n 56) 64-5; Home Office, 'Victims of Trafficking: Guidance for Frontline Staff' (n 60) 16.

the victim's account'.[62] Give credence to the victim first, then test and perhaps discard (if the objective criteria disagree) the victim's account.

There was some awareness in the guidance that this might jar with the expectations of victims and the NGOs that may lobby on their behalf.

> It is therefore essential that voluntary organisations do not give victims false hopes that they will receive the protection and assistance under the Convention. It must be communicated that whilst they may be eligible to receive short-term support and assistance from the voluntary organisation, longer-term assistance may not be available due to the restrictions above.[63]

The potential contradiction between the label 'victim' and the experiences of the individual seeking that label was complicated further by the position adopted by the Government that eligibility for support should depend on actual victim need. The simple fact of having been trafficked (according to the criteria discussed above) by itself would not be sufficient - the individual in question should be able to demonstrate a real and present need for support services. That position placed the emphasis back on to the victim's subjective experience, away from a more objective assessment.

The idea that support eligibility was dependent upon victim need arose primarily in the context of an argument over historic victimhood, i.e. where an individual had a credible claim to having been trafficked in the past but not recently. It was made clear in specific guidance on the topic that, in lieu of any instruction to the contrary within the Council of Europe Convention, it is relevant to consider when and where the trafficking took place - because affording Convention protections to

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62 Criminal Justice System, 'Trafficking of People: Tackling Trafficking Toolkit' (September 2010) ⟨http://webarchive.nationalarchives.gov.uk/20100920143917/http:/frontline.cjsonline.gov.uk/guidance/victims-and-witnesses/trafficking-of-people/⟩ accessed 22nd April 2015, 26.

63 ibid 82.

an individual should be based on that individual's need at the time of application for such protections, and not simply on the fact of having been trafficked at some point in the past.[64] This is inferred from the wording of the Convention, Article 4(e) of which defines 'victim' as follows: '"Victim" shall mean any natural person who *is* subject to trafficking in human beings as defined in this article' (my italics).[65]

Consequently, until September 2013, if a victim was fleeing to the UK to escape a trafficking situation (in which case they might still be traumatised) then the Authority had to 'offer the victim help and protection in the UK under the convention'.[66] If the victim had passed through several countries on the way and was therefore some way removed (geographically, temporally and, implicitly, emotionally) from their trafficking situation then they were not eligible for support.

This is a difficult call for an official to make. Factors to consider include whether the person is still under the trafficker's influence, needs time to recover from their trafficking ordeal, or has support and health needs as a result of their exploitation. The implicit test seems to be whether or not they would benefit from being considered under the Convention.[67]

The result of these various guidance documents, taken together, would seem to be a two-tier test. First, there was an 'objective' assessment of the individual's status

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64 UK Border Agency, 'Supplementary Guidance for Deciding if an Individual is Eligible for the Provisions of the Council of Europe Convention on Action against Trafficking in Human Beings' [2010] (In force until at least January 2010).

65 Council of Europe Convention on Action against Trafficking in Human Beings (n 1); the guidance was in force until at least January 2010 but this interpretation of the Convention appears to have remained in use until September 2013, when the *Atamewan* judgement ruled it incorrect. Home Office, *Review of the National Referral Mechanism for Victims of Human Trafficking* (n 29) 26-7; *R (on the Application of Atamewan) v Secretary of State for the Home Department* [2013] EWHC 2727 (Admin), [2014] 1 WLR 1959.

66 Home Office, 'Victims of Human Trafficking - Competent Authority Guidance' (n 56) 60.

67 ibid 60.

as a victim of trafficking. Second, there was a more 'subjective' assessment of the precise extent of that individual's needs, and whether or not they were sufficient to merit the provision of support. Yet of course both of these considerations were taking place simultaneously - first at the reasonable grounds decision and then at the conclusive decision. They were also mixed insofar as some of the 'objective' criteria refer to subjective emotional states (such as hostility, aggression or difficulty concentrating).[68]

The complexity inherent in these identification criteria mirrors the complexity of the NRM's institutional structure, as it also reflects some of the characteristics of administrative guidance set out above. Form follows function. Administrative rules are a particularly effective way of articulating something as complex as the identify of the trafficked victim. Not only are there a wide range of such victims, each with different experiences and characteristics, not only do victims not typically self-identify, but the general consensus (to the extent there has been one) on what a trafficked victim looks like has changed substantially and rapidly (in the UK, at least) since 2000. Administrative rules seem like the most appropriate technique to deal with that.

The complexity and flexibility of the NRM's 'trafficked victim' construct casts light on the role of the state. By establishing the NRM - its rules, procedures and actors - the Home Office asserted its ownership of the problem of 'human trafficking'. By setting out detailed criteria by which membership of the 'trafficked victim' category could be adjudicated, it set boundaries to what trafficking was. Implicitly, the case of someone not meeting the criteria to be a 'trafficked victim' did not con-

68 Home Office, 'Victims of Human Trafficking - Competent Authority Guidance' (n 56) 30.

stitute 'human trafficking'. Other actors had to orientate their ideas and practices towards this construct to at least some extent - whether or not they agreed with it. But the construct itself allowed for substantial flexibility in its interpretation and application - by state officials. So at the same time as asserting its ownership of the problem, the state did so without precisely specifying its understanding of the problem. It could change and develop the criteria - by iterating guidance or simply by informally directing officials to act in particular ways - in turn causing other actors to reconfigure their own efforts.

5.5 Conclusions

The establishment and operation of the NRM illustrates the functioning of administrative rules - one of the three state instruments that I focus on. The form of the documents - their length, complexity and, at times, inconsistency - paralleled their content. In particular, they allowed for a definition of the 'trafficked victim' to be provided that was flexible and somewhat ambiguous. Yet, by retaining institutional control of access to victim support, the state ensured that a wide range of actors would have to orientate themselves according to that definition. Connecting and coordinating diverse actors in this way allows the state to exert an important kind of authority - but, again, a different kind to the creation and enforcement of an explicit definition.

The institutional structure of the NRM reinforced these characteristics; it can be characterised as open, fluid and complex, with many moving parts. The different members of its network have had different degrees of autonomy thanks to their particular relationship with the Home Office. Some of those with more autonomy

(such as the NGOs) exercised it to engage with the NRM on a tactical and contingent basis. They compromised (by acceding to the NRM's requirements) only where they felt it useful in order to pursue their own objectives.

The NRM's structure has also been dynamic, enhancing the flexibility it permits. The guidance in which its rules and procedures are laid out has been iterated multiple times, while the structure was changed substantially in 2011, just two years after its establishment, and again in 2015, following a comprehensive review of its workings. Its absence from legislation and high-profile policy statements has enabled this dynamism.

The NRM has thus been a tool by which the state has been able to establish its ownership of the problem of trafficking through setting up a system to adjudicate victimhood. The flexibility inherent in the NRM meant that the state retained freedom of manoeuvre for itself while at the same time causing other actors to orientate themselves according to its definition.

6 The Modern Slavery Act

6.1 Introduction

This chapter explores a third contribution made by the state to the construction of 'human trafficking', one that involved a third kind of state instrument: legislation. Much like the Action Plan and the National Referral Mechanism, the Modern Slavery Act (passed in April 2015) was largely a reactive measure. In this case, it was prompted by the publication in 2013 of a report (entitled *It Happens Here*) by the thinktank Centre for Social Justice (CSJ).[1]

This chapter addresses how the construction of human trafficking advanced in that report was received and responded to by the state. I argue that the state adopted some of the rhetoric of the report but interpreted it in a way that accorded more closely with its priorities than those of the report's authors. I show how the state took on board some of the report's ideas and assumptions, shaping and codifying them into the text of the legislation, while attempting to sideline others. Those that it did take on it interpreted in particular ways that enabled it to privilege its own construction of trafficking. I suggest that the legislative process - and the resulting

[1] Centre for Social Justice, *It Happens Here: Equipping the United Kingdom to Fight Modern Slavery: A Policy Report* (Breakthrough Britain, London, 2013).

Act - were a way for the state to reassert its ownership of the problem of trafficking in the face of a challenge to that ownership represented by the CSJ report. Yet the state attempted to do so without conceding fundamental changes to the policy apparatus as it then stood. In this it was largely successful.

Before discussing the legislative process, however, I briefly describe the state of the policy apparatus from 2010-12, a period during which it experienced comparatively little change. It is useful to show this in order to understand the extent of the disruption prompted by the CSJ Report. It was that threatened disruption that caused the state to respond as it did, attempting to minimise substantive change.

6.2 The 2010-2012 period

A new Government (the Conservative / Liberal Democrat coalition) entered office in 2010. It maintained a rhetorical commitment to tackling trafficking but appeared content to let levels of anti-trafficking funding and activity diminish. This was a period of limited change for the policy apparatus. I briefly discuss three areas of activity that demonstrate this slowing of the apparatus' momentum, together with one that constitutes an exception: policy, legislation, institutional change and (the exception) Parliamentary debate.

6.2.1 The 2011 Home Office Human Trafficking Strategy

The principal policy initiative was a new Human Trafficking Strategy, published by the Home Office in July 2011.[2] The Strategy was mostly rhetoric; it did commit the state to a set of actions, but many of those were very vague. For example, the UK

[2] HM Government, *Human Trafficking: The Government's Strategy* (2011).

Border Agency was given the following action as part of the effort to improve victim identification and care: 'Continue to look for ways to enhance victim identification decision-making through driving up the quality of decisions and exploring the best match with immigration decision-making systems.'[3] More substantive actions tended to be minor tweaks to existing practices. Another action given to the Border Agency read: 'Develop a set of UK specific risk indicators [for victim identification] that can be deployed at our ports.'[4]

Nor was the rhetoric of the Strategy particularly innovative; it largely reproduced the patterns of assumptions about trafficking that had previously been the most salient within the policy apparatus. It presented trafficking as essentially an issue of cross-border organised crime - 'Human trafficking is international organised crime, with the exploitation of human beings at its heart'.[5] In general the Strategy privileged prevention and enforcement activity (devoting to it 12 pages of 32) over victim protection and support (four pages).[6] The authors were largely concerned with movement from abroad into the UK. Hence the victim envisioned was usually, albeit not always, a foreign national.[7]

The one area in which the Strategy contained ideas that were somewhat innovative was in its relatively more nuanced portrait of the trafficked victim (relative to the previous Action Plans). For example, the Strategy noted that victims may sometimes travel willingly in search of better paid work, may travel legally as well

3 HM Government, *Human Trafficking: The Government's Strategy* (n 2) 28.

4 ibid 30.

5 ibid 19.

6 ibid 2.

7 ibid 5.

as illegally, and may be deceived rather than directly coerced.[8]

However, this change was largely rhetorical in that it does not appear to have inspired or responded to any new patterns of activity (such as by law enforcement officials, for example). Overall, the Strategy still emphasised the idea that victims were usually illegal immigrants: 'A significant number of trafficking victims enter the UK illegally with false documents or by clandestine entry. This suggests many begin their journey believing they are being smuggled.'[9] The Strategy linked the idea that trafficked victims may *believe* they are being smuggled with a discussion of how to prevent human smuggling generally.[10] The implicit argument seems to have been that if victims think they are being smuggled they should be treated as such.

We might see the Strategy as an example of state activity that is without obvious consequence. It does not seem to have been connected to the wider policy apparatus in the way that the Action Plan (for example) was - by collating and coordinating existing ideas and practices and legitimising others that were emerging. But since the wider policy apparatus was experiencing a general decline in momentum during the 2010-12 period (detailed below), the Strategy's vagueness and low profile is unsurprising.

6.2.2 Legislation

The 2010-12 period saw very limited legislative change. The one significant development was the advent of the 2011 EU Directive on Preventing and Combating

8 HM Government, *Human Trafficking: The Government's Strategy* (n 2) 6.

9 ibid 20.

10 ibid 20.

Trafficking in Human Beings and Protecting its Victims,[11] although the Directive's impact on the UK's domestic practice was minimal.

The Government's response to the Directive demonstrates a resistance to changing its approach to tackling trafficking. Initially, in August 2010, the Government decided not to opt in to the Directive on the professed basis that it would not introduce any operational cooperation measures that might benefit the UK's existing anti-trafficking practices, while it would make mandatory activities that were at that point discretionary under UK law. It is not entirely clear what these were.[12]

When the Government changed its position and decided to opt in to the Directive, a decision announced in a Ministerial Statement on 22 March 2011,[13] it still maintained that there were no provisions 'that would significantly change the way the UK fights trafficking' and observed that their previous concerns had been allayed by the finalised text. It is unclear what these concerns had been, as there were only relatively minor changes in the final text relative to the 2010 draft (and these had the overall effect of making the Directive's obligations more, rather than less, burdensome).[14] The decision to opt in to the Directive appears in the end to have been taken on the basis that it was basically immaterial to the UK's anti-trafficking

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11 Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA [2011] OJ L54/1.

12 'Home Office Defends Position on Human Trafficking' (*GOVUK*, 31st August 2010) ⟨https://www.gov.uk/government/news/home-office-defends-position-on-human-trafficking⟩ accessed 27th October 2015.

13 'EU Directive on Human Trafficking' (*GOVUK*, 22nd March 2011) ⟨https://www.gov.uk/government/speeches/eu-directive-on-human-trafficking⟩ accessed 27th October 2015.

14 Commission, Proposal for a Directive of the European Parliament and of the Council on Preventing and Combating Trafficking in Human Beings, and Protecting Victims, Repealing Framework Decision 2002/629/JHA, COM(2010)95 final (29th March 2010).

strategy. The deadline for implementing the Directive was April 2013.[15]

Despite the Government's statement, there were in fact two legislative changes, albeit minor ones, that had to be made in order for the UK to comply with the Directive. These were flagged up in a Home Office review of existing UK trafficking legislation, carried out from September to December 2011.[16] The first was 'to criminalise acts of trafficking committed by UK nationals anywhere in the world where the trafficking has no connection with the UK' and the second was 'to criminalise trafficking for non-sexual exploitation which takes place wholly within the UK'.[17]

The two changes were fairly minor. The second was largely a matter of ensuring consistency between the 2003 and 2004 offences. The 2004 offence only covered internal trafficking (for non-sexual exploitation) where this took place after a connected act of trafficking into the UK. The change meant that internal trafficking was criminalised independently of any cross-border movement. Internal sex trafficking was already separately criminalised under the 2003 Act - the change to the 2004 Act removed that inconsistency in the approach to different forms of trafficking.

The rhetoric of the review, presenting the reasons for undertaking it, noted a problem with the policy apparatus as it then existed: prosecutors were not finding it straightforward to bring cases successfully.[18] There was not thought to be any need for new legislation, however. The idea of consolidating the three existing trafficking offences into a Human Trafficking Bill had first been considered in the late 2000s by the Home Office trafficking team, but it was decided that the necessary legislative

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15 HM Government, *Human Trafficking: The Government's Strategy* (n 2) 10.

16 HM Government, *Report on the Internal Review of Human Trafficking Legislation* (2012).

17 ibid 4.

18 HM Government, *Human Trafficking: The Government's Strategy* (n 2) 23.

amendments were not technically feasible at the time.[19] The review maintained that position, for a different reason - because it did not think that a Bill would increase the rates of successful prosecutions, citing the views of the Crown Prosecution Service (CPS).[20]

The review seems to imply that the state was relatively happy with the policy apparatus at that time. No fundamental reforms were canvassed. The (relatively minor) changes that were proposed tended to be in line with the general direction of the apparatus discussed in Chapter 4, i.e. towards the greater recognition of non-sexual forms of trafficking and the victims thereof.

6.2.3 Institutional change

Where policy and legislative activity tended to involve small, incremental and consolidating changes during this period, institutional activity seems to have more actively contributed to deprioritising trafficking.

The trafficking team operating out of the Home Office ceased operating towards the end of 2009,[21] shortly after the civil servant who had set it up (and was described by several of my participants as exceptionally able) moved on. One civil servant I spoke to suggested that trafficking was also deprioritised by the UK Border Agency during 2011-12.[22]

The principal development in law enforcement was the absorption of the UK Human Trafficking Centre (UKHTC) into the Serious Organised Crime Agency in

19 Interview with Civil Servant (Retired) (No. 54) (London, 26th May 2015).

20 HM Government, *Report on the Internal Review of Human Trafficking Legislation* (n 16) 6.

21 Interview with Civil Servant (Retired) (No. 54) (n 19).

22 Interview with Civil Servant (No. 23) (Phone, 30th January 2015).

2010. Conceptually the move made sense - the UKHTC was a nationally coordinating body but based in a regional police force; the Agency made a more natural home. In practice the move meant that the Centre was forced to relocate from Sheffield to London and in the process lost many of its most experienced staff, including almost all of its management team.[23]

In the Metropolitan Police Service the specialist trafficking unit that had been set up in 2006 shut down in 2009, again because the the central Government funding that had sustained it came to an end. The supposed rationale was that trafficking should be (or should have been by that point) 'mainstreamed' into regular policing activity, obviating the need for a specialist unit. The actual outcome was that in 2010 the issue of trafficking was separately picked up anew by the Clubs and Vice Unit of the Metropolitan Police,[24] giving rise to a new Trafficking and Prostitution Unit and at least initially reinforcing an implicit emphasis on sexual exploitation.

6.2.4 Parliament

Somewhat in contrast to the activities of central government and law enforcement, there was a substantial and growing amount of activity on trafficking in Parliament, indicating an increasing awareness of the issue. Often this activity was critical of the Government's efforts. Over the 2010-2012 period, some 363 parliamentary questions were asked on trafficking by a wide range of MPs and at least five debates were held that included trafficking in their title.[25]

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23 Interview with Civil Servant (Retired) (No. 54) (n 19).

24 Interview with Police Officer (No. 30) (London, 13th February 2015).

25 The numbers of Parliamentary Questions and debates are taken from a search of Hansard via www.theyworkforyou.com.

This Parliamentary interest does not appear to have prompted any significant response by the state. The debates do, however, illustrate some of the ideas about trafficking circulating at the time that would subsequently prove influential. There were, for example, four private members' Bills introduced during this period by MPs and one Lord with particular interests in trafficking.[26] Of those, two sought to introduce obligations on companies to report on trafficking in their supply chains, one was a broad-based Bill that pulled together existing criminal offences and introduced various victim protection provisions, and the fourth aimed to increase the interviewing of European victims by border control officers (although the text is unfortunately unavailable so it is difficult to know precisely what it sought to achieve).

The first two clearly had in mind the California Transparency in Supply Chains Act of 2010, the first of its kind in the world; supply chains would become a key issue in the negotiation of the Modern Slavery Bill.[27] The third seems to have recognised the same need as the Home Office trafficking team had - to draw together the existing trafficking offences into a single piece of legislation. Clearly this idea had some traction, and we might see it as prefiguring the arrival of the Modern Slavery Bill.

[26] Private Members' Bills are Bills introduced by MPs or Lords who are not Government Ministers. It is rare that these Bills become law but they can influence debate around a particular topic. For more information, see: http://www.parliament.uk/about/how/laws/bills/private-members/.

[27] Cal Civ Code [2010] s 1714.43.

6.3 Disruption

In March 2013, this period of comparative equilibrium came to an end with the publication of the CSJ Report *It Happens Here*.[28] The CSJ was established by Iain Duncan Smith, the Conservative MP, in 2004; its purpose was to research issues connected to poverty and social justice and to make policy recommendations. The organisation has been closely associated with the Conservative Party, which in 2007 (while in opposition) commissioned the CSJ to develop 'a new poverty fighting agenda'.[29]

Many of the concerns raised in the CSJ Report had previously been aired by other organisations, but those previous reports had fallen on deaf ears.[30] *It Happens Here*, by contrast, was far more successful.

The Report comprehensively problematised the policy apparatus as it then stood, suggesting that it needed to be radically reconceptualised, that a new 'blueprint'[31] needed to be established for tackling trafficking in the UK. By doing so, the Report disrupted the relative stasis of the policy apparatus and challenged the state's ownership of the problem of trafficking. In the following sections I discuss the Report's

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28 Centre for Social Justice (n 1).

29 'The CSJ Story' (2017) ⟨http://www.centreforsocialjustice.org.uk/about/story⟩ accessed 3rd August 2017.

30 I am referring to reports published by the Anti-Trafficking Monitoring Group, a group of anti-trafficking NGOs mentioned in previous chapters. Their first report, 'Wrong kind of victim?', was published in June 2010, just after the new administration came into power, and comprised a fundamental critique of the Government's efforts to support trafficked victims. Two participants commented on the 'scathing' tone of the report, suggesting that it had damaged relations between the Government and the NGOs involved in the group. Anti Trafficking Monitoring Group, *Wrong Kind of Victim?: One Year on : An Analysis of UK Measures to Protect Trafficked Persons* (Anti-Trafficking Monitoring Group 2010); Interview with Researcher (No. 15) (London, 15th January 2015); Interview with Civil Servant (No. 23) (n 22).

31 Interview with Think Tank Employee (No. 13) (Phone, 9th January 2015).

arguments and describe the state's response to them. I draw generally on interviews with three individuals closely involved in the production of the CSJ Report in order to provide the details of its publication and reception. I cite those interviews individually (as well as relevant documentation) where I am drawing on them to support particular points.[32]

6.3.1 The Report's production and conclusions

The issue of trafficking had been brought to the CSJ's attention by an NGO working in the area, but the immediate impetus for the Report came from private funders with an interest in the issue.[33] The Report was authored by a Working Group of external experts for whom the CSJ provided a secretariat. The Centre appointed the Working Group lead - Andrew Wallis of the trafficking charity Unseen UK - who then appointed the remaining members. The members were drawn from a range of backgrounds: the bar, the CPS, academia, law enforcement and NGOs (the two represented, in addition to Unseen, were Migrant Help and Love146).

The process of compiling the report involved the conducting of over 200 interviews with frontline and more senior workers from across the public and third sectors who were involved in anti-trafficking activity. The report's authors, having failed to find any comprehensive national blueprint for anti-trafficking action, set out to provide one themselves.[34]

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[32] Interview with NGO Employee (No. 10) (Bristol, 12th December 2014); Interview with Think Tank Employee (No. 13) (n 31); Interview with Think Tank Employee (No. 8) (London, 3rd December 2014).

[33] Unfortunately I have been unable to ascertain who these funders were. Interview with NGO Employee (No. 10) (n 32); Interview with Think Tank Employee (No. 13) (n 31).

[34] Interview with Think Tank Employee (No. 8) (n 32).

The 224-page substance of the report contained ideas and assumptions about trafficking that departed from what it saw as the dominant framing of trafficking at the time, that is as an issue of organised illegal immigration involving women who were sexually exploited. The report focused predominantly on victims. Of its seven main chapters, three dealt with victim support, victim identification and care for 'survivors' (a term the report employed). Only one chapter, a comparatively short one, was dedicated to law enforcement. Of the remaining three, one addressed a perceived lack of strategic leadership, one the role of business, and one dealt with introductory materials and terminological issues.

The CSJ Report's overarching message was that trafficking should be thought of as a type of 'modern slavery', and therefore an issue of crime rather than of immigration. Trafficking 'victims' should be treated as such, and not as immigrants, illegal or not. 'Victims of modern slavery have had a crime committed against them and our response must be the same as it would be towards any other victim of crime, regardless of their country of origin.'[35]

Throughout this thesis I have referred to 'human trafficking' as the main issue being discussed and addressed. I will continue to use that term, even though from the report's publication onward the term 'modern slavery' gradually came to be more common. 'Modern slavery', as employed by most of those who used the term, did not refer to a new set of facts (real or imagined) but was rather an attempted reframing of the facts often previously thought of as constituting 'human trafficking'. Continuing to use the term 'human trafficking' helps to illustrate the continuities in the way the problem was defined as well as changes in interpretation.

[35] Centre for Social Justice (n 1) 12.

The report's authors clearly saw themselves as attempting to challenge an established set of ideas about trafficking that they felt were erroneous. Consequently they included a set of 'myths' about existing understandings that they set out to disprove. These were:

- Modern slavery is only cross-border;
- Modern slavery only affects women and children;
- Modern slavery is the same as prostitution;
- Modern slavery only exists within the sex industry.[36]

This straw man was only tangentially related to the policy apparatus as it stood at that time. The discussion in Chapter 4 makes clear that the relative prevalence of the idea that trafficking was only cross-border, only affected women and children, and only involved sexual exploitation, had been decreasing within the apparatus since at least 2006. Nevertheless, as Chapter 4 also made clear (Section 4.4), many of the institutional structures that dealt with trafficking continued to embody those older assumptions, at least in part. For example, as mentioned above, the closure of the Human Trafficking Unit of the Metropolitan Police had resulted in trafficking finding its way back to the Clubs and Vice Unit. The straw man was really a way of saying, a little unfairly: here is how the state has mistakenly understood trafficking in the past; we need to correct that mistake.

In other words, the CSJ Report took aim at a set of assumptions that were certainly present but, by 2013, far less prevalent in the policy apparatus than they

[36] Centre for Social Justice (n 1) 33-4.

had previously been. The report was able to identify a legitimate target but at the same time it was pushing with the grain of developments in the policy apparatus.

Replying to the 'myths' they identified, the report's authors asserted the existence of 'internal trafficking', reproduced statistics from the National Referral Mechanism showing a high proportion of male victims referred, and emphasised the variety of forms of exploitation to which a victim could be subject. They also recommended that the Minister with responsibility for anti-trafficking policy needed to change - from the Minister of Immigration to the Minister for Policing and Criminal Justice - in part to lessen its association with immigration.[37]

Victim care was central for the CSJ Report not just on principle but because it was seen as the most effective way to combat trafficking, reducing its future prevalence.[38] The report's authors argued for the importance of returning victims into full employment after initial support. This marks a substantial contrast to the rescue-and-release model that the National Referral Mechanism had established, whereby victims were supported for a short period with the implicit aim of helping them contribute to successful prosecutions, after which they were no longer required.

Two further conclusions reached in the report were, first, the need for an Anti-Slavery Commissioner who could 'promote the views of those who have been trafficked into and within the UK, in order that the experiences of victims and survivors help shape policy' and, second, the need to remedy a perceived lack of strategic leadership in the coordination of anti-trafficking activities in the UK.[39] Part of the proposed Commissioner's role would be to take responsibility for the necessary co-

[37] Centre for Social Justice (n 1) 44.

[38] ibid 181.

[39] ibid 18.

ordination.

The report's principal recommendation (followed by a large number of detailed subsidiary recommendations) was the introduction of a Modern Slavery Act.[40] A new piece of legislation was a logical recommendation as it would meet the authors' two main goals of (i) reconceptualising trafficking as modern slavery and weakening its association with immigration and (ii) raising the profile of trafficking and improving the strategic leadership within the Government devoted to tackling it.

6.3.2 Publication of the Report

Perhaps unsurprisingly, given the CSJ Report's extensive criticism of the existing apparatus, the Government's immediate response to its publication was hostile.[41] It responded to the report's damning assessment of existing anti-trafficking activities by simply asserting its existing position: that the policies already in place were adequate and constantly being improved.[42] Within a day, however, following media coverage of the report's conclusions, the Home Office response became more positive.[43] Around two months later, some of the CSJ team were invited to brief first Mark Harper (Minister for Immigration) and then the Home Secretary, Theresa May.[44] Shortly thereafter a Cabinet Social Justice Committee meeting was held where the

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40 Centre for Social Justice (n 1) 13.

41 Interview with NGO Employee (No. 10) (n 32).

42 Michael Buchanan, 'UK Anti-Trafficking Efforts Need Overhaul, Report Says' (*BBC News*, 10th March 2013) ⟨http://www.bbc.co.uk/news/uk-21719778⟩ accessed 4th December 2015; Richard Suchet, 'Sex Trafficking Victims 'Failed' By Authorities' (*Sky News*, 10th March 2013) ⟨http://news.sky.com/story/1062579/sex-trafficking-victims-failed-by-authorities⟩ accessed 4th December 2015.

43 Interview with NGO Employee (No. 10) (n 32).

44 Interview with Think Tank Employee (No. 13) (n 31).

Home Secretary announced that she would bring forward a Modern Slavery Bill[45] and the Report team briefed other senior officials and the Prime Minister's office.[46] The decision to bring forward a Bill was kept confidential, however, until publication of an article authored by the Home Secretary in the Sunday Times on 25 August 2013.[47]

In that article, she commented:

> For too long modern slavery has been seen as someone else's problem: some believe it is an illegal immigration problem, others that it should be tackled through victim support, but most importantly many don't see it for what it is. So let me tell you what I believe it to be. It is a horrendous crime, it has got to stop and it is everyone's problem. It is a problem first and foremost for victims. It is a problem for our communities. I don't want just the NCA [National Crime Agency] to prioritise modern slavery, I want every police force in England and Wales to do the same.[48]

As in the case of the Action Plan, this is a clear example of the state absorbing ideas generated by external actors - here, the Centre for Social Justice. May did not simply accept their suggestions, however. While she seemed to agree with the report's problematisation of existing approaches to trafficking, and while she adopted some of the report's rhetoric, she interpreted it differently. She did adopt the language of 'modern slavery' and emphasised that it should be seen as a crime rather than as an immigration issue, agreeing with the CSJ on that point. Yet she did not emphasise victim support and rehabilitation, implicitly distancing herself in the above quote from the idea that trafficking should be 'tackled through victim

45 Interview with NGO Employee (No. 10) (n 32).

46 Interview with Think Tank Employee (No. 13) (n 31).

47 Theresa May, 'Modern Slave Drivers, I'll End Your Evil Trade; A New Bill Will Target the Human Trafficking Gangs Plaguing Britain' *Sunday Times (London)* (25th August 2013) 19.

48 ibid.

support'. She appears to have seen victims as passive objects who were 'forced to exist in appalling conditions often against their will'.[49] As the quote illustrates, she also tended to focus on more extreme forms of exploitation. By contrast, the CSJ Report had discussed the concept of a 'continuum of exploitation' (a phrase taken from a report by Klara Skrivankova of Anti-Slavery International).[50] The substance of May's argument was different to that of the CSJ, though justified according to the same rhetoric. I suggest we could see this as the state attempting to assert its ownership of the problem of trafficking, using the rhetoric of its critics to advance its own interpretation of the issue. This attitude was carried through into the text of the Bill (discussed below); it shows how the state does not just passively absorb ideas, but also transforms them for its own ends.

May phrased the article in such a way as to mark a departure from previous ideas about trafficking. She set out explicitly to redefine the problem. That she set out her stall in this way can be attributed, I think, to the CSJ Report - both in that it compelled her to respond and also in that it gave her an opportunity to do so. By problematising existing constructions of trafficking, by suggesting an alternative way of conceiving and tackling trafficking, the report destabilised some of the core assumptions underlying the operation of the policy apparatus (such as that trafficking should be viewed as a form of illegal immigration). It diminished the authority that those assumptions had enjoyed. May was able to move away from them in a way she may not otherwise have been able (or wanted) to do. And she

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49 May (n 47).

50 Centre for Social Justice (n 1) 36; Joseph Rowntree Foundation and Klara Skrivankova, 'Between Decent Work and Forced Labour: Examining the Continuum of Exploitation' (23rd November 2010) ⟨https://www.jrf.org.uk/report/between-decent-work-and-forced-labour-examining-continuum-exploitation⟩ accessed 4th January 2016.

had to do so; in order to regain the initiative she had to strongly set out a positive vision that would be perceived as a new departure.

The announcement of dedicated legislation was symbolic of the Government's intentions in this regard. It represented a high profile commitment to addressing the issue but also, crucially, a vehicle for the Government to reassert its ownership of the problem. However, instigating the legislative process also allowed for a number of new voices to enter the debate, as I discuss further below.

6.4 The legislative process

6.4.1 The Modern Slavery Evidence Review

With the initiation of the legislative process for the preparation of the Modern Slavery Bill that May had promised, a change in the debate occurred. Where, up until that point, it had been conducted partly through the media (the CSJ Report and coverage, the Government's responses) and partly behind closed doors (briefings to Ministers and to the Cabinet Social Justice Committee), it now moved, primarily if not entirely, into a set of well established institutional structures and procedures - the stages of the legislative process.

The first stage of this legislative process, however, was somewhat unusual. Following the announcement that a Bill would be brought forward, the Home Secretary established (in early October 2013) an independent Modern Slavery Evidence Review intended to inform the production of a Draft Bill.[51] The findings of that Review

[51] Baroness Butler-Sloss, Frank Field MP and Sir John Randall MP, *Establishing Britain as a World Leader in the Fight against Modern Slavery: Report of the Modern Slavery Bill Evidence Review* (2013).

were intended to inform the Bill's drafting process, although in fact the Review and the Draft Bill were eventually published together - due in part to a tight Parliamentary timescale (although it is hard not to conclude that the Government deliberately avoided having to engage with the Review's findings - since they diverged so substantially from its own positions).

The Review was in many ways a continuation of the CSJ's work and it consequently endorsed many of the same assumptions about trafficking. This was in part due to interpersonal links. The Review team consisted of three politicians with an interest in trafficking: Frank Field MP (who took the lead), Baroness Butler-Sloss and Sir John Randall MP. Frank Field had spoken at the launch of the CSJ Report in March 2013, suggesting that it '...could be a turning point in history'.[52] Much of the groundwork of conducting interviews and writing the Review was carried out by Lucy Maule, a CSJ employee who performed a similar role for the CSJ Report. Andrew Wallis, who had headed the CSJ Working Group, was listed by the Review as one of three key supporters.[53] The methodology employed by the Review team was also very similar to that used by the CSJ group, involving a large number of interviews with many of the same participants approached for the CSJ Report, and often obtaining quite similar answers.[54]

As a result, the conclusions that the Review reached were unsurprisingly similar to those that the CSJ group had come to. The Review supported the use of the term 'modern slavery' and strongly emphasised the need to shift to a focus on the

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52 The Centre for Social Justice, 'CSJ Launches Review of Modern Slavery in the UK - It Happens Here' (12th March 2013) ⟨https://www.youtube.com/watch?v=hPlZoXmGgfc⟩ accessed 4th January 2016.

53 Butler-Sloss, Field MP and Randall MP (n 51) iii.

54 Interview with Think Tank Employee (No. 13) (n 31).

exploitation rather than on any movement involved, thus challenging the assumption that trafficking was intimately linked to immigration.[55]

In line with that emphasis, the Review recommended removing the authority to identify trafficked victims from UK Visas and Immigration (on the basis that this represented a potential conflict of interest, since their remit to control immigration was presumed to be at odds with the objective of supporting trafficked victims). Discussing institutional changes, the Review also called for an increased range of first responders (organisations authorised to refer potential trafficked victims for support) in the National Referral Mechanism, for the recovery and reflection period granted to victims to be increased, and for the issuing of a temporary visa and work permit to all those conclusively identified as trafficked victims.[56] It was also supportive of a genuinely independent Anti-Slavery Commissioner able to act as a voice for victims.[57]

These recommendations show the Review taking a similar line to the CSJ Report, advocating a reconceptualisation of trafficking orientated around the perceived needs of trafficked victims.

The Review differed from the CSJ Report in some other respects, however. Although the Review had plenty to say on improving victim support, overall it focused relatively more on increasing prosecutions and convictions than the CSJ did.[58] It also tended to view 'exploitation' as a relatively extreme phenomenon.[59] There was

55 Butler-Sloss, Field MP and Randall MP (n 51) 14.

56 ibid 43-4, 47.

57 ibid 29.

58 ibid 22.

59 ibid 24.

little acknowledgement of the shades of grey that can surround work in exploitative conditions. As noted above, the CSJ Report was more nuanced on that point.

The Review listed its three key aims as follows:

- 'to dramatically increase the number of prosecutions and convictions';
- 'to improve the identification of victims of modern slavery and practices which involve modern slavery'; and
- 'to ensure the provision of adequate support for victims to help expedite their recovery.'[60]

In moving away from immigration towards a focus on exploitation, in prioritising victim support, and in calling for institutional reform, the Review echoed the CSJ Report. Where it had more in common with Theresa May's position in her Sunday Times article was in its greater emphasis on prosecutions and convictions and its emphasis on more extreme forms of exploitation. We can see the Review as positioned between the two.

6.4.2 The Draft Modern Slavery Bill

The Review and the Draft Bill were both published on 16 December 2013, but the Bill adopted rather a different approach towards trafficking, one that more closely echoed Theresa May's comments. It was issued together with a Foreword and a preliminary section that together set out the state's overall approach to tackling modern slavery and its view on the role of the new legislation within that.[61] In a

[60] Butler-Sloss, Field MP and Randall MP (n 51) 5.

[61] Secretary of State for the Home Department, *Draft Modern Slavery Bill* (Cm 8770, 2013).

manner not dissimilar to May's article in the Sunday times, the Draft Bill adopted the rhetoric of the CSJ Report and of the Review but used it to advance a set of priorities that differed from those advocated by the CSJ team.

Where the Home Secretary appeared to agree, in the Foreword, with both the Review and the CSJ Report was in the importance of moving away from an immigration perspective and towards a criminal frame: 'For years modern slavery has been associated with immigration crime. I have sought to change this perception.' 'Yes, there will often be an immigration crime angle but let's be clear; this is organised crime perpetrated by criminal gangs with links all over the world'.[62]

Like the Review, but unlike the CSJ Report, she focused on the more extreme forms of exploitation, not acknowledging more minor forms. 'Victims are held against their will and forced into a life of abuse, servitude and inhumane treatment'.[63]

Unlike both the Review and the CSJ Report, in the remaining prefatory materials to the Draft Bill the Government seemed to emphasise sexual exploitation over other forms. It was noted that 'We will strengthen links between work to tackle modern slavery and our existing programme to tackle violence against women and girls (VAWG)'.[64] The Government also said that 'We will carry out a targeted consultation to determine whether the current framework is suited for dealing with those who seek to traffick people into prostitution'.[65] No mention was made of assessing its suitability for dealing with those who traffick individuals into other forms of exploitation. Finally, it commented that 'We will do more to ensure a robust

62 Secretary of State for the Home Department, *Draft Modern Slavery Bill* (n 61) Foreword.

63 ibid.

64 ibid art 13.

65 ibid.

multi-agency approach in response to protect victims who are trafficked or enslaved to provide sexual services'.[66] Nothing was said about ensuring an approach was in place to protect victims of other types of exploitation.

Throughout the prefatory materials, less overall attention was given to victims than had been the case in the Review; the contrast with the CSJ Report was even greater. Together with the implicit emphasis on sexual exploitation, this suggests a more conservative set of assumptions about trafficking, in the sense that they retained a relatively greater amount of continuity with assumptions that had been prevalent earlier in the life of the policy apparatus. The detail of the wording here suggests that May's rhetoric in the press about redefining trafficking was not wholly substantive. The impression given is that not much had changed in the way the Home Office thought about trafficking and that the Draft Bill was mostly about rebranding. This may either be because May exaggerated features of her understanding of trafficking in her Sunday Times piece, or it may be that her intentions were toned down somewhat by Home Office civil servants responsible for drafting the Bill - or perhaps a combination of the two.

The Bill itself confirmed that impression while evincing a still narrower set of assumptions about trafficking than that contained within the Foreword and prefatory material, because the Government saw only a limited role for legislation in their overall approach to tackling modern slavery.[67] In the prefatory materials it listed five functions that it anticipated the Bill would fulfill:

- Consolidate and simplify existing slavery and trafficking offences to provide

66 Secretary of State for the Home Department, *Draft Modern Slavery Bill* (n 61).

67 ibid Foreword.

clarity and focus when investigating and prosecuting traffickers;

- Increase the maximum sentence available to life imprisonment so that offenders receive the punishments they deserve;
- Introduce civil orders to restrict the activity of those who pose a risk and those convicted of slavery and trafficking offences, strengthening our ability to cut this criminality;
- Create a new Anti-Slavery Commissioner role to galvanise law enforcement's efforts to tackle modern slavery;
- Establish a legal duty to report potential victims of trafficking to the National Crime Agency (NCA) to build a clearer picture of the nature of this hidden crime.[68]

Four of those are exclusively to do with law enforcement. The Government's implicit view appears to have been that the role of legislation in tackling modern slavery was simply to consolidate and improve (in relatively minor ways) the law enforcement response to the issue. This clearly aligns in part with the CSJ Report's recommendations, but does not particularly pick up on the CSJ's main emphasis, namely the need to adopt more generous victim support provisions.

The Bill text was of course the main focus of the legislative process. What made it into that text, and what did not, had important power implications. Subjects that were in the Bill could be openly debated and were subject to change - far more so than subjects that did not make it into the text at all, such as victim support. Of

[68] Secretary of State for the Home Department, *Draft Modern Slavery Bill* (n 61) art 4.

course the Government also had practical reasons for putting particular aspects of its trafficking response in statute and not others. Whatever the precise combination of motivations, however, the shaping of the Bill text was a useful tool by which the Government was able to assert its ownership of the problem of trafficking.

The text of the Bill stuck closely to the five priorities outlined. The first section brought together the trafficking offences from the 2003 and 2004 Acts and the slavery, forced labour and servitude offence from the 2009 Act (see Annex A for the full text of the offences). There was very little difference in the wording of the offences as reproduced; such as there was did not appear to indicate any substantive amendments.

The second section introduced two new 'civil orders'.[69] This section constituted the bulk of the Bill, making up 18 out of a total of 35 substantive provisions.[70] I will not discuss the detail of the two orders here. The relevant point is that they were intended to make it easier for law enforcement to prosecute trafficking cases, particularly where the individual in question had only peripheral involvement in the trafficking (acting, perhaps, as a driver).

The third section of the Bill proposed the establishment of an Anti-Slavery Commissioner.[71] The role was drawn quite broadly, including functions such as: making reports; making recommendations 'to any public authority about the exercise of its functions in England and Wales';[72] undertaking or supporting research; and 'consult-

69 Secretary of State for the Home Department, *Draft Modern Slavery Bill* (n 61) art 4.

70 ibid arts 11-28.

71 ibid arts 30-34.

72 ibid art 31(2)(b).

ing people'.[73] However, the independence of the role was heavily circumscribed by several clauses detailing the requirement for the Secretary of State to authorise the Commissioner's 'annual plan' (setting out proposed priorities and actions for a year of office) and any reports the Commissioner might wish to publish.[74] The implication was that, despite the relatively broad wording of the Commissioner's functions, the role would be limited to the furthering of the Home Secretary's objectives.

This was an indication that the Government was much less enthusiastic about institutional reform than the CSJ Report team were. Although the Commissioner would be an institutional innovation, it would be one harnessed to pre-existing objectives - centring on law enforcement - rather than establishing a new identity for the problem of trafficking. It was an implicit rejection of the CSJ team's vision of the Commissioner as means of reorientating the problem of trafficking towards the victim's perspective.

The fourth section of the Bill comprised a single provision that imposed a duty on all public authorities to inform the National Crime Agency 'if [they had] reasonable grounds to suspect that an individual may be a victim of human trafficking'.[75]

The text of the Draft Bill was therefore focused quite narrowly on law enforcement measures and was conservative in its approach to amending the existing policy apparatus. It introduced no new offences or significant institutional reform. What it did introduce was aimed at the narrow goal of making the existing trafficking offences work more effectively. It tweaked but it did not transform. The Government was thus able to limit detailed debate on aspects extraneous to its primary concerns.

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73 Secretary of State for the Home Department, *Draft Modern Slavery Bill* (n 61) art 31(2)(e).

74 ibid art 33(1)(b) & 31(3).

75 ibid art 35(1).

Keeping victim support away from the main legislative text meant that there was no real prospect of achieving the CSJ's recommended reorientation of the apparatus around the perceived perspective of trafficked victims. The Bill - and the legislative process - were tools that the state wielded in order to assert its ownership of the problem and limit the degree to which the policy apparatus would change.

6.4.3 The Pre-Legislative Scrutiny Committee

Before the Draft Bill was presented to Parliament it was first subject to examination by a pre-legislative scrutiny committee - the Joint Select Committee on the Draft Modern Slavery Bill. The Committee's report was critical of the draft in a number of areas, a stance perhaps unsurprising in view of the fact that Baroness Butler-Sloss, Sir John Randall MP and Frank Field MP (who had put together the Evidence Review) all sat on the Committee, with Frank Field chairing. The involvement of those individuals suggests that we ought to see the Committee as part of a chain of people and activities by which many of the main ideas and assumptions in the CSJ's original report were picked up and transmitted into and through the legislative process.

The Committee emphasised the need to include victim support provisions within the Bill rather than restricting its content to law enforcement and prosecution. They were concerned that 'the Draft Bill does not address either the identification or protection of victims'.[76] They recommended that support should be provided to victims who chose not to be referred into the NRM (going further than the Centre for Social Justice team, who had only recommended that anonymous information be

[76] Joint Committee on the Draft Modern Slavery Bill, *Draft Modern Slavery Bill: Report. Session 2013-14* (HL Paper 166; HC 1019, 2014) 55.

captured from those not willing to be referred).[77] This shows that the Committee shared the CSJ's view that anti-trafficking efforts should be reoriented around the victim. The NRM was the mechanism by which victims could be identified as such by the state - and thus as deserving of support. To provide support for 'victims' choosing not to be referred into the NRM would have been to provide support on a 'benefit of the doubt' basis, i.e. trusting alleged victims and those supporting them rather than investigating and assessing their claims. This would have weakened the state's ownership of the problem of trafficking - as discussed in Chapter 5. The Committee also recommended the inclusion of a statutory defence for victims who committed an offence as a result of their having been trafficked (perhaps breaking a window while escaping from an exploitative situation, for example). In this respect the Committee went further than the Evidence Review. The Review's authors had recommended enshrining the CPS policy of non-prosecution of trafficked victims in statute, but had stopped short of recommending a statutory defence, i.e. they were in favour of strengthening the presumption against prosecution of trafficked victims but not of introducing a legal defence available to trafficked victims.

Relatedly, the Committee saw the Commissioner role as providing a voice for victims and thereby providing a more victim-centred perspective on the problem. 'Several of our witnesses called for the Commissioner's role to go beyond simply encouraging the prosecution of specific offences and for it expressly to be extended to representation of, and advocacy for, victims of modern slavery.'[78] This was in line with the institutional reform that the CSJ implicitly envisioned the Commissioner as leading.

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77 Centre for Social Justice (n 1) 77.

78 Joint Committee on the Draft Modern Slavery Bill (n 76) 82.

The Committee was broadly in line with other elements of the CSJ's recommendations. The Committee members were supportive of the separation of the exploitation and movement elements of trafficking/modern slavery, on both practical and principled grounds.[79] The Committee also felt it was important in a more basic sense to separate trafficking from immigration concerns. 'Whether a person is a victim of modern slavery and their immigration status must be kept entirely and overtly separate.'[80]

Based on this position, the Committee proposed a new slate of offences (to replace those in the Draft Bill) that emphasised exploitative treatment.[81] The offences, ordered from most to least severe by the Committee, were as follows (reproduced in full in Appendix A): slavery of children and adults, child exploitation, general exploitation, child trafficking, and trafficking.

The inclusion of a separate exploitation offence emphasised the Committee's view that exploitation is what trafficking is really about - not movement. It is also notable that that offence would have covered a broader range of behaviours than the Government's proposed Clause 1 offence (slavery, servitude and forced labour). The Government had allowed for a broader definition of 'exploitation' (in its Clause 3) but only when attached to trafficking - hence only when movement was involved. The Committee thought that the broader offence of exploitation should be available without any attached movement, and they argued that that the offences the Gov-

79 The Committee's members found that there was difficulty prosecuting trafficking offences where both movement and intent to exploit needed to be proved. The perceived issue was that someone may move someone else while not caring what specifically happens to them after having delivered them. This conclusion drew on evidence provided to the Committee by Riel Karmy-Jones QC. Joint Committee on the Draft Modern Slavery Bill (n 76) 43.

80 ibid 85.

81 ibid 48-49.

ernment had proposed would miss a set of exploitative behaviours that could occur without movement.[82]

Although the Committee's main recommendations were in line with those put forward by the CSJ and, subsequently, the Modern Slavery Evidence Review, the Committee's report was issued in a different context. Rather than making recommendations regarding the content of a Bill yet to be drafted, the Committee was critiquing an existing legislative text. Hence the implication of the Committee's recommendations was more directly critical of the Government's ownership of the problem of trafficking. The Committee argued that some issues (particularly victim support) that were not in the Bill text, ought to be - in other words, they wanted matters on the table that the Government had deliberately kept off it. The legislative process is thus not just the iterative negotiation of a text but can also contain within itself challenges to what should be included in its debates.

6.4.4 The Government Response to the Pre-Legislative Scrutiny Committee

Perhaps unsurprisingly, the Government rejected the Joint Committee's proposed offences as 'too broad in scope and uncertain', potentially allowing 'a much lower level of exploitation to be captured' and diverting attention from more serious abuse.[83] The offences were thought to be confusing for judges and juries and so potentially harmful to the goal of increasing the quantity and effectiveness of prosecutions. The

[82] Joint Committee on the Draft Modern Slavery Bill (n 76) 44.

[83] Secretary of State for the Home Department, *The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166 / HC 1019: Draft Modern Slavery Bill* (Cm 8889, 2014) 3-4.

Government also gave the impression of being concerned about any unintended consequences that might follow on a more substantial reform of the offences. Alongside a natural and perhaps justifiable caution on the part of the Government here, I think we can also discern a reluctance to weaken its ownership of the problem.

The Government additionally argued that the exploitative behaviour the Joint Committee highlighted as falling outside the scope of the Bill's offences was already included within them.[84] However, while rhetorically maintaining that position the Government did in fact make a concession to address the Committee's concerns, by adding language to Clause 2 of the Bill (the offence of human trafficking) to specify that 'harbouring' or 'receipt' were behaviours that would be covered by the offence (as well as more active recruitment or movement). (These behaviours were already named in the Palermo Protocol's definition of trafficking from 2000.)[85]

The Government's decision as to how to meet the Committee's concerns is instructive. It is not clear that the language change had any substantive impact on the clause as drafted. Arguably harbouring and receipt were already included within its earlier wording (which would have criminalised 'arranging or facilitating travel...').[86] The Government argued that it could be 'helpful to take the opportunity of the Modern Slavery Bill to more explicitly reference the concepts in international definitions on the face of the legislation'.[87] Substantively, then, the point of

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84 Secretary of State for the Home Department, *The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166 / HC 1019: Draft Modern Slavery Bill* (n 83) 6.

85 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (signed 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

86 Secretary of State for the Home Department, *Draft Modern Slavery Bill* (n 61) art 2.

87 Secretary of State for the Home Department, *The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166 / HC 1019:*

the language seems to have been to concede rhetorically to the Committee's concerns without really changing the likely effect of the law.

The Government also rejected three other recommendations of the Committee, refusing any modification of the civil orders, any change to the overseas domestic worker visa and any inclusion of a provision on supply chains.[88] On the establishment of an Anti-Slavery Commissioner, the Government's response did include some very minor concessions as to the independence of the role, but their wording revealed their primary concern, namely that they did not want to create a 'general advocacy role rather than [one that would identify] key practical improvements' and they were keen to avoid confusion with other roles such as that of the Victims' Commissioner.[89] In other words, they rejected any significant change to the existing institutional structures that were responsible for coordinating anti-trafficking activity. The Commissioner was to be a tool of Government rather than a separate entity, subordinated to the Home Secretary rather than providing independent leadership.

The Government did make some minor concessions with regard to the inclusion of victim support measures in the Bill text. However, the measures introduced were relatively minor and, more importantly, were all aimed primarily at helping victims in their passage through the legal system - ensuring that they had funding for representation, a statutory defence to prevent inappropriate prosecution, special measures to protect them if acting as a witness, and, if children, advocates to ensure their best interests were represented throughout. In other words, these amendments

Draft Modern Slavery Bill (n 83) 6.

88 Secretary of State for the Home Department, *The Government Response to the Report from the Joint Committee on the Draft Modern Slavery Bill Session 2013-14 HL Paper 166 / HC 1019: Draft Modern Slavery Bill* (n 83) 8-11, 27-28 & 22-23.

89 ibid 13.

fitted with the overall law enforcement framing of trafficking but did not align with the CSJ's call to reorient anti-trafficking efforts around the perceived needs of the trafficked victim.

It is interesting to see the state here both arguing that the Committee's changes would dangerously loosen the precision of the Bill's offences and, at the same time, arguing for a broad interpretation of some key terms from the Bill's text (like 'harbouring' and 'receipt') in order to resist those changes. The point is not to suggest that the state was being hypocritical - both arguments were plausible. It is rather to suggest that the ideas of precision and interpretation are particularly important in the negotiation of a legislative text - more so than in the drafting of a policy paper, for example. Different instruments of state may entail or enable the use of different logics in their formation and operation.

6.5 The Modern Slavery Act

The final Act, as passed, included the provisions detailed in the Draft Bill plus various new elements.[90] Many who had been engaged in advocacy around the legislation were disappointed with the final text[91] since it did not move fully to a focus on exploitation, broadly defined, instead largely conserving existing offences of trafficking and of slavery, servitude and forced labour, and including only limited victim

[90] These included: a clause on the confiscation of assets (Article 7), a defence for victims of trafficking who have committed an offence as a result of their victim status (Article 45), civil legal aid for slavery victims (Article 47), an independent child advocate trial (Article 48), and a clause obliging companies of a certain size to report on efforts to eradicate modern slavery from their supply chains (Article 54). Other amendments and additions to existing law were mostly minor.

[91] Klara Skrivankova, 'Analysis of Modern Slavery Act' (*Anti-Slavery*) ⟨http://www.antislavery.org/english/press_and_news/news_and_press_releases_2009/analysis_of_modern_slavery_act.aspx⟩ accessed 4th January 2016.

support measures.

Superficially, the outcome of the legislative process supports this view, which can be summarised in terms of the following brief narrative. The CSJ Report successfully exposed and problematised many of the ideas and assumptions embedded in existing approaches to tackling human trafficking. The Government accepted the need to rethink its approach, and some of the principal rhetoric the CSJ used - particularly the term 'modern slavery'. The Government instigated a legislative process with the goal of rhetorically appeasing its critics while substantively changing little. While other actors within the legislative process pushed against that effort, ultimately the Government was broadly successful, to the frustration of many civil society actors.

This is only part of the story, however. The state did not only use the Act to take issues off the table, restricting possibilities for substantive reform. The legislation was also an instrument through which the state could introduce such change as suited its own interests. But it did not do so primarily through the text of the Act's provisions; instead, it chose avenues that allowed it to introduce change without substantive debate and scrutiny. To see how the state used the Modern Slavery Act in this manner we need to look beyond the Act's provisions to other features of the text.

First are those features we might term 'para-textual' - aspects of the Act itself separate to its provisions. The Modern Slavery Act had two such features. First, and most straightforwardly, was the title. Now that the Act has passed, 'modern slavery' is in common currency as the umbrella term. 'Human trafficking', which used to be the umbrella term within which the three previous offences sat, has been relegated to subcategory status. The connotations of 'modern slavery' are clear: less of a focus on movement; more of a focus on particularly severe forms of exploitation.

The second para-textual feature of the Act is the ordering of the offences. Section 1 is the offence of slavery, servitude and forced labour. Section 2 is the human trafficking offence. Chronologically, the human trafficking offences of 2003 and 2004 pre-date the slavery, servitude and forced labour offence of 2009. The last was only introduced in order to fill what was perceived to be a gap in the law - situations where the movement element of trafficking was difficult to establish. In other words, it was supplementary to the trafficking offences. In the Modern Slavery Act, that relationship is reversed; it is 'modern slavery' that matters.

The other dimension of the Act we can look to is its relationship with other, non-legislative texts (which we can think of as the Act's 'con-text'). The Act informs how we read them, as they inform how we read the Act. There were several such texts published around the time of the legislative process discussed above, including: the Government's 2014 Modern Slavery Strategy; the review of the National Referral Mechanism (the national victim support mechanism) also published in that year; and guidance issued by the Home Office on the interpretation of certain of the Act's provisions.

The Home Office's Modern Slavery Strategy included the following quote in its prefatory material:

> 'More than 200 hundred years ago the British House of Commons passed historic legislation to make the slave trade illegal. But sadly, the grim reality today is that slavery still exists in towns, cities and the countryside across the world. And be in no doubt, slavery is taking place here in the UK.'[92]

The language used, and the historical analogy, bolsters the impression that slav-

[92] Home Office, *Modern Slavery Strategy* (2014).

ery is now the priority, and the umbrella category - within which trafficking is a more minor concern.

In the review of the National Referral Mechanism, also published in 2014, it was proposed that 'first responders' (organisations accredited by the Home Office to refer alleged victims for support) be replaced by 'slavery safeguarding leads'.[93] The functional change is besides the point; what I want to highlight is the way in which the language of 'slavery' was already beginning to propagate through the institutional structures of anti-trafficking activity.

As a final example, paragraph 4 of the Explanatory Notes published alongside the Act reads as follows: 'Modern slavery is a brutal form of organised crime in which people are treated as commodities and exploited for criminal gain. The true extent of modern slavery in the United Kingdom, and indeed globally, is unknown. Modern slavery, in particular human trafficking, is an international problem and victims may have entered the United Kingdom legally, on forged documentation or clandestinely, or they may be British citizens living in the United Kingdom.'[94]

Note the phrasing: 'Modern slavery, in particular human trafficking...'. Human trafficking is now, quite clearly, a subcategory of the larger phenomenon of modern slavery.

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93 Home Office, *Review of the National Referral Mechanism for Victims of Human Trafficking* (2014) ⟨http://webarchive.nationalarchives.gov.uk/20141202113128/https://nrm.homeoffice.gov.uk/documents/2014/11/nrm-final-report.pdf⟩ accessed 25th January 2016.

94 Modern Slavery Act 2015 Explanatory Notes para 4.

6.6 Conclusions

The publication of the CSJ Report disrupted what had been a period of comparative equilibrium in the history of the policy apparatus. The Report successfully argued that existing assumptions and practices relating to trafficking needed to be questioned and reconceptualised - in particular by relabelling 'human trafficking' as 'modern slavery'. The Government broadly accepted the rhetoric of the Report, but under the cover of that rhetoric advanced an understanding of the problem that was quite different to that put forward by the CSJ. The Government generally evinced a more conservative construction of trafficking, in the sense of one having a greater degree of continuity with previously prevalent ideas and assumptions (prioritising a law enforcement approach; emphasising trafficking for sexual exploitation; minimising institutional change within the apparatus). The announcement of legislation was a symbolic way for the Government to appear active, and to assert its ownership of the problem of trafficking, without introducing substantive change to the policy apparatus - instead only tweaking some aspects. The legislative process was not entirely under the Government's control - other voices became involved, pushing the CSJ's ideas and trying to persuade the Government to introduce more fundamental reforms - but ultimately the Government was largely successful. It used the legislative process to block challenges to its ownership, to prevent substantive changes to the policy apparatus, and simultaneously to introduce the minor reforms it did want. Alongside that, taking advantage of aspects of legislation not controlled by the legislative process (para-text and con-text), the Government advanced a reconceptualisation of human trafficking that accorded with its own priorities - namely a focus on particularly severe forms of exploitation where there was no, or little,

movement involved.

7 Police officers, lawyers and judges

7.1 Introduction

In the previous chapters I have discussed three instruments through which the state has contributed to the construction of 'human trafficking'; I have focused on the nature and operation of each instrument. I have not yet looked at the wider effects of the state's activities. It is important to ask not just how the state has itself contributed to constructing trafficking, but also how its activities have shaped how others have further contributed to that construction. In other words, how have the state's activities affected other actors within the policy apparatus?

The actors most immediately affected by the state's activities are those responsible for implementing laws and policies on trafficking, such as police, lawyers and judges. They are obliged to interpret and apply the concepts and categories shaped by the state as part of the construction of human trafficking, including 'trafficked victim', 'exploitation' and 'movement' among others.

These actors are a useful focus because they have an obligation to work with concepts and categories given them by the state. They have some scope to interpret

those concepts and categories, but they cannot (for the most part) invent new ones, or take them from sources other than the state. Consequently, it is these actors in particular that show the state's influence.[1]

In this chapter I explore the nature of that influence, by asking how police officers, lawyers and judges have responded to and attempted to apply key concepts and categories within the construct 'human trafficking'. I focus in particular on the category 'trafficked victim' and the concepts 'exploitation' and 'consent'. How do the concepts and categories shaped by the state cause implementing officials to change their ideas and practices? How do organisations and individuals who have to do something with the concepts and categories the state gives them adapt, improvise or reorient? What novel compromises and collaborations do they find themselves engaged in? I draw on a number of interviews with serving and retired police officers and lawyers to address these questions.

I argue that police officers and lawyers often find themselves adapting and innovating, improvising new practices and relationships in order to accommodate the concepts and categories that the state has handed them. These new practices and relationships may in time change the overall shape of the policy apparatus (by involving new actors, or placing existing actors in new configurations), thus affecting the aggregate construction of human trafficking within it. I further suggest that ambiguities and inconsistencies in the concepts and categories shaped and disseminated

[1] It is important to note that I do not focus on the effects of implementation - such as on people who come to be labelled 'traffickers' or 'trafficked victims'. That is clearly an important issue, but it is beyond the scope of this thesis. For an overview of the implementation studies literature, see: Lucy Gilson, 'Michael Lipsky, Street-Level Bureaucracy: Dilemmas of the Individual in Public Service' in Martin Lodge, Edward Page and Steven Balla (eds), *The Oxford Handbook of Classics in Public Policy and Administration* (Oxford University Press 2015); Susan M Barrett, 'Implementation Studies: Time for a Revival? Personal Reflections on 20 Years of Implementation Studies' (2004) 82(2) Public Administration 249.

by the state are revealed with particular clarity by the efforts of frontline officials to work with those concepts and categories and apply them practically.

7.2 Law enforcement

For the police, a particularly significant and difficult category has been that of the 'trafficked victim'. Chapter 5 showed the complex and vague manner in which the figure of the trafficked victim has been constructed by parts of the apparatus, as was necessary in order to cover the wide range of kinds of victim that could be encountered.

Those who may fit the label 'trafficked victim' are often unwilling to cooperate with police and may not want to be rescued at all. One NGO employee I spoke to described a police raid on a London brothel (suspected of involvement in trafficking) that he had accompanied, where two Eastern European women were found. They denied that they were involved in prostitution and refused to come away with the police.[2] Similarly, another officer I spoke to mentioned a case in which a man working on a traveller site reported having been kidnapped. He went away with the police and was referred into the National Referral Mechanism (NRM) as a potential trafficked victim, but his friend, also working on the same site, refused to leave with the police when they arrived.[3] There are several reasons why this might be the case: victims might fear being arrested or deported themselves, might care more about continuing to earn money than about their poor working conditions, or might be afraid of what their trafficker could do if they reported them.

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2 Interview with NGO Employee (No. 38) (London, 16th March 2015).

3 Interview with Police Officer (No. 62) (Chippenham, 7th August 2015).

Police therefore have to find ways of working with victims who do not trust them; one strategy they use is cooperation with NGOs. One officer I spoke to noted a number of ways in which the police could benefit from such cooperation. Most were to do with mediated interaction with victims (i.e. those victims who had contacted the NGO but not the police): police might receive information indirectly, via the NGO, without having to speak to the victim; they might be able to interview the victim, perhaps on site with the NGO, in order to gain intelligence in situations in which the victim does not want to testify; and NGOs might be able to persuade victims to give evidence and testify in court.[4]

NGOs can persuade individuals to *become* 'trafficked victims' - to come forward to the police and report what happened to them, perhaps to be referred into the NRM. For example, an NGO might accompany police on raids so as to be able to take any suspected victims away to a place of safety where they can be sensitively interviewed. If potential victims are found the NGO might, in some cases, fill in the NRM form on the police's behalf, lending them their expertise and in return putting themselves in a better position to assist victims.[5] The cooperation between police and NGOs is an example of how the obligation to operationalise a complex category like 'trafficked victim' can facilitate - or necessitate - the creation of new relationships that might not otherwise have come about.

Even if the NGO cannot 'create' a 'victim', it may still be able to provide useful information. Police may sometimes lack expert knowledge on certain aspects of trafficking. NGOs can often assist police by producing expert evidence such as medical reports or even by helping with initial enquiries, such as by fact-checking in coop-

4 Interview with Police Officer (No. 30) (London, 13th February 2015).

5 Interview with NGO Employee (No. 55) (Reading, 28th May 2015).

eration with foreign NGOs with whom they have links.[6] This last may be useful if, for example, it needs to be established that trafficking of a certain kind is common in the region the victim(s) originally come from.

In some cases where the victim is willing to cooperate, the police face a second difficulty: the lack of an identifiable perpetrator. One officer explained how the police may be faced with a victim (or multiple victims) where, perhaps because the exploitation is not recent, or perhaps because of the circumstances of the exploitation, no trafficker can be identified. Nevertheless, the victim can still be assisted - through a referral for victim support.[7] This is an unusual position for the police to be in - in a sense, a kind of compromise, since it involves dedicating time and resources to an objective not usually within their remit.[8]

NGOs who work with the police must also compromise, since their main objective is to support (those whom they see as) victims rather than to collaborate in bringing successful prosecutions. Sometimes, the compromise both parties engage in leads to conflict. One officer, discussing the post-2010 period, noted that while there had been less conflict with NGOs than he had anticipated, there were still a 'lot of bridges to build'.[9] Cooperation, on both sides, was ultimately contingent on the degree to which it helped to further organisational goals.

Where NGOs do cooperate with the police, they do so cautiously, similarly to how they engage with the NRM. One NGO I spoke to recognised the importance of victim information for assisting police investigations but contrasted it with a basic

6 Interview with Police Officer (No. 30) (n 4).

7 ibid.

8 Conversely, perhaps less usually, they may be faced with a perpetrator but without any obvious victims. (ibid).

9 Interview with Police Officer (Retired) (No. 43) (London, 1st April 2015).

duty on their part to protect vulnerable victims - and saw his role as balancing those two needs.[10] He trusted some police officers - those he had experience with - to look after the victims' best interest and would occasionally allow them to be left alone with victims sheltered by his NGO if the victims were happy to talk.[11] In this way NGOs can see themselves as acting as a sort of buffer between victims and the police, transmitting information between them while sheltering the victim. They grant the police mediated access to victims, but that access is conditional. It is this kind of contingent cooperation that is necessary for the category 'trafficked victim' to be applied in practice.

7.2.1 Case study of a trafficking investigation

I now discuss in detail one particularly complex case.[12] The case is a particularly clear example of how the need to work with complex concepts and categories gives rise to improvisation, adaptation and new kinds of collaboration.

This case involved the discovery of around 15 Eastern European men working for a traveller family in England. On first encounter they appeared to be working in poor conditions and possibly to have been subject to violence. The problem the police faced once they were aware of the case was twofold. First, how should they approach the victims without alienating them? Advice from the National Crime Agency suggested that talking to the men on site would yield little engagement due to a lack of established trust. Second, once the victims were taken off the site, what

10 Interview with NGO Employee (No. 38) (n 2).

11 ibid.

12 Details of this case are drawn from interviews with two individuals closely involved in its management: Interview with Police Officer (No. 62) (n 3); Interview with Local Authority Employee (No. 62) (Phone, 10th September 2015).

should be done to support them?

The first part of the operation, involving surveillance and rescue, had to be carefully orchestrated. Police entered the site together with local authority officials and interpreters. Some officers entered in plain clothes so as not to appear too threatening to the victims. Others were in uniform so as to try to prevent any violence from the family - efforts were made to keep these two groups separate. The interpreters' job was to explain what was happening and try to persuade the men to get on the local authority coaches waiting outside.

The second part of the operation was more complex, involving the establishment of a reception centre which had to be ready to receive the men once they left the site. A building had to be found - a decommissioned children's home in less than ideal condition - and made habitable by the local Council over the preceding week. Medical staff had to be on hand to provide initial appraisals of the men's condition. The Red Cross provided food and other supplies. The cooperating parties - police, healthcare, an NGO, all coordinated by the Local Authority's emergency response team - had to work together in a complex operation. All these various actors were needed because each had a different authority, set of skills, and pool of resources - some part of which was required for the operation to be successful. The particular combination of capacities required is shaped to an important degree by the nature of the category 'trafficked victim'.

The police and their local authority partners had to arrange the initial victim support with an eye to a future court case. They ensured that the accommodation was adequate but not too luxurious - if it had been it could have been presented in court as an incentive for the victims to have left their employment and to retrospectively view it as exploitative. Clothing was provided on the same basis - everything

came from charity shops to avoid accusations of luxury. Trivial but complicated questions arose, such as whether or not to supply alcohol (in the end it was avoided). Unfortunately the support provided was not enough to prevent three of the eight men who had left the site from returning to it by the end of the first week, despite most saying that they had worked with no breaks, long hours, low pay and poor living conditions. They were more concerned about being able to send money home. Evidence from those three men was therefore devalued. In designing these procedures, the police and the local authority drew on formal guidance and informal advice from the UK Human Trafficking Centre, while adapting and improvising to respond to the particular circumstances they encountered. Some of the learning from that adaptation was later codified and formalised by the police in a Modern Slavery Strategy.[13]

Where established rules did apply, they were adapted. The remaining five men were referred into the NRM by the police, but the conventional support model was not particularly in their interests - they did not want to be moved to a different area and they wanted to continue working. The NRM's provision was therefore adapted to suit their particular circumstances. As a compromise, bed and breakfast accommodation was found temporarily (instead of sheltered accommodation arranged by an NGO), a Salvation Army outreach worker offered assistance, and the men were given help to attend an employment agency. However, all they could find was short-term zero-hour contract work that they found too unreliable. Shortly thereafter, all five remaining victims returned home to Romania of their own accord, travelling independently by bus.

[13] Wiltshire Police Force, 'Modern Slavery' (December 2013).

At the time I interviewed one of the officers involved in the case, the Crown Prosecution Service (CPS) had yet to make a decision on whether or not to prosecute. In light of the fact that three 'victims' had chosen to return to their alleged exploitation and the five others had left the country, it seems likely that the CPS would have chosen not to proceed with the case. However, the case had also been referred to HM Revenue and Customs as a matter of standard procedure in order that they could undertake a financial investigation. The traveller family had been earning substantial amounts of money without paying tax; the victims were not registered to work and had not been paying national insurance or income tax either. It seemed likely that a financial investigation would have succeeded in this instance, given the available evidence.

Throughout this case, the category 'trafficked victim' and the concept of 'exploitation' presented problems and prompted a substantial amount of improvisation and adaptation on the part of the police. The category 'victim' had to be applied with a sort of double-consciousness - individuals who were in need of support but who could only be provided with particular kinds of support. The category 'exploitation' also had to be treated carefully. Without deprecating the seriousness of the mistreatment the men had suffered, it also had to be remembered that the men may not necessarily have seen that mistreatment as 'exploitative' and, further, that whether or not they did see it that way could be affected by the standard of the treatment provided for them after being rescued. In order to operationalise each term, the police improvised new practices, adapted established procedures, and engaged in novel collaborative arrangements.

7.3 Trafficking in court

Just as with the police, key concepts and categories have often been a poor fit for the conventional assumptions and practices of the courtroom. The category 'trafficked victim' is again a good example. I discuss some difficulties raised by that category before, in the following section, illustrating how lawyers and judges have responded to those difficulties.

The majority of trafficking cases are criminal trials where the relevant offences are indictable and serious enough that they tend to take place in the Crown Court before a jury.[14] Criminal trials, and courts in general, need clear terms and definitions; they also presuppose particular roles, such as victim, witness and accused. Certain expectations generally attach to those roles, such as that a victim should be able to provide a factual account of what happened to them.

The victim in a trafficking case will often not conform to the expectations implicitly held of him or her, making them an unconvincing witness. One lawyer told me that victims often present an inconsistent or false account of what has happened to them,[15] whether because of residual loyalty to their exploiter,[16] or, as a barrister suggested, continued fear for their own safety.[17] They may also simply be ignorant

14 Subsequent to the revision of the Criminal Practice Directions in 2014, trafficking cases will always need to be referred to the Presiding Judge of the relevant circuit, who may retain the case for trial by a High Court Judge or allocate it to a named, less senior Judge or category of judges. The intended effect seems to be to ensure that trafficking cases are overseen by judges with either particular expertise in trafficking or general seniority. *Practice Direction (CA (Crim Div): Criminal Proceedings: Amendment No 2)* [2014] EWCA Crim 1569, [2014] 1 WLR 3001, para 33.

15 Interview with Lawyer (No. 36) (Phone, 11th March 2015).

16 ibid.

17 Interview with Lawyer (No. 33) (London, 4th March 2015).

of many of the details of their situation, unable perhaps to say who moved them.[18] A police officer noted that victims (or their families) may be subject to threats to discourage them from testifying at all. He referred to one case in which a victim's family was threatened in Bulgaria and his team had to reach out to the local police for assistance.[19] This becomes more complex if, as can be the case, victims have given multiple accounts of their experiences to police and lawyers before appearing in court, undermining their credibility. Trafficking seems particularly prone to generating multiple inconsistent accounts of events for these reasons.

As well as frustrating some basic assumptions of the court system, trafficked victims frequently do not present well to juries. Although in some cases the victim will be perceived as vulnerable and sympathetic (such as sexual exploitation cases, where the victim's vulnerability is more likely to come across, or labour exploitation cases that involve learning disabled individuals),[20] in many others they will not. Several participants talked about the difficulty of trafficked victims who do not conform to jury preconceptions about what trafficking involves. Examples were male victims, often not recognised by juries as 'trafficked victims' at all,[21] and labour exploitation, where there has often been an attitude that it was the victim's choice,[22] and the victims themselves (who are not infrequently male, adult, and physically robust) may not engender sympathy.

Relatedly, the contrast between alleged victim and perpetrator in court can be

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18 Interview with NGO Employee (No. 11) (London, 16th December 2014).

19 Interview with Police Officer (No. 37) (Phone, 13th March 2015).

20 E.g. Lucy Thornton, 'Caught on Shocking CCTV: Vulnerable Man Kept as 'Slave' and Used as 'Punchbag' by Ice Cream Business Family' *The Mirror* (8th January 2014).

21 Interview with Police Officer (Retired)(No. 32) (Sheffield, 19th February 2015).

22 Interview with Police Officer (Retired) (No. 53) (Skype, 20th May 2015).

problematic. Juries may expect the perpetrator in a criminal trial to be less sympathetic, more hostile, perhaps from a more disadvantaged background. In cases regarding the trafficking of overseas domestic workers, these characteristics are frequently reversed, such that victims may be the ones who appear less credible than their alleged traffickers. They may be less wealthy, less well-dressed, less articulate, or of a different ethnicity, for example. In such cases, the alleged perpetrator may not conform to popular images of a criminal, perhaps being a professional, wealthy and sometimes female. If a victim is hostile, if their 'defences are up', as one lawyer put it, then it can be difficult to get jurors to empathise.[23]

These presentational issues may play into existing prejudices held by members of a jury against individuals claiming to have been trafficked. Instead of seeing them as vulnerable victims they may view them as economic migrants claiming victim status in furtherance of their objective of remaining in the UK.[24] Another barrister, speaking at a public event, suggested that this argument might often be advanced by the defence, and sometimes 'strikes a chord' with juries.[25]

Trafficking is not the only type of crime to produce problematic witnesses, of course. And, over time, courts have become more aware of and knowledgeable about trafficking, and consequently have become better at taking into account victims' circumstances.[26] People are becoming more aware that trafficking may take place in the UK and hence juries are more 'sympathetic' to the idea that anyone can be

[23] Interview with Lawyer (No. 25) (Phone, 4th February 2015).

[24] Interview with Lawyer (No. 33) (n 17).

[25] Defence Barrister (Human Trafficking Law and Policy Forum, 2015, London).

[26] Interview with Lawyer (No. 33) (n 17).

exploited.[27] Nevertheless, these issues, as also those discussed below, continue to present obstacles to the successful prosecution of trafficking cases.

7.4 The courtroom responds

In this section I look at how lawyers and judges have responded to various problematic aspects of the category 'trafficked victim', focusing in particular on three: cases where a 'victim' is also a 'trafficker'; the difficult concept 'exploitation'; and the related concept 'consent'.

7.4.1 Victims as perpetrators

A particular issue with applying the category 'trafficked victim' is that, in some cases, victims of trafficking will also themselves be traffickers - or will have committed another offence, perhaps in the course of escaping from their trafficking situation. This comlicates the 'trafficker' / 'trafficked victim' roles that the construct 'human trafficking' presupposes.

The earliest case (for which I can find a record) involving an individual who was both victim and perpetrator of a trafficking offence is that of *R v Kizlaite* from 2006.[28] In that case, an erstwhile trafficked victim appealed her conviction for trafficking offences. Although she had a substantial body of mitigating evidence in her favour (acting truthfully during the trial, evidence of good behaviour towards the victim, lack of personal profit and her own trafficked status together with a diagnosis of Post-Traumatic Stress Disorder and Stockholm Syndrome) the Court

[27] Interview with Lawyer (No. 25) (n 23).

[28] *R v Vilma Kizlaite & Anor* [2006] EWCA Crim 1492, [2007] 1 Cr App R (S) 30.

of Appeal found that this had sufficiently been taken into account in the original case and that the severe sentences imposed were justified. The appellant's trafficked status was employed as a mitigating factor, but there was little discussion of the matter. Presumably this can be attributed to the very early stage of the policy apparatus: there was very little by way of a definition of the 'trafficked victim'.

Subsequent cases that involved victim/perpetrators were more complex, because the policy apparatus developed and the category 'trafficked victim' began to take shape. Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings, signed by the UK in January 2007, held that: 'Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on [trafficked] victims for their involvement in unlawful activities, to the extent that they have been compelled to do so'.[29] The CPS responded by introducing specific guidance on prosecuting trafficking cases (available at least from October 2008).[30]

The CPS guidance does not seem to have added a great deal to existing common law provisions, established to deal with a defendant who had committed an offence partly or entirely as a result of compulsion of some kind. One such is the defence of duress, a well established common law principle.[31] The other is the public interest

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[29] Council of Europe Convention on Action against Trafficking in Human Beings (signed 16 May 2005, entered into force 1 February 2008) CETS 197; more recently, the Article 26 obligation was reproduced by Article 8 of the EU Trafficking Directive of 2011: Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA [2011] OJ L54/1.

[30] The Crown Prosecution Service, 'Human Trafficking and Smuggling: Legal Guidance' (*The Crown Prosecution Service*, 2009).

[31] For an overview, see: Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (Oxford University Press 2013) 204ff.

test, provided for in the Crown Prosecution Service Code for Prosecutors.[32] Clearly, however, the CPS felt it important to signal acknowledgement of the issue and formalise procedures that would anyway have been commonsensical. In this sense the guidance was a largely symbolic response to the issue.

Updated in 2011, the guidance stated that if there was a suggestion that the defendant in a given case might be a trafficked victim, the prosecutor should seek out further evidence.[33] 'If new information or evidence supports the fact that the suspect has been trafficked and has committed the offence whilst in a coerced situation, there is a strong public interest to stop the prosecution. Where there is clear evidence that the suspect has a credible defence of duress, the case should be discontinued on evidential grounds'.[34] The effect of the guidance was not substantial, although it did add another ground to be formally considered as part of the public interest test.

Neither the public interest test nor the issue of duress were discussed in *Kizlaite*. After the signing of the Convention, however, and the issuing of the CPS' trafficking guidance, cases where an alleged trafficked victim was prosecuted for a connected crime gave rise to more extended discussion of the issue. This was prompted in part by the initiative of enterprising barristers in particular cases.

One prominent case was that of *R v LM*, in 2010, where it was held that:

> What [Article 26] says is no more, but no less, than that careful consideration must be given to whether public policy calls for a prosecution and punishment when the defendant is a trafficked victim and the crime has been committed when he or she was in some manner compelled (in the

32 The Crown Prosecution Service, 'The Full Code Test' ⟨https://www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.html⟩ accessed 18th January 2016.

33 The Crown Prosecution Service, 'CPS Policy for Prosecuting Cases of Human Trafficking' (May 2011) 30.

34 ibid.

> broad sense) to commit it. Article 26 does not require a blanket immunity from prosecution for trafficked victims. It follows that the application of Article 26 is fact-sensitive in every case.[35]

R v L, in 2013, here discussing the same obligation but now deriving from the EU Trafficking Directive,[36] held that:

> The criminality, or putting it another way, the culpability, of any victim of trafficking may be significantly diminished, and in some cases effectively extinguished, not merely because of age (always a relevant factor in the case of a child defendant) but because no realistic alternative was available to the exploited victim but to comply with the dominant force of another individual, or group of individuals.[37]

These judicial opinions seem commonsensical - much like the CPS guidance. Similarly, their importance lies not in their content but in their profile - that it was necessary to provide guidelines on this point speaks to the significance of the issue. Even if little by way of substantive change to established procedures occurred, nevertheless the profile of this issue was raised and that in turn led to changes in practices: new discussions happening in the courtroom and new aspects to how the category 'trafficked victim' was considered. A further, more specific, effect of the judicial opinions quoted was to place a greater emphasis on establishing the degree to which a victim had been compelled to commit the offence in question, thus foregrounding issues of autonomy and agency. These were already important aspects

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35 *R v LM & Ors* [2010] EWCA Crim 2327, [2011] Crim L R 425, paras 13-14.

36 Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA [2011] OJ L54/1 (n 29).

37 *L & Ors v The Children's Commissioner for England & Anor* [2013] EWCA Crim 991, [2014] Crim L R 150, para 13.

to be considered in trafficking cases, in no small part because of the importance of the concepts 'exploitation' and 'consent', which I discuss below.

7.4.2 The problems of 'exploitation' and 'consent'

Whether or not the victim is also a perpetrator of some kind, the question of whether he or she possessed some degree of agency in entering into and remaining within the exploitative situation, or whether he or she was instead coerced, has been important in establishing whether or not the individual in question was subject to 'exploitation' - a key concept constructed by the apparatus.

Exploitation has not been defined in great detail by the apparatus. The main definition of the concept derived (until the passage of the Modern Slavery Act) from the two trafficking offences established in 2003 and 2004. The 2003 offence of trafficking for the purposes of sexual exploitation clearly defined 'exploitation' as constituting any of the offences under Part I of the parent Act - the Sexual Offences Act 2003 - in addition to one or two other specific offences from other Acts. In contrast, under the 2004 Act, the offence of trafficking for non-sexual exploitation drew its terms much more broadly and with less clarity, defining exploitation as follows:

> d For the purposes of this section a person is exploited if (and only if)—
>
> (a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour),
>
> (b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ

Transplants Act 1989 (c. 31) or the Human Organ Transplants (Northern Ireland) Order 1989 (S.I. 1989/2408 (N.I. 21)),

(c) he is subjected to force, threats or deception designed to induce him—

i. to provide services of any kind,

ii. to provide another person with benefits of any kind, or

iii. to enable another person to acquire benefits of any kind, or

(d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that—

i. he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and

ii. a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.

The variety of behaviour potentially covered by this provision made it difficult to apply in practice, combining references to European law (a), existing English law (b) and newly constituted legal definitions ((c) and (d)). This uncertainty was not resolved through the building up of case law because the offence was, initially at least, used so little (since it was complex to enforce and not widely known).[38] The 2007 Action Plan also did little to resolve the ambiguity of 'exploitation'. As discussed in Chapter 4, it opened the concept out beyond what had been a previously prevalent focus on sexual exploitation, but without providing an exhaustive list of other forms of exploitation or defining those narrowly.

[38] Interview with Police Officer (No. 26) (Phone, 4th February 2015); Interview with Lawyer (No. 19) (Phone, 23rd January 2015); Interview with NGO Employee (No. 34) (London, 5th March 2015).

The courts had to deal with this complexity. One way of doing so was to draw on commonsense understandings of the term. 'Exploitation' is widely used in lay speech; most people think they know what it means to exploit someone. So implementing officials had a reference point they could use to augment what the state had given them.

A particularly clear example of this phenomenon is the case of *R v SK*.[39] The case was one of domestic servitude, involving an African woman brought in to the UK, paid little, rarely allowed out of the house and generally mistreated by her employer. The employer was convicted of trafficking. The question on appeal was whether the trial judge's written directions to the jury appropriately explained the concept of 'exploitation' or rather privileged a narrow, economic definition that did not reflect the requirements of Article 4 of the European Convention on Human Rights (which is invoked by the trafficking offence in the 2004 Act - see quoted section above). Article 4 of the Convention reads as follows:

a No one shall be held in slavery or servitude.

b No one shall be required to perform forced or compulsory labour.

c For the purpose of this Article the term "forced or compulsory labour" shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

[39] *R v SK* [2011] EWCA Crim 1691, [2011] Crim L R 63.

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations.[40]

The trial judge had told the jury that the fact that the complainant had been paid below minimum wage was something they were entitled to take into account in assessing whether or not she had been 'exploited', but was not something that could by itself govern their decision. His remarks were, however, somewhat unclear and his rhetorical emphasis appeared to be (at least from the sections quoted in the appeal judgment) concentrated on the economic aspects.[41]

The Court of Appeal agreed that the judge's summing up did not sufficiently reflect the requirements of Article 4.

> 'In our judgment, he focused too much on the economics of the relationship between the appellant and the complainant, thus diluting the test the jury had to apply to one appropriate to an employment law context but not strong enough to establish guilt of the criminal offence with which the appellant was charged. The economic context was not irrelevant. Germane as it was to the issue of exploitation, however, the alleged failure of the appellant to remunerate the complainant at, or anywhere near, the level of the national minimum wage was not determinative of her guilt.'[42]

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40 Convention for the Protection of Human Rights and Fundamental Freedoms (signed 4 November 1950, entered into force 3 September 1953) ETS 5 art 4.

41 *R v Vilma Kizlaite & Anor* (n 28) paras 25-30.

42 *R v SK* (n 39) para 44.

I suspect that the trial judge's directions, and particularly the questions asked of him by the jury, show a common tendency to rely on ideas and assumptions from the lay concept of 'exploitation', something made possible (and, perhaps, necessary) both by the lack of clarity in the legal definition of the concept and also by the inclusion within that definition of wording appearing to incorporate intuitive or common sense understandings of the term (section 4(c), above).

Commonsense interpretations of key terms are often employed in the courtroom. Trafficking is not unique in that respect. But some of the concepts and categories related to trafficking - such as 'exploitation' - are particularly broad and vague. There has also been limited case law discussing them. Consequently they have prompted the use of commonsense ideas where other, more thoroughly refined or clearer, terms may not have done.

An important related issue has been the treatment of the idea of consent. Under the international legal definitions of trafficking, in both the UN Palermo Protocol and the Council of Europe Convention, the consent or otherwise of the trafficked victim to their movement and exploitation is explicitly irrelevant - primarily to account for situations in which an individual has been deceived, rather than forced, into exploitative circumstances (and may therefore appear to have consented to their treatment). The term is not mentioned in the English offences, but it does crop up in some of the operational guidance related to the NRM. The relevant section of the Operational Enforcement Manual of the Border Immigration Agency (in force from at least 2007), which dealt with identifying victims of trafficking for sexual exploitation, implicitly emphasised consent in some of the questions it suggested

should be asked of alleged victims.[43] Whereas UK Border Agency guidance for its frontline staff (in force from July 2012), explicitly noted that consent was irrelevant to identifying a trafficked victim.[44]

This has perhaps been the cause of some confusion. As has what 'consent' actually means. Various of my participants felt that the proper role of consent in trafficking was widely misunderstood. For example, one suggested that the trafficking of women and girls into sexual exploitation is often perceived to involve forcible compulsion, whereas in practice individuals are often in more complex situations, possessing varying degrees of agency.[45] A similar criticism was made by an individual involved in authoring the Centre for Social Justice Report *It Happens Here*.[46] Two police officers also noted confusion regarding the meaning of consent.[47]

Part of the problem is the range of situations in which trafficked victims can find themselves. Sometimes they may appear to have a degree of freedom. Migrant domestic workers, for example, may receive some spending money and may (in theory at least) be free to come and go.[48] In labour exploitation cases generally it might seem as if there was a contract in place, giving the impression that the issue should be dealt with as a civil complaint rather than a criminal matter. In such cases juries

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43 Border Immigation Agency, 'Operational Enforcement Manual, Chapter 42' (October 2007) ⟨https://web.archive.org/web/20151119105909/http://www.atlep.org.uk/wp-content/uploads/2012/02/Archived-policy-no-longer-in-force-C42-Operation-Enforcement-Manual.pdf⟩ accessed 19th November 2015, 12-13.

44 Home Office, 'Victims of Trafficking: Guidance for Frontline Staff' (24th July 2012) ⟨http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/trafficking-guidance?view=Binary⟩ accessed 6th January 2016, 10.

45 Interview with Local Authority Employee (No. 45) (London, 16th April 2015).

46 Interview with Lawyer (No. 19) (n 38).

47 Interview with Police Officer (No. 37) (n 19); Interview with Police Officer (Retired) (No. 43) (n 9).

48 Interview with Police Officer (No. 30) (n 4).

may even see the victim as pursuing a spurious claim in order to obtain advantage for themselves.[49] It can be hard for victims of trafficking for labour exploitation to answer the question: why did you let this happen to you?[50] A particular challenge in such cases may be convincing a jury that non-physical coercion has taken place.[51]

The case of *Zarkasi v Anindita* before the Employment Appeals Tribunal exemplifies some of these issues.[52] The appellant was an Indonesian woman who came to the UK under a false identity on a tourist visa in order to work for the daughter of her previous employer (in Jakarta). She slept on the sofa, was discouraged from leaving the house (though not imprisoned), and was paid below minimum wage (though given occasional cash presents and a phone by her employer). After two years she wanted to go home; her employer disagreed, they argued, and she decided to stay. Shortly thereafter, she left her employer and went to a trafficking charity.

The question of whether the applicant had been trafficked was not ruled on (the main question being the enforceability of her contract), but the court noted that if they had considered that question they would have found that she was not, despite the fact that the UK Border Agency had recognised her to be a victim (presumably this refers to a positive NRM decision - whether a reasonable or conclusive grounds decision is not clear).[53] The court stated that the facts of the case did not meet the definition of trafficking put forward in Article 4 of the Council of Europe Con-

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49 Interview with Police Officer (No. 37) (n 19).

50 ibid.

51 ibid.

52 *Zarkasi v Anindita & Anor* [2012] ICR 788 (UKEAT).

53 See Chapter 5, Section 5.3.2 for the distinction between a reasonable and conclusive grounds decision.

vention.[54] Article 4 defines trafficking in the same way as Article 3 of the Palermo Protocol, discussed above; importantly, consent is stated explicitly to be irrelevant. In particular, the court argued that the circumstances did not constitute 'exploitation'. The court went on to note that: '...we cannot see in the findings of fact made by the Tribunal any of the necessary elements of lack of voluntary acceptance that underlie Article 4...[C]onsent may be referred to in 4(b) as irrelevant, but this was not a case of consent; on the findings of fact by the Tribunal, it was one of willing participation'.[55]

The court distinguished between consent and 'willing participation'. Admittedly made in *obiter* comments, nevertheless it is a distinction that speaks to broader doubts about the extent to which victims of some forms of trafficking may have, to some degree, chosen their lot. Like 'exploitation', we can see the judges drawing on preconceptions they hold, or on commonsense ideas, to augment the vagueness at the heart of the policy apparatus.

7.4.3 Case study of a trafficking prosecution

I now discuss an extended case study of one trafficking prosecution, which, like the case study of a police investigation, highlights the way in which implementing actors have responded to the concepts and categories of the policy apparatus. The trial I

[54] The reason why the Convention definition was referred to was that in the original case, as summarised in the appeal judgement, the claimant had contended that the court should give practical effect to the Convention by enforcing her contract - despite that contract being unlawful (as all parties to the case agreed). This is because Article 15 of the Convention calls on signatory states to provide in law for the right of victims to compensation from their perpetrators. This argument was not accepted by the original Tribunal or on appeal, but, partly as a consequence of it being raised, the question of the claimant's status as a victim of trafficking was discussed. *Zarkasi v Anindita & Anor* (n 52) paras 9-11.

[55] ibid para 34.

observed took place in August and September 2015. The case was that of *R v Suchy, Sana, Sanova, Ziga, Ziga and Boros* at the Central Criminal Court.[56] The whole trial lasted for nearly two months. Of the proceedings, I observed the testimony of one (of four) alleged victims and one (of five) alleged perpetrators. The other three alleged victims had testified before I began my observation; of the remaining four alleged perpetrators, two pleaded guilty at the outset of the trial and the remaining two opted not to testify. I also observed the closing speeches by the prosecution and defence and the judge's summing up.

The case involved five defendants accused of conspiracy to traffick women from Slovakia (all parties were Slovakian and of Roma heritage) to the UK for the purposes of entering those women into sham marriages with individuals who needed to get married in order to obtain a visa to remain in the UK.

The trial provided a vivid illustration of some of the difficulties of accommodating the trafficked victim within usual courtroom procedures, which prompted various adaptive responses. The alleged victim whose testimony I observed gave evidence via videolink from Slovakia, largely because she was too ill (with pneumonia) to travel safely. The videolink necessitated the cooperation of the Slovakian police, who hosted the link at their end. In the London courtroom, aside from the inevitable technical difficulties, the videolink made the lawyers' lives more difficult: there was very limited pre-trial time for prosecuting counsel to confer with the witness; both the prosecution and the defence found it difficult to establish a rapport with the witness (though the prosecutor did a much better job); and the witness did not speak much English so her words were relayed through a court interpreter in London.

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56 *R v Suchy, Sana, Savova, Ziga, Ziga and Boros* (Central Criminal Court, 18th August 2015).

At one point the witness appeared to contradict something she had said in her statement, but this was in fact due to an error on the interpreter's part, picked up only because another interpreter assisting the defendants in the dock had heard correctly. Prosecuting counsel spent a great deal of time trying to overcome these difficulties, attempting the challenging task of humanising her witness for the jury while frequently repeating questions in order to elicit the information she required. There was a real sense throughout the prosecution questioning that counsel was attempting to bring as much of the individuality of the witness into the courtroom as was feasible given the technical constraints.

The victims were alleged victim/perpetrators (perpetrators of similar offences but in other countries). This aspect of the case enabled the barristers to pursue certain tactics. The prosecution and defence were each able to stress one side of the dyad to the exclusion of the other, and did so throughout the case. Consequently, both prosecution and defence focused on the issue of this witness's agency - either attempting to call it into question or to establish it. Prosecuting counsel aimed to elicit information including the witness's poverty (suggesting she had no choice but to come to the UK, forced in the process to leave her children with her mother) and her lack of control over the process of transportation (such as establishing that she was driven to the bus station in Slovakia, did not have her own phone and was in possession of only 10 euros in cash).

The question of agency was especially stressed in discussion of the related trafficking activities alleged to have occurred in other countries in which the victims of this case had acted as perpetrators. The alleged victim I observed testifying admitted to involvement in contributing to the organisation of these other instances of sham marriages. Again, prosecuting counsel attempted to demonstrate her lack of

personal control over proceedings by asking questions such as: 'who suggested you travel to Germany?' and 'who bought the tickets?'.

The closing speeches continued these arguments. The prosecution counsel portrayed the victims as 'vulnerable' (a term repeated several times), 'easy to exploit' and consequently ideal targets for this criminal operation. She stressed that at root the case came down to the evidence of these 'four, young, female witnesses' - the image continuously underpinning her argument. The defence, by contrast, challenged the image of the women as vulnerable victims. One noted that they had themselves been prosecuted in Slovakia for offences related to people smuggling. Another argued that the women's evidence did not amount to much and, while freely admitting the exploitative behaviour to which the women had been subject, called into question their credibility (which relates to the discussion of trafficked victims in court, above). The second defence counsel also stressed the agency enjoyed by the women, emphasising points at which they had (she suggested) made active choices that led to them becoming involved in the operation. As part of this argument she referred to the involvement of at least two of the women in an alleged Berlin-based sham marriage operation - one had acted as a translator while another, it was alleged, profited from the operation. The case was further muddied by the fact that the defendants came from the same area and had a very similar socioeconomic and ethnic background to the alleged victims.

To some extent, we would expect to see lawyers and courtroom staff having to adapt in these ways in other cases, where other concepts and categories apply. Trafficking is not unique in its employment of concepts and categories that are loosely or ambiguously defined or constructed. The particular way in which certain concepts and categories are constructed, however, is important - because it causes

implementing actors to respond in particular ways. Had 'trafficked victim' been defined differently in the policy apparatus, for example, the question of agency may have been less important - or more so. That would have enabled, encouraged or made more difficult particular practices employed by lawyers or judges.

7.5 Conclusions

Concepts and categories shaped to some extent by the state - and then propagated with the imprimatur of the state - have an important influence on the policy apparatus. Their most direct influence is on the practices of those officials responsible for applying them. This chapter has explored the way in which the practices of law enforcement officials, lawyers and judges have been affected by the need to apply concepts and categories from the anti-trafficking policy apparatus, particularly 'trafficked victim', 'exploitation' and 'consent'.

In orientating themselves to those concepts and categories, police officers, lawyers and judges improvise new practices, adapt existing ones, create new guidance and procedures, and collaborate and cooperate with other organisations in novel ways.

As they do so, they change the shape of the policy apparatus. The actors involved in the construction of 'human trafficking' change, as does the manner in which they interact with one another. Some actors - such as NGOs - gain influence that they might not otherwise have had. Others - like the police involved in the investigation that I discussed - codify and formalise their own practices in ways that may end up influencing the ways other implementing officials act. These changes in the process of constructing trafficking, over time, may result in changes to how trafficking is, in aggregate, constructed.

What this exploration of the implementing practices of frontline officials has also shown is the way in which inconsistencies, ambiguities or conflicts within and between concepts and categories defined in or constructed by a state instrument of some kind are brought out and highlighted particularly when they are operationalised. When decisions need to be taken that require ambiguous concepts like 'exploitation' to be resolved, for example, those ambiguities are revealed with particular clarity.

8 The regional anti-trafficking networks

8.1 Introduction

Police officers, lawyers and judges are obliged to apply the concepts and categories handed to them by the state. What about actors also engaged in applying those concepts and categories but without any obligation to do so? There are some such actors in the UK: regional anti-trafficking networks.

The networks have no direct relationship to the state. They are not mentioned in any of the instruments described in this thesis; no law or policy governs their activities. I describe the nature and function of the networks in more detail below but, in brief, they are ad hoc, informal groupings of interested organisations (usually including NGOs, law enforcement, local authorities, and others) that meet to coordinate local anti-trafficking activity. Each network began with an interested individual or organisation, gradually involving other actors on a largely voluntary basis. The networks have some features in common, but also differ in important ways.

The networks raise some interesting questions. Do they receive and respond to the concepts and categories related to 'human trafficking' in a way similar to the

police and the courts? Or does their indirect relationship to the state mean their handling of them differs? If so, how does it differ?

In this chapter, I describe the origins, structure and operation of the networks. I illustrate some similarities and differences between them and the actors surveyed in Chapter 7 with regards to their use of key concepts and categories - particularly 'trafficked victim' and 'exploitation'.

I argue that a key role of the networks has been to facilitate novel forms of communication and coordination - forms that are necessary in order for complex and broad concepts like 'trafficked victim' and 'exploitation' to be implemented by practitioners and frontline officials. I further show how the networks adapt and disaggregate those concepts, utilising them in a way that makes sense to the local, context-specific concerns on which they focus. This may mean that a network is addressing behaviours that do not map neatly onto the concepts and categories shaped and disseminated by the state. Yet the networks do draw on such concepts and categories - like 'modern slavery' - in order to legitimise and make sense of their work. They are not overly concerned with precise definitions, however - what matters to them is how they can use a concept or category to instrumentally further their own objectives.

8.2 Where do the networks come from and what do they look like?

8.2.1 Origins and structures

In 2012, in a small town near the centre of England, two friends answered an advert in the local newspaper asking for information about any victims of trafficking in Yarl's Wood (an immigration removal centre). Together with the person who posted the advert, they decided to form a local group to work on trafficking. They got in touch with people in various local agencies - police, healthcare, fire services - to find out what was known about trafficking. Of the 35 people they spoke to, only one was aware of it - that was the police officer responsible for anti-trafficking activity across the county.[1] The organisation that the two friends founded instigated police training, produced information booklets, and organised a study day and a conference. The network now holds monthly meetings involving local healthcare and social work officials, charities, immigration officers and others.

The network is listed as one of the networks coordinated under the umbrella of the NGO Human Trafficking Foundation, which organises what it terms the National Network Coordinators' Forum. The Forum 'aims to act as a conduit between regional partnerships and key policy-makers, by informing the Home Office's Modern Slavery Unit and the Independent Anti-Slavery Commissioner of trends in exploitation and other areas of concern identified by frontline practitioners'.[2] The networks them-

1 Interview with NGO Employee (No. 59) (Phone, 11th June 2015).

2 'National Network Coordinators' Forum' ⟨http://www.humantraffickingfoundation.org/national-network-coordinators-forum⟩ accessed 26th April 2016.

selves use different titles to describe themselves; some use the term 'network', while others prefer 'partnership', 'community' or 'forum'. I refer to them as 'networks' because that seems to capture an important aspect of how they function.

Beginning approximately in 2009 a number of regional networks like the one I have described began to emerge with the goal of contributing to tackling trafficking at the local level. They vary in scale (from one specific to Croydon to some that cover whole regions), manner of organisation, membership, relationship to the state and activities. What they have in common is that they are an ad hoc, multi-agency and locally specific response to the problem of human trafficking as they perceive it to manifest itself in their region. In this section I introduce the networks and provide a brief overview of their origins and funding, exploring the nature of their relationship to the state and emphasising the autonomy that they possess.

I consider seven networks - for each I interviewed one (or in one case two) key individuals involved in the network (either as a coordinator or a senior member), asking them about their origins and operations.[3] Four of the networks were started and are now run by NGOs (or individuals working as part of an NGO). In one case the 'network' is essentially a single NGO that works as required with other organisations. In another it is a well established group of NGOs, local authorities, police, and some central government officials who meet quarterly. In the case described above the network was a single NGO when I spoke to them, but, as mentioned, it has now grown. A fifth network I spoke with was started by a local authority with funding from the EU (applied for independently). They were able to design organisational communication and cooperation protocols and disseminate them through training

[3] As of 3 August 2017, there are now 16 networks listed by the Human Trafficking Foundation - the number has doubled in only two years.

targeted at relevant local agencies. They also worked with at least one NGO. I am not aware that they had a fixed forum.

The last two networks I spoke with were based in Strategic Migration Partnerships (SMPs). These partnerships each cover one of the English regions (of which there are nine covering the whole country, such as the South-East, London or the North-West). Although they are effectively law enforcement bodies funded by central government, their work on trafficking was broadly self-motivated, derived from and justified by way of their mandate but responding autonomously to perceived local developments. The SMPs were originally set up to deal with general immigration issues, including a particular focus on the dispersion of asylum seekers around the country.[4] Towards the late 2000s asylum issues became somewhat less of a priority[5] and more became known about the vulnerability and exploitation of migrants,[6] in one case leading to the insertion of a point on tackling exploitation (within which sit trafficking and modern slavery) in the Partnership's business plan.[7] For the other SMP, where a specific anti-trafficking group has now been established, motivation came in the form both of increasing general awareness and also of a particular police operation. That operation involved the local Eastern European population and required cooperation between different Local Authorities as well as with the Red Cross and the Department for Work and Pensions, among others. Six months after the operation, the issue was discussed at board level and the group set up.[8]

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4 Interview with Local Authority Employee (No. 57) (Phone, 5th June 2015).

5 Interview with Local Authority Employee (No. 63) (Phone, 28th July 2015).

6 Interview with Local Authority Employee (No. 57) (n 4).

7 ibid.

8 Interview with Local Authority Employee (No. 63) (n 5).

8.2. WHERE DO THE NETWORKS COME FROM AND WHAT DO THEY LOOK LIKE?

On the basis that the SMPs' anti-trafficking role has not been formulated in any of the state instruments discussed in the previous chapters, and that they have not received state funding allocated directly to their trafficking work, I am including them in this chapter's analysis. For the SMPs trafficking was just one aspect of a wider programme of work whereas for the other networks it was, broadly speaking, the sole focus.

Since I conducted these interviews several more networks have been established, and one of my participants suggested (when I spoke to him, in June 2015) that networks and partnerships were beginning to emerge across the country, often beginning with an NGO that becomes interested in trafficking and holds a conference recognising a local need for education and partnership working and putting in place arrangements to attempt to pursue those.[9] Typically, the networks focus on identifying and supporting victims, although some involve law enforcement as part of their knowledge sharing and are thus connected to enforcement activities. In general the networks have not received any state support (at least they had not when I spoke to them). One participant emphasised, as did others I spoke to, that there is in England no state funding or (official) support for the networks. Another network noted that not only had they not received any state funding but their local Police and Crime Commissioner was not interested in committing resources.[10] (Although this is not the case in Wales, which has a state-run network.[11] Since the Welsh example seems to be an exception to the institutional structure shared by the other networks, however, I have not examined it here.)

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9 Interview with NGO Employee (No. 60) (Phone, 16th June 2015).

10 Interview with NGO Employee (No. 59) (n 1).

11 Interview with NGO Employee (No. 60) (n 9).

Of course this lack of any state funding was not strictly the case for the SMPs. Even in that case, however, there has been no (or very little) additional dedicated funding available for their anti-trafficking work. A participant from one of the SMPs told me that they had had a funding request (for £7,500) turned down by the Home Office; in that network, coordination was undertaken by someone for whom it represented just one quarter of their three-day a week role.[12] As mentioned, funding in the Local Authority came from a non-state source.

The main point is that the networks have been self-starting. They have been prompted by the concern of individuals, perhaps as a result of a particular police operation or news story, or perhaps arising out of an increasing awareness of trafficking in general. But while the networks may be institutionally independent - in the sense that no-one ordered their establishment - they have not created their own concepts and categories to make sense of what they are doing. In fact, they would not exist were it not for the ready availability of concepts like 'human trafficking' and 'exploitation' that the state has had a hand in shaping and propagating.

Although the networks have been able to draw on these concepts and categories, they have not been able to draw on more material support. Even had they wanted to become more directly incorporated within the apparatus - by obtaining state funding or establishing formal institutional relationships with existing members of the apparatus - they would have found it difficult to do so. One of my participants argued that the 2014 Modern Slavery Strategy talked a lot about partnership working without specifying what it should look like, while the Home Office has tended to take the view that they should not dictate what bodies outside government (such

[12] Interview with Local Authority Employee (No. 63) (n 5).

as the networks) do on modern slavery. Coupled with a general tightening of belts, there have been neither resources nor guidance for self-starting networks to take advantage of.[13]

The networks do, then, have a relationship to the state - but only conceptually, insofar as they draw on the concepts and categories that the state has shaped and propagated. Institutionally, and financially, the networks are independent (though of course many of their members, such as law enforcement officials, are not).

8.2.2 Ad hoc organisational arrangements

As the above discussion suggests, the networks have mostly come about as a result of someone thinking that various organisations who ought to know about and be addressing trafficking in a given area, are not doing so. That so many organisations could be thought to have a role in tackling trafficking must in part be due to the broad way in which 'human trafficking' has been constructed. Trafficking may be encountered in a number of different forms (because the concepts of 'exploitation' and 'victim' are defined so broadly); consequently it may present to any of a large number of different agencies and organisations, depending on their remit (e.g. indicators of human trafficking might be spotted by a housing inspector, a fire official, or a landlord, for example). The networks are a response to that breadth. Yet while they share that general goal, their varied funding sources and membership has led to the adoption of different organisational structures in each case.

One network, in West Yorkshire, is unusual in having a fully-funded and full-time network coordinator position - it is the only example of such an arrangement that

[13] Interview with NGO Employee (No. 60) (n 9).

I was able to find.[14] In general, the network coordinators either work voluntarily or are employed in another role and spend some small part of their time on trafficking. Due to the lack of dedicated resources, the coordinators often do not have access to tailor-made institutional arrangements, so they try to make informal connections either with existing organisations that have trafficking as part of their formal remit, or with individuals in other organisations who have a personal interest in the issue.

One of the SMPs I spoke to, for example, noted that they built up connections for their trafficking work through their existing Local Authority contacts for immigration matters - since they tended also to have oversight of trafficking.[15] This is an example of a network making a relatively direct connection with the apparatus - most connections have been more informal than this.

At the other SMP, my participant noted that they were not able to get much senior level interest in their trafficking work within the Partnership, nor did they seek particularly to obtain any. This was implicitly because of the low priority given to such work, as reflected in the funding situation. Instead, my participant worked with contacts at a middle-management level and talked about trying to foster a bottom-up approach.[16] Working with existing employees in Local Authorities meant, for her, targeting individuals responsible for public health, public safety or children's services, depending on the Local Authority in question. That same participant made a virtue of necessity insofar as she was able, through the other roles she had, to try to increase awareness of trafficking in superficially unrelated fora, instead of establishing any dedicated trafficking set up (which would have been prohibitively

[14] Interview with NGO Employee (No. 47) (Phone, 22nd April 2015).

[15] Interview with Local Authority Employee (No. 57) (n 4).

[16] Interview with Local Authority Employee (No. 63) (n 5).

expensive).[17] She also tried to spread awareness of trafficking in an informal manner, such as by talking to the environmental services inspector who happened to have a desk near to her own[18] - such inspectors can help to spot cases of trafficking in their day to day jobs (to such an extent that in a different Local Authority specific training was targeted at them).[19]

These kinds of connections are often not with individuals or organisations who are already part of the policy apparatus; instead, they are created in an effort to persuade others to become engaged in anti-trafficking work - actors who may have no formal remit to address trafficking but who, because of the way in which 'human trafficking' has been constructed, may encounter some forms of it. The networks established through these connections differ from the networks established by the Action Plan or the NRM in that they have no formal hierarchy or dedicated funding, and those who are involved with them take part on a voluntary basis.

Given this voluntary participation, as one participant stressed, it has been important for the networks to make the case to potential members that it would benefit them to be a part of it.[20] This is perhaps especially the case with larger or national level organisations who will have to be persuaded of the virtue of participating at a local or regional level. The West Yorkshire network meeting minutes show meeting attendance fluctuating. An early meeting in late 2014 saw NGOs, Government Departments, Local Authorities and law enforcement all present.[21] Two meetings

17 Interview with Local Authority Employee (No. 63) (n 5).

18 ibid.

19 Interview with Local Authority Employee (No. 45) (London, 16th April 2015).

20 Interview with NGO Employee (No. 60) (n 9).

21 'West Yorkshire Anti Trafficking Network Initial Meeting Minutes' (Leeds, 25th November 2014).

later, in January 2015, all the national level representatives had disappeared except for the Department for Work and Pensions, their presence perhaps explained by the prevalence of trafficking for labour exploitation in the area.[22] The networks have functioned on the basis of shared interest and necessity - only those with a role to play and an interest in the issue as locally manifested would be closely involved. (Although it may be noted that nearly all the national level representatives returned to the West Yorkshire network for a March meeting that was attended by the newly appointed Anti-Slavery Commissioner - attendance may therefore depend somewhat on the network's profile and attention from more senior figures.)[23]

This is another distinctive feature of the regional networks: they have little definite control over their membership, and their structures reflect the needs of expediency. In contrast, the networks established by the Action Plan or the NRM determined formally which actors would be part of those networks and established a particular distribution of responsibilities with corresponding procedures for collaboration.

One way of characterising what the various organisational structures of the networks have in common is to see their mode of operation as primarily (if not exclusively) 'horizontal' rather than 'vertical'. Here, 'vertical' would refer to some conventional pyramidal structure whereby more senior actors pass commands to more junior actors, who report back on their progress. The networks have generally not been able to connect to established hierarchical structures (such as those discussed in previous chapters). They may not always have wanted to. Instead, they have relied on the interest and willingness of individual actors, whom they have approached

22 'West Yorkshire Anti Trafficking Network Meeting Minutes' (Wakefield, 13th January 2015).

23 'West Yorkshire Anti Trafficking Network Meeting Minutes' (Wakefield, 11th March 2015).

on an ad hoc and horizontal basis - horizontal in the sense that the contacts are often between mid-level officials within or between organisations.

A consequence of the lack of a 'vertical' structure has naturally been that there is much less coordination and control of key concepts and categories. The networks have not been directly governed by policy statements or guidance documents (even if some of their members have been) in which key terms are defined or constructed. So we might assume that the networks have interpreted and applied concepts and categories from the apparatus quite loosely and in ways that advantage them. The following section discusses how they have done that.

8.3 Activities and attitudes

The networks are clearly not implementing bodies in the same sense as the police or the courts, even though representatives of law enforcement and the court system may be involved in some networks some of the time. The networks - *as* networks, rather than as the aggregate of their individual members - have no official basis as an organisational form (in the sense of a legal mandate or state funding).

So what is it that they do? And how do they draw on and work with key concepts and categories from the apparatus in their activities? They do not investigate or prosecute trafficking; nor do they directly support victims. Instead, they focus on coordination and information sharing in order to improve existing mechanisms of investigation and victim support. They also tend to respond to locally specific manifestations of trafficking within their area. These are the two main characteristics of their operation; each has implications for the way in which the networks relate to the concepts and categories shaped by the state. The following sections discuss each

in turn.

8.3.1 Coordination and information sharing

The main goal shared by each of the networks seems to be to coordinate interested parties and in particular to facilitate the sharing of information between them so as to build a more effective overall response to trafficking. This role makes sense given the lack of external funding and other resources available for local initiatives. What can be done is to gather together interested actors, share relevant information and coordinate existing activities so as to better tackle trafficking as it manifests in the local area.

Some participants touched on information exchange in terms of local operational advantages that could be gained, one example being the perceived importance of sharing information between law enforcement and the third sector. One participant noted that the police always say that they need more information - and others can help to provide it.[24] Conversely, local government and NGOs are interested in information the police might have that can help them to operate more effectively. For example, knowledge of an upcoming police operation, or of a recognised pattern of criminality within the area, can help NGOs and local government to tailor their activities accordingly.[25] In this vein, another network has coordinated the sharing of process maps between each member organisation, so that all can see what processes every other member has in place to tackle trafficking and support victims and how they fit with what they are doing.[26] These kinds of improvised collaboration echo

[24] Interview with Local Authority Employee (No. 63) (n 5).

[25] ibid.

[26] Interview with NGO Employee (No. 47) (n 14).

those discussed between police and NGOs in the previous chapter.

Nor is this coordination limited to within-network or locally specific information sharing. It can also involve sharing information between a network and local communities, or between different networks. Referring to the former, one participant noted the importance of educating particular ethnic or national communities on what labour standards they should expect in their place of employment but also, conversely, of educating local agencies on what a particular culture's existing expectations may be, thereby better enabling them to anticipate potential instances of labour exploitation.[27] In other words, the networks recognise that the term 'exploitation' means different things to different people. They adapt to that by gathering and sharing differing interpretations so as to minimise confusion and miscommunication.

A form of collaboration specific to the networks has involved building links between networks across, for example, Local Authority boundaries. One participant suggested that an Authority may on occasion be unaware of the footprint of a particular trafficking operation elsewhere in the country - particularly if in one area it has come to the notice of the police but in another there is only non-criminal information associated with it, in the hands of other agencies. An example might be a taxi driver suspected of trafficking by the police in one location who has, in another, recently applied to become a foster parent or to change the use of a property (which could indicate that he is intending to be or is actually involved in child trafficking or trafficking for sexual exploitation). Due to a lack of forums where police and Local Authorities can come together to share information this case may fall between the gaps - hence the utility of a network (such as in this case a SMP) that

[27] Interview with NGO Employee (No. 59) (n 1).

can link multiple areas.[28] A member of another network echoed this point, noting that links between networks enabled better coordination even within law enforcement in cases where otherwise operations would have remained known only to local constabularies.[29]

This kind of collaboration and coordination relates to the broad categories that make up the construct 'human trafficking' - such as 'trafficked victim' and 'exploitation'. The kinds of information needed to identify instances of those categories in practice may be varied and complex, as the taxi driver example illustrates.

Two training exercises described to me by one participant (based in an SMP) exemplify the need for, and manner of, information sharing that was sought after (if in some cases implicitly) by many of the networks I spoke to.[30] The exercises took place during the drafting process of the Modern Slavery Act, in anticipation of its potential impact. They involved two hypothetical case studies, presented to a mixed group of professionals (including police, health, Local Authorities, the fire service, and others) for discussion. The first case study posited a trafficker active in a care home for some time without being detected by any of the services that would regularly visit (police, doctors, environmental health inspectors), while the second used the example of a traffic accident - another situation in which multiple services are involved, each with a specific remit that may miss any indications of trafficking.

Rather than changing an organisation's remit to include trafficking detection - difficult when so many organisations may encounter so many different kinds of trafficking - the emphasis is on establishing just enough awareness to get the right

28 Interview with Police Officer (No. 56) (Phone, 1st June 2015).

29 Interview with NGO Employee (No. 47) (n 14).

30 Interview with Local Authority Employee (No. 57) (n 4).

people interested. Again, this is a response to the breadth of 'human trafficking' and some of its constituent categories, which require a diverse range of information sources to be collated if they are to be identified in practice.

A second participant from the same SMP, a police officer, emphasised this.[31] He noted that 'modern slavery' is a slippery concept, meaning that it is difficult for a frontline officer to recognise. A police officer taking an emergency call has to recognise signs of modern slavery 'between the lines' of the complaint being made, and also has to know who subsequently to contact with her suspicions. The answer to this problem, he argued, was getting frontline officers and others to 'think laterally' so that if they come across, for example, a Norwegian vagrant stealing food or a Vietnamese boy tending cannabis they are aware of the additional dimensions that the case might have. The officer I spoke to also linked this idea to resource constraints, noting that obtaining evidence of trafficking offences can be very resource intensive. Advocating for better recognition of and responses to trafficking does not have to entail the deprioritisation of other crimes, however, if the 'professionally curious' approach is adopted. There is perhaps less need for dedicated, expensive resources to be introduced.[32] So the idea of encouraging 'professional curiosity' is to extend networks in order to detect the wide range of kinds of 'exploitation' that trafficking can encompass, and to do so in a low-cost manner.

'Professional curiosity' would not be necessary were the officials in question formally tasked with interpreting and applying concepts and categories propagated by the state and were able to do so. The networks include some actors for whom trafficking is not part of their remit; curiosity for them is stepping outside of that

31 Interview with Police Officer (No. 56) (n 28).

32 ibid.

remit. The networks also include actors, like the police, for whom trafficking is a part of their remit (in the sense of being a criminal offence) - but the concepts and categories they have to apply (as the previous chapter demonstrated) are complex and challenging so tend to be left to specialist units. Curiosity for non-specialist police officers is asking questions so as to make links to individuals or organisations with the requisite expertise. In other words, 'professional curiosity' is a term for the kind of improvised, adaptive organisational links that the networks can create or facilitate, enabling the collaboration necessary to accommodate broad or ambiguous concepts and categories like 'modern slavery'.

There can be issues with this coordination in practice. Some information is difficult to share because of confidentiality issues - information pertaining to victims of trafficking where no crime has been established would fall into this category.[33] In other cases there may be a tension between what government agencies require and what NGOs want. One participant contrasted established NGOs such as the Red Cross, who she said were aware of what they could and should do and how it might link with the work of government agencies, with newer organisations who may be enthusiastic but lack experience. In one case she noted some concern (not universally shared) that police work risked being 'scuppered by well meaning amateurs'.[34] Issues like these are probably inevitable given the proliferation of institutional structures and patterns of activity introduced by the networks. While those new patterns of activity no doubt bring many positive consequences, they are also likely to produce obstacles as they encounter established structures and remits that may struggle to accommodate them. This parallels the obstacles mentioned in the previous chapter,

[33] Interview with Local Authority Employee (No. 45) (n 19).

[34] Interview with Local Authority Employee (No. 63) (n 5).

Section 7.2.

In some cases, improvised coordinating mechanisms have been successful enough (and perhaps have had enough government involvement or support) to have achieved some degree of formalisation. One Local Authority noted that there had been no guidance or set of standards to bring together a multi-agency response to trafficking (such as they were attempting) at the local level, so they had developed a toolkit to provide one, taking into account all relevant actors with existing responsibilities and discussing how they might work together.[35] Again, this has an obvious parallel in the last chapter's discussion (Section 7.2).

Although the networks have a different orientation towards the state, when compared to law enforcement officials and the courts, they still display a similar pattern of practices.

The networks facilitate forms of organisational cooperation and information sharing that allow the aggregation of a wide range of kinds of information. Often such information may be known only to certain actors, who are unable to recognise it as indicative of trafficking and do not communicate with one another. The networks get around that problem: first, by creating spaces to meet and exchange information and, second, by (in some cases at least) inculcating an ethic of 'professional curiosity'. This kind of information sharing is predicated upon 'horizontal' rather than 'vertical' structures.

[35] Interview with Local Authority Employee (No. 45) (n 19).

8.3.2 Alive to the complexities of reality

The networks tend to concentrate on locally specific manifestations of trafficking (the extent of their 'local' area will naturally vary according to the various network structures laid out above). They attempt to respond to particular patterns of trafficking that they perceive to be more prevalent in their area. In many cases, they were established precisely because of a perception that there was a problem with trafficking in their area manifesting in a particular manner. In the West Yorkshire and West Midlands areas it was felt by one participant that trafficking for forced labour was far more prominent than trafficking for sexual exploitation.[36] By contrast, a network based in a London Local Authority made an explicit choice to focus largely on trafficking for sexual exploitation on the basis that London had the largest off-street sex market in the country.[37]

A sensitivity to local manifestations of trafficking meant that many of my participants were keenly aware of the practical nuances of tackling that particular kind of trafficking. One raised the issue of the number of Roma in Kent, often asylum seekers living in poor conditions who are unable to access legally regulated workplaces - so they find themselves bussed out to fields for unregulated work where they may or may not get paid.[38] Appreciating their particular situation enabled a better understanding of what enforcement techniques or victim support measures would or would not be effective. Another participant stressed the nuanced understanding of

[36] Interview with NGO Employee (No. 60) (n 9).

[37] Interview with Local Authority Employee (No. 45) (n 19).

[38] Interview with Local Authority Employee (No. 57) (n 4).

local victim needs she had gained through the activities of their network.[39]

Relatedly, a recurrent theme in the interviews I carried out with network organisers and members was the way in which the circumstances of trafficking cases they encountered in their work did not neatly align with the concepts and categories propagated by the state. No doubt this was partly because of their detailed local knowledge of particular aspects of trafficking. One participant noted that, in their work looking at female victims of trafficking for sexual exploitation, they had found 500 sex workers, of whom approximately 10% conformed to the legal definition of a trafficked victim, another 10% were apparently working independently, and the remaining 80% fell somewhere on a spectrum of exploitation without meeting the threshold to be considered as trafficked.[40]

Labour exploitation was often felt to be particularly problematic. A law enforcement participant noted that the exploitation in such cases may often not be immediately obvious. In some cases the promises made to the victim (e.g. of food or shelter) may be fulfilled for the first 24 hours before that victim is then removed, perhaps to another country, and put to work without food or pay - this is a 'really common' phenomenon. Less dramatically, he also mentioned the example of Eastern European men working in a car wash - it may be that they are unaware their pay will not materialise until some time has passed.[41] In both cases the victim is unlikely to be in a position to report what has happened to them until it is too late to do so.

A participant from a different network echoed these concerns, describing patterns of exploitation that, far from being black and white, evolved gradually over time.

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39 Interview with Local Authority Employee (No. 45) (n 19).

40 ibid.

41 Interview with Police Officer (No. 56) (n 28).

She referred to cases of debt bondage where the individual in question does not know they are being exploited, because initially they expect the majority of their salary to go to paying for their flights and rent. In their second month they may be told that their rent has gone up and that they owe money for new items (such as cigarettes), but the deductions still seem legitimate. Victims may therefore put up with them for a long time before they eventually begin to ask questions - at which point they may be beaten, and it becomes clear that they are being exploited. It can still be difficult to persuade these victims to leave their place of exploitation if, despite the harsh treatment, they believe themselves to be better off than they would be back home. They may also want assurances that if they leave (with the police), then their exploiter will be arrested - otherwise they or their family may suffer subsequently.[42]

The recognition that encountered situations rarely match up perfectly with concepts and categories shaped and polished and set out in policy or legislation is hardly unique to the networks, or indeed to trafficking. In combination with the focus on locally salient aspects of trafficking, however, it does tell us something about the networks' response to broad and sometimes vaguely defined concepts and categories.

The networks are not 'anti-trafficking' organisations in the same sense that the national UK Human Trafficking Centre is. They do not deal with every permutation of victim and exploitation types that can potentially characterise trafficking under the legal definition. Instead, they deal with what they actually find in front of them, which in practice is usually some subcategory of the legal concept of trafficking. In other words, the networks do not straightforwardly operationalise (or even seek

[42] Interview with NGO Employee (No. 47) (n 14).

to operationalise) the concepts found in law and policy. Clearly those concepts are relevant to them, but they work to their own inflection of those concepts based on what they experience within their areas.

Some of my participants alluded to this explicitly. One put it with particular clarity when she suggested that overall they did both more and less than 'human trafficking' as understood by the Government. By that she meant that in her area they had collected information on a wide variety of labour exploitation cases, many of which would not qualify as trafficking, but they had not looked at all at domestic servitude - an important category of trafficking but not thought to be an issue in the region.[43] She talked about her network focusing not just on trafficking but on a broader 'exploitation agenda'.[44] And in the training that their SMP helped to provide, through a partner NGO, although they did refer to the Palermo definition (discussed in Chapter 3) they also talked about wider instances of exploitation such as informal labourers in carwashes, charity bag collection services and nailbars.[45] So while the networks choose to draw on concepts (such as 'trafficking', 'victim', or 'exploitation') from the policy apparatus, their attention to local issues and to the facts as they find them tends to mean that they draw on those concepts in a fairly loose manner.

No doubt this is in part a general feature of any policy apparatus. Concepts and categories that are produced or shaped and propagated at the national level must of

43 Interview with Local Authority Employee (No. 63) (n 5).

44 ibid.

45 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (signed 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319; Interview with Local Authority Employee (No. 63) (n 5).

necessity be quite general, as 'human trafficking' and 'exploitation' are. In order to be applied to real situations, they must be reduced, made more specific. In the process, the distinctiveness of a category like 'trafficking' - the sort of distinctiveness captured in a legal definition or a policy paper - becomes somewhat blurred and fragmented. Instead of tackling 'human trafficking', a network is more likely to be addressing the problem of Polish agricultural workers underpaid by local gangmasters, for example. The networks provide a particularly apt example of this process because of their local specificity.

From the perspective of the networks, the question is: why draw on the concepts and categories of the policy apparatus at all? One answer might be that they would not exist if someone had not already been aware of the category 'human trafficking' and wanted to do something about it. In that sense, the policy apparatus came first. Another answer might be that the networks seek a measure of legitimacy (and, if they can get it, institutional support and funding); engaging with the apparatus promises that. It might also be that the conceptual toolkit that the apparatus provides simply offers a way for the networks to make sense of what they are doing - to fit it into a bigger picture.

Certainly the networks do not seem to feel obliged to reproduce concepts and categories from the apparatus faithfully; they are happy to use them flexibly, to suit their goals. This is different to police officers or lawyers, who are closely bound by the law and must work to the concepts defined there. Consequently, as Chapter 7 showed, the police make an effort to wrestle reality into line with the conceptual framework they have to apply. That means taking a situation in which Polish agricultural workers are underpaid, or in which Vietnamese teenagers are found cultivating cannabis, and identifying the features of those situations that make them human

trafficking, rather than a different crime. They must do this, as the case study in the previous chapter showed, while not forgetting the specific circumstances of the individual case. The networks (as networks, distinct from their members) can do this - as the discussion of 'professional curiosity' demonstrated - but they are under no obligation to do so. In general, they can more freely focus on the specific circumstances of individual cases without concerning themselves quite as much with the features of those cases that qualify them as instances of human trafficking (or some other larger issue). Yet they nevertheless seek to maintain their link to that conceptual umbrella.

8.3.3 The networks and the Modern Slavery Act

There is something of a paradox here: the networks clearly draw some legitimacy from concepts such as 'trafficking', 'victim' and 'exploitation' - they are anti-trafficking networks, after all - but at the same time they adapt and modify those concepts to their specific concerns, not feeling bound by their parameters. In order to explore further how this relationship operates in practice, I asked my participants about their perceptions of the Modern Slavery Act and particularly the term 'modern slavery'. We discussed how the law and the term were relevant, or not, for their work. The networks are not in any way directly governed by the Act, which makes no mention of them and places no obligations on them (although some members of the networks, such as police officers, are of course responsible for applying some of the Act's provisions).

In general, those I spoke with talked about the law as if it were a symbol - something to raise the profile of the issue of trafficking and so a tool to advance their work - but they had little to say about its contents. In part this is likely because

the Act is predominantly to do with criminal justice while the networks are mostly concerned with victim support, but that is a simplified dichotomy. The Act did have aspects that touched on victims and other matters not related to enforcement, while the networks have been active to some extent in the enforcement sphere.

A common comment was that the Act was positive, a sign that the Government had recognised the significance of human trafficking in the UK, and that it would help the networks convince people to become involved. This was seen to be particularly important given the lack of central funding or guidance for the networks. It would seem to support the idea that the networks sought some legitimacy from their engagement with the apparatus. One participant who discussed this in detail noted a dawning realisation amongst many agencies (sparked, he implied, by the Act) that 'if nothing else...there's a moral obligation' to tackle modern slavery.[46] Given that the networks often lacked any significant instrumental authority, additional moral legitimacy was clearly valuable.

Other participants echoed this sentiment. One SMP carried out training to ensure they were able to respond to the Act on its completion; this is unlikely to have been in anticipation of any concrete obligations upon them as the Act was always unlikely to impose any. I think it is more likely that they wanted to be ready to respond to the perceived increase in the moral obligation to act on the issue.[47] One law enforcement participant saw the Act as an 'eye-opener', noting that even if middle or senior managers do not see trafficking as an issue, the Government clearly does. Again, here the law is seen as an enabler not because of any instrumental duties it imposes but because of its symbolic weight as an indication of the Government's

[46] Interview with NGO Employee (No. 60) (n 9).

[47] Interview with Local Authority Employee (No. 57) (n 4).

priorities. Another participant, from a Local Authority, talked about the Act raising the visibility of the issue, hence making it easier to deal with. She noted that trafficking is now 'more in the public domain than it ever has been before'.[48]

The same participant also noted that, just like any other legislation or policy document (she referred to both), the Act was something to be used as needed, as 'leverage' with people otherwise unaware of the issue. Consequently it was of less help with those already aware and engaged.[49] Perhaps related to this attitude, many of my participants were quite vague on the law itself, few talking about its intricacies or debating its instrumental impact. In general they were not overly concerned with it - they saw it only in this symbolic light and as representing some potential leverage that they could use to advance their work. One NGO participant, for example, felt that the Act would make no difference at all to how their partnership worked.[50] Another, in one of the SMPs, talked in vague terms about the Act giving a push to statutory agencies to ensure they were doing their job, but quickly moved on to stress that the Act itself was far less important than the Anti-Slavery Commissioner and his priorities.[51] Others echoed the importance of the Commissioner,[52] without overtly linking him to the Act (even though his position was created by the legislation). His ability to bring people to the table to act on trafficking was clearly seen in the discussion of the West Yorkshire group's minutes, above. The Commissioner is both an extension of the Act's symbolism - a figurehead for anti-trafficking activities -

48 Interview with Local Authority Employee (No. 45) (n 19).

49 ibid.

50 Interview with NGO Employee (No. 59) (n 1).

51 Interview with Local Authority Employee (No. 63) (n 5).

52 Interview with NGO Employee (No. 59) (n 1).

and also an institution with instrumental powers; one participant noted that he was preparing guidance for the partnerships.[53]

Another participant talked about a further kind of significance he felt the Act possessed. He suggested that while his SMP had always been aware of exploitation, sometimes amounting to 'effective slavery', it hadn't been 'properly articulated' until recently (he was unclear as to what this meant, but talked about a general awareness of migrant vulnerability resolving itself into a more specific understanding of particular control factors to which migrants might be subject). When asked, he agreed that the Bill process was one factor that had helped to articulate those concerns (although not the only one).[54] None of the other participants from the networks talked about law in this way, but nearly all spoke in terms of 'modern slavery' either instead of or in addition to 'human trafficking'. Consequently, I think it is obvious that some of the conceptual language in currency among them owes its force to the Act, even if it is unclear what the material implications of that terminological shift may be.

I asked many of these participants more specifically what they thought of the shift to 'modern slavery' (where previously the term 'human trafficking' had been more common). The responses I received tended to be inconsistent, confusing and related to local concerns. One told me that 'modern slavery' included trafficking, forced labour and other forms of exploitation.[55] Another ignored the question and noted instead that there is a lack of clarity in distinguishing between trafficking, human smuggling, illegal immigration and asylum seekers, but also said that traf-

53 Interview with NGO Employee (No. 59) (n 1).

54 Interview with Local Authority Employee (No. 57) (n 4).

55 Interview with NGO Employee (No. 60) (n 9).

ficking is a 'very specific offence'.[56] Another saw 'modern slavery' as basically similar to trafficking, but thought that it might confuse matters - she was unclear on how.[57] Two participants in a SMP noted, perhaps unsurprisingly, a tension between 'modern slavery' and migration. One argued that the term 'modern slavery' was beneficial because it reinforced the idea that people held in slavery or servitude might not be typical victims of trafficking (the example he gave of the latter was of individuals brought illegally into the country in the back of a lorry and forced into prostitution).[58] Both he and his colleague noted that 'modern slavery' seemed to indicate a conceptual moving away from migration, which represented a risk given an 'inextricable link' between the two phenomena, even if this was not an 'exclusive relationship'.[59] An example might be the ways in which organised immigration crime such as sham marriages or visa abuse can then lead to exploitation.[60]

Clearly these different responses owe something to the different levels of expertise amongst my participants as well as to their differing institutional contexts. They also demonstrate uneven levels of conscious conceptual awareness - some participants had clearly not given any thought to the issue of conceptual labels while others had (albeit in no case to any great extent). Those caveats aside, I think we can see the networks drawing loosely on the concept 'modern slavery' to provide them with a source of legitimacy and a useful umbrella term to make sense of their work, without worrying too much about the details of its meaning.

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56 Interview with Local Authority Employee (No. 63) (n 5).

57 Interview with NGO Employee (No. 59) (n 1).

58 Interview with Police Officer (No. 56) (n 28).

59 Interview with Local Authority Employee (No. 57) (n 4).

60 Interview with Police Officer (No. 56) (n 28).

The networks' attitude towards the Act suggests a certain flexibility in their use of the concepts and categories within it; their varied interpretations of the term 'modern slavery' seem to support that. The implication of this flexibility could well be that the networks facilitate the modification of some of the concepts and categories circulating within the apparatus - perhaps their activities could, over time, come to change what it means to be a trafficked victim, or to be exploited. But the networks' relatively loose connection to other parts of the apparatus may work to minimise the wider influence of any conceptual modification that takes place through their activities. Their eventual influence in this regard remains to be seen.

8.4 Conclusions

The regional anti-trafficking networks have a variety of distinctive characteristics. They are informal, ad hoc, and diverse in their structures, and they have in common a 'horizontal' orientation. The networks facilitate forms of communication and coordination not otherwise possible, enabling the practical application of complex concepts and categories like 'trafficked victim'. They focus on the facts as they find them in their local area, implicitly disaggregating the abstract notion of 'human trafficking', bringing its component concepts and categories into contact with lived reality in a way that makes sense to them.

In operating like this, somewhat at the margins of the apparatus, the networks are free to draw on key concepts, categories and symbols (like the Modern Slavery Act) as a source of legitimacy and as a guiding framework for their operation, but they do so on their own terms, interpreting those ideas in line with their own preoccupations.

Even though the networks themselves (separately from their members) may be thought of as not fully part of the policy apparatus, their main activities - coordination and information-sharing - involve actors who certainly are part of the policy apparatus (like police officers). Consequently the networks have an effect on the process of constructing human trafficking. The nature of that effect is linked to how they operate. As with the police officers in Chapter 7, the networks facilitate novel forms of collaboration and cooperation. What is more distinctive about them is the way in which they interpret and apply the concepts and categories from the policy apparatus in a flexible manner, expanding them (by addressing cases of labour exploitation that probably do not constitute trafficking) or addressing only the parts that seem most relevant to them. By flexibly working with key concepts and categories in this way, and by affecting the interactions between different actors involved in the policy apparatus, the networks exert their own influence on how human trafficking is constructed.

An implication of this discussion of the networks is that a policy apparatus is not a static structure that can be treated as final and complete. It may contain the potential, at least, to evolve and develop over time, in its structure and membership as well as in the content of its ideas and assumptions. The networks joined the policy apparatus without asking, as it were; it may be that policy apparatuses in general are not sealed structures. The policy apparatus might perhaps be better thought of as a set of processes or activities that are constantly changing. In other words, rather than speaking of 'a policy apparatus', it might be more useful to speak of 'doing policy', of participating in the performance of a set of activities, organised into certain more or less established patterns, that share an orientation towards an identified set of social phenomena. In adopting this perspective, we are led naturally

to ask what actors are involved, what roles they play, and how they interact with one another. We look for unifying themes and ideas, explore assumptions shared by some actors but not others, and identify narrative arcs. Above all, we try to understand the world that the actors, through their performance, both represent and call into being.

9 Conclusions

9.1 Overview

What role has the state played in the processes through which the social problem of 'human trafficking' has been constructed? What instruments and techniques has it employed and in what ways? In this thesis I have explored the role of the state through focusing on its three most significant interventions into the governance of human trafficking: the 2007 Action Plan, the establishment of the National Referral Mechanism (NRM) in 2009, and the Modern Slavery Act 2015. Each exemplifies a different kind of state instrument: a policy statement, a set of administrative rules, and a piece of legislation. I have investigated the state's use of those instruments to shape the concepts and categories that constitute human trafficking, such as 'trafficked victim' or 'exploitation'.

The main finding has been that the state operates on concepts and categories in a way that may not align with our expectations. Rather than creating and imposing authoritative definitions, it works largely with existing ideas and assumptions, both explicit and implicit; it codifies, formalises, rationalises, shapes and propagates them. Its role is to do with coordination and connection.

I have explored the above questions in three parts, arranged chronologically:

Chapters 2 and 3 addressed the question of how the state first came to recognise and assume responsibility for the problem of human trafficking; Chapters 4, 5 and 6 explored the state's contribution to the construction of human trafficking through focusing on the role of policy, administrative guidance and legislation, respectively; Chapters 7 and 8 investigated the influence of the concepts and categories shaped by those instruments.

Human trafficking first began to enter the purview of the state through its inclusion in policy papers, reviews and institutional remits in the early 2000s, before any dedicated law or policy was introduced to address it. The documents in which trafficking began to be mentioned were those that concerned themselves with sexual violence, child sexual exploitation and illegal immigration - three sets of ideas and assumptions with which trafficking had long been associated in international law and policy. Early legislation, policy and institutional activity in the UK shows the absorption of human trafficking into the purview of the state without any consciously articulated strategy or approach, and without any obvious debate as to what trafficking actually was. The definition derived from the Palermo Protocol[1] - that trafficking consisted of the movement of a person through force or deception for the purpose of exploiting them - was transposed quite straightforwardly into section 4 of the Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004. The dominant assumptions about trafficking that had preceded the introduction of the Palermo Protocol and persisted afterwards - that trafficking essentially involved the movement of women across borders for the purpose of sexual exploitation - in-

[1] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (signed 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

formed sections 57-9 of the Sexual Offences Act 2003. The way in which trafficking was constructed by the incipient policy apparatus at this stage was a legacy of the associations and connotations the term had previously accrued.

It was not until 2007 that the state published a comprehensive statement of its approach to tackling human trafficking, along with a more or less explicit consideration of what trafficking entailed, in the form of its 2007 Action Plan.[2] The most notable characteristic of the Action Plan was that a majority of the ideas and assumptions that it contained were not new: they either already existed or were implicit within developments occurring at the time the Action Plan was introduced. The Gangmasters Licensing Authority was already taking an interest in trafficking; the UK Human Trafficking Centre had been proposed independently and was established by the time of the Action Plan's publication; the recognition of migrant domestic workers as victims of trafficking was probably inevitable after the charity Kalayaan decided to label their clients accordingly. The Action Plan drew together these diverse developments, linking them and providing them with an overarching rationale. It formally codified what various actors, such as those mentioned, were already doing or were likely to do anyway, lending them legitimacy. Some developments subsequent to the Action Plan - such as the offence in section 71 of the Coroners and Justice Act 2009 - occurred independently of the Action Plan (they were not prefigured within it) but seemed to operate within the conceptual framework that the Plan had set out. Others - such as the continuation of an emphasis on trafficking for sexual exploitation in several major police operations - seemed to show the limits of the Action Plan's conceptual authority.

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2 Home Office and Scottish Executive, *UK Action Plan on Tackling Human Trafficking* (2007).

The instigation of the NRM in April 2009 was a different task, undertaken with a different tool: administrative guidance. The design process for the NRM (taking place in 2007-2008), as well as the guidance that governed it and the nature of its operation, were all much less publicly visible and accessible than the equivalent aspects of the Action Plan and its updates. The texts of the relevant guidance allowed for the inclusion of nuance and ambiguity. They could be iterated quietly and rapidly without public attention. They were thus an ideal tool for dealing with the classification of the difficult figure of the 'trafficked victim'. The NRM was similar to the Action Plan insofar as it codified and formalised some practices and procedures that were already in place: existing state-funded victim support through the Poppy Project and various informal and ad hoc collaborations, mostly between the UK Human Trafficking Centre and various small NGOs able to support victims of trafficking for labour exploitation. But the NRM's primary purpose was to demarcate the boundaries of trafficking, by defining when an individual was, or was not, a victim. It rendered the problem of trafficking manageable by the state - ensuring it took up a limited amount of resources and did not provide an exception to immigration rules. The NRM's category 'trafficked victim' has been continually critiqued and contested as a result of the limits placed on it, but that category has also become of central importance, causing many other actors to orientate their practices around it. While the NRM was a way for the state to assert its ownership of the problem of human trafficking, at the same time its rules were in places vague. Consequently they left room for implementing officials to exercise their own judgment in response to changing political or administrative priorities, granting the state some flexibility in exactly how it constructed the 'trafficked victim'.

The third state instrument I explored was legislation, in the form of the Modern

Slavery Act 2015. The legislation was introduced in reaction to external critique - principally the Centre for Social Justice (CSJ) report *It Happens Here* (published in March 2013) - to which the state felt compelled to respond.[3] While adopting the rhetoric of its critics ('modern slavery') the state tried to interpret it in such a way as to introduce minimal substantive changes to the policy apparatus and to ensure that such changes as were introduced aligned with the state's conception of trafficking rather than that advanced by the CSJ. The state used the legislative process to limit what debate could take place, keeping some issues off the table (notably the issue of victim support arrangements). Yet I have argued that the Act is conceptually and symbolically important, despite the apparently minimal substantive changes it introduced. The state minimised the degree of change introduced through the text of the Act's provisions, but it took advantage of other features of the legislation to advance its construction of trafficking. I referred to these features as 'para-text' (the title of the Act and the ordering of the offences) and 'con-text' (related texts affecting the interpretation of the Act's provisions).

The Action Plan, the NRM and the Modern Slavery Act all show the state using the different tools at its disposal, in different ways, to shape, rationalise, control, demarcate and entrench key concepts and categories that constitute 'human trafficking'. That influence is not necessarily straightforward, however; the concepts and categories need to be applied. Police officers, lawyers and judges must closely observe the concepts and categories propagated by the state and must attempt to operationalise them, to make the facts that they find conform to them for the purpose of obtaining a conviction or rendering a judgement. Some of the concepts and cat-

[3] Centre for Social Justice, *It Happens Here: Equipping the United Kingdom to Fight Modern Slavery: A Policy Report* (Breakthrough Britain, London, 2013).

egories - particularly 'trafficked victim', 'consent' and 'exploitation' - are complex, vaguely defined and subject to varying interpretations. Their operationalisation has consequently been challenging. The police offers, lawyers and judges who have had to put them into effect have improvised new procedures, adapted existing ones, created and codified new rules and engaged in novel collaborations.

The regional anti-trafficking networks show the same phenomenon from a different angle. The networks also orientate themselves towards the concepts and categories propagated by the state, but they do so out of choice. They self-label as anti-trafficking organisations, drawing on the conceptual framework of the policy apparatus to justify, legitimise and make sense of their work. Yet they are relatively unconcerned with the precise interpretation of those concepts and categories - they interpret them in a way that makes sense in relation to the particular, local manifestations of trafficking that they address. In general, they care less about what 'modern slavery' means than about the fact of its existence; what matters to them is that it lends weight to their priorities.

For analytical purposes, we can distinguish a number of different state activities by which it contributes to shaping the construction of 'human trafficking' and, by extension, other social issues. As the state begins to become 'seized' of an issue, it (implicitly) recognises it by including it within existing policy concerns and, while doing so, it absorbs certain associations and connotations that the issue already possesses. The inclusion of the term 'human trafficking' in policy statements reifies the phenomenon, granting it legitimacy. The state also translates concepts and definitions from international law into domestic law, as with section 4 of the Asylum and Immigration Act 2004. When the state makes a more comprehensive and explicit statement of its approach to an issue - as with the Action Plan - it begins to

aggregate, codify and formalise a set of existing or incipient practices and assumptions, which it rationalises, organising them into a strategy that it presents and propagates. It also names actors and specifies their remits, codifies the relationships between them and provides shared goals.

Sometimes the state may have to more concretely define a particular category for the purpose of setting boundaries on a problem and making it manageable within resource limits: the NRM is an example. In doing so, the state may allow for a degree of nuance or even ambiguity to permit itself some flexibility. At the same time, the act of codifying and formalising its definition - however loose - allows the state to assert its 'ownership' of the issue.[4] The state's concepts and categories may on occasion be challenged by external critics - such as the Centre for Social Justice. Then, the state may try to revise its conceptual framework, heading off the criticism while avoiding changes it deems undesirable and, where possible, advancing its own priorities. The state may, as in this case, take in and transform the rhetoric of its critics, using vague terminology ('modern slavery') in a tactical manner. It may use its influence over the legislative process to keep certain topics out of discussion, while advancing its own understanding in texts that it alone controls (legislative explanatory notes, Home Office guidance).[5] Once established, the concepts and categories that have been thus codified, formalised or shaped by the state then form a point of reference by which other actors may orientate their own ideas and practices. They may have to improvise, adapt and collaborate in new ways in order to do so. Sometimes, newly improvised practices may be formally codified and may then in turn shape how

[4] Joseph R Gusfield, *The Culture of Public Problems: Drinking-Driving and the Symbolic Order* (University of Chicago Press 1984) 10.

[5] Modern Slavery Act 2015 Explanatory Notes; Home Office, *Modern Slavery Strategy* (2014).

others act[6] - influencing the further development of the policy apparatus.

The state's contribution to the construction of human trafficking has in short been significant, but complex. It has not simply 'defined' trafficking - as we might assume that states do. It has instead worked with and shaped an ongoing conversation about trafficking - the policy apparatus - lending legitimacy to some ideas, interpreting others in particular ways, and rationalising sets of assumptions into somewhat coherent strategies. It seems reasonable to assume that the state might play a similar role in the construction of other issues.

This picture of the state's role resonates with some of the literature on governmentality discussed in the Introduction. Writers in that literature have decentred the state, noting that power is exercised through diverse configurations of actors in various ways. As Rose and Miller remark: 'Political power is exercised today through a profusion of shifting alliances between diverse authorities in projects to govern a multitude of facets of economic activity, social life and individual conduct.'[7]

The state still has a role to play in this picture, but it does not, perhaps cannot, act alone; instead, the state connects itself to existing, local regimes of government - already existing patterns of knowledge and sets of practices that regulate people's conduct. Rose suggests that

> ...[c]entres of political deliberation and calculation [such as the state] have to act through the actions of a whole range of other authorities, and through complex technologies, if they are to be able to intervene upon the conduct of persons, activities, spaces and objects far flung in space and time.[8]

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6 E.g.: Wiltshire Police Force, 'Modern Slavery' (December 2013).

7 Nikolas Rose and Peter Miller, 'Political Power Beyond the State: Problematics of Government' [1992] British Journal of Sociology 173, 174.

8 Nikolas Rose, 'Government and Control' (2000) 40(2) British Journal of Criminology 321, 323.

Similarly, in a separate article, Rose, O'Malley & Valverde suggest that 'states [manage] to connect themselves to a diversity of forces and groups that in different ways ha[ve] long tried to shape and administer the lives of individuals in pursuit of various goals.'[9] This seems to capture important aspects of the way in which the state has used the Action Plan and the NRM.

This work is theoretically rich, but rarely engages with empirical data. An exception is Rose and Miller's discussion of the the rise of 'welfarism' in the UK in the mid-20th century; they discuss it as an example of the state connecting and coordinating existing practices, such as those of charitable organisations, hospitals, and philanthropists. They suggest that the state

> did not, could not, eliminate all other centres of power or decision, or reduce them to its creatures whether through the mechanisms of command and obedience or by subjecting everyone to perpetual surveillance and normalization. Welfarism is not so much a matter of the rise of an interventionist state as the assembling of diverse mechanisms and arguments through which political forces seek to secure social and economic objectives by linking up a plethora of networks with aspirations to know, programme and transform the social field.[10]

Their discussion, like other empirical examples used in the governmentality literature on the role of the state, covers a lot of ground in a relatively short space and focuses on an area - 'welfarism' - that involves an enormous diversity of actors and practices. One contribution this thesis makes is to provide an extended, in-depth exploration of a relatively narrowly-defined policy area, allowing for a nuanced examination of the role of the state.

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9 Nikolas Rose, Pat O'Malley and Mariana Valverde, 'Governmentality' (2006) 2 Annual Review of Law and Social Science 83, 87.

10 Rose and Miller (n 7) 192.

In particular, this thesis expands and elaborates on two key concepts in the governmentality literature: 'networks' and 'articulation'. 'Networks' are a structure by which regimes of government are established and operate. Rose and Miller define them as follows:

> To the extent that actors have come to understand their situation according to a similar language and logic, to construe their goals and their fate as in some way inextricable, they are assembled into mobile and loosely affiliated networks.[11]

The policy apparatus can be thought of as a network of this sort. The actors within it share a common language (with terms like 'human trafficking', 'trafficked victim' and 'exploitation') and an overarching set of shared goals. But the policy apparatus shows that members of a network may have different understandings of key terms, even while apparently speaking the same language. It also shows that the specific goals possessed by individual network members may differ - sometimes in a way that creates inconsistency or conflict.

The state is not a necessary part of a network, but it can play a particular role within them. A state may act as a 'centre', Rose and Miller suggest, coordinating a network through the disbursement of resources (for example) or through making laws that in turn create or shape categories by which others orientate their actions.[12] This does not mean that states create networks *ex nihilo*. Networks consist of already existing local regimes of government with which the state establishes links.[13]

To conceptualise the state's role in a 'network', Rose and Miller use the term 'articulation'. Articulation may mean, they argue, the generation and dissemination

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11 Rose and Miller (n 7) 184.

12 ibid 189-90.

13 ibid 191.

of 'political discourses, persuasions, negotiations and bargains' that create 'shared interests' and 'common modes of perception'.[14] It may mean writing texts: writing 'codifies customs and habits, normalising them, both transforming them into repeatable instructions as to how to conduct oneself, and establishing authoritative means of judgment.'[15] It may mean, as mentioned, disbursing resources or creating laws. Rose and Miller do not suggest that the state necessarily uses all of these techniques and instruments; nor do they elaborate on the specific roles that each technique or instrument can play.

This thesis has focused in detail on three instruments through which the state can 'articulate' a 'policy apparatus': policy statements, administrative guidance and legislation. I have shown in detail how the character and operation of each differ, how the state has used each in particular ways to shape particular concepts and categories. I have suggested that administrative guidance allows for the inclusion of relatively greater amounts of complexity, ambiguity and flexibility; I have shown how policy statements can rationalise a diverse range of practices, ideas and assumptions into a (superficially) coherent strategy that establishes a conceptual framework within which future developments may take place; and I have demonstrated the role that legislation can be made to play - establishing a concise and superficially definitive text that nevertheless serves certain goals more than others through particular interpretations and applications of key terms.

'Articulate' is a useful term to capture these kinds of activities because it has both a discursive and a mechanical sense. In its discursive sense, 'articulate' means

14 Rose and Miller (n 7) 184.

15 ibid 184.

to 'express...fluently and coherently'.[16] This captures the way in which the state repeats, elaborates, expands and rationalises utterances and implicit assumptions from a variety of sources. The state tries to bring coherence to a diverse range of ideas, assumptions and practices. In its mechanical sense, 'articulate' means to attach or unite by a joint - often used anatomically.[17] Here, it can be pressed into service to refer to the material things that the state does when it creates a network, such as: disbursing funds, moving around people, buildings and equipment.

This is a useful perspective from which to approach the question of the state's role in the business of governing trafficking, and governing generally. The state is a coordinator, a unifier and a connector: it articulates a range of actors into networks for various purposes. It is important to point out that 'articulation' does not imply the state is simply tying together other actors and other ideas, while having no influence itself. As I have shown in this thesis, the act of articulation has itself an important influence. By codifying, linking and rationalising, the state is able to shape the policy apparatus. It can affect which actors think of themselves as 'anti-trafficking' organisations, who comes to be seen as a 'trafficker' or 'trafficked victim', and which procedures organisations should follow when they connect to one another. This is a significant source of power, but it is quite different to the kind of command-and-control power we often attribute to the state (which is not to say that the state lacks that power, only that a consideration of it is beyond the scope of this thesis).

16 'articulate, v.' *OED Online* (2017).

17 ibid.

9.2 The social construction of social problems

This perspective allows the thesis to make an important contribution to the literature on the social construction of social problems. As noted in the Introduction, existing scholarship on the social construction of social problems has tended to pay relatively little attention to the role of the state. The state is conceived in much of this writing as a responder to claims made by others (such as NGOs or the media);[18] it is not often explored as itself a claimsmaker, although a limited range of work has addressed that.[19]

This thesis has shown that the state does have an important role to play. It has also nuanced some earlier work that, while allowing the state a role, saw that role straightforwardly as the explicit making of claims about particular social problems. I have shown that the state's role is more complex than that.

The state does make its own claims about problems - such as the NRM's construction of the 'trafficked victim' - but it also works with claims made by others. It does not simply respond to those; it also changes them, by articulating them into wholes greater than the sum of their parts. The state formalises claims, codifies them, legitimises them, aggregates them, adapts them, and links them to one another. It makes claims itself, and it also shapes the kinds of claims that can be made within the networks it articulates. The state does not determine what those claims are (it does not determine what the UK Human Trafficking Centre claims

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[18] See for example: Malcolm Spector and John I Kitsuse, *Constructing Social Problems* (Transaction Publishers 2001); Joel Best, *Social Problems* (W W Norton & Company 2007).

[19] See: Donna M Randall and James F Short, 'Women in Toxic Work Environments: A Case Study of Social Problem Development' (1983) 30(4) Social Problems 410; Gerald E Markle and Ronald J Troyer, 'Smoke Gets in your Eyes: Cigarette Smoking as Deviant Behavior' (1979) 26(5) Social Problems 611.

are the main causes of trafficking, for example) but it does influence them - through the structure and membership of the networks established, for example.

As the foregoing paragraph shows, the state's role is not only complex but also difficult to analyse in terms of 'claims'. The idea that utterances and activities relating to a given social problem can be read as explicit or implicit 'claims' about the problem is a useful one. Examples of claims have been touched on in this thesis, such as the UK Human Trafficking Centre's claim that trafficking does not have to involve immigration. But identifying and analysing individual claims captures only a small part of the story told here, and seems inadequate to explain what the state is doing. Perhaps this is because claims do not exist as discrete units, but rather as part of a larger, ongoing conversation that, like any conversation, is continuous and dynamic. Claims shift and interrelate in subtle ways. The state has an important role in that conversation, but its role can be obscured if we concentrate on identifying individual claims that the state makes or affects. The state acts not so much on individual claims, but on the conversation. Its acts of reifying, codifying, legitimising, rationalising and connecting steer the conversation about a given social problem, exerting an important influence on the kinds of claims that can be made within it, who can make them, and how they relate. The state can of course make specific claims itself at times (such as the NRM guidance implicitly making a claim as to who constitutes the 'trafficked victim'), but it does not have to do so and if we were to focus only on such recognisable claims we would miss much of what is significant about the state's influence.

The role of the state in the social construction of social problems needs further exploration. It is both more important and more complex than the existing literature acknowledges. It shapes conversations about social problems in ways that no

doubt stretch beyond what this thesis has explored. A focus on the techniques and instruments of the state could be a useful way of structuring future research on this question. Different techniques will incorporate and act on a different range and kind of claims in different ways. The Action Plan used a formal consultation exercise to gather claims about trafficking, and produced an explicit rationalisation and strategy. By contrast, the NRM was designed largely behind closed doors with the involvement of a selected group. Its outputs were not publicly accessible and placed much less priority on the articulation of an explicit strategy.

9.3 Critical literature on human trafficking

This view of the state's contribution to the social construction of social problems also extends the critical literature on human trafficking policy. In the Introduction I looked in particular at the work of Julia O'Connell-Davidson and Bridget Anderson, two authors whose work has critiqued the approach taken, particularly in the UK, to tackling trafficking.[20] They have argued that the way trafficking has been constructed has arbitrarily and unfairly singled out one group of vulnerable individuals for support, while implicitly sanctioning the exploitative circumstances in which many others find themselves.

In other words, these scholars have looked at the effects of trafficking policy. This

[20] Bridget Anderson and Rutvica Andrijasevic, 'Sex, Slaves and Citizens: the Politics of Anti-Trafficking' [2008] (40) Soundings 135; Bridget Anderson, 'Motherhood, Apple Pie and Slavery: Reflections on Trafficking Debates' [2007] (Working Paper No. 48) ⟨https://www.compas.ox.ac.uk/2007/wp-2007-048-anderson_trafficking_debates/⟩ accessed 31st August 2017; Julia O'Connell Davidson, 'New Slavery, Old Binaries: Human Trafficking and the Borders of 'Freedom'' (2010) 10(2) Global Networks 244; Julia O'Connell Davidson, 'The Making of Modern Slavery: Whose Interests are Served by the New Abolitionism?' (2014) 24(1) British Academy Review 28; Julia O'Connell Davidson, 'De-canting 'Trafficking in Human Beings', Re-Centring the State' (2016) 51(1) The International Spectator 58.

thesis has added to their work by showing how trafficking policy, in the UK, has come to take the shape that it has. This extends the literature but may also support it in its goals. Assuming the authors whose work critiques established constructions of trafficking wish to challenge or change those constructions, it may prove useful to have a detailed account of how they came about.

This thesis has also suggested that we cannot readily identify any single 'construction' of human trafficking in the UK at any point in the history of anti-trafficking efforts. The policy apparatus has been in a near-continuous state of flux (excepting certain transient moments of stability), and a snapshot taken at any single moment in time will show a range of ideas, assumptions and practices that are not always consistent with one another. Across the evolution of the policy apparatus, however, certain general trends and patterns can be identified. The slowly decreasing prevalence of the assumption that trafficking involves illegal immigration and sexual exploitation is an example. This detailed account of the changing construction of human trafficking in the UK may be a useful foundation for future trafficking-related research. It may, for example, be productive to isolate individual actors, such as the UK Human Trafficking Centre, or networks, such as the NRM, and explore in depth the particular contribution they have made to the construction of trafficking. Rather than analysing 'the' construction of human trafficking by one or more policies, efforts could be directed at disaggregating the constructive process to show where different elements of that construction have come from (or are now coming from), in a way that would extend the argument of this thesis. By highlighting the specific sources of particular constructions or aspects thereof (such as a particular construction of one of the constituent categories of 'human trafficking', like 'exploitation'), criticism could be more precisely targeted.

9.4 The 'policy apparatus'

I have adopted Gregory Feldman's concept of the 'policy apparatus' as a useful way of referring to the aggregate effects of state-connected practices on the construction of 'human trafficking'.[21] I have found this a convenient way both to refer to that aggregate effect without presuming any kind of identifiable intent or direction behind it, and also to distinguish the 'policy apparatus' from Foucault's broader conception of the 'apparatus' - which would include things entirely unconnected to the state and thus beyond the scope of this thesis.[22]

A policy apparatus involves many different actors, sometimes distant from one another in time and space, not necessarily directly connected, whose actions and utterances collectively result in an overall 'approach' to a problem, such as trafficking. Because of the many actors involved, a policy apparatus has no identifiable author; each of its actors has a degree of autonomy. Consequently, a policy apparatus is constantly changing. No one individual or organisation has control over a policy apparatus; even its membership is to a degree open. The regional anti-trafficking networks joined the anti-trafficking policy apparatus of their own volition and without invitation. The policy apparatus is more an ongoing process than a structure or an object.

Where the idea of a 'policy' invites us to investigate who authored it, with what

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21 Gregory Feldman, 'Illuminating the Apparatus: Steps toward a Nonlocal Ethnography of Global Governance' in Cris Shore, Susan Wright and Davide Peró (eds), *Policy Worlds: Anthropology and the analysis of contemporary power* (Berghahn Books 2011); Gregory Feldman, *The Migration Apparatus: Security, Labor, and Policymaking in the European Union* (Stanford University Press 2012).

22 Paul Rabinow, *Anthropos Today: Reflections on Modern Equipment* (Princeton University Press 2009) 51.

intention, and how effective it has been at achieving its stated goals, a policy apparatus prompts different questions. We might want to ask which actors are involved, what roles they each play and how they interact. We might explore what shifting patterns of ideas and assumptions their interactions give rise to, and ask what key concepts and categories orient and give meaning to the actions taking place. We might also ask what role the state plays. These are some of the questions I have asked in this thesis, and that could productively be applied to a variety of policy areas.

An important advantage of this perspective is that it avoids assuming that there is someone or some group that possesses and wields power. The idea that there is someone - perhaps the state, or more specifically a group of civil servants or Ministers - who 'makes' 'policy' implies that the relevant someone possesses power and can put it into effect. The policy apparatus perspective allows for a Foucauldian view of power - not something one can possess but rather something that is immanent in the relations between different actors. Power is

> produced from one moment to the next, at every point, or rather in every relation from one point to another. Power is everywhere; not because it embraces everything, but because it comes from everywhere.[23]

Certain configurations of actors making up the policy apparatus allow certain voices to be heard while silencing others, for example, and produce effects in the world - such as by categorising some individuals as 'trafficked victims' and others simply as illegal immigrants. Those classifications in turn place the individuals in a particular relation to, for example, their local authority or immigration enforcement officers.

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[23] Michel Foucault, *The History of Sexuality. Vol. 1: The Will to Knowledge* (Penguin 1988) 93.

So it is the structure of relations that produce the apparatus that becomes the object of interest, rather than an attempt to identify a throne and its occupant.

Although a policy apparatus is a constantly evolving thing, it is not necessarily chaotic. There are moments when it may seem quite stable, with little change occurring - few actors joining, few leaving, few patterns of activity changing (such as the 2010-12 period, in the case of the present study). Then there are moments when it is particularly dynamic - a substantial turnover in the actors involved, significant changes in understanding or in action (such as the establishment of the NRM in 2009). Relatedly, there may be moments at which the apparatus seems relatively homogeneous, and moments at which inconsistencies or contradictions emerge and harden. It is useful to map these as they may reflect the significance of certain actors, ideas or institutional structures whose operation we may want to interrogate further.

9.5 Future lines of enquiry

The approach that I have taken in this thesis suggests productive avenues for future research. I chose to focus on the operation of particular instruments of the state, as a way into studying the role of the state in the construction of 'human trafficking'. I focused on perhaps the three most obvious instruments of the state: legislation, policy and administrative rules. But these certainly do not exhaust the techniques at the state's disposal.

The idea of a 'technique' or 'technology' is taken from the Foucauldian concept of 'techne', which Dean glosses as: the 'means, mechanisms, procedures, instruments, tactics, techniques, technologies and vocabularies [by which] authority [is] consti-

tuted and rule accomplished'.[24]

In order to further explore the role of the state in the construction of social issues, and in 'government' more broadly, we need to identify the full range of instruments and techniques that the state employs, to understand their nature and operation, and to elucidate their effect. And we need to do so empirically. Only by paying close attention to the day-to-day operation of the state and those organisations and individuals with whom it interacts, can we identify the actual techniques that it employs and understand how they function. As I have shown in this thesis, the state does both more and less than what we might imagine with the instruments that I have documented (to say nothing of the other instruments and techniques the state has at its disposal). To avoid assuming away techniques that the state uses, or inventing those we expect it to wield, we must undertake further ethnographic research.

The kinds of techniques we could explore vary in nature and scale. Some work has already been done, for example, on the mechanics of consultation exercises.[25] Other examples might include press conferences,[26] infrastructure projects or advisory committees. Each example prompts questions: which actors are involved? How do they interact? Which voices achieve prominence and which are silenced? What kinds of rationalisation and strategisation are achieved? What kinds of codification and legitimisation?

There is considerable scope for future research to map these techniques and

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24 Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (Sage 1999) 31.

25 Graeme Baxter, 'The Best-Laid Schemes? The Provision and Accessibility of Government Consultation Information in the UK' (2010) 60(3) Libri 253.

26 This example is taken from: Andrew Barry, 'The Anti-Political Economy' (2002) 31(2) Economy and Society 268.

instruments, exploring their role and function and casting further light on the operation of the state.

This thesis has begun that research. I have shown that the state's role in the construction of concepts and categories that shape how we think and act - that structure our social world - is neither as straightforward as we might think. The state does have an important contribution to make, and does exert some degree of authority, but its role is not to create and set in stone; it is to collate, codify, formalise, shape, legitimise and propagate. It is a conduit that selects, channels, organises and amplifies. The state's role is thus complex and multifaceted. It could not single-handedly construct 'human trafficking', but without its contribution 'human trafficking' may have meant something very different to what it does today.

Appendix: Text of Human Trafficking Offences

Sexual Offences Act 2003, s 57

(1) A person commits an offence if he intentionally arranges or facilitates the arrival in the United Kingdom of another person (B) and either—

(a) he intends to do anything to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence, or

(b) he believes that another person is likely to do something to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Ss.58 & 59 are the same, except that they replace 'the arrival in' with 'travel within' and 'the departure from' respectively.

Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004, s 4

(1) A person commits an offence if he arranges or facilitates the arrival in the United Kingdom of an individual (the "passenger") and—

(a) he intends to exploit the passenger in the United Kingdom or elsewhere, or

(b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.

(2) A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the "passenger") in respect of whom he believes that an offence under subsection (1) may have been committed and—

(a) he intends to exploit the passenger in the United Kingdom or elsewhere, or

(b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.

(3) A person commits an offence if he arranges or facilitates the departure from the United Kingdom of an individual (the "passenger") and—

(a) he intends to exploit the passenger outside the United Kingdom, or

(b) he believes that another person is likely to exploit the passenger outside the United Kingdom.

(4) For the purposes of this section a person is exploited if (and only if)—

(a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour),

(b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ Transplants Act 1989 (c. 31) or the Human Organ Transplants (Northern Ireland) Order 1989 (S.I. 1989/2408 (N.I. 21)),

(c) he is subjected to force, threats or deception designed to induce him—

(i) to provide services of any kind,

(ii) to provide another person with benefits of any kind, or

(iii) to enable another person to acquire benefits of any kind, or

(d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that—

(i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and

(ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.

(5) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.

Coroners and Justice Act 2009, s 71

(1) A person (D) commits an offence if—

(a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held, or

(b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed Coroners and Justice Act 2009 (c.25) in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both.

(4) In this section-

"Human Rights Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950;

"the relevant period" means-

(a) in relation to England and Wales, 12 months;

(b) in relation to Northern Ireland, 6 months.

New offences proposed by the Draft Modern Slavery Bill Joint Committee

(1) Slavery of children and adults

(1) It is an offence to hold a person in, or subject a person to, slavery.

(2) For the purposes of this Act "slavery" means the control by a person of a second person in such a way as-

(a) significantly to deprive that second person of their individual liberty,

(b) by which any person obtains a benefit through the use, management, profit, transfer or disposal of that second person.

(3) Where that second person is a child, slavery also includes any act or transaction whereby the child is transferred or purports to be transferred to another person in return for money or other consideration, other than through lawful adoption or similar formal process

(2) Child Exploitation offences

(1) It is an offence to exploit a child.

(2) It is an offence for one person to obtain a benefit through the use of a child for the purpose of exploitation.

(3) In determining whether an offence has been committed under this section,—

(a) the question whether a child, or any person who has responsibility for the child, has consented to any conduct, and

(b) the question whether any coercive means have been used, are irrelevant.

(3) Exploitation offence: general

(1) It is an offence to exploit a person.

(2) An offence under this section is committed where one person obtains a benefit through the use of a second person for the purpose of exploitation by means of—

(a) the threat or use of force or of other forms of coercion,

(b) abduction,

(c) fraud or deception,

(d) abuse of power,

(e) abuse of a position of vulnerability, or

(f) the giving or receiving of any payment or benefit with a view to securing the consent of any person having control over that second person.

(4) Child trafficking

(1) It is an offence to traffick a child.

(2) An offence under this section is committed by any person who recruits, transports, transfers, harbours or receives that child, including the exchange or transfer of control over that child, for the purpose of exploitation.

(3) In determining whether an offence has been committed under this section—

(a) the question whether that child, or any person who has responsibility for that child, has consented to any conduct, and

(b) the question whether any coercive means have been used, are irrelevant.

(5) Trafficking

(1) It is an offence to traffick a person.

(2) An offence under this section is committed by any person who recruits, transports, transfers, harbours or receives a second person for the purpose of exploitation, where the means used to do any of those acts include—

(a) the threat or use of force or of other forms of coercion,

(b) abduction,

(c) fraud or deception,

(d) abuse of power,

(e) abuse of a position of vulnerability, or

(f) the giving or receiving of any payment or benefit with a view to securing the consent of any other person having control over that

second person.

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