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Victim or Villain?**

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Abstract

Recent national concern for “victims of trafficking” seems to offer new possibilities for dialogue between government and those lobbying for migrants’ rights. This paper argues that the language of trafficking is anti-political, in that it smuggles in certain politics under an apparently humanitarian agenda. It first considers the implications of trafficking for the politics of citizenship, understood as a process of constructing relations. It goes on to examine the politics of labour implicit in the free/forced labour distinction which is crucial to the definition of trafficking. The paper concludes by emphasising the importance of putting state institutions and the relation between state and labour markets at the centre of an analysis of the exploitation of migrant labour.

Keywords: Labour migration, trafficking, citizenship, forced labour, illegality

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“Illegal immigrant”: Victim or Villain?

The “illegal immigrant” is presented as either an exploited victim (“trafficked”) or abuser of the system. This reflects a broader discourse on migration which separates foreigners into “good” and “bad” migrants: the hard working foreigner necessary for the economy, or the thief of jobs and opportunities. This type of framing is prevalent in academic work as well as in policy and media. Those who are supporters of migrants’ rights promote the first, those who cast themselves as concerned with the rights of UK nationals promote the second. I want to examine the illegal immigrant as victim or villain with relation to this goodie/baddie paradigm and argue that portraying the “illegal immigrant” as a victim confines one to a debate whose parameters are very much set by the state. In particular such an approach is “anti-political”, and the language of victimhood and “good” migrants as it used in popular and academic debate: a) obscures the state’s crucial role in construction of categories of people who are vulnerable to “exploitation” and abuse; and b) sets up a straw (wo)man of the “forced labourer” which leads to a political cul de sac. This is not to say that, at a time of alarming state surveillance, legitimization of torture, and ever increasing inequality, we retreat to a sterile Marxist reiteration of the formalism of “rights”, sitting back and saying “I told you so”. But that those who struggle to advance the rights of migrants, including, most importantly, migrants themselves, must use the political space that invoking “rights” opens up strategically, while academics should be challenging what is currently a very dominant paradigm.

The spectacle of immigration control

First, briefly, what do I mean by goodies and baddies, victims and villains? The “good” migrant includes the victim of trafficking, the refugee, the “bad” migrant includes the trafficker, the “welfare scrounger” and the “illegal immigrant”. The place of the economic migrant is contested, depending partly on the rather fuzzy notion of “skill”. That is one aspect of the debate, which is very much related to another aspect of debate, which is how many people fit into each category. What are the proportions of refugees to economic migrants? Of legals to illegals? Of hardworkers to welfare scroungers?

Those who support migrant rights want to cram more and more people into the “good category”. In many ways this mirrors the government strategy of “making migration work for Britain” emphasising the benefits that hardworking migrants bring to the UK economy (Rudd and Sriskandarajah 2008). But they also emphasise the exploitation that migrants experience in so doing, and in particular the large numbers of migrants that might be considered “victims of trafficking” (International Labour

Office 2005). In all major UK immigration policy documents since July 1998 there is a reiteration of illegal immigrants as being “victims” and denied “human rights” at the same time as them being “criminals”. The language of trafficking seems to help develop this into a more concrete opportunity to shift some “illegal immigrants” into the “good” category by recognising them as trafficking victims. Yet there are some very real difficulties in practise with moving beyond rhetoric and deriving practical benefits from this exercise.

It is important to remember that immigration control has a strong reliance on *spectacle*. The migration regime must be perceived as competent and for the state be seen to act and act powerfully to defend its borders (De Genova 2002; Hampshire 2008). A key principle identified by the UK state for effective border controls is “reassure and deter”. Border controls must be visible in order to deter potential illegal immigrants and “to provide a level of reassurance to the public that the border controls are successfully tackling the perceived threats” (Cabinet Office 2007). That is not to say that immigration controls are an illusion, or that a unified and monolithic state is secretly facilitating illegal entry and overstaying in order to provide fodder for exploitative employers. The state does act of course, and the action is increasingly “targeted” on populations that are seen as posing particular problems. Such targeting has the aims of “efficiency” and ensuring that the movement of “legitimate” migrants is facilitated. But it is also a political exercise, as the UK Home Office’s document on ‘Enforcing the Rules’ states:

From our analysis of detected overstayers, some may be doing so inadvertently, of whom many are thought to be young and from countries with reasonably high GDP per capital and perhaps with high levels of education. Anecdotal evidence suggests that these groups do not intend to stay long term in the UK and require low levels of encouragement to return home. Some groups overstay deliberately as a way of evading immigration controls and some of these may then go on to make an unfounded asylum claim. (Home Office 2007a: 11)

So, overstayers from wealthy countries cause less “harm”, and therefore those from poorer countries should be more targeted².

The spectacular figures that come to epitomise challenges to immigration regimes, the “illegal immigrant”, the “bogus asylum seeker”, “the welfare scrounger”, the “foreign prisoner”, etc, have a political dimension. They are both the subjects of targeting, but equally signify deeper contradictions and anxieties around immigration control. The figure of the Victim of Trafficking (VoT) is no exception to this. She has risen to prominence relatively recently. In 2002 numbers of VoT were “small” and the

² Perhaps informed by the Australian Immigration Department report that found that UK citizens represented the largest nationality of illegal workers in Australia.

majority of illegal migrants were held to be in the UK “by their consent” (Home Office 2002). But five years later, then Home Secretary John Reid was warning that

Failure to take on the people traffickers, who are behind three-quarters of illegal immigration to this country, leaves vulnerable and often desperate people at the mercy of organised criminals. (Home Office 2007a)

Thus the VoT is used to invoke large numbers, echoing “floods” and “hordes”, only now the dominant emotion is pity rather than fear.

In fact, the problem of definitions, data, and analysis means that evidence to support this kind of statement is negligible, and the number of people actually recognised by states as victims of trafficking is very small (United States' Government Accountability Office 2006). In the UK to date there has not been a single conviction for trafficking for forced labour. So rather than a description of fact, these kinds of statements are better seen as indicating a shift in the framing of the debate. Illegal immigrants are now presented using the spectacle of the “Victim of Trafficking” as victims of crimes rather than as principle perpetrators, and it seems to open up new possibilities for dialogue between the Home Office and “illegal” migrants and those working on their behalf.

However, this apparent common ground is in practise often treacherous territory, and there are some immediate difficulties for non-state actors who attempt to tread there. The VoT brings her flip side – the evil trafficker – as do other “goodies”. Increasing the proportion of acknowledged “good migrants” permits the overall logic to prevail that those migrants who fit into the “bad” category should be deported or refused entry, or at the very best that they are not the priority concern. Moreover, whether this group comprises economic migrants or welfare scroungers they are often constructed as actively making life more difficult for those who have a better claim than they do for access to the UK. Some individuals or groups just give refugees/migrants a bad name and make people unsympathetic to the contributions of the “good” migrant. Such an approach can be extremely divisive between migrants as well as between migrants and UK nationals.

For these “bad” migrants what the state does to them is of their own making, because they have chosen it, i.e. economic migrants have *chosen* to come, overstayers have *chosen* to break the rules etc. (I'm going to come back to this politics of choice below) - and support and resources should be put into those who deserve entry but whom the state treats unjustly. So the disciplinary nature of immigration controls and policy is legitimated for a particular group – and their punitive nature is not a problem except that sometimes the wrong people get punished, or the laws are drawn too harshly. It allows in arguments for the further securitisation of migration and the criminalisation of certain groups of

migrants as a response to abuses (Hampshire 2008). In the case of trafficking and illegality the enforcement of immigration controls thus is presented as a means of protection of rights and in the interest of those who are “ruthlessly exploited”.

The second problem is that implementing the good/bad migrant distinction requires “hierarchies of oppression”. In the case of trafficking, what categories of migrants are so exploited that they become victims and thereby merit special treatment, especially given that one of the desirable qualities of migrants is their “work ethic”? How can a line be drawn between “trafficked” and “not trafficked but just-the-regular-kind-of-exploitation” migrants? The arguments become about state *identification* of victims, and the low numbers of those identified, as if they can be identified in the same way as blue-eyed people. The political nature of the category is obscured. In practical terms, for organisations working with undocumented migrants “choosing” those deserving of special help carries the very real risk of divisiveness and a “race to the bottom”. More generally it risks enshrining lower work standards for migrants as the conditions of those who have “just” been exploited, by for example non-payment of the minimum wage are favourably compared with those who have been trafficked.

There is a shift in discourse on “illegal immigration” that portrays “illegal immigrants” as victims of trafficking. This is within a more general and longstanding paradigm in policy and research of good or bad migrants. While this seems to be advantageous to those who are struggling for migrants’ rights, there are some very practical difficulties with engaging with the state on this terrain in order to further these rights. I now want to go on to suggest that these difficulties are not simply practical, but signal more profound conflicts of interest and theoretical divisions.

Anti-politics

Trafficking needs to be seen in the context of a general attempt to depoliticise migration. Increasingly migration to the UK is portrayed as being about managing what makes economic sense, and in particular about determining the details of labour supply and demand. Hampshire (2008) describes the new institutional architecture of UK migration as being “an exercise in anticipated blame-shifting” (p.17) through managerialisation, privatisation and expertisation. Migration policy thus becomes a matter of operationalising technical judgements rather than a political process and “reassurance” becomes assuring the public that the right technical decisions will be made. Demand for VoT represents the unacceptable face of labour demand. The clients of prostitutes, and labour providers and other abusive employers (who often gain unfair competitive advantage through their exploitation of migrants) abuse the human

rights of migrants, particularly those who are illegal and this kind of demand must be eliminated (Home Office 2007b). Those who are so abused are victims rather than perpetrators, and so the slippage between “illegal immigration” and trafficking seems to indicate a convergence around human rights as setting the limits on politics, a constraint on the pursuit of political ends.

Wendy Brown (2006) has observed “One sure sign of a depoliticising trope or discourse is the easy and politically crosscutting embrace of a political project bearing its name” (p 16) . This certainly seems to be the case for “trafficking”. Statements condemning trafficking have been issued by all major political parties and by organisations as diverse as the TUC and the Salvation Army. Yet in this case, even the name of the project is up for grabs, as there is no consensus about what the term “trafficking” actually means (Anderson et al. 2003; United States' Government Accountability Office 2006). Indeed the language of trafficking does not simply de-politicise. It is “anti-politics” in the sense that it uses a humanitarian agenda, allegedly above politics, in order to smuggle in politics by the back door (Balibar 2004). The question is, what are the politics that are being smuggled in? I want to consider first the politics of citizenship, and second the politics of labour.

The politics of citizenship

The attempts to depoliticise migration cannot escape the fact that migration raises one of the most fundamental political questions of all: *who constitutes the polity?*

At first sight the answer seems obvious: the “polity” comprises citizens. “Illegal immigrants” are a sort of anti-polity, with legal non-citizen residents somewhere in between. The position of the illegal immigrant in terms of rights fits in a long-standing debate around the limitations of “human” rights as compared with “citizens’ rights”. But it is also relevant to debates about human rights as being the rights of victims not the rights of agents. These debates have resurfaced in the arguments around the legitimacy of humanitarian intervention (Žižek, 2005), most currently with reference to Burma and Zimbabwe. There are calls for the UN to invoke the concept of “responsibility to protect” civilians even in violation of national sovereignty. This concept applies when states fail in their primary responsibility to protect their own citizens and humanitarian intervention is justified when rights of citizenship are no longer accessible. However, in the case of migrants, the state that “rescues” victims of trafficking as a result of a claim to human rights is the same state that denies access to rights on the basis of non-citizenship. The figure of the evil employer and trafficker throws a shadow over the role of the state in constructing vulnerability. For the Victim of Trafficking (VoT) or the victim of exploitation it is the

employer, pimp or trafficker who denies access to hospital treatment for example. The problem is of course, that if they were not denying her this access then the state would. Indeed one of the keys to vulnerability is state-legitimated limited access to rights (health care, employment, anti-discrimination...etc). So a highly political reality about the state's role in constructing vulnerability for non-citizens, a reality with potential political solutions, is obscured by the call to the state to protect the "human rights" of VoTs and exploited people. It is notable there is no such call by the state to protect "human rights" of "illegal immigrants".

The above discussion is based on a formalised understanding of citizenship as legal status. But there are also considerations of citizenship as participation in public affairs, the creation and engagement with polity (Balibar 2004). Citizenship is not simply a legal status bestowed by the state, but actively constructed through action. As Balibar puts it:

We can view these demands (*by migrant workers who demand legal residence for the undocumented*) based on resistance and the refusal of violence as partial but direct expressions of the process of creation of rights, a dynamic that allows the political constitution to be recognized as 'popular sovereignty' or democracy. (Balibar 2004)

This views citizenship as a process of constructing relations, in which all, including migrants, are directly engaged. It is diametrically opposed to the language of trafficking. In practise while illegal immigration and trafficking are frequently conflated by the media and by the Home Secretary, those who are held up as VoT and therefore worthy of special treatment are only the most victimised, those who are unable to act for themselves. To pass the test of trafficking one must be a true victim: unable to engage, or to make choices. One can only suffer and be rescued. Those who are angry, who are resentful, are not victim enough. Because they can only be helped and rescued they are not political subjects, rather they are the objects of negotiation. Since they cannot actualise their rights, they must be given to others to act on their behalf (Žižek, 2005), and indeed there has been a veritable plethora of anti-trafficking organisations and initiatives. But the organisations cannot be comprised of trafficked people – for they are the victims. So the language of trafficking means that one cannot engage with the notion of citizenship as process, but only with citizenship as formal legal status administered by an omniscient state. But citizenship as formal legal status is a long way off being granted to the VoT. Even being recognised as a VoT is difficult – in contrast to large numbers invoked, those recognised as such are minimal. The possibility of a thirty day reflection period – an opportunity for a VoT to consider whether they might take legal action against traffickers and thereby stave off removal or deportation – only became implemented after considerable NGO lobbying. There is no automatic right to stay in the UK even if one is a "genuine" VoT.

So, on the one hand the importance of formal citizenship/legal status and the role of the state in constructing vulnerability through denial of legal status is obscured by reference to “human rights” denied by individual actors. And on the other hand, it does not allow for citizenship as a process that migrants are actively engaged in. So political conflict is turned into negotiated adjustments of interests, patching over contradictions, where negotiation and patching is usually not being done by migrants, and where the bad migrant is sacrificed for the good.

I recognise that at a time of increasing state surveillance and limited analytical and practical responses, we should beware of throwing the baby out with the bathwater. Citizenship as an active process can involve the use of the language of rights in order to demonstrate the gap between rhetoric around “human rights” and reality. Rancière (2004: 304) puts forward the idea of “dissensus”

A division put in the ‘common sense’: a dispute about what is given, about the frame within which we see something as given A dissensus then demonstrates the discrepancy between “rights” and the experiences of those who are excluded from the polity. Thus, in considering the question, *Who is the Subject of the Rights of Man?* The very difference between man and citizen is not a sign of disjunction proving that the rights are either void or tautological. It is the opening of an interval for political subjectivization. (Rancière 2004)

This dissensus, this strategic use of the language of rights in order to facilitate engagement with the political is in contrast to the victimhood which risks sucking out the politics of citizenship, and which is epitomised in the language of trafficking.

The politics of “free labour”

The “illegal immigrant” as victim of trafficking may also be the illegal immigrant as modern day slave. There is a fear that globalisation and immigration has given rise to the importation of both slaves and slavery. David Davis (then the opposition Home Secretary), writing in the *Mail on Sunday* for example said:

This is the modern day slave trade. Lured to Britain with little knowledge of English, illegal immigrants are forced to work 12 hours a day, six days a week, for derisory amounts of money. Health and safety regulations don’t apply. They are kept outside the confines of society and beyond the reach of the law. (Davis 2004 cited in Ryan 2005)

In this respect the language of trafficking and slavery may be seen as an opportunity to raise concerns about labour conditions, and in particular about forced labour. There is increasing political and theoretical concern evinced about “modern day slavery” (Bales 2005; International Labour Office 2005;

Van Den Anker 2004). This is, it is argued, on the increase all over the world, but the prevalence in the north is largely to do with migration. There is a distinction drawn between “modern” and “traditional” forms of forced labour, and “modern slavery” is what happens to migrants (Rogaly 2008). Since this “slavery” is confined to non-citizens popular presentations have tended to focus on the relation between slavery and immigration, and how slavery can be prevented by improved immigration control – which operates then to the benefit of the potential slaves, for clearly nobody wants to be enslaved. Thus, as well as detracting attention, as discussed above, from the state’s construction of vulnerability through immigration control, it also detracts attention from the state’s complicity in constructing de-regulated labour markets.

But the language of trafficking and slavery as applied to migrant labour demonstrates deep contradictions and anomalies in our conception of “free labour”. Rather than papering these over, surely this is a place to insert our academic crowbars. It is in this way that we can better understand, to quote Nina Glick Schiller’s conference paper summary “the processes that place migration and the restructuring of local and national economies and policies within global efforts to reconstitute capital and facilitate its flexible accumulation”.³ Migrants are not the exception, but the “canaries in the cage”.

In order to do this we must bear in mind that “forced labour” and “slavery” as applied to migrants in the UK is very much associated with “illegality”, as in the newspaper article cited above – with employers being able to take advantage of migrants because of their legal status (though it is also important to know that there have been no prosecutions for trafficking for the purposes of “forced labour”, only for the purposes of prostitution). But while some employers may indeed take advantage of their worker’s “illegal” immigration status, this is compounded by the “doctrine of illegality”: that a person should not profit from their wrongdoing. This applies in cases related to working without paying tax and National Insurance and for those working in breach of their immigration status (Ryan 2005). It means that workers cannot enforce any employment contract or statutory rights. That is, employers can be confident that this group of workers cannot complain about mistreatment or failure to respect an agreement. Thus “evil employers” are structurally supported through immigration and employment law.

However, there are real risks with conflating “illegality” and “exploitation” – a term that is almost always used too loosely in this context in order to signify moral disapproval. Workers do not have to be migrants to be exploited and neither do they have to be “illegal”. Illegality is not the only

³ ‘Theorizing Migration, Locality and Transnational Processes Without Methodological Nationalism’, keynote address at the conference on Theorizing Key Migration Debates, St Anne’s College, Oxford University June 30-July 1 2008.

immigration status that results in exploitation. Consider the “signs” that the public is warned to keep an eye open for as they may be indicative of trafficking.

- **Non-UK** nationals doing farm or factory work
 - Poor or non-existent safety equipment
 - Workers do not have suitable clothing for the work they are doing
 - Workers live in **overcrowded** private rented accommodation. They don't know the address of where they live or work
 - Minibuses pick up non-UK nationals at **unusual hours** of the day and night
 - Bins at the accommodation are full of fast food packaging
 - Workers may seem **fearful** and poorly integrated into the wider community
 - They have no days off or holiday time
 - Employers or someone else is holding passport or identity documents.
- (United Kingdom Human Trafficking Centre and (UKHTC) 2008)

With the possible exception of the last, these points could apply to a high proportion of the migrant agricultural workers in the UK. Yet these are not “illegal” immigrants. Indeed, many of them may be EU citizens. The term “trafficking” does not however open up the black box of labour conditions and relations in the low waged, insecure work that many migrants are confined to. It rather associates these, quite normalised conditions and relations with illegality and with informality.

Another problem with looking at labour conditions for migrants through the lens of illegality is that it obscures the fact that for legally resident migrants who do not have indefinite leave to remain the labour contract cannot be imagined as a contract between juridical equals. For migrant workers a labour contract can cement or efface legality of *residence* that is, it has an impact that goes beyond the employment relation. Indeed the state can set limits on this contract. For example, a wage increase above “normal” increments may be grounds for refusing a work permit renewal without advertising the job and the new wage level to EEA nationals.

Looking at labour conditions for migrants in general, rather than simply considering poor conditions as an aberration applying to those working illegally troubles the bright line between free and unfree labour and the fiction that free labour is what happens in the formal economy, and unfree in the informal economy. In this respect, the language of trafficking can help illuminate the contradictory positions adopted by the state. Take for example indentured servitude. This is no longer regarded as “free labour”, and it is for this reason that Chinese snakeheads who facilitate debt financed migration and employment are deemed to be “traffickers” even though migrants may well have consented. So the *Times* (December 6th 2004) reported that “ Illegal immigrants are pressed into prostitution, exploited by protection rackets or used as ‘*slave* labour’ to pay off their *debts*,

according to Sir Stephen Lander, chairman of the new Serious Organised Crime Agency (Soca).” But a recent Home Office explanation of trafficking suggests that this type of contract is not a problem per se but only when the debt is “unrealistic” (Home Office 2007b). Similarly in the Home Office’s consultation *Making Migration work for Britain* the proposed “bonds scheme” administered by employers was not felt to be incompatible with free labour. In practise then it seems to suggest ambivalence: the problem is one of degree and “reasonableness” rather than kind. It is only if they are conducted within the informal economy and by “illegals” that these arrangements are an abomination. If they are conducted within the formal economy they are acceptable (i.e. free labour), and indeed not only could they be legal, they may even be used as part of the immigration structure.

At the moment these arrangements are not incorporated into immigration practise – though we should watch this space. But even the current taken-for-granted work permit arrangements may trouble concepts of free labour. For typically migrants on work permits cannot change employer but are tied by their work permit which is given to the employer not to the worker⁴. If they want to leave their employer they can, but they must then leave the country or be criminalised. Thus the line dividing forced and free labour is different for non-citizens than it is for citizens even when those non-citizens have legal status. This has the affect of denying other assumed rights including the right to organise. Restrictions on employment significantly increase the power of employers over migrant labor when combined with migrants’ dependence on employers for visa renewal, and this combination has consequences for legally resident migrant workers’ access to rights. For while it is true that irregular migrants may be deported with very limited process, many of those who are legally residing on permits must also leave should their employer not require their services any more (Home Office 2008). This has been demonstrated to prove a problem in access to rights as migrants on visas are often concerned that their employer won’t support their application for visa renewal should they challenge their employer in any way, join a trades union or even present as unenthusiastic (Anderson and Rogaly 2005). Thus, it is in practice not only irregular migrants who are unable to challenge employers power but also those working legally.

The politics of forced labour rest on highly politicised notions of “consent”. Why a political cul-de-sac? Because “In the cases of both the slave and the free wage worker, the parties may be said to have been coerced into performing the labor or to have freely chosen the lesser evil” (Steinfeld 2001:15). The judgement about whether this is coercion or freedom is a political one, but perhaps it is

⁴ Some can change employer but only to the same sector which can have the same effect. E.g. SAWS workers can change to another SAWS registered employer.

not the primary issue. What is important is not an individual's consent but the functioning of the relation between states and markets and people (citizens and non-citizens, workers and others), and these relations are contingent. They can be changed as part of the citizenship making process.

Who cares about all this theory?

But what are the implications of all these conundrums? The space for common ground around helping victims is smaller than rhetoric suggests and is treacherous territory. Expanding the numbers of good migrants can be hugely significant for the lives of the migrants so recognised, but it does not move the argument on. Celebrating migrants' contribution to the economy is practically a dangerous strategy in the case of an economic downturn, but it also leaves intact the notion that low wage, insecure, poor work is acceptable (indeed may be a golden opportunity).

The category of "migrant" as a) non-bearer of citizenship rights and b) bearer of differential labour rights is not "real", but it has real implications. These theoretical arguments lend substance to claims that it is important to separate protection of labour and other rights from immigration status. While recognising the effects of this categorisation, the categorisation itself must be challenged. Rather than seeing a homogenised category of "migrant workers" as special victims, separated out from the labour market and deserving of special attention there is a need to a) challenge the state on its role in constructing vulnerability through immigration controls, and b) enact citizenship by building common platforms with others so constructed – e.g. regulations around welfare benefits, the withdrawal of labour protection mechanisms, legislative facilitation of the decline in organised workforces, through limitations on workers' rights to particular groups in the labour market (agency workers) etc.

The illegal immigrant as victim or villain, like the good and bad migrant is an unsatisfactory paradigm. In fact, when unpacked it often rests on shaky notions of consent and choice that mask a multitude of assumptions. It is important to find ways to challenge this dominant paradigm while at the same time engaging with policy makers. This requires putting state institutions and the relation between state and labour markets at the heart of our analysis. Those who would further equality between migrants and citizens must continuously struggle to widen the political space that is available to non-citizens. Trafficking does not open up this space. Spectacle is no substitute for politics.

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