

# Sex, slaves and citizens: the politics of anti-trafficking

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A focus on the evils of trafficking is a way of depoliticising the debate on migration.

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**T**rafficking is in the news. It is on the political agenda, both nationally and internationally. Thousands of individuals, hundreds of groups, dozens of newspapers are determined to stamp it out. This focus on trafficking consistently reflects and reinforces deep public concern about prostitution/sex work, and also about immigration, and the abuse and exploitation it so frequently involves. So to challenge the expression, or some of the actions taken as a response to this concern, is akin to saying that one endorses slavery or is against motherhood and apple pie. Trafficking is a theme that is supposed to bring us all together. But we believe it is necessary to tread the line of challenging motherhood and apple pie while not endorsing slavery, because the moral panic over trafficking is diverting attention from the structural causes of the abuse of migrant workers. Concern becomes focused on the evil wrongdoers rather than more systemic factors. In particular it ignores the state's approach to migration and employment, which effectively constructs groups of non-citizens who can be treated as unequal with impunity.

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## What is trafficking? Definitions and the UN Convention

In November 2000 the UN Convention Against Transnational Organised Crime was adopted by the UN General Assembly. The purpose of this convention was to promote interstate cooperation in the combating of transnational organised crime and to eliminate 'safe havens' for its perpetrators. It is supplemented by three additional protocols, which deal with Smuggling of Migrants, Trafficking in Persons - especially women and children - and Trafficking in Firearms. The definition of trafficking in persons in the Protocol contains three elements: it is defined as an *action*, consisting of 'the recruitment, transportation, transfer, harbouring or receipt of persons'; as one which occurs *by means of* 'the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person'; and as being undertaken *for the purpose of exploitation* ... (which) ... 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'.

It is important to remember that the Palermo Protocol, as it is known, is *not* a human rights instrument. It is an instrument designed to facilitate cooperation between states to combat organised crime, rather than to protect or give restitution to the victims of crime. States are to strengthen border controls to prevent trafficking and smuggling. Border controls and police cooperation, not human rights protection, lies at the heart of both the smuggling and trafficking protocols. The emphasis is on intercepting traffickers and smugglers and on punishing and prosecuting them. While states are encouraged to offer protection to trafficked persons, in particular to consider providing victims of trafficking with the possibility of remaining, temporarily or permanently, on their territory, actual obligations are minimal and the protection provisions are weak. Though there do exist other more progressive legal instruments governing trafficking, even in these the protection of trafficked persons is dependent on their co-operation with authorities.<sup>1</sup>

The Palermo Protocol's concerns with crime and borders arose partly from a more particular concern about the prostitution of women and minors, and there

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is special reference made in the protocol to sexual exploitation and exploitation of the prostitution of others. Media, policy and research on trafficking have for the most part focused exclusively on sex work, and trafficking is commonly associated with 'sexual slavery' and organised crime. Journalists, politicians and scholars are quick to depict migrant women in the sex industry as victims of abuse and violence, and traffickers as Mafia-like individuals and/or organisations that enslave women in prostitution. This helps to install the image of trafficking within a simplistic and stereotyped binary of duped/innocent victim (foreign women) and evil traffickers (usually foreign men). Trafficking appears as an activity that takes place outside any social framework: it is criminal individuals that are responsible.

Governments, particularly in Europe, also blame traffickers for the proliferation of irregular migration and the abuse of migrant workers. For example, in his foreword to the Home Office document *Enforcing the rules* (2007), then UK Home Secretary John Reid said:

Failure to take on the people traffickers who are behind *three quarters of illegal migration* to this country leaves vulnerable and often desperate people at the mercy of organised criminals.

The image of the Victim of Trafficking is used to invoke an emotional reaction and an image of large numbers, echoing fears of 'floods' and 'hordes' of ('illegal') migrants. (There has been a recent shift in discourse, so that the dominant emotion has become pity rather than fear, but the effects are very similar.) The portrayal of trafficking as a main driver of illegal migration is a relatively new development - contrast John Reid's claims with Home Office statements of 2002, when numbers of victims of trafficking were 'small' and the majority of illegal migrants were held to be in the UK 'by their consent'.<sup>2</sup> There is little evidence to sustain the figures that are bandied about. For example, the US State Department estimates that 600,000 to 800,000 persons are trafficked across international borders annually, but the US Government Accountability Office has severely criticised these and other estimates, describing them as 'questionable' and relying on weak methodologies.<sup>3</sup> It points out that since 1999 fewer than 8000 migrants in 26 countries have received assistance through the International Organization for Migration (which is one of the main inter-governmental organisations dealing with the issue). There is a significant gap

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between estimated numbers and identified victims, and the estimates resonate with fears of being overwhelmed by 'illegals'. Thus in the UK there are some 35 places for women identified as victims of sex trafficking, and in 2007 there were only 17 convictions for trafficking offences, all for sex trafficking.<sup>4</sup>

This equation of illegal migration and trafficking is not supported by the Palermo Protocol. Indeed the UN protocols state that entry into a state can be legal or illegal in the case of trafficking (whereas smuggling can only refer to illegal entry). They also state that trafficking can take place within national boundaries. One does not need to be 'illegal' in order to be trafficked, as one does not need to be a 'prostitute'. Hence, in practice, there are crucial definitional problems about what actually constitutes trafficking that have not been resolved. This lack of clarity has not stood in the way of success for the Palermo Protocol; perhaps it has indeed facilitated it. While the UN Convention on the Protection of the Rights of All Migrant Workers and their Families, approved by the UN in 1990, had only 15 signatories by July 2008, the Palermo Protocol had at that time 117 signatories.

### Trafficking as 'anti-politics'

This lack of definitional clarity allows a constant slippage between 'illegal immigration', 'forced prostitution' and 'trafficking'. Everyone agrees that trafficking and (sexual) exploitation is wrong, in spite of the problem about what these words actually mean. This helps to create a humane consensus outside political debate - no one can doubt that 'trafficking' must be stamped out. The slippage serves to de-politicise anti-trafficking interventions, and avert attention from the role of the state in creating the conditions in which exploitation occurs. Our argument is that this de-politicisation is actually a form of 'anti-politics':<sup>5</sup> it smuggles politics in under a 'humanitarian agenda' seemingly geared towards the assistance and protection of victims. The Victim of Trafficking is not an apolitical figure, as we have seen: it is one that has been taken up by the state. The question then becomes: what are the politics that are being smuggled in? In addressing this we will consider three key areas - the politics of sex, the politics of labour, and the politics of citizenship. (The fact that these can be imagined as separate terrains of political engagement is perhaps in itself the point most worthy of note.)

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## Politics of sex

Negotiations over the Palermo Protocol brought together states and feminists who were particularly concerned with prostitution, and until recently the policy discussions and research on trafficking have been very much focused on attitudes to sex work rather than migration. The discussions around the Protocol itself were affected by the polarised debate between those who might be termed 'feminist abolitionists' and those arguing from a 'sex workers' rights' perspective. Abolitionists argue that prostitution reduces women to bought objects, and is always and necessarily degrading and damaging to women. Thus they recognise no distinction between 'forced' and 'free choice' prostitution, and hold that in tolerating, regulating or legalizing prostitution, states permit the repeated violation of human rights to dignity and sexual autonomy. Prostitution is a 'gender crime', part of patriarchal domination over female sexuality, and its existence affects all women negatively by consolidating men's rights of access to women's bodies. All prostitution is a form of sexual slavery, and trafficking is intrinsically connected to prostitution. From this vantage point, measures to eradicate the market for commercial sex are simultaneously anti-trafficking measures, and *vice versa*.

Feminists who adopt what might be termed a 'sex workers' rights' perspective reject the idea that all prostitution is forced and intrinsically degrading. They view sex work as a service sector job, and see state actions that criminalise or otherwise penalise those who make an individual choice to enter prostitution as a denial of human rights to self determination. They also strongly challenge the simple equation by feminist abolitionists of the demand for trafficking and the demand for prostitution. From this standpoint, it is the lack of protection for workers in the sex industry, whether migrant or not, rather than the existence of a market for commercial sex in itself, that leaves room for extremes of exploitation, including trafficking. The solution to the problem thus lies in bringing the sex sector above ground, and regulating it in the same way that other employment sectors are regulated.

Most of the EU states adopt a prohibitionist approach - prohibiting prostitution and penalising sex workers. However, the Swedish government has a 'neo-abolitionist' model, which the British government has been considering adopting. This criminalises the buyers of sexual services and outlaws the purchase and the attempted purchase

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of sexual services. Within this logic, prostitution and sex trafficking are seen as a matter of supply and demand: supply is created by men's demand for women's sexual services. The solution then becomes one of restricting demand.

The proposal to criminalise prostitution in order to combat sex trafficking and the exploitation of migrant workers in the sex sector is often based on a simplistic view of the sex industry and the way the sector operates. To focus anti-trafficking efforts and policies on the buyers as those causing the demand, and/or on 'traffickers' as exploiting migrants' labour, diverts attention from the much wider economic, social and political context within which the sex industry is located; and in particular, for the purposes of our argument here, it diverts attention from the role played by residency and employment regulations in the destination states. This approach also reduces women's migration and participation in the sex industry to the idea of (sex) slavery, and simplifies social relations by viewing them exclusively in terms of patriarchal oppression or criminal activity, leaving no space for sex workers' agency. Moreover it adds force to the idea that trafficking equals coerced and illegal migration, and fosters an imaginary clear-cut separation between 'legal' and 'illegal' forms of migration.

Finally, a focus on sex work as the main feature of trafficking does little to dissipate the moral panic that feeds fears of illegal migration. On the contrary, it strongly reinforces the idea that increasing restriction is called for. Those advocating the criminalisation of clients are failing to consider that it is precisely the tightening of immigration controls and restrictive labour laws that create the conditions for the proliferation of illegality and labour exploitation.

## Politics of labour

State concern with trafficking seems to offer some space for those who are concerned with the human and/or labour rights of migrants; there is increasing pressure to widen the debate from its focus on sex trafficking to a broader concern with forced labour. Here academics, migrants' organisations and some trades unions, as well as the International Labour Organisation, have sought to exploit the common ground they apparently share with governments in their desire to stamp out trafficking and forced labour.

A focus on workers' rights highlights a number of contradictions in

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government thinking. A key problem here arises from what is actually meant by 'force' and 'exploitation'. How to distinguish trafficking from legally tolerated employment contracts (also from legally tolerated forms of exploitation of women and children within families)? Questions about what constitutes an exploitative employment practice are much disputed - indeed they have historically been, and remain, a central focus of the organised labour movement's struggle to protect workers. In the absence of a global political consensus on minimum employment rights, or of cross-national and cross-sector norms regarding employment relations, it is extremely difficult to come up with a yardstick against which 'exploitation' can be measured. Low-waged migrant labour is permitted, and sought by employers, precisely because it can be exploited. How to draw a line in the sand between 'trafficked' and 'not trafficked but just-the-regular-kind-of-exploitation' migrants? Indeed, given that movement across international borders is not a requirement for trafficking to take place, how can this distinction between trafficked migrants and exploited workers in general be made, and why make it? Abuses can vary in severity, which means they generate a continuum of experience rather than being definable through a simple either/or dichotomy. Ideas about the precise point on this continuum at which tolerable forms of labour migration end and trafficking begins will vary according to our political and moral values. Whether migrant or not, workers cannot be divided into two entirely separate and distinct groups - those who are trafficked involuntarily into the misery of slavery-like conditions in an illegal or unregulated economic sector, and those who voluntarily and legally work in the happy and protected world of the formal economy. Violence, confinement, coercion, deception and exploitation can and do occur within both legally regulated and irregular systems of work, and within legal and illegal systems of migration.

The question then arises of why movement matters at all in these debates. Why is being forced into prostitution or to labour in your home town less heinous than being forced into prostitution or work elsewhere? It is the outcome - exploitation and abuse - that is the problem, not where it takes place. It is here that the elision between illegal immigration and trafficking comes into play. For it allows the sidestepping of the question that is key for activists but that states want to avoid: what is the role of immigration controls in heightening vulnerability to exploitation and abuse? Certain immigration statuses create marginalised groups without access to the formal labour market, or to any of the protections usually offered by states to

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citizens and workers. The state itself thereby equips employers with labour control and retention mechanisms that would not otherwise be available to them, and which have the potential to be abused. But attention is almost always diverted from this question and on to 'evil employers'.

The figure of the evil employer and trafficker throws a shadow over the role of the state in constructing vulnerability. For the individual Victim of Trafficking or victim of exploitation it is the employer, pimp or trafficker who denies access to basic social rights such as hospital treatment. But if these individuals were not denying access, the state would. Indeed, one of the key sources of vulnerability is state-legitimated restriction of access to social rights. A highly political reality about the state's role in constructing vulnerability for non-citizens - a reality with potential political solutions - is obscured by calling on the states to protect the human rights of victims of trafficking. It is notable that there is no similar call by the state for the protection of the 'human rights' of 'illegal immigrants'.

## Politics of citizenship

The discourse of trafficking needs to be seen as part of a more general attempt to depoliticise the question of migration. Managerialist discourses are also an important part of this process: the question becomes one of managing what makes economic sense, of appointing experts to determine the niceties of labour supply and demand. Migration policy thus becomes a matter of operationalising technical judgements rather than a political process, and 'reassurance' consists of assuring the public that the right technical decisions will be made. In fact migration is one of the most fundamental political questions of all: *who constitutes the polity?*

This is not simply a formal question: it addresses questions of how a polity is created, how it is engaged with.<sup>6</sup> Citizenship is not simply a legal status bestowed by the state. It is a dynamic process, and is actively constructed. Citizenship is enacted by a variety of actors, and their acts are enabled or restricted by the social structures and the material conditions of their lives. As Balibar argues, we can view the demands of migrant workers for legal rights as 'partial but direct expressions of the process of creation of rights, a dynamic that allows the political constitution to be recognized as "popular sovereignty" or democracy'.

Citizenship is not an abstract manifestation of state power; it is embodied and



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enacted by individuals, who enjoy, negotiate, or fail to negotiate, the privileges and/or barriers of membership. It is a subject of contestation, and is constituted through a continuous interaction between practices of citizenship and its institutional codification. The question of the rights of migrant workers is part of this political interaction. The denial that this is an arena of political contestation, either by treating migration as an economic question, or by regarding abuses of rights as originating from free-floating individuals, closes down the debate.

While illegal immigration and trafficking are frequently conflated by the media and by successive Home Secretaries, only the most victimised - those who are unable to act for themselves - can qualify as Victims of Trafficking and become entitled to the state's assistance and protection. To pass the 'test' of trafficking one must be a 'true' victim: injured, suffering, and enslaved. Since victims are defined as those who are in need of help (by the state, NGOs, police or clients), they are not seen as political subjects but rather as objects of intervention. Victims cannot engage in the realm of the political. Others need to act on their behalf - and indeed there has been a plethora of anti-trafficking organisations and initiatives. The language of trafficking obliterates any idea of struggle, and works to stabilise the political and social transformations brought about by migration, as it confines migrants to victimhood. This reinforces the notion that one cannot engage with citizenship as a process, but only with citizenship as formal legal status administered by an omniscient state.

Yet even citizenship as a formal legal status is a long way off for Victims of Trafficking. In the first place, it is extremely difficult to be granted VoT status. In contrast to the large numbers that are invoked, the state recognises very few people as VoTs. Moreover, the status carries only temporary rights. The thirty-day reflection period - an opportunity for the VoT to consider whether or not they might take legal action against traffickers and thereby stave off removal or deportation - was only implemented after considerable NGO lobbying. VoT status does not grant an automatic right to stay in the UK; it simply indicates a temporary right to assistance and to stay in the country, which is removed after the victim has collaborated with the authorities to assist their prosecution of the traffickers. What follows, in the language of the Home Office, is the reintegration and resettlement of victims - *alias* deportation. The legal category of VoT is not aimed at the protection of victims but rather at the prosecution of traffickers. In its allocation of temporary and conditional rights, VoT status normalises the exclusion produced through restrictive immigration

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and labour policies, and serves to uphold the hierarchical organisation of access to rights and citizenship.

Reference to the abuses conducted by individual actors - brutal traffickers and exploitative employers - obscures the importance of formal citizenship/legal status, and the role of the state in constructing vulnerability through denial of legal status. Anti-trafficking measures and rhetoric turn political conflict into a patching-over of contradictions, or negotiated adjustments of interests - and the negotiation and patching is not usually being done by migrants.

## Conclusion

Many people feel deep concern at the widespread injustice endured by so many, particularly when it is happening close to home, and is a clear manifestation of global inequalities. And the enthusiasm with which 'anti-trafficking' campaigns and policies are embraced is one manifestation of such concern. But if exploitation and abuse is to be ended, solutions must be sought that move beyond identifying victims and imprisoning traffickers. In signing up to anti-trafficking policies and campaigns, there is a danger of being taken in by a sleight of hand that conflates illegality and trafficking, and presents ever harsher immigration controls as being in the interests of migrants. Immigration controls produce groups of people that are 'deportable' and hence particularly vulnerable to abuse. The state is responsible for the maintenance of a legal framework within which certain occupations and sectors are deregulated, and exist outside labour protection rules; and it is complicit in permitting third parties to profit from migrants' labour, whether it is in the commercial sex or other sectors. It is therefore important to put the state back into the analysis, and to address the role played by the state's immigration and labour regulations in creating the conditions in which trafficking and the exploitation of migrant labour are able to flourish.

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## Notes

1. For example, the Council of Europe Convention on Action Against Trafficking in Human Beings and Council Directive on the Short-Term

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Residence Permit have an emphasis on victim-protection schemes but these are also conditional on co-operation with law enforcement.

2. Home Office, *Secure Borders, Safe Haven. Integration with Diversity in Modern Britain*, HMSO 2002.

3. United States Government Accountability Office, *Human Trafficking: Better data, strategy and reporting needed to enhance US anti-trafficking efforts abroad*, US GAO 2006.

4. Hansard, Col. 1263W, written answer by Vernon Coaker, Parliamentary Under-Secretary Home Office, to Ms Dari Taylor, MP, 19.3.08.

5. E. Balibar, *We, the People of Europe? Reflections on transnational citizenship*, Princeton University Press 2004.

6. Ibid.

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