

## Global Britain and the Modern Slavery Act 2015

To stamp out a trade that affects 30 million people around the world is not a question of Labour vs Tory, as both sides are committed to the [the Modern Slavery] Bill. The question is how we make this Bill a world leader which other countries will seek to adopt.

—Frank Field, *The Spectator*

Just as it was Britain that took an historic stand to ban slavery two centuries ago, so Britain will once again lead the way in defeating modern slavery and preserving the freedoms and values that have defined our country for generations.

—Theresa May, ‘Anti-slavery service’

At an antislavery service held at Westminster Abbey in 2016 to honour the celebrated abolitionist William Wilberforce, Prime Minister Theresa May took up his mantle: ‘I want Britain at the forefront of this fight, leading the world with our efforts to stamp out modern day slavery and human trafficking.’<sup>1</sup> She described modern slavery as a crime that ‘knows no geographic boundaries’ and held up the United Kingdom’s Modern Slavery Act 2015 as having some of the toughest penalties in the world. With the help of an elite antislavery policy network, May, as home secretary, had forged a bipartisan consensus on abolition in Parliament in favour of modern slavery legislation and cultivated the support of faith-based organisations. As home secretary (2010–2016) and prime minister (2016–2019), May positioned the United Kingdom as a critical node in the global antislavery governance network and fashioned the United Kingdom’s fight against modern slavery as a key plank in her vision of Global Britain.

<sup>1</sup> May, ‘Anti-slavery service’.

This chapter explores how modern slavery came to play a central role in the United Kingdom's governance strategy. Initially, the Coalition (Conservatives and Liberal Democrats) government followed New Labour's carceral approach to human trafficking and reluctantly adopted the 2011 EU antitrafficking directive, which it felt demanded too much in the way of victim protection. It also tried to retain executive control over antitrafficking policy, but no party had a majority in Parliament. Parliamentarians gave the policy a distinctively British inflexion through the adoption of the term 'modern slavery'. They also pressured the government to tackle forced labour in supply chains.

As we saw in Chapter 5, the bipartisan All-Party Parliamentary Group (APPG) on Human Trafficking (its name was amended in 2015 to add Modern Slavery) pressured the Labour government to adopt the Council of Europe Convention on Action Against Trafficking in Human Beings. It used the language of slavery to refer to human trafficking and evoked the memory of Britain's leading role in the antislavery campaign. In December 2009, the APPG's founder, Anthony Steen (a Conservative MP), introduced the Anti-Slavery Day Bill. He referred to William Wilberforce's parliamentary campaign against the slave trade as a model to emulate.<sup>2</sup> The private member's bill received royal assent before the May 2010 election.

Reframing human trafficking as slavery enabled new abolitionists to draw on a historical repertoire in which Christian evangelicals, Parliament, and British leaders figured prominently. Cast as a moral issue, modern slavery transcended party politics. Modern slavery, like human trafficking, was mobilised by groups – from Christian abolitionists to antiprostitution campaigners to workers' rights advocates – who held incommensurable views on what modern slavery comprises, its causes, and potential solutions. Employing the language of modern slavery also allowed the government to sidestep the divisive issue of prostitution, which fell under human trafficking.

May's invocation of Wilberforce is telling. Wilberforce's rightly praised abolition work overshadowed other aspects of his politics that were conservative and repressive. He introduced his ninth abolition bill in February 1799 between supporting a bill suspending habeas corpus and introducing a bill to outlaw trade unions, which he denounced as 'a general disease on society'.<sup>3</sup> Wilberforce 'used his moral capital as the hero of abolition' to outlaw trade unions, introduce imprisonment without trial, and reduce freedom of

<sup>2</sup> Hansard, HC, vol. 505, col. 536, 5 February 2010.

<sup>3</sup> The Combination Act 1799 made it an offence, subject to three months imprisonment or two months hard labour, for a workman to join a trade union. Tomkins, *William Wilberforce*, 146.

speech and freedom of assembly. But there is nothing cynical or contradictory in this blend of freedom and coercion if, according to his biographer Stephen Tomkins, we consider Wilberforce's religion (evangelical Christian) and class (a wealthy importer of Baltic timber and iron). Wilberforce interpreted British radicalism, often coupled with attacks on traditional Christianity, as an attack on Christian values and society.<sup>4</sup> The antislavery movement in Britain in the early 1800s was 'spiritually radical but socially reactionary'.<sup>5</sup> Its challenge was to abolish slavery without upending the social order.

Like Wilberforce's legislation, the Modern Slavery Act 2015 was sandwiched between repressive legislation – the Immigration Acts of 2014 and 2016, designed to make the United Kingdom a 'hostile environment' for illegal migrants. These three interconnected laws are May's political legacy, and for her, as for Wilberforce, there is no contradiction between this mix of freedom and coercion. They are integral components of a legal scheme that sorts out victims and illegal migrants from migrants who are welcome. This system draws on and reinvigorates ideas of control and sovereignty deeply rooted in the United Kingdom's cultural political economy – ideas that were particularly potent as the United Kingdom decided to leave the EU.

#### SOVEREIGNTY, AUSTERITY, AND BREXIT

The United Kingdom's relationship with the EU became contentious in the context of a fragile governing coalition, the Eurozone financial crisis, and domestic austerity policies.<sup>6</sup> The slogan 'Take Back Control' – associated with border and immigration controls and the rise of the United Kingdom Independent Party (UKIP) – also came to refer to sovereignty, with its links to power, authority, and national identity. Reclaiming sovereignty was a rallying cry for those who sought to leave the EU and chart a new path for 'Global Britain'.<sup>7</sup>

Sovereignty has three dimensions here.<sup>8</sup> In the United Kingdom, sovereignty as a political principle means parliamentary sovereignty, which includes elements of monarchical sovereignty and emphasises centralised power and control.<sup>9</sup> But on its own, parliamentary sovereignty cannot provide political legitimacy. The second dimension, popular sovereignty (equated

<sup>4</sup> Tomkins, *William Wilberforce*, 146.

<sup>5</sup> Scanlan, *Slave Empire*, 16.

<sup>6</sup> Gifford, 'The people against Europe'.

<sup>7</sup> Wellings, *English Nationalism, Brexit and the Anglosphere*; and Daddow, 'Globalbritain™'.

<sup>8</sup> Gifford, 'The UK and the European Union', 323.

<sup>9</sup> Ibid.

with democratic rule exercised by citizens), is required. The third dimension, economic sovereignty, is the separation of the market from the state, and it resonates with 'British' values of liberty and private property.<sup>10</sup> While the border between politics and markets is contested, in the United Kingdom the state has 'historically been quite effective at policing and reinforcing the sovereignty of the market'.<sup>11</sup>

Eurosceptics exploited the contradiction between the economic functionalism of the New Labour's supernationalism and the different dimensions of sovereignty prominent in UK political discourse. Fearing the impact of the Eurozone crisis and the EU's qualified voting majority rules on the United Kingdom's economic autonomy, Prime Minister David Cameron took an increasingly hard stance on the EU.<sup>12</sup> In his version of economic supernationalism, the United Kingdom would obtain greater concessions from the EU, especially over the free movement of EU citizens, and lead the EU in a more liberal market-oriented direction. On 23 January 2013, Cameron set out his position: 'We have the character of an island nation – independent, forthright and passionate in defence of our sovereignty. We can no more change this British sensibility than we can drain the English Channel. And because of this sensibility, we come to the European Union with a frame of mind that is more practical than emotional.'<sup>13</sup> This expression of 'British' exceptionalism was designed to placate the growing Eurosceptic faction in the Conservative Party. To appease them, Cameron announced that a Conservative victory in the 2015 election would mean a referendum on EU membership.<sup>14</sup>

Emboldened by UKIP's populist rhetoric (disseminated in the tabloid press), Eurosceptics championed popular sovereignty as the path to taking back power ceded to bureaucrats in Brussels.<sup>15</sup> Although popular sovereignty and national identity were at the heart of the September 2014 Scottish referendum on independence, nationalism is not straightforward in the United Kingdom's plurinational context. Elite political discourse incorporated political nationalism, in the form of overt populism and tacit nativism, by expressing it in terms of controlling immigration.<sup>16</sup> Since the 1950s,

<sup>10</sup> Ibid., 323–324.

<sup>11</sup> Ibid., 335.

<sup>12</sup> Gifford, 'The United Kingdom's Eurosceptic political economy', 790.

<sup>13</sup> Gifford, 'The people against Europe', 524.

<sup>14</sup> Gifford, 'The UK and the European Union', 332.

<sup>15</sup> Ibid.

<sup>16</sup> Menon and Wager, 'Taking back control', 281.

immigration policy meant controlling the movement of people deemed racially distinct, and controls created different categories of migrants.<sup>17</sup>

Opposition to immigration and the EU were closely linked.<sup>18</sup> An influx of EU citizens after the 2004 enlargement, combined with the financial crisis and austerity policies, fuelled anti-immigration political discourse and opposition to free movement. Cameron did not challenge claims that migration, rather than government cuts, had led to the deterioration of public services such as education, health, and housing.<sup>19</sup> Indeed, he blamed the United Kingdom's 'soft touch' benefits culture for attracting EU and third-country citizens.<sup>20</sup>

In 2015, when the Conservatives won the election with a majority, Cameron announced that the referendum would be held in June 2016. Although the EU made concessions, including a 'brake' on free movement, key proponents of the Leave campaign, including prominent figures in the Conservative Party and the UK Parliament and cabinet, blamed migrants for exhausting public services and the EU for draining the United Kingdom's finances.<sup>21</sup> The slogan 'Take Back Control' elided the idea of 'control over borders', 'designed to resonate amongst those concerned about levels of immigration into the UK', and the 'slightly more esoteric argument about the right form of democracy and representation that ought to pertain to Britain'.<sup>22</sup> In the run-up to the referendum, tabloids claimed that membership in the EU had led to uncontrolled immigration.<sup>23</sup>

The Leave campaign offered a positive economic vision to counter the EU Remainers' 'fearmongering' about the consequences of leaving the EU. Conservative Eurosceptics claimed the EU encumbered the United Kingdom with regulations; the United Kingdom would flourish as a more globally oriented player.<sup>24</sup> Britain's imperial past allowed Brexiters to imagine a global future in which the market was sovereign and extended beyond the United Kingdom's territorial borders. They pointed to London's role as a global financial centre that had the 'capacity, particularly when compared to

<sup>17</sup> Geddes, 'The politics of irregular migration'; Gish, 'Color and skill'. In *Bordering Britain*, El-Enany traces these racialised legal categories back to Britain's colonial and slave-trading past.

<sup>18</sup> Menon and Wager, 'Taking back control'; Goodwin and Milazzo, 'Taking back control'.

<sup>19</sup> Hopkin, 'When Polanyi met Farage', 472.

<sup>20</sup> Ibid.

<sup>21</sup> Such as Iain Duncan Smith, Michael Gove, Boris Johnson, and Jacob Rees-Mogg. Labour Member of Parliament Frank Field, a key policy actor in the modern slavery policy space, also promoted Brexit.

<sup>22</sup> Wellings, *English Nationalism, Brexit and the Anglosphere*, 105.

<sup>23</sup> Simpson and Startin, 'Tabloid tales'.

<sup>24</sup> Menon and Wager, 'Taking back control'.

its European counterparts, to deterritorialise capital'.<sup>25</sup> The Leave campaign working with tabloids blanketed neoliberal globalism – low taxes, deregulation, and minimal state intervention in a 'free' market – with the language of 'sovereignty and symbolism'.<sup>26</sup>

Cameron resigned when the majority of those voting in the referendum favoured leaving the EU. May became prime minister in July 2016 and rebranded the United Kingdom as 'Global Britain'.<sup>27</sup> This governance narrative drew on 'imperial nostalgia' for Britain's past glory as a trading nation and moral leader.<sup>28</sup> In Britain, particularly England, sovereignty had long had an extraterritorial dimension. As Ben Wellings explains, 'English nationalists do not seek to make the state and nation congruent: instead they instinctively defend British sovereignty its existence, operation, and memory', which, as a former empire, is extraterritorial.<sup>29</sup> May had incorporated the 'narrative of moral leadership and the myth of British exceptionalism' into her fight against modern slavery (her personal cause) and governance strategy.<sup>30</sup> Casting the United Kingdom as a world leader in the campaign against modern slavery helped her build cross-party support during the Coalition government's tenure and after the EU referendum. It linked the United Kingdom's post-EU role to its former glory. Invoking William Wilberforce and the abolitionist campaign to end slavery reinforced a narrative of moral authority, liberty, and British exceptionalism, since in the United Kingdom, unlike the United States, slavery ended through acts of Parliament, not war.<sup>31</sup> Despite a shift from the language of human trafficking to that of modern slavery, Coalition and Conservative governments did not discard but incorporated the links New Labour drew between illegal working and human trafficking. The language of modern slavery heralded a revitalised vision of British global sovereignty.

#### HUMAN TRAFFICKING AND IMMIGRATION

Using terms almost identical to New Labour's, Cameron had defended his government's aggressive approach to illegal migration. It 'is a question of fairness – yes to the British people . . . but also to those who have been shipped over here against their will, kept as slaves and forced to work horrendous

<sup>25</sup> Gifford, 'The United Kingdom's Eurosceptic political economy', 784.

<sup>26</sup> Menon and Wager, 'Taking back control', 281.

<sup>27</sup> Daddow, 'Globalbritain™'; Atkins, 'Rhetoric and audience reception'.

<sup>28</sup> Melhuish, 'Euroscepticism, anti-nostalgic nostalgia'.

<sup>29</sup> Wellings, *English Nationalism, Brexit and the Anglosphere*, 21.

<sup>30</sup> Atkins, '(Re)imagining Magna Carta', 60.

<sup>31</sup> Wellings, *English Nationalism, Brexit and the Anglosphere*, 134.

hours'.<sup>32</sup> The Coalition government, following New Labour's approach to human trafficking, treated EU directives with scepticism and emphasised criminality and illegal immigration as the causes. The government initially refused to opt into the proposed EU antitrafficking directive, which (as we saw in Chapter 4) went further than the framework decision to protect victims of human trafficking and address methods of prevention. It explained that most of the directive's provisions, already in place in the United Kingdom, would require the government to transform discretionary provisions around victim assistance into mandatory entitlements.<sup>33</sup> However, in the face of concerted opposition, the minority government changed its position. The prime minister confirmed the United Kingdom would adopt the 2011 directive and pledged to 'make Britain a "world leader" in the fight against human trafficking'.<sup>34</sup>

On 19 July 2011, the government published *Human Trafficking: The Government's Strategy*, with a foreword by May, then home secretary. She set four priorities: 'a renewed focus on prevention overseas, a stronger border at home, tougher action on the perpetrators, and better identification and care for the victims'.<sup>35</sup> The National Crime Agency (NCA), which would be up and running in 2013, would connect and direct local, national, and overseas action to detect and disrupt human trafficking and strengthen border arrangements. Building on measures New Labour had put in place, it would work with international law enforcement and other UK agencies, such as the Foreign and Commonwealth Office and the Department for International Development. The goal was to stop 'illegal' immigrants before they got to the United Kingdom by putting in place a scheme at the visa application stage that would use markers such as nationality, gender, age, and socioeconomic status to identify potential victims and offenders.<sup>36</sup>

The government promised to revise the primary institution for victim identification and protection, the National Referral Mechanism (NRM). The NRM comprises different agencies (known as first responders) who refer potential victims through the identification and support process (victims cannot refer themselves). As we saw in Chapter 5, the Anti-Trafficking Monitoring Group (ATMG) had criticised the government's decision to make the UK Border Agency (which detected and deported illegal immigrants) a competent authority to determine victim status in the NRM. In response to complaints, the government said it would improve victim identification,

<sup>32</sup> Cameron, 'Prime Minister's address to Conservative Party members'.

<sup>33</sup> Lipscombe and Beard, *Human Trafficking*, 25.

<sup>34</sup> Dugan, 'UK signs trafficking directive after 10-month delay'.

<sup>35</sup> Home Office, *Human Trafficking: The Government's Strategy*, 4.

<sup>36</sup> Sharapov, 'Traffickers and their victims', 94.

including by increasing the number of government and nongovernmental agencies eligible to refer potential victims to the NRM. Under the EU directive and the Council of Europe's convention, it was obliged to provide specific services to victims of trafficking. It outsourced all service provision for victims to the Salvation Army, an evangelical Christian church and the largest nongovernment provider of social care.<sup>37</sup> In these ways, NGOs and faith-based organisations were incorporated into its antitrafficking system.

To comply with the EU antitrafficking directive, the United Kingdom needed to amend the territorial scope of human trafficking offences; provide a statutory basis for measures to protect victims; and set up a national rapporteur to gather statistics, assess trafficking trends, and measure the results of antitrafficking actions. The government agreed to criminalise human trafficking for the purposes of labour exploitation in the United Kingdom and human trafficking by a UK national outside the United Kingdom.<sup>38</sup> But the government hesitated to introduce even secondary legislation that would transform discretionary victim assistance and support practices into mandatory legal entitlements.<sup>39</sup> It also continued to consolidate authority over the governance of human trafficking in the executive; it appointed the Inter-Departmental Ministerial Group on Human Trafficking (IDMG) national rapporteur.<sup>40</sup>

On the United Kingdom's first antislavery day, 18 October 2012, the IDMG released its first annual report on human trafficking. It used NRM data to provide an assessment and analysis of trends and the United Kingdom's antitrafficking efforts. While the strategy's success would depend on the NCA's effectiveness, a 'fundamental aspect' of the United Kingdom's strategy involved disrupting a priority list of source countries.<sup>41</sup> The report stressed paying more attention to trafficking for labour exploitation and the challenge of distinguishing 'between cases of labour exploitation, where workers are under paid and subjected to poor working conditions, and cases of trafficking for forced labour where work is exacted under the menace of penalty and performed against the will of the person concerned'.<sup>42</sup> It called for more research on labour exploitation but rejected the suggestion that the Gangmasters Licencing Authority's (GLA) remit be extended to licensing

<sup>37</sup> Ibid., 11.

<sup>38</sup> HM Government, *Report on the Internal Review of Human Trafficking Legislation*, 3.

<sup>39</sup> Lipscombe and Beard, *Human Trafficking*, 25–26.

<sup>40</sup> It comprises representatives from the UK government, the Scottish government, the Northern Ireland executive, and the Welsh government.

<sup>41</sup> HM Government, *First Annual Report of the Inter-Departmental Ministerial Group*, 46.

<sup>42</sup> Ibid., 72.



labour providers in other sectors where migrant workers were exploited. The report also outlined the government's response to the criticism of the border agency's involvement in the NRM process. It claimed that only officials acting under the authority of the Home Secretary, such as the UK Border Agency, have the power to grant leave from immigration controls; thus, the border agency would remain a competent authority. Conclusive ground decisions would be reviewed by a senior caseworker outside the asylum case-working management chain.<sup>43</sup> Despite these changes, the structure and operation of the NRM continued to be criticised for failing to identify and support victims and for a perceived bias against migrants without lawful immigration status.

For the Coalition government, human trafficking was part of the bigger challenge of controlling immigration.<sup>44</sup> Under May, almost every immigration stream was restricted (through caps, stringent eligibility requirements, or both), and many 'low-skill' channels were abolished.<sup>45</sup> She sought to create what she labelled 'a really hostile environment for illegal immigrants' to encourage them to leave the United Kingdom or deter them from entering.<sup>46</sup> While the Labour government had enlisted third parties such as employers and education providers to monitor migrants' visa requirements from within the United Kingdom, May's policy took the unpaid outsourcing of immigration controls to a new level.<sup>47</sup> Two immigration acts, in 2014 and 2016, gave legal expression to the hostile environment policy. The latter was also part of the government's modern slavery governance strategy.

The 2012 reform of the Overseas Domestic Worker (ODW) visa was just one example of the Coalition government's immigration restrictions. But, as we saw in the preceding chapter, this visa programme attracted a great deal of attention because domestic workers and their supporters said it contributed to domestic servitude and modern slavery. Unlike the Labour government, which yielded to a civil society campaign to preserve parts of the ODW visa designed to protect migrant women, the Coalition government stuck to its proposal to abolish the ODW visa or make it more restrictive.<sup>48</sup> In February 2012, it announced it would limit the visa to six months and prohibit ODW visa holders from changing employers while in the United Kingdom, claiming that migrants admitted under the ODW visa now had other forms of

<sup>43</sup> Ibid., 82.

<sup>44</sup> May, 'Immigration: Home secretary's speech'.

<sup>45</sup> Gower, *Immigration and Asylum*.

<sup>46</sup> Kirkup and Winnett, 'Theresa May interview'.

<sup>47</sup> Griffiths and Yeo, 'The UK's hostile environment', 525.

<sup>48</sup> Fudge and Strauss, 'Migrants, unfree labour, and the legal construction'.

protection (such as the NRM).<sup>49</sup> As a result, the protections available to migrant workers on these visas diminished.

Like New Labour, the Coalition government blended criminal prohibitions with immigration restrictions and was grudging when it came to victim protection and labour regulation. Members of Parliament, however, preferred the language of modern slavery to human trafficking and supported a broader range of governance mechanisms.

On the same evening that the IDWG released its first antitrafficking report, the APPG on Human Trafficking marked Antislavery Day by hosting a gathering at the House of Commons in support of a private members bill (modelled after a California law) that would require large corporations to disclose measures they were taking to keep their businesses and supply chains free of forced labour and human trafficking. Michael Connarty, the Labour cochair of the APPG and sponsor of the Transparency in UK Company Supply Chains (Eradication of Slavery) Bill, convened the meeting, attended by about twenty leading faith-based and civil society organisations. The bill was backed by a 'transparency collation', composed of multinational enterprises (including IKEA, Amazon, and ManpowerGroup), ethical investment and shareholder groups, and the Global Business Coalition Against Trafficking (composed of transnational corporations).<sup>50</sup> This initiative was precisely the type the ethical business alliance described in Chapter 2 sought to promote.

At the bill's second reading, Connarty made it clear the proposed law was not about human trafficking, which he equated with immigration, but forced labour, found within the United Kingdom's own domestic food chains.<sup>51</sup> He stressed the bill's support among civil society organisations and transnational businesses and assured Parliament that the bill 'represents a challenge, but not a threat' to companies. The bill's Conservative cosponsor described it as having 'a light touch'.<sup>52</sup> Even free traders who opposed business regulation supported some form of transparency legislation. Referring to 'the proud Christian tradition of opposing slavery in all its forms', Jacob Rees-Mogg, a Eurosceptic Conservative MP, asserted there were robust economic and moral reasons for wanting to avoid slave labour.<sup>53</sup> Despite cross-party support, the bill died on the order table. Later, it would be revived as

<sup>49</sup> Home Office, *Impact Assessment of Changes to ODW visa*, 17.

<sup>50</sup> LeBaron and Rühmkorf, 'The domestic politics of corporate accountability legislation', 730.

<sup>51</sup> Hansard, HC, vol. 551, col., 662, 19 October 2012.

<sup>52</sup> *Ibid.*, col., 663, 667.

<sup>53</sup> *Ibid.*, col., 670.

parliamentarians, NGOs, faith-based organisations, and transnational business sought to shape the Coalition government's modern slavery agenda.

#### MOBILISING AGAINST MODERN SLAVERY

Released in March 2013, the Centre for Social Justice's report *It Happens Here* put modern slavery law on the government's agenda. Inspired by the new abolitionists, it avoided the issue of prostitution, addressed labour and sexual exploitation, and endorsed a broad range of mechanisms to deal with the different types of slavery.<sup>54</sup> The report recommended a single act to address modern slavery (defined as human trafficking, slavery, servitude, and forced labour) and treated it as a crime and human rights violation. Indeed, it identified 'the widespread misperception that modern slavery is an issue of immigration' as a 'dangerous mistake' that made it hard to identify victims.<sup>55</sup> The report recommended that responsibility for human trafficking move from the minister of immigration to the minister of policing and the elimination of immigration authorities from the NRM's victim-determination process. It called for the establishment of an independent Anti-Slavery Commissioner to launch investigations without ministerial permission and promote victims' interests.

The report's aim was effective enforcement and improved victim identification, protection, and reintegration.<sup>56</sup> Criminal law combined with labour and business regulation was considered the best means to address labour exploitation and modern slavery. Because the GLA played an important role in identifying victims and perpetrators in the fresh-produce supply sector, where it regulated labour providers, the report recommended that its remit be extended to sectors with a high volume of cheap labour.<sup>57</sup> It also proposed allowing ODWs to change employers (and restricting their employment to domestic work).<sup>58</sup>

*It Happens Here* exemplified the ethical business approach to modern slavery, stressing the need for a framework in which the private sector could

<sup>54</sup> Centre for Social Justice, *It Happens Here*, 33–34. The Modern Slavery Working Group was chaired by Andrew Wallis, director of an antitrafficking victim support charity Unseen, and composed of antislavery campaigners, legal experts, police officers, and migrant and human-trafficking service providers. Kevin Bales, who (as we saw in Chapter 2) was a leading abolitionist, was its adviser.

<sup>55</sup> *Ibid.*, 83.

<sup>56</sup> *Ibid.*, 33–34.

<sup>57</sup> *Ibid.*, 89.

<sup>58</sup> *Ibid.*, 94.

'begin to address the integrity of its supply chains without the fear of public, media or NGO censure'.<sup>59</sup> It supported a transparency law similar to the bill the Centre for Social Justice (CSJ) had helped draft and promote the previous year.

By rebranding 'human trafficking' 'modern slavery', *It Happens Here* appealed to a broader political constituency. That and its provenance explain its influence. The CSJ had impeccable conservative credentials. Set up in 2004 by Iain Duncan-Smith, an influential Conservative who was May's mentor, the centre-right think tank focused on poverty-related social issues: 'while secular in its arguments ... [it] was Christian in tone and hiring'.<sup>60</sup> Christian Guy, the centre's managing director, had previously been David Cameron's adviser. To signal that fighting modern slavery was above party politics, Guy invited Frank Field, a maverick Labour MP and member of the centre's advisory council, to speak at the report's launch.<sup>61</sup>

Together with the CSJ, Field persuaded the home secretary to introduce modern slavery legislation; he commented that May's instincts told her that it was not only right, but it 'would be politically good for her'.<sup>62</sup> According to Fields, the cause was 'universally popular' and nonpartisan.<sup>63</sup> It appealed to Conservative MPs.<sup>64</sup> But instead of introducing a white paper, May launched a new process. She appointed a Modern Slavery Bill Evidence Review Panel and a joint committee, adding two extra stages to an already lengthy legislative process. She sought to cultivate a bipartisan consensus and engage a broad array of stakeholders around the problem of modern slavery, while containing the governance agenda within an elite antislavery policy network. The government made it clear that reforming prostitution law was not on the table.<sup>65</sup>

The elite antislavery network May assembled overshadowed other policy actors. It included individuals who were associated with key nodes such as the APPG, the CSJ, and the Home Office. May appointed Field to chair the Evidence Review Panel and the joint committee. The Human Trafficking Foundation, established by Steen, operated as the APPG's secretariat, organised the witnesses, and the CSJ hosted the hearings. Butler-Sloss, a crossbench

<sup>59</sup> Ibid., 209, 212.

<sup>60</sup> Cook, 'Christian Tories rewrite party doctrine'.

<sup>61</sup> Field's Christian faith inspired his socially conservative values. He resigned from the Labour Party in 2018 and was made crossbench peer by the Conservative government in 2020, after campaigning in favour of Brexit.

<sup>62</sup> Field, 'Extension to Michael Dottridge's "How did we get the Modern Slavery Act?"'.

<sup>63</sup> Field, 'David Cameron could have been an anti-slavery hero'.

<sup>64</sup> Peter Bone, the chair of the APPG, introduced a Slavery Bill much less ambitious than the CSJ had recommended. Hansard, HC, vol. 566, col., 395, 10 July 2013.

<sup>65</sup> Robinson, 'The problem with the British government's approach to exploitation'.

peer who cochaired the APPG, was vice-chair of the evidence panel and a member of the joint committee. Steen, former chair of the APPG, was the review's adviser and May's special envoy for combating modern slavery. Andrew Wallis, the CEO of Unseen (an antislavery charity), was the chair of the CSJ's Slavery Working Group and an advocate of supply-chain-transparency legislation; his deputy chair, James Ewins, a barrister associated with the International Justice Mission (an evangelical antislavery organisation), provided support. May's adviser, Fiona Hill, was likewise instrumental in shaping legislation and the government's agenda.

The panel (consisting of Field, Butler-Sloss, and Conservative MP John Randall) heard from academics, NGOs, faith-based organisations, and law enforcement officials. Its report, *Establishing Britain as a World Leader in the Fight against Modern Slavery*, supported the CSJ's recommendations on victim identification and protection, the ODW visa, the independent anti-slavery commissioner, and transparency legislation. Referring to the evidence of David Arkless, cochair of the Global Business Coalition Against Trafficking (GBCAT), a former executive of ManpowerGroup (which, along with the Qatar Foundation, had funded the CJS's slavery report), and a leader of the 'transparency coalition', the panel claimed business supported the move beyond voluntary measures.<sup>66</sup> Although the panel supported mandatory initiatives over voluntary ones to address forced labour in supply chains, it insisted 'that any such legislation must be pro-business'. It recommended legislation similar to the 2012 transparency bill sponsored by Connarty.<sup>67</sup>

The review panel avoided the issue of prostitution's relationship to exploitation.<sup>68</sup> To address labour exploitation, it recommended moving the GLA from the department responsible for agriculture to the Home Office and expanding it into sectors such as construction and catering where contractors engaged in exploitative practices. It asked the joint committee to consider whether the GLA's power should extend beyond licence violations to the more serious offence of forced labour (workers' advocates feared the reform might detract from the GLA's work ensuring that labour contractors observe basic labour standards).<sup>69</sup> The panel also emphasised augmenting state coercive power by increasing the penalties for serious offences from fourteen years to life, using orders to prevent modern slavery offenders from entering the United Kingdom, and extending the United Kingdom's jurisdiction to

<sup>66</sup> Modern Slavery Bill Evidence Review, *Establishing Britain as a World Leader*, 33.

<sup>67</sup> *Ibid.*, 46.

<sup>68</sup> *Ibid.*, 42. It recommended that the antislavery commissioner address the demand for modern slavery, including the domestic market for prostitution, and make recommendations.

<sup>69</sup> *Ibid.*, 19.

prosecute British citizens for modern slavery offences committed outside British territory.<sup>70</sup>

On 16 December 2013, the day the review panel released its report, the home secretary introduced a white paper, which included the Modern Day Slavery Bill, in Parliament. May wanted the bill to make it onto the 2014 legislative agenda and promised to introduce a second bill in May 2014 after the joint committee reported on the first bill. As a gesture towards the CSJ's recommendation that modern slavery be separated from immigration, May authorised the police and security minister to shepherd the bill through Parliament. She cautioned that modern slavery should not be conflated with 'immigration crime' but stated that there 'will often be an immigration crime angle'.<sup>71</sup>

The Modern Slavery Bill was lodged in criminal law, and its goal was to boost the state's coercive power. Applying only to England and Wales, it consolidated the offences of slavery, forced labour, and servitude and human trafficking. It increased the maximum sentence from fourteen years to life and introduced slavery and trafficking-prevention orders (which applied to individuals convicted of a trafficking offence) and slavery and trafficking risk orders (for those not convicted but considered a risk to others). Modelled on sexual offence prevention orders, these civil powers allowed courts to prevent individuals from participating in particular types of businesses, operating as gang-masters, visiting a particular place, working with children, or travelling to specified countries for specified periods of time. The antislavery commissioner's independence and mandate were more limited than the review panel had recommended. The bill provided little in terms of victim protection or revisions to the NRM, which were postponed until the review was completed. Thus, the NRM was not subjected to parliamentary scrutiny. The white paper also put supply chain legislation and extending the GLA's remit on the back burner. It ignored the ODW visa altogether.

Before the bill went to the joint committee for review, the political lines were drawn. The review panel supported using the criminal law against slave traders, but it also stressed victim protection, light-touch business regulation, and labour regulation. The government's sole concern was increasing criminal-law enforcement and penalties. As the bill wound its way through review, the government kept its coercive elements and the Opposition made compromises on what it would accept in terms of business and labour regulation.

<sup>70</sup> Ibid., 29, 32–33.

<sup>71</sup> Home Office, *Draft Modern Slavery Bill*, Foreword.

Field chaired the joint committee, composed of, and advised by, several members of the elite antislavery network.<sup>72</sup> It published its report and a bill on 8 April.<sup>73</sup> The joint committee repeated many of the review panel's recommendations but dialled back its proposals for business and labour regulation. British retailers opposed a full-scale transparency act in favour of adding modern slavery to the list of social, community, and human rights issues companies were required to report on annually under the Companies Act 2006, as required by the EU's 2014 nonfinancial disclosure directive (as discussed in Chapter 4). The joint committee opted for this weak form of transparency obligation.<sup>74</sup> Noting that the government was restricting the GLA's remit and that the GLA's resources were already overstretched, it recommended that the government review rather than extend the GLA.<sup>75</sup>

The government's response came on 10 June 2014, the same day it introduced the Modern Slavery Bill. The bill was virtually identical to the 2013 draft but with minor amendments that nodded towards victim protection. Throughout the lengthy legislative process, the government opposed amendments and debate claiming that this was necessary so the bill could be enacted before the May 2015 election.<sup>76</sup>

In the meantime, the government consolidated antislavery governance in the Home Office. In 2014, the GLA was brought under the Home Office's authority, and the post of minister for preventing abuse, exploitation, and crime, with direct responsibility for driving the modern slavery governance agenda, was created under the home secretary. Karen Bradley was appointed and shepherded the modern slavery bill through Parliament. The government also released its first modern slavery strategy.<sup>77</sup>

Both May and Field cultivated a faith-based antislavery coalition. May announced the formation of 'Santa Marta Group' while attending an

<sup>72</sup> The joint committee was composed of seven members drawn from each house and included members of the review panel and the APPG, who were assisted by specialist advisers and staff involved in the CSJ and review panel reports.

<sup>73</sup> House of Lords, House of Commons, Joint Committee on the Draft Modern Slavery Bill Report.

<sup>74</sup> *Ibid.*, 91. See also LeBaron and Rühmkorf, 'The domestic politics of corporate accountability legislation'.

<sup>75</sup> *Ibid.*, 93. In 2013, the government moved forestry from the licensing regime.

<sup>76</sup> Craig, 'The UK's modern slavery legislation', 21. The Modern Slavery Bill was introduced in the House of Commons on 10 June 2014 and received its second reading on 8 July. The bill was examined by a Public Bill Committee before receiving both its report stage and third reading on 4 November. It was introduced in the House of Lords on 5 November and received its second reading on 17 November. It completed its final stage on 4 March 2015. After ping pong, the bill received royal assent on 26 March 2015.

<sup>77</sup> Home Office, *Modern Slavery Strategy 2014*, 8, 58.

international antislavery conference in the Vatican organised by Catholic bishops and the London Metropolitan police. Cofounded by Kevin Hyland, soon to be appointed by May as the United Kingdom's first independent antislavery commissioner, the group was composed of police chiefs and bishops from around the world committed to working with civil society to combine vigorous criminal law enforcement with pastoral care for victims.<sup>78</sup> Writing in a right-leaning weekly magazine, Field called on Prime Minister Cameron to support an amendment to require businesses to report their efforts to keep their supply chains free of modern slavery. Field summoned the churches – 'Anglican, Roman Catholic, and Nonconformist' – 'to draw inspiration from the great Christian abolitionist, William Wilberforce, and galvanise their followers to stamp out slavery' by targeting marginal seats in the upcoming election.<sup>79</sup> Other faith-based groups rallied around the bill.<sup>80</sup> Once it became law, faith-based antislavery organisations proliferated.<sup>81</sup>

As the bill moved through Parliament, the government faced mounting pressure for greater protection for victims and noncriminal forms of regulation to address forced labour and labour exploitation. It made minor concessions, but it ignored the APPG's recommendation to criminalise the purchase of sexual services to prevent trafficking.<sup>82</sup> In the end, the bill's criminal-law provisions, which made up most of the legislation, remained virtually intact.

Despite the tribute the home secretary paid to 'the campaigners, organisations, and Parliamentarians of all parties' who shined 'a light on this hidden crime', the law, which she described as a 'historic milestone', fell well short of what the review panel and campaigners had recommended.<sup>83</sup> The Modern Slavery Act 2015 (MSA) provides for two general offences: (1) slavery, servitude, and forced or compulsory labour and (2) human trafficking. The first offence is defined according to Article 4 of the European Convention on Human Rights (ECHR), which brings the European Court of Human Rights' Article 4 jurisprudence (which relies, in turn, on ILO instruments and the observations of ILO supervisory bodies) into the definition. 'Human trafficking' covers sexual and nonsexual exploitation, and 'exploitation' includes situations involving trafficking for the purposes of slavery, servitude, forced

<sup>78</sup> May, 'A model that works'.

<sup>79</sup> Field, 'David Cameron could have been an anti-slavery hero'.

<sup>80</sup> Unseen (founded by Andrew Wallis) and Justice and Care (Christian Guy, CEO), both set up in 2008, supported by the bill.

<sup>81</sup> Waite et al., 'Faith, bordering and modern slavery', 3; Turnbull and Broad, 'Bringing the problem home'.

<sup>82</sup> APPG on Prostitution and the Global Sex Trade, *Behind Closed Doors*, 21.

<sup>83</sup> Home Office, 'Historic law to end Modern Slavery passed'.



or compulsory labour, sexual exploitation, the removal of organs, securing services by force, threats, or deception, and securing services from children and other vulnerable persons. Consent does not preclude the offence from having taken place, and personal circumstances (such as a family relationship and mental or physical illness) that make a person more vulnerable may be considered relevant. ‘Trafficking for labour’ and ‘sexual exploitation’ are treated differently, as the former always requires coercion and intent, whereas the latter does not. Despite repeated urgings, the government refused to introduce a crime of labour exploitation in which coercion does not figure.<sup>84</sup>

The MSA increased sentences for serious offenders and provided a wide range of enforcement tools, including confiscation and forfeiture orders.<sup>85</sup> Maritime enforcement orders empower officers to stop, board, divert, and detain UK ships operating in England and Wales waters, foreign waters, or international waters and a foreign ship in England and Wales waters. The slavery and trafficking prevention and risk orders also give courts wide-ranging powers to restrict individuals convicted or at risk of committing a modern slavery or human trafficking offence for a minimum period of five and two years, respectively.<sup>86</sup>

Although Field, members of the APPG, and NGOs championed victim protection, the government resisted enshrining victims’ rights. It refused to make legal aid available to individuals entering the NRM process, to provide a civil remedy to victims, or to put the NRM on a statutory basis. But it did include a new defence for slavery or trafficking victims who commit a crime, protections for victims who are witnesses in criminal proceedings, civil legal aid for victims confirmed through the NRM process, and independent child trafficking advocates.<sup>87</sup>

In the struggle over the independence and mandate of the antislavery commissioner, the government retained the power to approve the commissioner’s strategic plan, but its power to redact the commissioner’s annual report was limited, and the commissioner’s authority was extended from enforcement to include victim identification.<sup>88</sup>

The government’s biggest concession was section 54 of the MSA, which required companies to provide an annual statement on their efforts, if any, to

<sup>84</sup> Robinson, ‘Claiming space for labour rights’, 136–137.

<sup>85</sup> The MSA increased the maximum sentence for most serious offenders from fourteen years to life; those with previous convictions for a specific sexual or violent offence face an automatic life sentence.

<sup>86</sup> Haynes, ‘The Modern Slavery Act (2015)’, 41–45.

<sup>87</sup> MSA 2015, ss. 43–51.

<sup>88</sup> Haynes, ‘The Modern Slavery Act (2015)’, 45–47.

eradicate modern slavery from their business or supply chains. The government overcame its opposition to imposing a disclosure obligation after the British Retail Consortium wrote to the prime minister to press for it.<sup>89</sup> Nothing in the MSA obliges an organisation to specify the steps it may have taken and whether they were effective and there is no penalty for nondisclosure. Nor does the MSA provide a central registry of modern slavery statements or any type of third-party oversight. The only enforcement mechanism is via an application by the secretary of state for an injunction to compel an organisation to disclose. But even these weak transparency provisions were considered a victory by advocates of supply chain regulation because of the government's previous opposition to even such light-touch business regulation.

Pressure from the Lords resulted in two concessions from the government on the ODW visa. The Modern Slavery Bill was amended to permit workers on ODW visas determined by the NRM to be victims of slavery or human trafficking to stay in the United Kingdom for a minimum of six months, during which time they are entitled to change employers so long as they remain employed as a domestic worker in a private household.<sup>90</sup> The government also appointed Ewins, a member of the elite antislavery policy network, to evaluate the impact of restricting ODW visas to a single employer and report by July 2015.

The government continued to resist labour regulation as a method for tackling exploitation. NGOs pushed to have the GLA's licensing provisions expanded to several low-wage sectors and called for a comprehensive labour inspection and enforcement system.<sup>91</sup> Labour MPs tabled a series of amendments in the Commons to require the government to review the GLA's remit and, based on the review, extend it where necessary, which garnered some support from Conservative backbenchers. The Lords supported measures to tackle labour exploitation and an amendment calling for a review of the GLA's remit and resources. The government suggested that the GLA could take on the issue of serious labour exploitation. In the end, the government committed to a paper on the role of the GLA, involving 'an amorphous consultation' that offered an 'opportunity to further divert the GLA from its labour inspection role towards crime control or immigration enforcement'.<sup>92</sup>

<sup>89</sup> Berman, 'Shaping the Modern Slavery Act'; LeBaron and Rühmkorf, 'The domestic politics of corporate accountability legislation'.

<sup>90</sup> MSA, s. 53.

<sup>91</sup> For example, FLEX (Focus on Labour Exploitation), Forced Labour Monitoring Group, Joseph Rowntree Foundation, Trade Union Congress.

<sup>92</sup> Robinson, 'Claiming space for labour rights', 138.

Although there was little in the MSA about immigration, it figured in the government's antislavery agenda. The CSJ's second report, written by Fiona Hill (between her stints as May's political adviser in the Home Office and chief of the prime minister's staff), *A Modern Approach to Modern Slavery*, released between the MSA's royal assent on March 26 and the general election on 7 May 2015, anticipated a return to modern slavery being seen as an offshoot of illegal immigration. The report urged European lawmakers to follow Britain and substitute 'modern slavery' for 'human trafficking'.<sup>93</sup> In her foreword, the home secretary praised the report for making it clear that modern slavery 'is a cross-border crime that needs law enforcement in different countries to work together to disrupt and defeat these organised crime groups'.<sup>94</sup> The report called on police and immigration officials across the EU to take a 'joined-up strategic approach' to investigate and prosecute 'organized crime hidden in the immigration system'.<sup>95</sup> The goal was to create 'a hostile environment' for slave traders.<sup>96</sup>

#### ILLEGAL WORKING AND LABOUR MARKET EXPLOITATION

The Conservative Party's 2015 election manifesto linked modern slavery to exploitation, unscrupulous employers, and illegal working and called for greater labour market regulation.<sup>97</sup> Together with the Immigration Act 2016, the MSA created an integrated regime for dealing with labour exploitation, from chronic violations of labour standards to modern slavery offences.<sup>98</sup>

During the election campaign, both the Conservative and Labour Parties promised to reduce low-skilled migrant workers and to toughen labour market regulation to prevent labour exploitation and illegal work.<sup>99</sup> After winning a majority, the Conservative government deepened and extended the hostile environment for illegal migrants, stressing the connection between labour-market exploitation and illegal migration. In his 21 May 2015 'high-profile' speech on immigration, Prime Minister Cameron identified 'gangmasters' who lure migrant workers to the United Kingdom and then exploit them and businesses by bringing in 'cheap labour that undercuts the wages of local

<sup>93</sup> Centre for Social Justice, *A Modern Approach to Modern Slavery*, 10.

<sup>94</sup> *Ibid.*, 7.

<sup>95</sup> *Ibid.*, 42.

<sup>96</sup> *Ibid.*, 10.

<sup>97</sup> The Conservative Party Manifesto 2015, *A Strong Leadership*, 31.

<sup>98</sup> Fudge, 'Modern slavery, unfree labour and the labour market', 426–429.

<sup>99</sup> Bale, 'Putting it right?', 300.

people'.<sup>100</sup> He promised to create 'a new enforcement agency that cracks down on the worst cases of exploitation'.<sup>101</sup>

The Immigration Act 2014 required landlords and banks to check the immigration status of their tenants or clients and prohibited them from providing services to illegal immigrants. The 2015 immigration bill, designed 'to tackle illegal immigration by making it harder to live and work illegally in the United Kingdom', made it a criminal offence to fail to check immigration status.<sup>102</sup> Doctors, landlords, employers, and others were conscripted to conduct immigration checks, moving bordering practices deep inside the United Kingdom. Unless 'lawful' immigration status could be established, an individual would be denied access to employment, education, housing, health care, driving licences, marriage, and financial services.<sup>103</sup> Requiring private actors to police migrants' 'status' inculcates behaviour in one group by requiring them to help to police another. Because lawful migrant status is often difficult to determine (there are a variety of different visa statuses with different rules, and people can slip from one status to another for a variety of reasons), ethnicity or holding a British passport, as many predicted, came to function as proxies for individuals who did not meet the idea of 'white Britishness'.<sup>104</sup>

The government tabled the immigration bill in September 2015, in time for it to be enacted before the referendum on the EU. In the background papers, consultation documents, and debates, the government blamed organised criminal groups who preyed on vulnerable migrant workers for labour exploitation. It also regarded migrants who chose to work without employment authorisation as bearing some responsibility, since 'illegal working encourages illegal immigration, undercuts legitimate businesses, and is often associated with exploitation'.<sup>105</sup> According to the home secretary, it was necessary to treat illegal working as a criminal offence in order 'to seize and confiscate the profits made by those who choose to break our immigration laws'.<sup>106</sup> She

<sup>100</sup> Cameron, 'PM speech on immigration'.

<sup>101</sup> Ibid.

<sup>102</sup> Fudge, 'Illegal working', 571.

<sup>103</sup> Griffiths and Yeo, 'The UK's hostile environment'.

<sup>104</sup> El-Enany, *Bordering Britain*, 20. An internal Home Office review of what later was renamed the 'compliant' environment found that the hostile-environment policy had a 'meaningful differential impact' on the basis of race and nationality, but that the policy was 'a proportionate means of achieving legitimate aim, rational, fair and reasonable because it is based on the existing framework and legislation underpinning immigration control in the UK'. Home Office, 'Overarching equality impact assessment [EIA]', 24, 25.

<sup>105</sup> Fudge, 'Illegal working', 571.

<sup>106</sup> Hansard, HC, vol. 603, col. 269, 1 December 2015.

assured Parliament that the vulnerable, ‘such as those who are trafficked here and forced to work illegally’, would not be punished because safeguards provided in the MSA will protect them.<sup>107</sup> Protection would be offered, but only to migrants without lawful immigration status who the NRM confirmed as victims.

On the bill’s second reading, on 13 October 2015, its two sponsors, the Department for Business Innovation and Skills and the Home Office, released a consultation document ‘Tackling Exploitation in the Labour Market’, which the government treated as fulfilling its obligation to review the GLA. The government would deal with all forms of forced labour and abuses of employment law to protect ‘local workers and responsible businesses affected by those prepared to exploit cheap labour’. Tackling labour market exploitation was as much about creating a level playing field for business as it was about enforcing workers’ rights.<sup>108</sup>

The document presented a limited menu of recommendations: introduce a new offence – aggravated breach of labour-market legislation; create a new statutory Office of Director of Labour Market Enforcement (ODLME) to develop a labour-market strategy and coordinate the enforcement activities of the three labour-market-enforcement agencies;<sup>109</sup> strengthen information sharing between the enforcement agencies; and expand the GLA’s remit. A central labour standards enforcement agency was off the table.<sup>110</sup>

In January 2016, the government released its response. Although there was broad agreement that a new offence was needed to address labour exploitation that fell short of the coercive behaviour required under the MSA offences, the government decided to create a new type of enforcement order supported by a criminal offence for noncompliance to tackle the exploitation of workers. While the ODLME received broad support, intelligence sharing and reforming the GLA polarised the respondents. Some expressed concern that

<sup>107</sup> Ibid.

<sup>108</sup> Fudge, ‘Illegal working’, 571.

<sup>109</sup> The three agencies are HM Revenue and Customs (HMRC), responsible for the enforcement of holiday pay and National Minimum and National Living Wage; the GLA, later the GLAA; and the Employment Agency Standards Inspectorate (EAS), responsible for the enforcement of the Employment Agencies Act 1973 and other regulations that apply to recruitment and employment agencies.

<sup>110</sup> In its 2019 report on modern slavery, the Johnson government announced a review of the existing labour-market-enforcement landscape to ensure that workers’ rights were protected and businesses were supported to comply with the law. It published a consultation to consider the case for establishing a new enforcement body for employment rights in July 2019 and closed the consultations in October. UK, 2019 *UK Annual Report on Modern Slavery*, 20. As of the end of December 2023, there was still no initiative introducing a single labour-enforcement agency.

information sharing with immigration officials could deter undocumented workers at risk of labour exploitation from reporting labour standards violations for fear of being prosecuted for ‘illegal working’. Most respondents considered the GLA’s licensing regime to be effective, and the majority thought the GLA’s role should be expanded to other sectors and licensing criteria updated. Several feared that a grant of police powers and a new mandate to enforce the MSA would transform the GLA from an agency that used licensing to enforce labour standards to one that used criminal law to target a narrow range of egregious forms of labour abuse.<sup>111</sup>

During the immigration bill’s final stage in the Lords, peers mounted a last-ditch attempt to implement changes to the ODW visa, as recommended in the Ewins report. Released in December 2015, the report stated that workers with an ODW visa should be permitted to change employers for any reason during their initial six-month stay in the United Kingdom and to extend their visa for a further two years.<sup>112</sup> A universal right to change employers would, according to Ewins, give abused workers a practical way out without risking either a precarious immigration status or loss of income; a maximum stay of two and a half years was the minimum period required for the effective protection of abused ODWs. The government accepted Ewins’s recommendation that workers on ODW visas be allowed to change employers but rejected the suggestion that all ODWs should be able to extend their stay in the United Kingdom by a further two years. It expressed concern that workers would be less likely to report abuse if they could change employers *and* extend their stay in the United Kingdom. The government changed the Immigration Rules in March 2016 to permit ODWs to change employers during their six-month visa; however, only those workers identified as victims of slavery would have leave to remain for up to two years as domestic workers (but with no access to public funds). The Commons supported the government and rejected the Lords’ proposed amendment.<sup>113</sup>

On 16 May 2016, three weeks before the Brexit referendum, the Immigration Act 2016 received royal assent. The Act made ‘illegal working’ a crime, empowered state officials to seize the wages of illegal workers, imposed criminal sanctions on employers who had reasonable cause to believe an individual did not have the right to work in the UK, and empowered the government to close workplaces that engaged or had engaged

<sup>111</sup> Fudge, ‘Illegal working’, 572.

<sup>112</sup> Ewins, *Independent Review of the Overseas Domestic Workers Visa*.

<sup>113</sup> Gower, ‘Calls to change overseas domestic worker visa conditions’.

illegal workers.<sup>114</sup> By making illegal working a crime, the government closed the only avenue available to undocumented workers to enforce employment-related rights – anti-discrimination law.<sup>115</sup>

The Immigration Act 2016 also expanded the remit of the GLA, reborn as the Gangmasters Labour Abuse Authority (GLAA), and increased its powers.<sup>116</sup> The GLAA's mission was to prevent, detect, and investigate worker exploitation across all labour sectors, not just in the regulated sectors of agriculture, food, and food processing (where the GLAA continues to license labour providers and set standards). It has the authority to enforce MSA offences, and labour abuse prevention officers, who have investigatory powers under the Police and Criminal Evidence Act, were created for that purpose.<sup>117</sup> The GLAA was also given authority to enforce the offence-related provisions of the Employment Agencies Act 1973 and the Minimum Wage Act 1998 against more serious or persistent offenders and to use its new labour-market-enforcement undertakings and orders. The Act established the ODLME to direct the three organisations responsible for regulating the UK labour market and to determine how to enforce noncompliance across a spectrum, from occasional and unintentional to severe exploitation.

As those who favoured regulating labour to prevent exploitation feared, the Immigration Act 2016 shifted the GLAA away from licensing labour providers to ensure they met basic labour standards to tackling modern slavery and more egregious forms of labour exploitation.<sup>118</sup> The GLAA focused on modern slavery offences instead of using its new enforcement powers to pursue businesses that violate labour standards.<sup>119</sup> Indeed, David Metcalf, the director of labour market enforcement, expressed concern that the GLAA's jurisdiction over modern slavery was 'beginning to crowd out their licensing work'.<sup>120</sup>

Operations to rescue victims of labour exploitation can now be transformed into raids to detect illegal workers. A series of raids targeting modern slavery in

<sup>114</sup> Fudge, 'Illegal working', 572–575. The Immigration Act 2016 also created an incentive for employers to denounce illegal migrant workers to mitigate their own wrongdoing. Bales, 'Immigration raids, employer collusion', 279.

<sup>115</sup> Ibid., 573–574; Guild and Barylska, 'Decent work for migrants?', 295.

<sup>116</sup> Fudge, 'Illegal working', 578–579.

<sup>117</sup> The GLAA can ask assistance from a chief constable, the Director of the National Crime Agency or an immigration officer, and chief constables and immigration officers can ask, but not require, the GLAA to assist them.

<sup>118</sup> Fudge, 'Illegal working'; Guild and Barylska, 'Decent work for migrants?', 285; and Davies, 'Criminological reflections on the regulation and governance', 73.

<sup>119</sup> Barnard and Fraser Butlin, 'Why are criminal offences criminal in labour law?', 90; HM Government, 2018 *UK Annual Report on Modern Slavery*, 28.

<sup>120</sup> Metcalf, *United Kingdom Labour Market Enforcement Strategy 2019/20*, 80. This shift in enforcement occurred despite the GLAA's expanded budget and jurisdiction.

nail bars bore many similarities to raids on massage parlours to rescue migrant women from sexual exploitation (see Chapter 5). Not only were the nail bar raids gendered (female Vietnamese nationals were targeted), but many more individuals who were ‘rescued’ were charged with immigration offences than identified as victims of slavery.<sup>121</sup>

By inserting labour-market-enforcement provisions within the Immigration Act, the government cemented the connection between illegal working and labour exploitation and shifted the GLAA away from forms of labour regulation like licensing (treated as a burden on business) to the enforcement of criminal offences. It even rejected the ODLME’s recommendation for a geographically limited pilot of mandatory licensing of nail bars and car handwashes, marginal sectors in the UK economy that the independent antitrafficking commissioner had identified as being riddled with modern slavery; it insisted instead on trying out a voluntary system.<sup>122</sup> The government resisted new forms of labour and business regulation to prevent the full spectrum of labour exploitation.<sup>123</sup>

#### GLOBAL LEADER IN THE FIGHT AGAINST MODERN SLAVERY?

Modern slavery was a critical component of May’s governance agenda. Within a month of taking office, she marked the first anniversary of the MSA by publishing an article in the *Telegraph* (a Conservative-oriented broadsheet) affirming her government’s commitment to fighting modern slavery.<sup>124</sup> The landmark MSA was simply the beginning. May announced that she would be setting up a task force on modern slavery to coordinate and drive government efforts. She also set out her government’s priorities: (1) making sure the MSA was prosecuting slave drivers, (2) collaborating with law enforcement agencies around the world to track and stop these criminal ‘gangs who operate across borders and jurisdictions’, and (3) continuing to ‘lead this fight on the global

<sup>121</sup> Balch, ‘Defeating “modern slavery”, reducing exploitation?’, 86.

<sup>122</sup> Metcalf, *UK Labour Market Enforcement Strategy 2018/19*, 101–192. Department for Business, Energy and Industrial Strategy and Home Office, *Government Response*. The government postponed considering procurement and other mechanisms to promote compliance in domestic supply chains until after consultation. In March 2020, the government published its first modern slavery statement, and in 2021 ministerial departments began publishing individual modern slavery statements. While a central registry was introduced by the government in March 2021, companies were not required to submit their modern slavery statements to it.

<sup>123</sup> UK, 2019 *UK Annual Report on Modern Slavery*, 20.

<sup>124</sup> May, ‘My Government will lead the way in defeating modern slavery’.



stage'.<sup>125</sup> The strategy was received differently by global and domestic audiences.

Under May's leadership, the United Kingdom became a key node in the global antislavery governance network. The United Kingdom vigorously promoted tackling modern slavery on a global scale and played a leading role in making the eradication of modern slavery a Sustainable Development Goal.<sup>126</sup> At the UN General Assembly in September 2017, May launched a Call to Action to End Forced Labour, Modern Slavery, and Human Trafficking. The government also cultivated ties with leading antislavery philanthropists and the ethical business alliance. Indeed, May invited Andrew Forrest of Walk Free to the UN gathering of world leaders.<sup>127</sup> Strengthening its connections with the other members of the Anglosphere (Australia, Canada, New Zealand, and the United States), the United Kingdom brokered an agreement on four principles to tackle modern slavery in global supply chains: (1) encourage business to address modern slavery in supply chains, (2) tackle modern slavery in public procurement processes, (3) advance responsible recruitment practices, and (4) harmonise laws and policies across jurisdictions. In tandem with Walk Free, May promoted antislavery policy among the members of the Commonwealth, the institutional remnant of Britain's former empire.<sup>128</sup> In 2019, she appointed an international migration and modern slavery envoy to help coordinate the United Kingdom's antislavery efforts with other nations. Tellingly, she linked modern slavery to international migration in the envoy's responsibilities.

The United Kingdom used its economic muscle to shape the modern slavery strategy internationally. In 2017, May doubled aid spending on modern slavery to £150 million and increased it to £200 million in 2018.<sup>129</sup> While some of the aid targeted high-risk countries (such as Nigeria) where victims are regularly trafficked to the United Kingdom, £20 million in seed funding went to the Global Fund to End Modern Slavery, a project of the ethical business alliance and another node in the global antislavery governance network (see Chapter 2). The United Kingdom's efforts to address

<sup>125</sup> Ibid.

<sup>126</sup> Gadd and Broad, 'Troubling recognitions'.

<sup>127</sup> Hewett, 'Andrew Forrest and the fight against slavery'; Robertson, 'A mining billionaire takes his war'.

<sup>128</sup> Walk Free, *Towards a common future*; Guilbert, 'Taking UK's lead'.

<sup>129</sup> The Independent Commission for Aid Impact, *The UK's Approach to Tackling Modern Slavery*, 41.

modern slavery were ranked at the top of Walk Free's 2019 *Measurement, Freedom, Action* index of government responses.<sup>130</sup>

The Conservative Party's 2017 election manifesto made much of the United Kingdom's modern slavery strategy, describing the United Kingdom as 'a global leader in fighting the evil trade in human beings – both around the world and in our own country – for sex and labour exploitation'.<sup>131</sup> It promoted the MSA as the first of its kind in Europe and promised to use the United Kingdom's power to push the UN to make modern slavery a thing of the past. However, the snap election backfired; instead of strengthening her hand in the Brexit negotiations, it cost May her government's parliamentary majority, and she had to negotiate a confidence-and-supply agreement with the very conservative Democratic Unionist Party (DUP) based in Northern Ireland. She was faced with a fractious Parliament disgruntled with the slow speed of Brexit negotiations.

The UK was celebrated as a global leader in the fight against modern slavery, but its strategy attracted a great deal of criticism domestically. In 2017, an independent review issued the first in a series of critical reports by government agencies and parliamentary committees.<sup>132</sup> It found inconsistencies between law enforcement and criminal justice agencies and poor-quality intelligence at all levels. A report by Her Majesty's Inspectorate of Constabulary, Fire Rescue Services (HMICFRS) the same year identified the police's lack of knowledge of modern slavery, ineffective investigations, and referral of potential victims to immigration authorities as problems.<sup>133</sup> In December 2017, the National Audit Office (NAO) criticised the Home Office's lack of strategic action, the absence of effective indicators for measuring progress despite extensive public spending on policing operations, the NRM's failure to identify and support victims, and the failure to monitor businesses' efforts to rid their supply chains of modern slavery.<sup>134</sup> In May 2018, a follow-up report by the Public Accounts Committee confirmed the NAO's criticisms and issued a series of recommendations, which the government accepted.<sup>135</sup> That month, Kevin Hyland, the first independent antislavery commissioner resigned, citing government interference.<sup>136</sup> In July 2018, the government commissioned an independent review of the

<sup>130</sup> Walk Free Foundation, *Measurement, Freedom, Action*, 32, 88.

<sup>131</sup> The Conservative and Unionist Party Manifesto 2017, *Forward, Together*, 42.

<sup>132</sup> UK Home Office, *The Modern Slavery Act Review*.

<sup>133</sup> HMICFRS, *Stolen Freedom*, 13, 38.

<sup>134</sup> National Audit Office, *Reducing Modern Slavery*.

<sup>135</sup> HC Committee of Public Accounts, *Reducing Modern Slavery*.

<sup>136</sup> Dearden, 'UK's first Independent anti-slavery commissioner resigns'.

MSA by members of Parliament, and it appointed the usual suspects, Fields and Butler-Sloss, who were joined by Maria Miller (a Conservative MP). Several of the review's advisers were drawn from the elite antislavery epistemic network.<sup>137</sup> The review had a broad mandate; its report was laid before Parliament on 22 May 2019.<sup>138</sup>

The Home Office's research contributed to the idea that modern slavery was a widespread and pressing social problem. It released a series of reports on the extent of modern slavery in the United Kingdom (2014), a typology of modern slavery offences (2017), and their economic costs (2018). The Home Office's chief scientific adviser estimated that there had been between 10,000 and 13,000 cases of modern slavery in 2013.<sup>139</sup> Seventeen types of modern slavery offences under four broad categories (labour exploitation, domestic servitude, social exploitation, and criminal exploitation) were identified using NRM data.<sup>140</sup> The total cost of modern slavery in the United Kingdom in the year ending March 2017 was estimated to be between £3.3 and £4.3 billion.<sup>141</sup> These estimates, based on intelligence reports rather than confirmed crimes, made the 'dark figure' of modern slavery visible.<sup>142</sup>

The hidden nature of the crime was used to explain the discrepancy between estimates and the number of prosecutions and convictions for modern slavery offences.<sup>143</sup> The number of prosecutions peaked in 2017 at 132 and decreased to 68 in 2019. Convictions under the MSA reached a high of 40 in 2019. The average custodial sentence for those convicted was thirty-six months, a far cry from the maximum life sentence.<sup>144</sup> Yet, instead of raising doubt about the extent and nature of the problem of modern slavery, the tiny number of prosecutions was seen as evidence of the need for additional resources to detect and pursue the hidden crime.<sup>145</sup>

Given the breadth of offences and the flexibility given to police and prosecutors to operationalise a broad definition of modern slavery, the low level of prosecutions and convictions is surprising. Modern slavery offences include the sexual abuse of children in care, forced and sham marriages,

<sup>137</sup> HM Government, *Independent Review of the Modern Slavery Act 2015*; Steen and Guy were among the seven advisers.

<sup>138</sup> *Ibid.*, 11.

<sup>139</sup> Silverman, *Modern Slavery*.

<sup>140</sup> Cooper et al., *A Typology of Modern Slavery Offences*.

<sup>141</sup> Reed et al., 'The economic and social costs of modern slavery'. These costs covered prevention and protection measures and law enforcement and criminal justice.

<sup>142</sup> Broad and Gadd, *Demystifying Modern Slavery*, 29–30.

<sup>143</sup> Office for National Statistics, *Modern Slavery in the UK: March 2020*, 2.

<sup>144</sup> Broad and Gadd, *Demystifying Modern Slavery*, 31–32.

<sup>145</sup> *Ibid.*, 5.

domestic servitude, coerced cannabis cultivation, forced labour exploitation, and assisting the movement of adults involved in prostitution within and across national borders, crimes ‘few criminologists would suggest share common causes or solutions’.<sup>146</sup> The definition suited the government as it is ‘sufficiently flexible to include emerging forms of modern slavery, such as county lines’, which frequently involves children, who are used by gangs to transport drugs and money to and from urban areas to suburban areas and market and coastal towns.<sup>147</sup> This flexibility enabled the government to use the MSA’s extensive enforcement powers against a wide range of behaviour not typically associated with modern slavery. It also helps to explain the increased number of victims referred under the NRM.

The NRM is a critical, and much-maligned, component of the government’s modern slavery system. It has two functions. The first is epistemological: providing authoritative data about victims of modern slavery in the United Kingdom. The other is normative: determining victim status, which is the gateway to victim support. The NRM sorts people into categories with different legal statuses. First responders, ranging from NGOs to the police, refer people who they suspect to be victims to the NRM. After a person is referred, there is a two-step victim-determination process – first, to decide whether there are reasonable grounds to believe the person is a victim of modern slavery and, second, to determine whether there are conclusive grounds. An individual who has received a positive-ground decision has access to state-funded support, provided by charities, for a minimum of forty-five days while the case is worked on and at least until a conclusive decision has been made.<sup>148</sup>

The NRM process has many problems. The first is selection bias. First responders make the referrals, and they must filter out ‘real slaves’ who are coerced from those whose labour rights are violated.<sup>149</sup> UK Visa and Immigrations and the police provide the largest number of referrals (about 30 per cent each in 2018). Typically, immigration officials identify potential victims in the context of asylum claims. Policing practices, priorities, and

<sup>146</sup> Gadd and Broad, ‘Troubling recognitions’, 1449.

<sup>147</sup> HM Government, *Independent Review of the Modern Slavery Act 2015*, 17; HM Government, *The UK Government Response to the Independent Review of the Modern Slavery Act 2015*, 17.

<sup>148</sup> In 2018, the High Court ruled that the Home Office’s practice of limiting victim support to a maximum of forty-five days was unlawful and incompatible with the European Convention Against Trafficking (Articles 11 and 12). The government conceded that support should be given to victims of modern slavery in line with their needs and not stopped after a specified period. Hodal, ‘High Court suspends Home Office policy’; Lewis and Waite, ‘Migrant illegality, slavery and exploitative work’, 233–234.

<sup>149</sup> Strauss, ‘Sorting victims from workers’, 153; and Aliverti, ‘Law in the margins’, 11.

resources influence the numbers and types of victims who the police refer to the NRM; in 2017, for example, police began to refer county-line victims. This change in policing practice increased the number of child victims and influenced the composition of modern slavery offences.<sup>150</sup> Between 2013 and 2018, the number of victim referrals to the NRM increased from 1,745 to 6,993, and the most common form of exploitation reported by victims was labour exploitation (52 per cent) followed by sexual exploitation (33 per cent). But what counts as category labour exploitation or forced labour is not obvious. In 2018, 47 per cent (1,868) of the 3,990 victims of forced labour were also described as victims of forced criminality, like county lines. As the numbers increased, the system became backlogged – in 2018 over half (3,867) of the decisions were pending. Of those decided, 24 per cent received both a positive reasonable and conclusive grounds decision.<sup>151</sup>

A second problem with the NRM was structural bias against unauthorised migrants, an outgrowth of Visa and Immigration being able to determine victim status for individuals who were neither EU nor UK citizens or UK permanent residents. In the first tranche of referrals in 2009, the Antitrafficking Monitoring Group found that there were much higher rates of conclusive grounds decisions for EU and UK nationals than for third-country citizens, a pattern confirmed by subsequent research.<sup>152</sup> There was also a bias against nationals from certain countries. Despite Albania and Nigeria being the two countries with the greatest overall number of citizen referrals for 2014, their portion of conclusive decisions was among the lowest, at 2 and 10 per cent, respectively.<sup>153</sup> The NRM tends to treat potential victims like illegal migrants. In 2018, 507 victims of human trafficking were in detention even though they had received a 'positive reasonable grounds' decision.<sup>154</sup>

To address these widespread criticisms, in 2019 a single unit in the Home Office was created to determine victim status, and an independent expert panel was appointed to review all negative conclusive-ground decisions.<sup>155</sup> However, without statutory footing, the NRM would remain an executive-led policy with no appeal rights and only limited judicial review.<sup>156</sup>

<sup>150</sup> HM Government, 2019 *Report on Modern Slavery*, 9–11.

<sup>151</sup> *Ibid.*, 8–10.

<sup>152</sup> Strauss, 'Sorting victims from workers'; Fudge, 'Why labour lawyers should care about the Modern Slavery Act 2015', 382–384.

<sup>153</sup> Strauss, 'Sorting victims from workers', 151.

<sup>154</sup> Labour Exploitation Advisory Group, *Detaining Victims*, 34.

<sup>155</sup> HM Government, 2019 *Report on Modern Slavery*, 6.

<sup>156</sup> Currie, 'Compounding vulnerability and concealing unfairness', 498.

The government consistently opposed increasing the protection offered to victims of modern slavery. In April 2017, the Work and Pensions Committee (chaired by Frank Field) released a report, *Victims of Modern Slavery*, championing victim support. The committee found that denial of public benefits to victims and the difficulty of obtaining leave to remain in the United Kingdom undermined victim protection and reintegration.<sup>157</sup> It urged the government to provide victims of slavery at least one year's leave to remain and access to public benefits. But the government preferred the status quo where leave is granted only when there are compelling circumstances that justify it.<sup>158</sup> It claimed that automatic leave and benefits would 'incentivis[e] individuals to make false trafficking claims in an attempt to fraudulently obtain leave to remain or delay removals'.<sup>159</sup>

Although proclaimed world-leading by international actors, on the home front the supply-chain-transparency provisions of the MSA were considered virtually ineffective.<sup>160</sup> Section 54 requires commercial organisations that carry out business in the United Kingdom, have a total turnover in excess of £36 million, and supply goods or services to publish a statement each financial year. The Home Office claimed that business transparency would increase supply-chain accountability and 'create a level playing field' between businesses that act responsibly and those that need to do more, thereby driving up standards.<sup>161</sup> Sanctions were unnecessary for businesses that failed to comply. The Home Office respected the sovereignty of the market; it observed that it is up to consumers, investors, and NGOs to apply pressure when they believe a business falls short.<sup>162</sup>

The limitations of the transparency provision were obvious. Analyses of modern slavery statements found that their quality was uneven and that

<sup>157</sup> UK, Home Office, House of Commons, Work and Pensions Committee, *Victims of Modern Slavery*. Other problems included victims having no access to legal aid during the NRM process and the absence of appeal rights from negative determinations of victim status.

<sup>158</sup> HM Government, *Government Response to the Committee's Twelfth Report of Session 2016–17*. However, in *K (Ghana) v. Secretary of the State for the Home Department* [2018] EWCA Civ 98, the Court of Appeal found that the compelling circumstances test was too high as Article 14 of the Council of Europe Convention on Action against Trafficking in Human Beings requires consideration of personal circumstances. In response, the Home Office offered interim guidance, placing all refusals of discretionary leave to remain to victims of trafficking on hold, Currie, 'Compounding vulnerability and concealing unfairness', 510.

<sup>159</sup> HM Government, *Government Response to the Committee's Twelfth Report of Session 2016–17*.

<sup>160</sup> *Ibid.*; Ergon Associates, *Reporting on Modern Slavery*; and Lindsay, Kirkpatrick, and Low, 'Hardly soft law'.

<sup>161</sup> UK, Home Office, *Transparency in Supply Chains etc.*, 2.

<sup>162</sup> *Ibid.*

leading companies (those listed on the Financial Times Stock Exchange's 100 Index) did not meet even the minimal requirements of the MSA. Many of the statements lacked adequate detail and provided superficial and broad descriptions of processes and actions.<sup>163</sup> On 23 May 2016, Baroness Young introduced the Modern Slavery (Transparency in Supply Chains) Bill as a remedy.<sup>164</sup> It proposed to amend the MSA by including public bodies in the transparency requirements; requiring companies and public bodies to publish their statements in company reports; requiring the secretary of state to compile a list of companies that should be compliant; and preventing public bodies from procuring services from companies that have not conducted due diligence. The Joint Committee on Human Rights urged the government to adopt the bill and recommended that a criminal offence (along the lines of the UK's Bribery Act) for failing to prevent human rights abuses be introduced.<sup>165</sup> The independent review also recommended establishing a government-run central registry for slavery statements and extending reporting requirements to government departments.<sup>166</sup>

The government responded in a piecemeal fashion. The Home Office wrote to 17,000 organisations governed by the MSA and urged them to publish a statement. It also committed to carrying out an audit of slavery statements at the end of March 2019 and to publishing a list of noncompliant companies. The prime minister announced the government would publish its own modern slavery statement, extend reporting requirements to government departments and public procurement processes, and establish a central registry for transparency statements.<sup>167</sup> However, her government postponed acting on several of the independent review's recommendations until it conducted public consultations.<sup>168</sup> By the time the consultations concluded in September 2019, May had resigned as prime minister, unable to get her bill

<sup>163</sup> Ergon Associates, *Reporting on Modern Slavery*; Lake et al., *Corporate Leadership on Modern Slavery*; Business and Human Rights Resource Centre, 'FTSE 100 at the starting line'. In a five-year follow-up of its assessments of modern slavery reports, the Business and Human Rights Resource Centre concluded that the Modern Slavery Act was 'not fit for purpose' as the reporting requirements were weak, result in poor disclosure, and do not require companies to prevent forced labour and modern slavery. Business and Human Rights Resource Centre, *Modern Slavery Act*, 11.

<sup>164</sup> Modern Slavery (Transparency in Supply Chains) Bill, House of Lords, Sess. 2016–2017.

<sup>165</sup> Joint Committee on Human Rights, *Human Rights and Business* 2017, 41, 58.

<sup>166</sup> HM Government, *Independent Review of the Modern Slavery Act 2015*, 39–47.

<sup>167</sup> HM Government, *The UK Government Response to the Independent Review of the Modern Slavery Act 2015*, 10–11.

<sup>168</sup> *Ibid.*, 53.

to withdraw the United Kingdom from the EU through Parliament, and Boris Johnson had replaced her.

Before leaving office, May sought to consolidate her legacy on modern slavery. She created a £10 million modern slavery research centre to bring together academics, businesses, and charities to drive research and policy.<sup>169</sup> The Modern Slavery and Human Rights Policy and Evidence Centre is a consortium of universities and independent research organisations that includes, among others, Kevin Bales, Andrew Wallis, a former independent antislavery commissioner, and members of the Home Office. This is precisely the kind of epistemic network that the global antislavery governance network promoted.

Like May, for Johnson, modern slavery symbolised Global Britain. According to the Conservative Party's 2019 election manifesto: 'From helping to end the slave trade to tackling modern slavery, the UK has long been a beacon of freedom and human rights – and will continue to be so.'<sup>170</sup> On December 12, Johnson won a resounding victory in the general election on the platform 'Get Brexit Done'. The United Kingdom withdrew from the EU on 31 January 2020. In March, on the fifth anniversary of the MSA, the government published its first modern slavery statement, with a foreword by Johnson, who expressed his hope that by taking action to drive this 'increasingly pervasive evil' out of the government's supply chains, the United Kingdom would set an 'example that will be followed by governments and businesses right around the world'.<sup>171</sup>

To keep modern slavery at the top of the government's agenda, in 2020 Justice and Care UK and the Centre for Social Justice set up the Modern Slavery Policy Unit. In July 2020, it released a report claiming that 'there could be at least 100,000' victims of modern slavery in the United Kingdom.<sup>172</sup> It called for a blend of tougher criminal laws and greater protection for victims.<sup>173</sup>

The Johnson government continued to treat modern slavery as an important part of its governance agenda. In March 2021, it set up a central registry for modern slavery statements and urged (because without statutory authority it

<sup>169</sup> Home Office, 'Government to launch new modern slavery research centre', 'The £10 million policy centre comes as the government responds to the Independent Review into the Modern Slavery Act'.

<sup>170</sup> Conservative and Unionist Party Manifesto 2019, *Get Brexit Done*, 53.

<sup>171</sup> HM Government, *UK Government Modern Slavery Statement*, 1.

<sup>172</sup> Centre for Social Justice, *It Still Happens Here*, 8. This figure is much closer to Walk Free's estimate that there were 136,000 modern slaves in the UK in 2018.

<sup>173</sup> *Ibid.*



could not require) companies to submit their modern slavery statements. The Queen's Speech on 10 May 2022 outlined the government's intention to introduce a Modern Slavery Bill to strengthen the protection and support for victims of modern slavery and to increase accountability of companies and other organisations to drive out modern slavery from their supply chains.<sup>174</sup>

However, the pandemic and related scandals derailed the government's plans to better protect victims and strengthen reporting obligations.<sup>175</sup> As the political turmoil became entwined with the deteriorating state of the United Kingdom's Brexit economy, fighting modern slavery began to slip down the political agenda as getting tough on illegal migrants rose. The independent antislavery commissioner's position was left empty.<sup>176</sup> Johnson's Home Secretary (Priti Patel) blamed the MSA for encouraging illegal immigrants to come to the United Kingdom and permitting criminals to avail themselves of the NRM. Indeed, she claimed that child rapists (the ultimate embodiment of evil) had sought referral as modern slaves to avoid or delay deportation or removal.<sup>177</sup> Alleged victims have now joined 'evil slave masters as political folk devils' and a key source of illegal migration, which the government blamed as the source of Britain's economic woes. This narrative distracts from the impact years of austerity, Britain's 'lightly' regulated labour markets, and the effect Brexit had on most people's standard of living.<sup>178</sup>

In the context of a tabloid-fuelled panic around small boats loaded with asylum seekers heading towards British shores, the Johnson government introduced the Nationality and Borders Act 2022, which makes the NRM process more restrictive, and 'disapplies' the EU 2011 trafficking directive to the extent that it contradicts this legislation.<sup>179</sup> Although the Act provided a statutory basis for the reflection period for victims, as required under the European Convention against Trafficking, it reduced the length of the reflection period from forty-five to thirty days and limited it to one period, unless the

<sup>174</sup> UK, Prime Minister's Office, *The Queen's Speech* 2022, 83–85.

<sup>175</sup> By the end of December 2023, the government still had not introduced amendments to strengthen the disclosure requirements. By contrast, the legislation to make it more difficult to establish status as a victim of modern slavery had come into effect.

<sup>176</sup> Dugan, 'Home Office accused of deliberately leaving anti-slavery post unfilled'. It had not been filled by the end of September 2023, leaving the position empty for eighteen months. In October 2023, the government announced that Eleanor Lyons, a former special advisor to Boris Johnson with no background in antislavery initiatives, would in December 2023 become the new antislavery commissioner.

<sup>177</sup> UK, Home Office, 'Alarming rise of abuse within modern slavery system'.

<sup>178</sup> Broad and Gadd, *Demystifying Modern Slavery*, 15, 36.

<sup>179</sup> The provisions came into effect on 30 January 2023. They permit asylum seekers who enter the UK as stowaways and on small boats to be processed in Rwanda.

secretary of state considered it appropriate to provide a further period. The threshold for reasonable-grounds decision making within the NRM was also increased from reasonable grounds for believing a person ‘may be a victim’ to ‘is a victim’.<sup>180</sup> Moreover, the act disqualifies victims who have a reasonable-grounds decision from protection if the competent authority is satisfied that they are a ‘threat to public order’ or have claimed victim status in ‘bad faith’.

These changes made it much more difficult to establish victim status in the United Kingdom. In the first quarter of 2023 (the changes to the NRM came into effect on 1 January 2023), the percentage of referrals to the NRM receiving a reasonable-grounds decision was 58 per cent, a significant drop from 88 per cent in 2022.<sup>181</sup> The number of positive final decisions also dropped, from 92 per cent in early 2022 to 75 per cent in early 2023.<sup>182</sup> These are the highest rejection rates from the NRM since at least 2014, the furthest back the available data goes.

The conflation of modern slavery with illegal migration in government rhetoric continued after Johnson resigned in July 2022. His successor as prime minister, Liz Truss (6 September 2022), only had time to transfer authority over modern slavery from the minister for victims and safeguarding to the minister for immigration and appoint Suella Braverman as home secretary.<sup>183</sup> When Rishi Sunak became prime minister on 25 October 2022 after Truss’s debacle, he reappointed Suella Braverman as home secretary. She echoed Patel in identifying the protections available to victims of modern slavery as a source of illegal migration. Braverman told the Conservative Party conference that criminals and asylum seekers were ‘gaming’ the modern slavery system,<sup>184</sup> a claim disputed by the head of the GLAA.<sup>185</sup>

In a statement to the House of Commons on illegal migration the day after a small boat capsized off the coast of England, drowning four asylum seekers, Prime Minister Sunak doubled down on the Johnson government’s decision to get tough on victims of modern slavery. In his push to stop illegal migration, he confirmed that his government would ‘remove the gold plating in our modern slavery system, including by reducing the cooling off period from

<sup>180</sup> In response to a successful legal challenge brought by two victims of trafficking, the government changed the reasonable grounds threshold back to what it had been before the Nationality and Borders Act 2022 changes went into effect. Taylor, ‘Suella Braverman U-turns on new rules targeting trafficking victims’.

<sup>181</sup> Ibid.

<sup>182</sup> Crosby Medlicott, ‘Experts blame Suella Braverman’s borders act’.

<sup>183</sup> Roberts, ‘The UK government is undermining decades of anti-slavery efforts’.

<sup>184</sup> Dearden, ‘No evidence of Suella Braverman’s claims’.

<sup>185</sup> Dugan, ‘Watchdog disputes Braverman’s claim modern slavery laws being “gamed”’.

45 to 30 days' – the legal minimum set out in the (nonjusticiable) European Convention against Trafficking.<sup>186</sup> His government went even further and introduced a bill to facilitate the removal of illegal entrants to the United Kingdom, including those who have established reasonable grounds for believing they are victims of modern slavery.

The Illegal Migration Bill was Sunak's flagship measure to remove those who arrive in the United Kingdom illegally, including asylum seekers and victims of modern slavery. Braverman, the bill's sponsor, characterised it as the government's response 'to the waves of illegal migrants breaching our borders'.<sup>187</sup> Robert Jenrick, Sunak's minister of immigration and responsible for guiding the bill through the House of Commons, claimed it would 'crack down on the opportunities to abuse modern slavery protections, by preventing people who come to the UK through illegal and dangerous journeys from misusing modern slavery safeguards to block their removal'.<sup>188</sup>

Antislavery and human rights advocates complained that the government was running roughshod over the European Convention on Human Rights. To downplay these fears, the government characterised the bill as an extraordinary measure to deal with the small-boats crisis and limited its operation to two years.<sup>189</sup> However, the government failed to allay the concerns of some of its own members that it had gone too far in sacrificing the rights of victims of modern slavery. May expressed her 'fear' that this bill will 'drive a coach and horses through the Modern Slavery Act, denying support to those who have been exploited and enslaved, and in doing so making it much harder to catch and stop the traffickers and slave drivers'.<sup>190</sup>

The Illegal Migration Act received royal assent on 23 July 2023. It removes almost all protections for victims of modern slavery and trafficking who are targeted for removal. For example, victims of modern slavery who have established reasonable grounds to believe that they are indeed victims are to be removed from the United Kingdom before a conclusive grounds decision is made unless they are cooperating with investigations or criminal proceedings relating to their exploitation and the home secretary considers it 'necessary for the person to be present in the United Kingdom to provide that cooperation'.<sup>191</sup> To make it even harder to fit into this exception, the government added a presumption that it is not necessary for a person to be

<sup>186</sup> UK, 'PM statement on illegal migration'.

<sup>187</sup> Hansard, HC, vol. 729, col. 152, 7 March 2023.

<sup>188</sup> UK, Parliament, 'Illegal migration bill'.

<sup>189</sup> Illegal Migration Act 2023, c. 37, s. 26.

<sup>190</sup> Ambrose, 'UK's illegal migration bill will force traffickers underground, says May'.

<sup>191</sup> Illegal Migration Act 2023, c. 37, ss. 22.

in the United Kingdom to cooperate with an investigation and/or prosecution unless there are ‘compelling circumstances’, to be determined with regard to new statutory guidance. Instead of promoting Britain as a global leader in the fight against modern slavery, the Sunak government calculates that there is greater political capital in depicting the MSA as contributing to the ‘immigration’ problem.<sup>192</sup>

## CONCLUSION

The UK government was the first government to embrace the term ‘modern slavery’ and incorporate new abolitionist discourse into its governance strategy. Its modern slavery governance agenda was initially both a domestic and global success. By evoking Wilberforce’s parliamentary campaign against the slave trade, it reminded people of Britain’s golden past when it led the world morally and economically. It had a key driver in the person of Theresa May, who as home secretary and prime minister made eliminating modern slavery her personal cause. An elite antislavery network set the terms of the policy debate in ways that downplayed other elements of the government’s agenda, such as labour-market deregulation and creating a hostile environment for illegal migration, which increases the vulnerability of all (citizens and migrants, both documented and undocumented) workers to modern slavery.<sup>193</sup> This network avoided divisive issues, such as the relationship between prostitution and exploitation.<sup>194</sup> The term ‘modern slavery’ helped elide the nature and causes of exploitation since it covered everything from human trafficking for sexual exploitation and county lines to forced labour. By deploying a moral rather than political vocabulary, new abolitionists could accommodate a range of groups with different approaches and perspectives.

May elucidated her conception of modern slavery and her governance agenda in her speech to the ILO’s centenary conference, made when she

<sup>192</sup> Contrary to what the Johnson government promised, as of 1 January 2024, Sunak’s government has not adopted any measure to protect victims of modern slavery or to strengthen the transparency requirements in the MSA.

<sup>193</sup> Walk Free’s *Measurement, Action, Freedom*, 32, found that the UK’s hostile environment policy resulted in wrongful detention and deportation and fear and uncertainty. However, it still ranked the UK as the world leader on modern slavery initiatives.

<sup>194</sup> Although the 2018 independent review acknowledged that prostitution was not within its mandate, its final report observed that the UK might be seen as an ‘easy target’ by sex traffickers since it does not have a ‘sex-buyer law’. The reviewers planned to undertake ‘a scoping review into laws surrounding prostitution in England and Wales, and their relation to trafficking for sexual exploitation’. UK, *Independent Review of the Modern Slavery Act 2015*, 20.

was preparing to step down as prime minister. Characterising modern slavery as a ‘global epidemic’ that ‘hides in plain sight’, she said her goal was to ‘put the issue of modern slavery firmly on the domestic and international agenda’.<sup>195</sup> Slavery not only destroys lives and communities, May noted, but it also ‘causes illegal immigration – with all the risks that brings for the migrants and the challenges it brings for nation states’. Modern slavery, she continued, undercuts legitimate business and profits. While aid might deal with the supply side, tackling demand is critical. Here, the ‘most powerful voice’ belongs ‘not to business or government, but to the consumer’, since ‘it is customers who ultimately decide whether a business succeeds or fails’. She called on ‘ordinary shoppers the world over to vote with their wallets’ and ‘shun those companies that do not make the ethical grade’. But, she advised, ‘none of this should distract from the central piece of the puzzle: pursuing the criminals at the heart of it all’. She applauded the extraterritorial reach of the law, citing a British court’s jailing of British citizen for her part in trafficking five women from Nigeria to Germany – even though none of her crimes took place in the United Kingdom.<sup>196</sup>

In May’s rendition, modern slavery is cast as a moral problem that pits ‘barbaric individuals’, ‘gangs’, ‘people smugglers’, and ‘child abusers’ against ‘ethical entrepreneurs’, ‘responsible businessmen and women’, and consumers with a ‘conscience’.<sup>197</sup> In this scenario, governments should use the criminal law against traffickers and encourage businesses to be transparent about their efforts to rid themselves and their supply chains of modern slavery.

But not all consumers can ‘vote with their wallets’, and entrepreneurs often engage in pricing practices that squeeze suppliers. Some product markets, such as agriculture, have been restructured in ways that depend on a supply of precarious migrant workers (many on temporary work visas that bind them to a specific employer) who lack the political and labour-market power to insist on and enforce decent labour standards.<sup>198</sup> Modern slavery offenders are often marginal players, and it is questionable how many are, as the government suggests, ‘invested in enduring criminal enterprises’ rather than situational actors.<sup>199</sup> Since many of the modern slavery crimes intersect with immigration

<sup>195</sup> UK, ‘PM speech at ILO centenary conference’.

<sup>196</sup> The first person convicted of human trafficking for sexual exploitation with no connection to the UK’s territory other than citizenship was born in Liberia, became a British citizen in 2009, and was accused of using ‘voodoo’ to coerce her victims. Cooper, ‘UK “voodoo” nurse first person convicted under modern slavery laws’.

<sup>197</sup> UK, ‘PM speech at ILO centenary conference’.

<sup>198</sup> Ruhs and Anderson, *Who Needs Migrant Workers?*

<sup>199</sup> Broad and Gadd, *Demystifying Modern Slavery*, 173.

controls, the proliferation of immigration offences creates ‘around it a field of illegal practices’ that contributes to the growing number of modern slavery offenders.<sup>200</sup> Associating modern slavery with illegal immigration also fosters racial profiling.<sup>201</sup>

The United Kingdom’s modern slavery governance strategy is primarily carceral; the MSA provides a plethora of offences and an elastic definition of exploitation, stiff penalties, a variety of enforcement orders, and extraterritorial effect. Legal authority over modern slavery is lodged in the Home Office, which is concerned with ensuring strong borders and internal order. Different governance strategies are deployed for sexual exploitation and forced labour. Illegal working and modern slavery are the manifestations of labour-market exploitation that concern the UK government. Although labour advocates tried to persuade the government to adopt a labour-market-regulation approach, the government did the opposite. It used the language of modern slavery to shift the GLAA away from enforcing labour standards via licensing to using its criminal-law powers to pursue modern slavery offenders.<sup>202</sup> The United Kingdom has not adopted a labour-market-regulation approach to addressing forced labour and labour exploitation, even though it was one of the first countries to ratify the ILO’s protocol on forced labour.

Indeed, the United Kingdom has made ‘illegal working’ a criminal offence to combat labour-market exploitation, which is seen as undercutting decent employers, good migrants, and British workers. The government justifies the wide variety of private and public bordering practices that operate within, outside, and at the edge of the United Kingdom’s territory by claiming it protects victims of modern slavery. However, it offers victims limited hospitality for fear that offering more will attract a flood of illegal migrants. Moreover, as Britain’s economic and political woes increased with Brexit, the pandemic, and the war in Ukraine, the Sunak government

<sup>200</sup> Foucault, *Discipline and Punish*, 280.

<sup>201</sup> The Windrush scandal (so named after the *Empire Windrush*, the ship that brought one of the first groups of West Indian migrants to the UK in 1948) involved the wrongful detention and deportation of British subjects, many of whom had arrived in the UK before 1973 from Caribbean countries. In 2018, it emerged that in at least eighty-three cases, individuals had been wrongly deported from the UK by the Home Office. In response, Amber Rudd resigned as home secretary, and her successor, Sajid Javid, rebranded the ‘hostile environment’ ‘compliant environment’.

<sup>202</sup> Elysia McCaffrey, the chief executive of the GLAA, was reported as stating that only 12 of its 1,000 inspections of licence holders had been completed by August 2022. Dugan, ‘Watchdog disputes Braverman’s claim modern slavery laws being “gamed”’.

abandoned any attempt to use the fight against modern slavery to establish moral hegemony and, instead, has increased its vilification of illegal migrants, including those who also happen to be victims of modern slavery. Despite these changes, Walk Free's 2023 Global Slavery Index ranked the UK government's response to modern slavery as the best out of 160 countries in the world.<sup>203</sup>

<sup>203</sup> It did note, however, that the UK's response had declined and that the Illegal Migration Bill put the UK 'at risk of continuing its downward trend'. Walk Free, *The Global Slavery Index* 2023.