

Imaginary counter-trafficking penalties: A comparative analysis of Greece and the United Kingdom

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Abstract: *The wars on sex trafficking have traditionally focused on the proliferation of criminal sanctions, the militarization of border controls, and the criminalization and marginalization of the sex industry. In recent years, however, the human rights approach has emerged as a key component of a new reframed, holistic anti-trafficking discourse. According to this approach, human rights are shown to have significant importance for bringing together prevention, prosecution, protection of victims and partnerships to deliver gendered victim services. While valuable, our analysis draws on a comparative examination of the wars on sex trafficking to highlight the significant limitations of dominant contemporary anti-trafficking discourses and technologies. Using Greece and the United Kingdom as case studies, the present article examines the criminalization and human rights anti-trafficking components in the context of the initial “war on trafficking” and investigates the diverse articulations and crucial limitations that have created the differences of these two anti-trafficking models. We conclude by suggesting that in recent years the “war on trafficking” framework is gradually fading away. In its place the new anti-trafficking inferential schemes take the form of evidence-based, market driven products.*

Keywords: human trafficking; criminalization; victims; Greece; UK; war discourse

Introduction

The antithesis between a criminalization and a human rights approach in the context of sex trafficking has been considered a highly contested issue. On the one hand, it is argued that a criminalization approach would be better because border controls and zero tolerance measures will be fortified, the number of convictions will inevitably increase, and states’ interests will be safeguarded against security threats. On the other hand, it is maintained that a human rights approach would bring more effective results, as this would mobilize a more “holistic” framework, bringing together prevention, prosecution, protection of victims and partnerships for delivering gendered victim services (United Nations, 9 August 2011). This antithesis, discursively constructed at an international level, cuts across a decentralized reliance on the respective national, competent authorities.

The argument of this article is that the emergence of the new millennium’s “war on trafficking”, primarily instigated by the United States, put sex trafficking on the international agenda as a law enforcement and human rights priority (DeStefano, 2007). This war, which refers not to a specific tactic but to the totality of political and operational actions undertaken by anti-trafficking mechanisms, has now spawned a problematic transnational bureaucracy (Hodges & Nilep, 2007; U.S. Department of State, 28 October 2008, 2014; UN General Assembly, 15 November 2000). Both global and local modes of crime and security governance have been utilized in the construction of this transnational “war” (for the proliferation of these dialectics see Aradau, 2012; Barkawi, 2011; Engelhardt, 2010;

Shaw, 2010). While our analysis draws predominantly on the legal management of human trafficking, this “war” framework is connected to the formation of imaginary penalties, as an ever-encroaching and totalizing criminal governance (Carlen, 2008a, p. 2). By exploring key texts, legislation, fieldwork notes and interviews (see Bouklis, 2012; Chatzopoulos, 2013, 2014), and data gathered through questionnaires submitted to anti-trafficking teams in Greece and the United Kingdom, we map out the internal regressive and progressive dynamics of contemporary counter trafficking.

For the legal syntheses, both countries are dominated by the same general principles found in all Western European cultures (Grossfeld, 1990, p. 39). Indicatively, both countries banned slavery around similar times, in 1833 (UK Slavery Abolition Act) and 1822 (Greek Parliament, 2008), respectively. Moving to contemporary international counter-trafficking legal instruments, both countries, again, are signatory parties to the Palermo Protocol and to the Council of Europe Convention on Action against Trafficking in Human Beings. Clearly, therefore, the anti-trafficking domestic contexts investigated here are inextricably linked with the emergence and proliferation of global anti-trafficking norms (Ditmore & Wijers, 2003; Doezema, 2005; Papanicolaou, 2008a, 2008b; Papanicolaou & Bouklis, 2011).

By comparatively evaluating these two dissimilar legal systems and cultures (common law versus civil law), we use this occasion to outline the unfolding of criminalization and human rights provisions as reoccurring core elements which can be found in both jurisdictions (see Appendix 1)(Munro, 2006). Using a functional comparative framework, where function itself serves as *tertium comparationis*, we aim to grasp how this concept of “counter-trafficking criminal governance” emerged through institutions, both legal and non-legal, by fulfilling similar functions in different legal systems (Michaels, 2006, p. 342). The burden of the argument depends upon an analysis of the effects of reductionist criminalization strategies, ascended by the central forces spinning these parallel counter-trafficking narratives and their hegemonic vicissitudes.

While interrogating the construction of criminalization strategies, the analysis questions the extent to which these domestic laws put the context of trafficking offences on trial. Reflecting on the context, this article maps out the attempts to reconcile the initial antithesis between criminalization and human rights. This aims to contribute rich and analytical descriptions of how global trends and national policies are conceptualized and materialized. Further, we question the extent to which these criminalized acts have been restructuring the continuum between national and international justice. Do counter-trafficking frameworks construct the criminalized acts within the very context within which they occur? Do they engage the communities within which crimes occur (Webber, 2004)? Do they suggest solutions that draw upon cultural and penal governance? Do they administer punishments that are reflective of the expansion of the prison industrial complex (Spade, 2011; Wacquant, 2002)?

From the outset in the UK the recently ratified Modern Slavery Act 2015 (after the submission of this article the Modern Slavery Act, 2015 was enacted; see also Modern Slavery Unit, June 2014) introduces a revamped administrative structure, which highlights cost and resource implications, while neglecting the social dimensions of poverty (for poverty as a root cause see Sarkar, 2014). It also implicitly demonizes low skilled migration to the UK (Modern Slavery Bill 2014-15, p. 28).¹ Similarly, the economic crisis-hit Greek anti-trafficking context presents a unified, yet rather limited solution to the social causes of trafficking and to the antagonisms within it. Instead of supporting further criminalization developments, this article questions the implicit promise of imaginary penalties, according to which crime and social risk can ultimately be abolished (Carlen, 2008a, p. 10). To that extent, this article examines the relationship between these opposing visions and assesses the processes through which counter-trafficking establishes the logic of managerialist audit and evaluation, entangled with crime-reduction and crime-eradication rhetorics.

¹ The Bill explicitly states its strict labor remit: “Permitting a change of employer once in the UK would not be compatible with the purpose of the route, which is to allow a short visit with an existing employer. It is not the government’s policy to facilitate low skilled migration to the UK.”

Criminalization of Trafficking in the UK

The International Labor Organization (ILO, 2012) estimates that 20.9 million people are victims of forced labor globally, of which 1.5 million are to be found in the developed economies of the European Union alone. The British Government argues that human trafficking is an ongoing problem in the UK, and it estimates that there are 5000 trafficked people at any one time (Anti-Slavery, n.d.). Based on international legal trends (Council of Europe, 2005; UN General Assembly, 15 November 2000), it is clear that trafficking in human beings is considered a crime consisting of many different illegal acts ranging from abduction and threats, to fraud and illegalized sex work. In England and Wales trafficking is not legislated against in one single piece of law (Skrivankova, 2008, p. 212), which is why the English legal framework, in its totality, is particularly extensive in its response to trafficking (see Table 1). Specifically, the legal framework is very broad, with almost 20 separate statutes related to trafficking. This creates a rather complicated and labyrinthine structure, to which we shall return again towards the end of this section. Most recently law-makers have begun to identify some specific weaknesses of the existing framework and have considered three bills to reform the law on trafficking. Below we present these legal instruments, as they are indicative of institutional priorities and concerns.

In recent years, anxieties about migratory shifts have frequently turned into trafficking debates (e.g. Agustín, 2007a, 2007b; Aradau, 2008; Doezema, 2010). Touching upon those debates, the first recent legislative step in this area involved a new bill targeting human trafficking (Human Trafficking (Border Control) Bill, 2010-12)(HTB). Following the “fortress Britain” paradigm, this Bill proposed a populist criminalization solution. As such, it required border control officers to stop and interview potential victims of trafficking notwithstanding entitlements under European Union law to the free movement of persons (Human Trafficking (Border Control) Bill, 2010-12). Presenting trafficking in a simplistic and instrumentalized form, solely focusing on the criminalization of migration and the enhancement of border controls, this Bill failed to complete its passage through Parliament (Weekly Information Bulletin: 23rd July, 2011).

The second recent legislative debate on trafficking took the form of the Human Trafficking and Exploitation Bill. This Bill showcased a human rights protective framework by suggesting unconditional assistance for the victims of human trafficking, and the comprehensive protection of witnesses (Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill [HL], 2012-13 part. 2-3). However, after just one reading in the House of Lords in May 2012, this Bill failed to complete its passage through parliament before the end of the session and made no further progress.

The third legislative debate presents the reconstitution of the modern slavery framework in the UK, framed as the Modern Slavery Bill (Home Office, 2013; now Modern Slavery Act, 2015). The latter intends to “consolidate and simplify existing slavery and trafficking offences to provide clarity and focus when investigating and prosecuting traffickers” (Theresa May, MP, quoted in Home Office, 16 Dec 2013). Intended to strengthen criminalization initiatives, this Bill is one element in a comprehensive programme to:

“tackle modern slavery, which also includes an enhanced operational focus on modern slavery, and non-legislative policy changes, including trialing child advocates to better support trafficking children and introducing specialist teams at the border to identify cases of trafficking” (Modern Slavery Unit, June 2014, p. 1).

One of the most prominent changes regarding criminalization, and the one mostly advertised by the government, is the increase of the maximum sentence for committing the crime of human trafficking (Home Office, December 2013, at 4). Specifically, according to s.6 of the Draft Bill as presented in December 2013 (Home Office, at 19-20), the maximum sentence for modern slavery offences will be increased, from 14 years to life imprisonment (Modern Slavery Act 2015, Part 1, s. 5), to ensure that perpetrators are harshly punished for their crimes (Home Office, December 2013, at 4). Furthermore, the Draft Bill also includes modern slavery offences within the extended determinate sentencing regime. This means that an individual convicted of a second listed offence will be automatically con-

sidered for a life sentence (Home Office, December 2013, at 4). Evidently, this punitive harshness promises to highlight the issue of “modern slavery” as a governmental priority.

Building on this punitive basis, in the second part of the Bill (Home Office, December 2013, sections 11-28), prevention orders are being introduced to restrict the activity of individuals who pose a risk, as well as those already convicted of slavery and trafficking offences. These preemptive steps are aimed at strengthening the country’s ability to combat this type of criminality (Home Office, December 2013, at 4). Framing the pursuit of justice in “war” terms, these prevention orders are designed so that law enforcement bodies and the courts can respond flexibly to the risks posed by an individual of committing future slavery or trafficking offences (Paye, 2007). This flexibility will supposedly enable law enforcement and the courts to respond and take action in relation to changing slavery practices and trafficking tactics. As such, the invocation of the concept of justice becomes invested in enabling an adaptable anti-trafficking structure. A structure that reaches out to future offenders and allows for tailored prohibitions to the specific risks posed by individuals (see Modern Slavery Unit, June 2014, at 10).

Returning to the labyrinthine legal structure mentioned earlier, to provide only a few indicative punitive measures, human traffickers in England can already be prosecuted under a number of different legislative Acts depending on the offences committed (see Table 1). Namely, the criminalization of trafficking for sexual exploitation and the provisions for trafficking inciting or causing prostitution, dovetail effectively with the Sexual Offences Act 2003 (Sexual Offences Act, 2003). Trafficking for exploitation is an offence under s.4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Both the above mentioned Acts were further amended by the Protection of Freedoms Act 2012. Within the wider penal programming, the Human Tissue Act 2004 creates additional offences for commercial dealings in human organs for transplantation. Lastly, to raise awareness of the “dangers and consequences of slavery, human trafficking and exploitation” as well as to highlight the progress made by the government and those working “to combat all forms of slavery, human trafficking and exploitation”, the Anti-Slavery Day Act 2010 serves as a motivational and ideological statement.

Table 1. Other related legislation for challenging trafficking

Modern Slavery Act 2015 Identity Documents Act 2010, s.4 Coroners and Justice Act 2009, s.71 Police and Crime Act 2009, s.14 Counter-Terrorism Act 2008, s.30 Gangmasters (Licencing) Act 2004 Asylum and Immigration Act 2004, s.4 Human Rights Act 1998 Child Abduction Act 1984, s.2 Protection of Children Act 1978, s.1 Immigration Act 1971 s.25, s.25A, s.25B Proceeds of Crime Act 2002 s.75, sch.2(3)

Criminalization of Trafficking in Greece

In contrast to the fragmentation of English law which we discussed above, the Greek law on this issue has been reasonably concise. In the following paragraphs we explore the provisions of the Hellenic Criminal Code dealing with human trafficking. Historically, the Hellenic constitutional development involves the abolition of slavery in 1828 with the founding of the Hellenic modern state. Commonly describing the 400 years of Turkish rule as slavery, for the modern Hellenic state anti-slavery provisions and public discourse have been tightly associated with national identity and territorial integrity. Despite these anti-slavery provisions and substantial evidence that trafficking of illegalized migrants is a growing problem, Greece had for many years no legislation specifically criminalizing the trafficking of human beings for forced labor, including forced sexual exploitation. Greece’s Aliens Act, Law 1975/1991, Article 33, which was in force until June 2001, included penalties in cases where the

transport of undocumented migrants was for an “illegal profit”. There was, however, no direct reference to “human trafficking”. Under international pressure exercised by the US TIP Reports and the obligations set out by the Framework Decision on Trafficking in Human Beings of 19 July 2002 (European Council Framework Decision 2002/629/JHA, 2002/629/JHA, 2002/629/JHA, 2002/629/JHA, 2002/629/JHA), and the Palermo Protocol, human trafficking became a distinct criminal offence in 2002 after the implementation of L.3064/2002 (ΦΕΚ Α΄ 248/15.10.2002). Indeed, during the years 2002 - 2003, similarly to the English context, issues of border control and operational intelligence were presented as effective responses to the increasing levels of migration, be it illegalized or other. Simultaneously, the introduction of legally binding international anti-trafficking instruments set out changes that are not easily reconcilable with non-punitive structures.

In fact, the implementation of L.3064/2002, as subsequently supplemented by delegated legislation and other specific provisions contained in L.3386/2005 (ΦΕΚ Α΄ 212/23.08.2005, replaced later by L.4251/2014) on the status of third country nationals, amended Chapter 19 of the Greek Penal Code. The new legal framework added a new paragraph to Article 323 (slave trade) of the Penal Code, entitled “Trafficking in Human Beings” (Article 323A). Article 323A criminalized contemporary forms of trafficking, *inter alia* for the purpose of organ removal, for the forced or fraudulent exploitation of labor, for begging, and for trafficking with the purpose of recruiting minors in armed conflicts (Vogiatzi, 2008, p. 152). Additional legal provisions were also inserted into Article 348 pertaining to pornography featuring minors (Article 348A) and into Article 351 “soliciting prostitution”. The initial Article 351 made no reference to smuggling or to the contemporary broader understanding of labor exploitation. To that extent, the aforementioned Article was amended to incorporate the imposition of sanctions upon the economic exploitation of sexual life and the commission of indecent acts with, or involving, minors in exchange for money or gifts (Article 351A).

All offences contained in Articles 323A and 351 are punishable with incarceration of up to ten years, in addition to a fine ranging from 10.000 to 50.000€. In cases of further aggravating circumstances the punishment is increased to at least ten years and a fine ranging from 50.000 to 100.000€. According to Article 323A (4) aggravating factors include the exercise of trafficking as a profession, abuse of authority, whether the victim is a “minor or mentally and/or physical disabled” and, lastly, whether the act resulted in the serious injury of the victim. In the case where the victim dies while being trafficked the perpetrator is incarcerated for life (Greek Criminal Code, Art.323A(6) as introduced by v. 3625/2007 (A΄ 290/24.12.2007)).

Furthermore, the law also provides punishment for the intentional “clients” of victims and for the participation in sexual tourism trips targeting children. Those who intentionally use the services provided by victims of human trafficking are punished with imprisonment for at least six months (Greek Criminal Code, Art.323A(3)). The planners, promoters, organizers and advertisers of trips with the purpose of sexual intercourse, or other indecent acts with children, are punished with incarceration of up to ten years (Greek Criminal Code, Art.323B as introduced by v. 3625/2007 (A΄ 290/24.12.2007)), notwithstanding whether the acts took place in Greek territory or abroad, by Greek or foreign nationals (Greek Criminal Code, Art.6 and Art.7). Another important aspect of the law regarding sexual tourism with children is that even plain participation in such trips is punishable with one year imprisonment regardless of the commission of the actual act of intercourse or other indecent acts (Vogiatzi, 2008, p. 152). To supplement this punitive framework, the intense determination of Greek legislators to criminalize and implement a combative, “war”, framework targeting the phenomenon of human trafficking is clearly evident when analyzing Articles 323A(2) and 351(2) (Greek Criminal Code, Criminal Code). According to these two Articles, perpetrators are guilty of the offence of human trafficking when they obtain the consent of victims by fraudulent means, deceit or by taking advantage of the vulnerable position of victims. Notably, the actual act of trafficking does not need to take place: from the moment that the victim is convinced by the perpetrator’s promises or threats, the crime of trafficking has been committed (Sykiotou, 2007, p. 96). Furthermore, the punishment is the same as for a perpetrator actually trafficking an individual. Again, the appearance of punitive harshness is the

ultimate aim, as the law allows for incarceration of up to ten years, in addition to a fine ranging from 10.000 to 50.000€.

Despite this broad range of sanctions, it is questionable whether the actual traffickers are ever brought to justice. Ongoing testimonies have been critical of the operational success of these frameworks, suggesting that it is only vulnerable individuals involved in illegalized forms of labor that are convicted of trafficking offences (Andrijasevic & Anderson, 2009; Greek Helsinki Monitor, 1 October 2004, 25 September 2004; O'Connell Davidson, 2006). Even though there have been some minor increases in trafficking investigations, arrests and (only imperceptibly) in convictions, this “war” on trafficking, which initially carried the risk of being used to threaten civil liberties, is now being transformed (Méndez, 1990, p. 39; Sengupta, 2009). We elaborate further on these transformations after examining the human rights aspects of anti-trafficking.

Human and Victim Rights in the UK

Even as we speak (January 2015), there are no expressly stated rules specifically addressing protection, support and assistance for victims of human trafficking in the English legal system. A few provisional measures addressing this issue, which are currently under review and have been introduced recently, will be discussed briefly after summarizing the wider legal context. The Code of Practice for Victims of Crime first issued in 2006 contains some measures for the protection of victims of all types of crime (Skrivankova, 2008, p. 214), which, however, are not meant specifically for the relief and protection of victims of Human Trafficking. This lack of trafficking-specific provisions creates a one-dimensional prism. Human and victims’ rights in the context of trafficking are primarily to be materialized through criminalization provisions.

On an international level, all relevant protective remedies and measures are clearly stated in two international treaties/agreements (Modern Slavery Unit, June 2014, at 21), the Council of Europe Convention on Action against Trafficking in Human Beings and the EU Directive on preventing and combating trafficking in human beings and protecting its victims (European Parliament & Council Directive 2011/36/EU, 05 April 2011).² As a result, UK protection and support measures are provided on the basis of interpretation of these European and international conventions and protocols and not through clearly defined national rules (Baroness Butler-Sloss, Frank Field MP (Chair), & Sir John Randall MP, 2013, p. 35).

This lack of national procedural, as well as substantive measures has evoked a well-established critique. According to specialists and practitioners giving evidence to the Modern Slavery Bill Evidence Review (Baroness Butler-Sloss et al., 2013), protection and support measures are extremely important for successfully addressing Human Trafficking. Their application through a “policy” approach that can be subject to different interpretations, according to organizational roles and responsibilities, “is not acceptable” (Baroness Butler-Sloss et al., 2013, pp. 35-36). Furthermore, the absence of clearly defined legislative prescriptions can lead to arbitrariness in applications and access to victims’ support, which creates uncertainty for victims and prevents them from approaching and cooperating with the authorities (Baroness Butler-Sloss et al., 2013, pp. 35-36).

The Measures

The aforementioned international instruments set out minimum standards for preventing and combating trafficking in human beings and more importantly for the protection of victims. Namely, these instruments provide for:

²The deadline for transposition of the Directive into UK national law was April 6, 2013. Despite originally opting out of the Directive, the UK government later decided to transpose the Directive in the form of the Modern Slavery Bill, which was still under debate during the writing of this article and was ratified on March 26, 2015. The European Commission shall by April 6, 2015 report back assessing the extent to which Member States have taken the necessary measures in order to comply with the Directive.

- standards of living capable of ensuring the victims' subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
- access to emergency medical treatment;
- translation and interpretation services, when appropriate;
- counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
- assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
- access to education for children and young adults (Council of Europe, 2005, Art. 12; European Parliament & Council Directive 2011/36/EU, 05 April 2011, Art.11-12).

Apart from the aforesaid, EU Member-States must provide a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim of trafficking (Council of Europe, 2005, Art. 13; European Parliament & Council Directive 2011/36/EU, 05 April 2011, Art.11(6)). Lastly, each government shall issue a renewable residence permit to victims if they consider that the victims' stay is necessary, owing to their personal situation, or if the competent authorities consider that the victims' stay is necessary for the purpose of their cooperation in investigations or criminal proceedings (Council of Europe, 2005, Art.14).

Limitations of the Law Regarding Human Rights: Compatibility with the ECHR

In *Rantsev v Cyprus and Russia* (Council of Europe: European Court of Human Rights, 7 January 2010) the ECtHR held that contracting parties to the Treaty had a positive obligation to implement measures to prevent and protect people from human trafficking. Accordingly, every state has the obligation to evaluate the different circumstances of each case and take positive measures to protect victims.

Nevertheless, it has often been reported that victims of human trafficking in the UK, after being set free from captivity and exploitation, are deported by the authorities to their countries of origin, only to be re-victimized and re-trafficked (Schwandner-Sievers, 2010). These victims later are in position to claim substantial damages from the UK for failing to protect them adequately (Travis, 11 April 2011). Consequently, the failure to recognize the danger endured by these victims constitutes a violation of victims' human rights as well as the ECHR. Until May 2012, according to UK law, persons who had not been previously trafficked into the UK could not be considered victims of internal trafficking. This was an evident breach of the ECHR and, after acknowledging this fact, English authorities introduced changes to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 through the Protection of Freedoms Act 2012.

Prosecution of Victims

A substantial reference to the need to protect victims against secondary victimization and criminalization is set out in Article 26 of the European Convention on Action against Trafficking in Human Beings 2005. Article 26 provides for the possibility of not imposing penalties on victims of trafficking for involvement in unlawful activities, to the extent that they have been compelled to be involved in them. Nevertheless, the Code for Crown Prosecutors fails to make this option explicit (CPS, January 2013, para D2.11).

Contrary to other offences like rape or domestic violence, where the Code specifically mentions that the police should make suitable inquiries and the prosecutor should consider whether there is public interest in prosecuting or continuing prosecution, in cases where the trafficking of human beings is a possibility, the Code fails to expressly state this caveat, thus creating a degree of uncertainty (CPS, January 2013, para D2.11). According to L.H. Leigh (2010), this phenomenon was apparent in the case of *LM and Others v The Queen* (EWCA Crim 2327, 2010) where "the Crown failed to consider whether there was a public interest in continued prosecution. Had it done so, the prosecution ought to have been abandoned." Therefore, the UK by failing to provide for the possibility of not im-

posing penalties on victims for their involvement in unlawful activities, where there has been duress and coercion, is in violation of Article 26 of the ECHR.

New Bill, Old Changes?

Initially the Draft Modern Slavery Bill, as presented in December 2013, had no specific provisions for the protection, assistance, and support of victims of trafficking in human beings (Home Office, December 2013). Accordingly, the Joint Committee made some recommendations for the creation of a new part to the Bill, specifically meant to contain provisions for the protection, support, and assistance of victims (Joint Committee on the Draft Modern Slavery Bill, 3 April 2014, p. 3). Although the initial recommendations contained some interesting and innovative measures, such as the comprehensive reform of the National Referral Mechanism (the authority responsible for the identification of victims) (Joint Committee on the Draft Modern Slavery Bill, 3 April 2014, pp. 59-61, 64-65), and the training of highly specialized advocates for children (Joint Committee on the Draft Modern Slavery Bill, 3 April 2014, pp. 66-71), the government elected to opt out of introducing new measures (see Part 5 "Protection of Victims" of the Modern Slavery Act, 2015) and mostly recycled pre-existing provisions (Modern Slavery Unit, June 2014, p. 21). For instance:

National Referral Mechanism – instead of going through with a much needed and comprehensive reform of the NRM the government elected to wait for the results of an ongoing and rather delayed review (Joint Committee on the Draft Modern Slavery Bill, 3 April 2014, p. 109).

Legal Aid for Victims –the Joint Committee made far reaching recommendations regarding legal aid for victims. However the government elected to only amend the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Modern Slavery Unit, June 2014, p. 21). Notwithstanding the fact that the procedure for receiving legal aid through LASPO is extremely complex and lengthy (Joint Committee on the Draft Modern Slavery Bill, 3 April 2014, p. 73).

Guardians for Child Victims –the Joint Committee made recommendations for highly specialized trained advocates for child victims of trafficking, consistent with the UK's international obligations. Nevertheless, the government's first reaction was to suggest reliance on Local Authority Care Orders and Cafcass personnel as guardians. When it was made apparent that this was an insufficient response to the particular needs of trafficked children, a pilot scheme was announced for personal advocates which, however, is only a substitute for a statutory advocate scheme (Joint Committee on the Draft Modern Slavery Bill, 3 April 2014, p. 110).

Some of the few positive obligations created by the Act, are the increased powers of the Secretary of State to issue specific guidelines to front-line professionals and first responders, to help in identification of victims and to set out the provision of support and assistance available to victims, in line with the England's international obligations (Modern Slavery Unit, June 2014, p. 18). Additionally, a new statutory defense has been created to provide protection for victims of modern slavery who have been forced or coerced to commit a crime as part of their exploitation (Modern Slavery Unit, June 2014, p. 17). The potential effect, if any, of the newly introduced "Independent Anti-slavery Commissioner" on victims' rights remains to be seen following the recent ratification of the Act (see Part 4 "The Independent Anti-slavery Commissioner" of the Modern Slavery Act, 2015). These plans, however, rely heavily on separate guidelines and are not yet explicitly spelled out.

Lastly, the politics of victim compensation become apparent in the proposed asset recovery scheme. According to the government, those who engage in horrendous crimes must have their criminal profits seized, and these assets should be used to provide reparation directly to their victim (Modern Slavery Unit, June 2014, p. 20). This has been injected in Part 1, "Penalties and Sentencing", section 8 of the Modern Slavery Act 2015, assuming positive connections between victims' benefits and punitive measures. The precise form, however, in which these victim compensation debates are taking place, must be evaluated within the wider context of victims' increasingly utilitarian role in the criminal justice process.

To investigate the applicability of the aforesaid perplexing framework, our investigation further interrogates the English claim that the war on human trafficking is a national priority. The questionnaire that we circulated to the relevant authorities through the Freedom of Information Act 2000 initially involved ten questions regarding statistical data and ten questions regarding the organizational and operational structure of anti-trafficking in the UK. The stated priorities of these structures; the utilization of educational programmes and the main principles underpinning these programmes. Questions relevant to inter-organizational cooperation were also posed, as well as questions relevant to the legal framework that was applied. This questionnaire was initially rejected. The Metropolitan Police Service instructed us that their response “will not be possible within the cost threshold” (MPS Freedom of Information Request Reference No: 2014050000100). It was also rejected by the National Crime Agency based on “an absolute exemption from disclosure” (PICU Enquiries 30 April 2014).

Eleven months later we received a response from the Metropolitan Police, which only covered three out of the total number of questions initially submitted. These three questions involved standardized data sets relevant to victims and perpetrators of trafficking in the UK. Our request received two extensions and a further delay. The response we received consisted of a partial response to our data request within Specialist Crime and Operations (see Figure 2). Accordingly, the lack of readily available statistical data suggests that to some extent institutional constraints may impede upon counter trafficking operational priorities and create a rather loose, volatile and financially-oriented framework. The exact same questionnaire was sent to the Hellenic Police and we present our findings in the section below.

Human and Victim Rights in Greece

Turning to victims’ protection, the Greek legal framework was seen as properly balanced and stabilized by officials after the introduction of the Presidential Decree 233/2003(ΦΕΚ Α’ 204/28.08.2003), as the law provides for the protection of both proven victims and presumed victims of human trafficking (Vogiatzi, 2008, p. 153). However, this protection is often conditional upon the willingness of victims to cooperate with the authorities in the criminal proceedings against their traffickers (Vogiatzi, 2008, p. 153). This protection is limited even further in most instances. When a case has been brought against suspected traffickers and the victims cooperate with the Police then the state provides residence and labor permits until the end of the penal procedure. This includes police protection, accommodation, education, healthcare, legal advice and interpretation services.

From the moment victims are identified by the police or the public prosecutor, victims initially had a one-month reflection period (Law 3386/2005), which was later extended to a three-month reflection period, to decide whether they are willing to cooperate with the authorities or not (Law 3875/2010, ΦΕΚ Α’ 158/20.9.2010, Art.46 (1); Law 4251/2014 “Code on Migration and Social Integration”, which consolidated all previous migration and relevant provisions). This reflection period, under the protection of the relevant authorities, is intended to assist victims in evading the influence of their traffickers and recover mentally and physically in order to be able to make an informed and impervious decision (Law 3875/2010, Art.46 (1); Law 4251/2014, Art.49-54). During this period the victims cannot be deported. If the victim is a minor the public prosecutor can extend the reflection period for another two months [Law 3875/2010, Art.46 (2)].

If victims decide to cooperate with the authorities in the prosecution of their traffickers, they are entitled to a one-year, renewable, residence permit, without an obligation to pay the fee normally required for this permit (Law 3875/2010, Art.46). The permit is also valid as a work permit, providing victims with legitimate access to the labor market. Victims are entitled to renewals of their residence permit until the penal procedure has been completed. Thereafter, they can apply for a residence permit under a different status (marriage, work, etc) (Vogiatzi, 2008, p. 154).

Assistance Provided to Victims

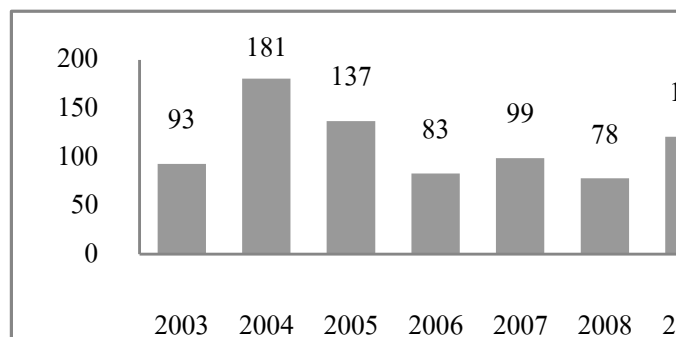
According to Presidential Decree 233/2003 state assistance, including police protection, accommoda-

tion, education for persons up to 23-years-old, health care, legal advice and interpretation, is provided if a case has been brought against the suspected traffickers, or if the trafficked individual has sought the service listed in the Annex to the Decree (Vogiatzi, 2008, p. 154). This Annex contains state institutions and shelters that victims can turn to for help and guidance. In addition to the above-mentioned, if minors are involved, they are placed in educational and vocational programmes (Vogiatzi, 2008, p. 154). All these provisions are available to victims during the reflection period provided for in Article 46(1) of 3875/2010. Furthermore, Article 49 of 3386/2005 specifies that persons who do not have sufficient resources shall be granted an adequate standard of living and, where appropriate, shall be provided with translation and interpretation services and all required legal aid (Vogiatzi, 2008).

These initiatives were created on the basis of the international capacity to transfer project-design and generate funding for these projects. The continuous functioning of pertinent services inherently requires sustainable funding through state or international funds. Impacted by the financial crisis, however, these mechanisms primarily relied on sporadic external funding and have largely ceased to exist: “[t]here cannot be national strategies and policies with occasional funding given by the EU. When this funding stops the structures stop working as well” (Amnesty International, 2010, p. 26; Bouklis, n.d.).

To investigate the applicability of the above, the questionnaire submitted to the British anti-trafficking authorities was also translated and submitted to the Greek anti-trafficking team of the Public Security Directorate, in Athens, Greece. Contrary to the British response, the Greek response was provided in full and within three months of our submission (no. 71572/11/1132805) (see Figure 1). The response by the Hellenic Police highlighted an often neglected aspect of the war on trafficking, involving bilateral agreements between states, and the need for further implementation of mutual co-operation at cross-border level. This point is crucial as it explicitly sets the counter-trafficking parameters within a globalized process (see Paye, 2007).

Figure 1. Total number of victims identified in Greece



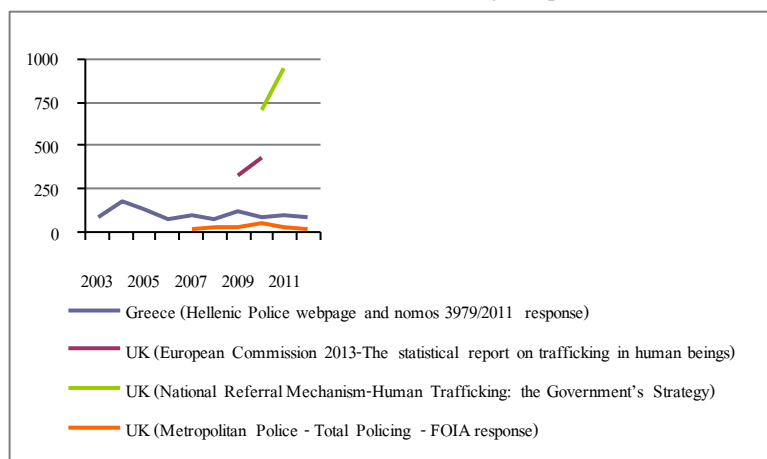
Conclusion

We began with establishing what the wars on trafficking entail for the United Kingdom and for the Hellenic Republic (see Appendix 1). For both contexts, it becomes evident that the transformative prioritization of anti-trafficking in its imaginary admission of trafficking exploitation, despite being continuously renewed and restated through consecutive legislative efforts, contributes to the “silent build-up of social auditing and penal programming machinery” (Carlen, 2008b, p. xvi). Our comparison revealed striking differences between the two counter-trafficking contexts (see Appendix 1). Mainly, anti-slavery politics in Greece have been directly related to the nexus of democratic, national integrity and identity struggles. As such, the renewed efforts to counter trafficking take the concise, yet imported, form of introducing “minor adjustments”, clarifications and improvements in the relevant areas. Unlike Greece, the counter-trafficking culture in the UK is rooted in earlier debates relevant to border control anxieties and the regulation of sex work.

More striking, however, are the many similarities of the two regimes. Current discussions neglect the social context within which crimes occur and silence the organization and operation of colonial, neo-colonial, capitalist and neoliberal logics. By ignoring these structural conditions, the focal point of political debates and legislative efforts is primarily the “bad people” (Burns, 24 December 2012). Those have been seen as solely responsible for trafficking through their actions. The assumption is, therefore, that if harsher punishments would be imposed, trafficking would be solved. As a result, the intensification of sweeping criminalization measures, the criminalization of migration, and the utilization of security border-control and market-privatization instruments, harm those they intend to help. Simultaneously, human rights are presented as part of a “holistic” approach, supposedly intended to improve neoliberal, “law and order” agendas. Yet, these ongoing legislative efforts fail to grasp social factors like poverty and racism that push people to become vulnerable. To the contrary, the bureaucratic routinization of criminalization efforts obstructs the introduction of more imaginative, open and pluralistic legislative steps to also counter the abusive and exploitative structural arrangements within which trafficking offences are allowed to take place.

While resorting to penal populism is highly problematic in itself, the lack of readily available statistics adds a further site of strain and a series of challenges. Clearly, this lack of data problematizes the extent to which human trafficking has indeed become an operational priority (see Figure 2)³. Turning to the cost effectiveness of anti-trafficking, in the context of the Freedom of Information Request there is also evidence of a market-driven logic, as suggested by repeated references to cost concerns in responding to the request. For Greece, again, the prevailing anti-trafficking structure is relying on the commercial profitability model. The consumer-market demand necessary for commercial sustainability is largely maintained by an increased reliance on external funds. This comes to reinstate, invoke and normalize debt-governance, an already dominant modality of control (Chatzistefanou & Kitidi, 9 July 2011). Even though a comparatively promising human rights and victims’ rights framework is being presented, social factors contributing to trafficking victimization are being silenced. The question we then need to be asking for future legislative efforts is: can counter-trafficking ever account for social issues? Currently, through the creation and continuous reinvention of this re-engineered war on trafficking, dominated by resource allocations and market-driven logics, community and social intervention is displaced and gradually erased.

Figure 2. Victims of Human trafficking comparative data



³ Regarding the Metropolitan Police figures, Police forces in the United Kingdom are routinely required to provide crime statistics to government bodies and the recording criteria is set nationally. However, the systems used for recording these figures are not generic, nor are the procedures used locally in capturing the crime data. It was indicated to us that for these reasons this force’s response to our questions should not be used for comparison purposes with any other response available, as such we present the diverse responses intact. Regarding the Metropolitan Police figures, the victims’ data was extracted from CRIS AD-HOC on 3rd September 2014. The data in this response reflects live data which may be subject to small changes over time.

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Appendices

Appendix 1. Comparison of international obligations and national application for Greece and the United Kingdom

Obligation	Derives from	UK	Greece
Abolition of Slavery	EU Treaties	Slavery Abolition Act 1833	Revolutionary Constitution 1822 Modern Greek Constitution 1975
Criminalization of HT	UN Convention against transnational organized crime	Sexual Offences Act 2003 & Asylum and Immigration (Treatment of Claimants, etc.) Act 2004	L. 3875/2010
Protection, assistance and support of victims of HT	EU Directive 2011/36/EE	Not expressly stated rules addressing specifically protection, support & assistance for victims of human trafficking in the English legal system	P.D. 233/2003 L. 3907/2011 L. 4198/2013 L. 4251/2014
	European Convention on Action against Trafficking of Human Beings 2005		
Non prosecution of victims	European Convention on Action against Trafficking of Human Beings 2005	No provisions	L. 4216/2013
Monitoring and evaluation mechanism	European Convention on Action against Trafficking of Human Beings 2005	National Referral Mechanism	Future Foreign Office project (not in use/force)
Compensation to victims of HT	European Convention on Action against Trafficking of Human Beings 2005	s.130 of the Powers of Criminal Courts (Sentencing) Act 2000	art.914 civil code art.63 criminal law procedure code L. 3811/2009
Reflection period	Convention / Directive 2004/81	Through NRM (minimum 45 days)	L.3386/2005 (1 month) amended by L.3875/2010 (3-5 months) amended by L.4251/2014 (3-5 months)
Resident's permit	Convention / Directive 2004/81	Through UK Border Agency	L.4251/2014
Education	Directive 2004/81	No specific provisions specially for victims of trafficking BUT general rules apply	P.D. 233/2003 L.4251/2014
Counselling	Convention / Directive 2011/36	No specific provisions. Only through NGOs (e.g. Salvation army)	P.D. 233/2003 L.4251/2014
Special Provisions from Bilateral Agreements			
Special provisions for the protection of minors	No specific obligation but more suggestion from UN	N/A	Bilateral agreement between Greece and Albania 2006

Appendix 2

Legal instruments

England & Wales Acts:

Slavery Abolition Act 1833
Immigration Act 1971
Protection of Children Act 1978
Child Abduction Act 1984
Criminal Justice Act 1988
Human Rights Act 1998
Youth Justice and Criminal Evidence Act 1999
Freedom of Information Act 2000
Proceeds of Crime Act 2002
Sexual Offences Act 2003
Asylum and Immigration Act 2004
Gangmasters (Licencing) Act 2004
Human Tissue Act 2004
Serious Organized Crime and Police Act 2005
Code of Practice for Victims of Crime 2006
Fraud Act 2006
Identity Cards Act 2006
UK Borders Act 2007
Counter-Terrorism Act 2008
Coroners and Justice Act 2009
Police and Crime Act 2009
Anti-Slavery Day Act 2010
Bribery Act 2010
Identity Documents Act 2010
Protection of Freedoms Act 2012
Modern Slavery Act 2015

Bills:

Human Trafficking (Border Control) Bill 2010-12
Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill [HL] 2012-13
Draft Modern Slavery Bill (December 2013, Cm 8770)

Greece Acts:

Greek Criminal Code
Greek Civil Code
Law 1975/1991 (ΦΕΚΑ'184/1996)
Law 3064/2002 (ΦΕΚΑ'248/15.10.2002)
Law 3106/2003 (ΦΕΚΑ'30/10.2.2003)
Presidential Decree 233/2003 (ΦΕΚΑ'204/28.08.2003)
Law 3386/2005 (ΦΕΚΑ'212/23.8.2005)
Law 3402/2005 (ΦΕΚΑ'258/17.10.2005)
Law 3625/2007 (ΦΕΚΑ'290/24.12.2007)
Law 3875/2010 (ΦΕΚΑ'158/20.9.2010)
Law 3907/2011 (ΦΕΚΑ'7/26.01.2011)
Law 4198/2013 (ΦΕΚΑ'215/11.10.2013)
Law 4216/2013 (ΦΕΚΑ'266/10.12.2013)
Law 4251/2014 (ΦΕΚΑ'80/01.04.2014)

International Agreements:

Greece/Albania Bilateral Agreement on the Protection and Assistance of Child Victims of Trafficking 2006

Domestic Agreements:

Memorandum of Cooperation between the Greek State and NGOs 2005
Presidential Decree 48/2006

European Union:

Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings
The Treaty of European Union [2010] OJ 83/01
The Treaty on the Functioning of the European Union [2010] OJ 83/01

International:

Charter of the United Nations, San Francisco 1945
United Nations Universal Declaration of Human Rights, Paris 1948
European Convention on Human Rights 1950
United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Palermo 2000
United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000
Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] OJ L 101
Council of Europe Convention on Action against Trafficking in Human Beings 2005 CETS No: 197
Council of Europe convention on Action against Human Trafficking 2008