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Fighting or fuelling forced labour? The Modern Slavery Act 2015, irregular migrants and the vulnerabilising role of the UK's hostile environment

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Abstract

Abolishing 'modern slavery' has now achieved international policy consensus. The most recent UK initiative – the 2015 Modern Slavery Act (MSA) – includes amongst other aspects tougher prison sentencing for perpetrators and the creation of an independent anti-slavery commissioner to oversee its implementation. However, drawing on research into forced labour among people seeking asylum in England, this paper argues that when considered alongside the UK government's deliberate creation of a 'hostile environment' towards migrants, not least in the Immigration Acts of 2014 and 2016, state action to outlaw modern slavery is flawed, counter-productive and disingenuous. We show how the MSA focuses only on the immediate act of coercion between 'victim' and 'criminal', ignoring how the hostile state vulnerabilises migrants in ways that compel their entry and continued entrapment within severe labour exploitation.

Keywords: forced labour, asylum seekers, immigration, vulnerability, hostile environment

Introduction

> The aim is to create here in Britain a really hostile environment for illegal migration… What we don't want is a situation where people think that they can come here and overstay because they're able to access everything they need… (Theresa May, Interviewed by *The Telegraph*, Kirkup and Winnett, 2012)

> Modern slavery is an appalling crime… Victims are held against their will and forced into a life of abuse, servitude and inhumane treatment… This is organised crime perpetrated by criminal gangs with links all over the world… I want a strong message

> to go out… you will not get away with it, we will catch you and you will go to prison for a very long time (Theresa May, Foreword, no page, Home Office 2013a).

In 2013, the UK Coalition Government – and specifically the then Home Secretary, Theresa May – launched two major pieces of legislation aimed at countering 'illegal' activity linked to immigration. First came the Immigration Bill in October containing a series of measures designed to create May's 'really hostile environment for illegal migration' as part of the Coalition government's overall aim of bringing down annual net immigration to tens of thousands by 2015. It was controversially symbolised by the Home Office's 'Operation Vaken', better known for its billboard vans bearing the slogan 'Go Home or face arrest' sent into mixed ethnic communities of six London boroughs in the summer of 2013 to test whether 'illegal migrants' would depart voluntarily if warned of a near and present danger of being arrested (Home Office, 2013b). It was followed in December 2013 by the Modern Slavery White Paper, aimed at addressing the estimated 10,000 to 13,000 people in ''modern slavery' in the UK in 2013 (Silverman, 2014). The Coalition Government identified international organised crime as the problem and once again advocated stronger law and border enforcement with life sentences for forced labour convictions and a range of policing powers to control suspects and rescue 'victims' (Home Office, 2013a).

While efforts to tackle severe exploitation should be welcomed, in this paper we argue that the UK government's 'fight against modern slavery' is doomed to fail because of the historical and ongoing state construction of a racialised hostile environment for migrants. Specifically, we argue that the government's conflation of modern slavery as primarily a law and border enforcement issue targeting criminal gangs *excludes* consideration of how the state itself acts a 'third party enslaver' through hostile environment policies that structure migrants' susceptibility to exploitation by a range of actors. The malign consequences of this hostile environment were shamefully revealed in 2018 with the 'Windrush Scandal' that saw many members or descendants of the post-war Caribbean migration wave from former British colonies - British citizens - targeted by hostile environment policies with the result that some lost their homes and jobs, were refused healthcare, pensions and access to social security, held in immigration detention centres and even refused re-entry to or deported from the UK (House of Commons Home Affairs Select Committee, 2018). We argue that the combined effect of the 2015 Modern Slavery Act's (MSA) false but rigid binary

between lawful and unlawful exploitation, and hostile immigration legislation, will be to criminalise rather than help irregular migrants in exploitative labour situations, driving them further underground and lacking any real acceptable alternative but to submit to the abuse involved in forced labour.

The paper proceeds as follows: section one provides a brief policy contextualisation of the MSA 2015; section two reviews literature on the role of hostile state policies in the rise of exploitative and forced labour amongst irregular migrants over the past two decades; section three presents evidence from our study on forced labour among asylum seekers conducted from 2010 to 2012 (see also Lewis et al, 2014a, 2014b; Waite et al 2015; Lewis and Waite, 2015; Dwyer et al, 2016; Waite and Lewis, 2017) that shows how the state's hostile environment structures migrant vulnerability and coercion; section four critically unpacks the 'hostile state' intentions of the Immigration Acts of 2014 and 2016 in relation to the 'rescue state' ambitions of the MSA; and the conclusion puts forward an alternative list of urgent policy interventions needed to genuinely tackle modern slavery.

The British state's new 'modern slavery crusade'

State action to eradicate modern slavery inevitably evokes parallels with the abolitionist movement of the 18th and 19th centuries that eventually outlawed the colonial era of *state-sponsored* enslavement dominated by the Transatlantic Slave Trade. The notion of modern slavery draws from the League of Nations' 1926 Slavery Convention definition which considered slavery to encompass powers of *ownership* (more recently updated away from legal ownership to ideas of *possession* in the 2012 Bellagio–Harvard Guidelines) and the International Labour Organisation's 1930 definition of 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [sic] voluntarily' (ILO, 1930). The latter was supplemented in 2000 by the United Nations Palermo Protocol against human trafficking for various forms of sexual and labour exploitation. It is routinely argued by government and NGO commentators that there is a growth in forms of exploitation considered part of 'modern slavery'. Widely critiqued estimates put forward in the Global Slavery Index suggest that 40.3 million people were in modern slavery in 2016, with a subset of 24.9 million in forced labour (the vast majority

exploited by individuals or enterprises in the private economy) (ILO and Walk Free Foundation, 2017; but see methodological critique from Gallagher, 2017). There have been 333 separate national laws across the world tackling forced labour since 1998 compared to just 90 in the previous 70 years (ILO, 2015). This action has been driven by the international consensus-forming work of the ILO, which in 1998 persuaded its 183 Member States – including the UK – to sign a Declaration on Fundamental Principles and Rights at Work, committing them to eradicate *forced or compulsory labour* within their national borders. In the same year, the UK Labour Government (1997-2010) introduced Overseas Domestic Worker Visas aimed at protecting migrant workers from slavery and servitude by empowering them to change employer. In 2004 the Gangmasters Licensing Authority (GLA) was created to enforce new labour regulations in the agriculture, horticulture, and shellfish sectors; and in 2009 the Council of Europe Convention on Action Against Trafficking in Human Beings (2008) was brought into force with the creation of a National Referral Mechanism (NRM) to support suspected human trafficking 'victims'. The 2009 Coroners and Justice Act made non-trafficked forced labour a *criminal offence* in the UK.

The Modern Slavery Act 2015

Further anti-slavery initiatives seemed unlikely in 2010 when the UK Conservative and Liberal Democrat Coalition Government (2010-15) took power. As part of its tough stance on immigration that brought an annual cap on the number of non-EEA workers allowed to enter the UK from April 2011, the Coalition reversed Labour's 2004 visa rule changes for migrant domestic workers, meaning their immigration status was once more tied to their existing employer only, a relationship that had previously generated stark cases of domestic servitude (Mantouvalou, 2015). Surprisingly, the Coalition Government was convinced by a right-wing think tank, the Centre for Social Justice (CSJ), and a cross-party alliance of MPs, to sponsor new legislation that would address major weaknesses in the state's existing approach to modern slavery. Among these weaknesses were: the absence of a strategic, national-scale leadership body to monitor and coordinate the state's anti-slavery efforts; insufficient labour market enforcement and regulation due to the limited coverage and powers of the GLA; and a failing victim support and protection system with many migrants criminalised or forced into prostitution rather than properly helped due to a culture of disbelief and the under-resourcing of the NRM that was in turn too restricted to trafficking cases. More

fundamentally, critics highlighted how fragmented and poorly-drafted existing legislation was on the definition and offence of modern slavery, ignoring the impact of wider contexts and dangerously conflating modern slavery with immigration, which led to immigration officials and asylum case-owners playing a dominant role in adjudicating cases. All of this served to deter irregular migrants in severe exploitation from engaging with the reporting system for fear of being detained and deported (Centre for Social Justice, 2013).

Much of what campaigners and parliamentarians pushed for was eventually accepted in subsequent legislation. A new 'independent anti-slavery commissioner' was created with responsibilities for monitoring and coordinating the work of government and law enforcement agencies in the interests of 'victims'. The NRM's scope was expanded from trafficking to all suspected cases of modern slavery with new legal requirements on specified public authorities to refer suspected 'victims' to the Home Office and a statutory defence introduced for individuals in modern slavery forced to commit a criminal offence. Those convicted of forced labour offences would now face life imprisonment instead of 14 years, with courts empowered to make slavery and trafficking reparation orders to compensate victims where assets were confiscated from perpetrators. The Immigration Act 2016 completed the reforms with the relaunch of the GLA as the Gangmasters and Labour Abuse Authority (GLAA) to reflect its widened remit across the whole labour market. However, the Coalition Government fervently resisted parliamentary attempts to both broaden the definition of exploitation within the offence of modern slavery to ensure that 'abuse of vulnerability' was included, and to separate immigration enforcement from tackling modern slavery. The Conservative Governments since 2015 have in fact further strengthened the relationship between tackling forced labour and their hostile environment approach to immigration enforcement (see Craig et al, 2019). It is to these issues we now turn.

Working in a hostile environment: State structuring of migrant exploitation and forced labour

Research has repeatedly identified the role of the *state* – both national and supranational – in structuring the phenomenon of migrant forced labour through two broad drivers. The first relates to states' pursuit of neoliberal policies over the past 30 years to facilitate economic globalisation

through privatisation, labour market flexibilisation and employment casualisation that have directly attacked workers' collective power in increasingly deregulated and de-unionised employment settings (Peck et al. 2005; Cumbers et al, 2008; Wills et al, 2010). This has led to a deterioration in wages and conditions, and growing numbers of flexible, low-skilled, temporary jobs routinely undertaken by marginalised groups – including vulnerable migrants – with limited or no social protection against unemployment and discrimination (Barbieri, 2009; Rienzo, 2017).

The second state driver of migrant labour exploitation lies in the rise of 'managed migration' regimes embodying the centrality of 'national security' concerns about terrorism, organised crime and responses to migratory flows (Walters, 2004; Amoore, 2006; Guild, 2009). Immigration policy has promoted an increasingly securitised, bio-political form of 'carceral cosmopolitanism' (Sparke, 2006) in which migration and migrants themselves are ever more closely controlled and monitored (Anderson, 2013; LeBaron and Phillips, 2019). Faced with constrained migration channels and hard borders, many migrants including people seeking asylum are forced to seek out illegal routes of entry, often relying on 'professional smugglers' (Andreas, 2004; Bloch et al, 2011) that can embroil them in a lengthy relationship of indebtedness and vulnerability to exploitation (O'Connell Davidson, 2013). These populations are further disciplined through increasingly normalised techniques of state power such as detention and deportation (Conlon and Hiemstra, 2016).

A key aspect of restricting and controlling migrants under managed migration is the imposition of an inferior or even non-existent *socio-legal status* on particular migrant groups through tiering, dilution, and removal of migrant sub-groups' rights and entitlements to residency, work, and welfare (Vertovec, 2006; Dwyer et al, 2011). Denied permission to work and with limited access to highly conditional social security, irregular migrants feel compelled to seek alternative means of income often in informal and unregulated sectors of the economy that shield unscrupulous employers; especially when they need to send remittances to families back 'home' (Crawley et al., 2011) or to repay debts incurred in their migration (O'Connell Davidson, 2013). The constant fear of expulsion and being returned to persecution, torture, and forced labour – what De Genova (2002) terms 'deportability in everyday life' – often results in increased migrant susceptibility to exploitation (Bloch, 2013). It also opens up another aspect of deportability – the policing of 'illegal migrant workers' by targeting certain workplaces for raids by immigration officials, heightening a

sense of insecurity that inhibits resistance and collective action for those working without papers (Burnett and Whyte, 2010, Bloch et al, 2014).

The structuring created by states' simultaneously neoliberalising and bordering their societies interacts with forced migrants' own vulnerabilities that can further erode their capacity to either enter decent work or leave severely exploitative employment. As Hynes' (2010: 966) analysis of child trafficking to the UK shows, there can be multiple and clustering 'points of vulnerability' prior to and after arrival. The role of labour market intermediaries such as recruitment agents or gangmasters in destination countries often with links to (or be one and the same as) smugglers or traffickers can be key here (Geddes, 2011). The glue that holds this web together is frequently indebtedness, whether to traffickers, smugglers, or others who helped finance migrants' journeys. Moreover, migrant workers' perceptions of their own obligations to support families or honour debts are 'powerful disciplining mechanisms which can very effectively be harnessed to the cause of exploitation' (Phillips, 2013:8).

Tracing the rise of the hostile state in the UK: a longer view

These twin structuring roles of the state are well advanced in the UK. Migrants increasingly underpin the low-wage economy created by neoliberal policies precisely because they offer a cheaper and more compliant alternative to local workers (Wills et al., 2010). Core to their pliable nature is the UK's ever-restrictive and punitive immigration and asylum regime – the 'hostile environment' – and its use of 'stratified rights' (Kofman, 2002; Bloch and Schuster, 2002; Dwyer et al, 2011). Although the hostile environment brand is associated with Coalition and Conservative Governments since 2010, the deliberate construction of a racially selective immigration system irrespective of the party of government has been a central feature of UK immigration laws since they were first introduced under the Alien's Act 1905. The Act was a placatory and largely symbolic response to growing anti-Semitic opposition to the mass immigration of Jews fleeing persecution from Russia and Poland during the late 19th century. While those seeking asylum from political or religious persecution would be allowed entry, the Act sought to repel so-called 'undesirable immigrants', which included those without the means to support themselves as well as 'lunatics', those believed to be 'infirm or diseased', and 'convicted criminals' (Bashford and Gilchrist, 2012).

The 1905 Alien's Act marked the beginning of a succession of restrictive immigration laws designed to distinguish the entry rights of 'British citizens' and desirable (white) migrants whilst placing ever more restrictive barriers to entry and stratified rights to remain and access welfare for those defined as 'aliens'. Beneath the official welcoming mythology surrounding the Windrush Generation, post-war migration from Britain's empire and former colonies by black and Asian 'British subjects' was met with growing restrictions on citizenship rights (Hammond Perry, 2014) previously enshrined in the Nationality Act 1948 (Gilroy, 1987). The 1968 Commonwealth Immigrants Act, the 1971 Immigration Act, and the 1981 British Nationality Act each time went further in narrowing the definition of a British citizen with automatic rights of entry and abode in the UK, whilst strengthening the state's powers to detain, imprison and deport those deemed to be illegally present. From the mid-1970s, central and local government gradually introduced checks and eligibility rules linking immigration status to access to employment, public services and welfare (Webber, 2018). Following the arrival of significant numbers of migrants from the eight new Eastern European accession countries to the EU after 2004, the Labour government closed entry routes for low-skilled migrants beyond Europe through introducing a points-based system, and with the Borders, Citizenship and Immigration Act (2009) introduced new rules that denied Third Country Nationals access to benefits prior to attaining British citizenship or permanent residence.

Since the early 1990s, four main deterrence policies have been systematically pitched against people seeking asylum – dispersal, detention, deportation and destitution. The Conservatives' Asylum and Immigration Appeals Act 1993 focused primarily on curtailing asylum seekers' access to the welfare state, removing the right to permanent local authority housing and capping benefit entitlements at 90% of the standard rate received by British citizens (and then to 70% under the Immigration and Asylum Act 1996), as well as introducing fingerprinting for all asylum seekers entering the UK. New Labour's Immigration and Asylum Act 1999 went even further, excluding asylum seekers from all mainstream social security benefits, and from 2002 barring them from working in the UK (unless there are exceptional circumstances) (see Parker, 2017).

The Joint Committee on Human Rights (2007) described New Labour's approach as 'enforced destitution', a policy Ministers justified as a means to create stronger incentives on refused asylum seekers to return to their country of origin. The policy of enforced destitution has been further tightened over time, primarily through decreasing levels of financial support. As of 2019, asylum seekers eligible for 'asylum support' receive only £36.95 per week, the same as they did in 2015, which amounts to less than a third of the weekly spend of the poorest 10% of British citizens (Mayblin and James, 2019). For asylum seekers whose applications are subsequently refused and must now leave the UK, support is available under Section 4(2) of the 1999 Act at an even lower weekly rate of £35.39, provided only via a payment card with very restricted purchasing choice. However, most refused asylum seekers do not access Section 4 support, because they either do not meet the narrow eligibility grounds (e.g. temporarily unable to return to their home country for medical or travel reasons, or granted a Judicial Review of their asylum decision or leave to appeal) or are too afraid of returning home to comply with the main condition for accessing Section 4 support – that they are taking all reasonable steps to leave or be in a position to leave the UK.

While recent research on UK migrant exploitation has concentrated on the importance of immigration status (Anderson, 2007; Oxfam and Kalayaan, 2008; Lalani, 2011; Clark and Kumarappan, 2011; Bales and Mayblin, 2018), there is an absence of work conceptualising the specific mechanisms by which the state facilitates forced labour among irregular migrants and what this means for the effectiveness of policies aimed at combating modern slavery. To address this gap, the next section sets out our research, which focused on the ways in which the UK state's exclusionary immigration regime indirectly structures forced labour among asylum seekers whilst they are seeking that state's protection under the UN Refugee Convention 1951.

Forced labour among asylum seekers in England: the state as third party enslaver

Our evidence is drawn from an ESRC project which aimed to explore experiences of forced labour among asylum seekers and refugees in England. Following 200 outreach visits to speak to over 400 contacts in the Yorkshire and Humber region, 70 individuals were identified with possible experiences of forced labour. This led to 30 interviews with 12 women and 18 men (aged 18 or

over) from 17 countries spanning Central Europe, Africa and Asia who had at some point made a successful or unsuccessful claim for asylum in the UK. 17 interviewees had lodged an initial claim soon after entering the UK, 6 interviewees had entered on various visas but then remained without state permission and subsequently claimed asylum, and a further 7 interviewees were trafficked to the UK for the purpose of sexual, criminal or forced labour exploitation. In this paper, we focus solely on the experiences of the *23 non-trafficked migrants* as this group is specifically targeted by the MSA 2015. Interviewees have been anonymised by removing or altering identifying characteristics such as real names, place names and specific nationalities (for a fuller reflexive account of the ethical issues within this project, see Lewis et al, 2014a and Lewis, 2015).

In using the term forced labour, we draw directly on the ILO's definition as any form of service exacted from a person under the menace of any penalty and for which they have not offered themselves voluntarily (ILO, 1930). The ILO has recently developed 11 indicators of possible forced labour: abuse of vulnerability; deception; restriction of movement; isolation; physical and sexual violence; intimidation and threats; retention of identity documents; withholding of wages; debt bondage; abusive working and living conditions; and excessive overtime. These are considered within a field of power relations at three possible moments of coercion: *unfree recruitment* (involuntary or coerced entry into employment); *work and life under duress* (abusive living or working conditions imposed during employment); and the *impossibility of leaving the employer* (ILO, 2011: 14-15). The ILO states that forced labour is present when any of these moments is combined with one or more of the following penalties: threats and violence; restriction of workers' freedom of movement; debt bondage or debt manipulation; withholding of wages or other promised benefits; retention of identity or travel documents; and abuse of vulnerability, including threats of denunciation to the authorities.

The role of the state in structuring severely exploitative work

Our cohort of 23 non-trafficked migrants collectively experienced 89 separate 'labour situations' in the UK, by which we mean varying types of *formal, informal and transactional work*. These labour situations took place either before or during their asylum claim, after being refused, or once granted Leave to Remain. Most jobs tended to be in fast food shops, factory packing, food processing, domestic work, care work and cleaning. A minority (39) of labour situations were in

formal employment with a recognised employer, workplace and agreed wage and National Insurance (NI) contributions; the majority (50) were *informal* jobs, and comprised both *cash in hand* work (39) and *unwaged transactional work* (11) (exchanging labour for food, shelter, or debt repayment) with little if any verbal agreement or assurances of conditions. All 23 interviewees experienced one or more ILO forced labour indicator across 68 labour situations; 18 of these labour situations had *at least four* forced labour indicators. The most common indicators were: the non-payment of wages; being forced to work excessive overtime beyond UK legal limits; deception about pay levels and/or the nature of the work; and the abuse of vulnerability by an employer or third party deliberately using individuals' precarious immigration and labour market status to exploit them as workers.

Our analysis suggests that the state played three core roles in structuring these severely exploitative work experiences.

1. State-facilitated compulsion to enter indecent, precarious work

17 interviewees entered forced labour situations either directly or soon after the refusal of their asylum claim and/or the termination of state support. Some interviewees tried to avoid 'illegal' work fearing that being caught would damage their on-going asylum claim or appeal against refusal decisions. They initially survived through the help of friends, strangers and charitable organisations, but a change in their own personal circumstances eventually pushed them into seeking work, including those still receiving state support but suddenly needing to remit money home or pay off debts. The inability to meet basic survival needs left these individuals with no real or acceptable alternative than to enter or remain in severe labour exploitation. 'Gregory' was refused asylum, had become stateless, and had no welfare support:

> After my support stopped a few times I decide to try and find some illegal work… because is very hard time for me and was stressful situation… I living in limbo because my country not accept me back… Home Office decide not give me anything.

Transactional arrangements also emerged as part of the landscape of survival traversed by several interviewees (Waite and Lewis, 2017). Some of our interviewees felt they had to undertake domestic household and childcare duties in return for board, lodging and occasional spending money supplied by a friend. Some then took up work to avoid exhausting their highly limited support networks and spoke of being ashamed of the burden they placed on friends.

2. State-led vulnerabilisation of asylum seekers through removing rights and protections

All 23 interviewees experienced a second mechanism of state-facilitated exploitation: employers' and third parties' abuse of their weakened social-legal status to impose more extreme working conditions than otherwise legally possible. We detected a clear pattern of employers deliberately or knowingly employing migrant workers 'without papers' (i.e. permission to work) to perform the hardest tasks under abusive conditions, forcing them to stay long hours after other workers had left, paying them below the legal National Minimum Wage (NMW) and even withholding wages in part or whole in the knowledge that these workers would never report them. 'Alex' told us that after his asylum claim was refused, he found work in several takeaway restaurants. Each time his employers knew he was undocumented and thus paid him far below the NMW – in one place he received 50% less than his fellow workers with papers:

> …he recognised that I have to work… when people recognise that you have to work and you don't have any [rights], they're not going to help you, they're going to misuse you.

The majority of interviewees experienced work situations in which they were either forced to work for 'no pay' or their promised wages were 'partially withheld'. A common employer tactic was non-payment of wages for the first 1 to 2 weeks, justified as 'deductions' for training or trial period. Even when interviewees were regularly paid, they routinely received extremely low wages. Interviewees provided us with the actual hourly wages they earned for 64 labouring situations between 1999 and 2011, which we compared to the legal minimum they should have received for the corresponding year. This showed that more than three-quarters (41) regularly earned below the NMW. Even more striking is the extent to which weakened socio-legal status intensified wage

exploitation. This is clearly illustrated when comparing the average £2.50 reduction below the NMW hourly rate for situations where the employer knew the migrant lacked immigration status and the right to work (Figure 1) with the £0.52 average reduction below the NMW for situations where the migrant had the right the work, or used false papers to convince the employer they did (Figure 2). The fact that documented migrants also experienced sub-NMW pay rates can be partly explained by the long gaps in their CVs from the UK government's refusal to allow them to work during their asylum claim. This restricted them to working in the highly casualised, insecure and low paid sectors of the economy where employers are more likely to intentionally pay below legal minimum wage levels (see Ipsos MORI, 2012). Pressure to remain in such jobs was further intensified by the hostile conditionality of UK family reunification rules that required interviewees to have both sufficient finances through employment to sponsor joining family members and provide adequate accommodation for them.

Figure 1: Actual Hourly Pay vs National Minimum Wage for Undocumented Migrants

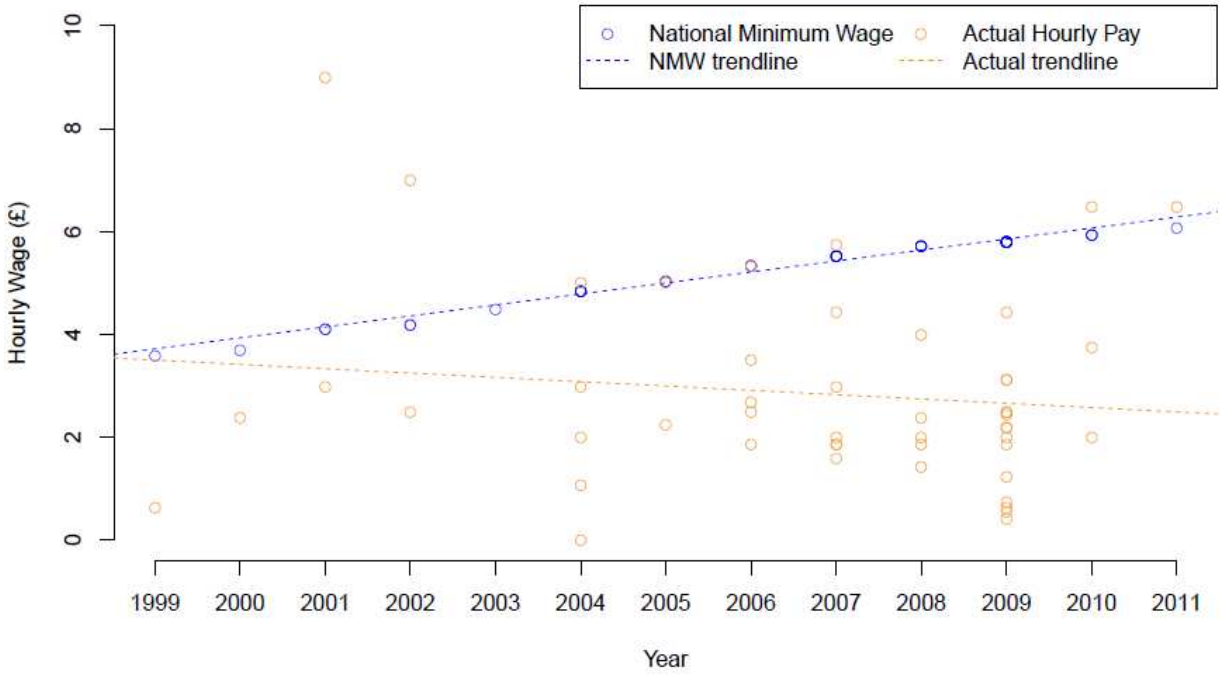
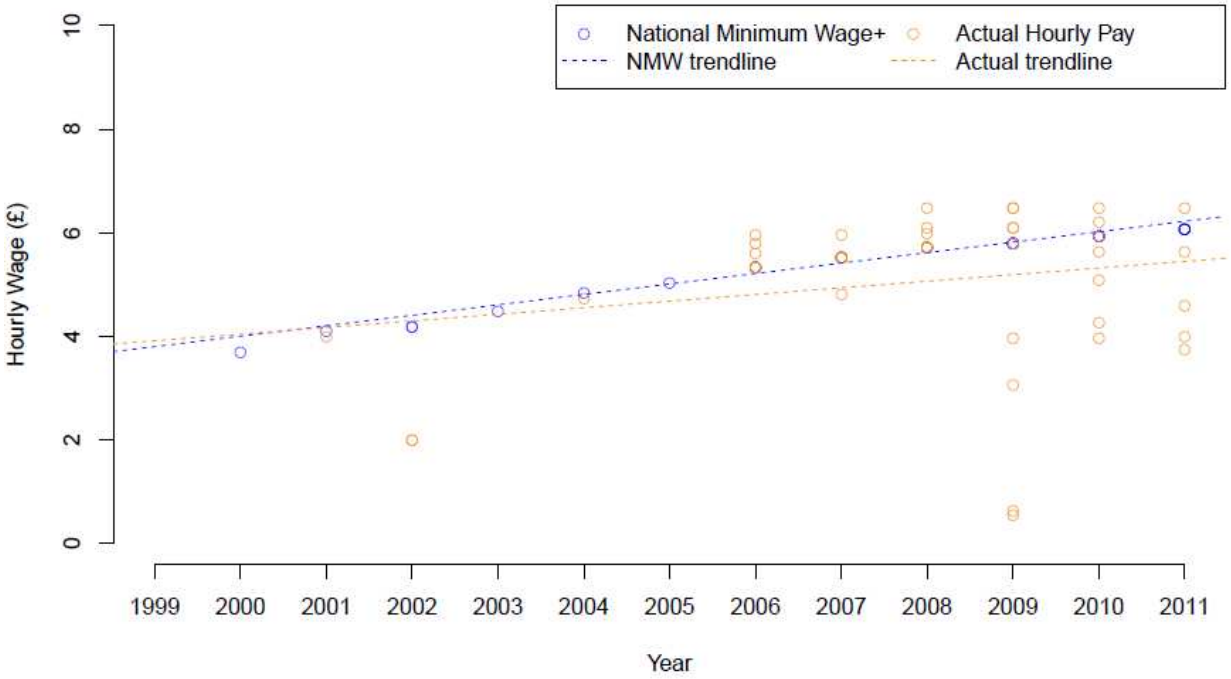


Figure 2: Actual Hourly Pay vs National Minimum Wage for Documented Migrants (including false papers)



Sources: Authors' interview data; NMW rates from https://www.gov.uk/government/publications/20-years-of-the-national-minimum-wage

For ‘Gojo’, however, even after gaining Leave to Remain, the general barriers to decent work for refugees and the pressures of meeting family reunion conditions were accentuated by her prior criminal record for working with false papers whilst being a refused asylum seeker to help pay her father’s medical bills and her children’s school fees in her homeland. After being rejected by five mainstream employers including a local authority and a public transport operator, she was eventually taken on as administrator in a small business on the NMW. She felt she had to tell them about her precarious situation so that they would provide a letter to the Home Office in fulfilment of the family reunion rules. After being paid in full for the first month, however, her wages suddenly stopped being paid and the agreed working hours were replaced with sudden unpaid overtime shifts. Yet ‘Gojo’ felt unable to leave the company because of her need to have a job to satisfy immigration rules: ‘…if I had the choice to go and apply for another job and get it straight away I was going to do so, move on yeah. But I had to stay because I didn’t have a choice.’ The company had deliberately exploited her immigration-induced vulnerability to trap her in a situation of forced labour.

3. State-structured entrapment in forced labour

Finally, 8 interviewees experienced their vulnerable immigration status being used by others to entrap them in forced labour by creating fear of denunciation to the authorities. In some cases, constrained socio-legal status was also actively *constructed* by *third party intermediaries* to create both material and psychological control over someone to exact forced labour through what we call ‘identity bondage’. With irregular migrants generally having insufficient identity documents to open bank accounts, they are in turn unable to receive pay and typically lack both a National Insurance Number (NINo) and identity papers (e.g. passports) required to access paid work. This led some of our interviewees to borrow or rent another person’s bank account and identity papers, making them vulnerable to losing control over their wages (see Burnett and Whyte, 2010). ‘Frank’ was a refused asylum seeker surviving on Section 4 support when his family, previously presumed dead in a conflict zone, were suddenly found and in urgent need of financial assistance to help them get to safety and receive medical help. Having narrowly avoided being arrested by Border Force for working illegally whilst previously destitute, ‘Frank’ was reluctant to jeopardise his forthcoming asylum appeal by working with false or no papers. A friend with Leave to Remain

offered to lend 'Frank' his identity papers and bank account so he could work 'legally'. However, after a few months, 'Frank's friend began to deduct half of the weekly wage and then more of the wage, sometimes not paying him anything, whilst threatening him with denunciation to the employer if 'Frank' stopped working.

> …so if he decided 'I'm not going to give you money today', that's it I cannot go and report him to someone and say 'he has taken my money'… At the same time, I cannot drop work, who is going to support my family? …later on I realised it wasn't only me using his papers, there were… two, three people using his documents… he told me that if I don't give him the money by carrying on working he can go to the company and say that I stole his documents and that I used them to find work.

The 'rescue state' versus the 'hostile state': whither the Modern Slavery Act 2015?

Our research findings provide a powerful evidence base for critically evaluating the likely effectiveness of the MSA 2015's 'rescue state' approach vis-à-vis victims of 'modern slavery' (McGrath and Watson, 2018, Robinson, 2019) against the backdrop of the 'hostile state' approach to migration, recently intensified under the Immigration Acts of 2014 and 2016. This legislation has made it easier to deport irregular migrants from the UK through streamlining the removals process, reducing legal challenges to removal decisions, and creating a 'deport now, appeal later' power. It has also led to: the criminalisation of both the act of working with irregular immigration status and those who employ irregular migrants; the removal of financial and accommodation support for refused asylum seekers and certain other migrant categories; and restricting access to private sector housing and other essential services such as healthcare, personal banking, and a driving license. Finally, migrants' entry into the UK has also been made more difficult through taking action to prevent so-called sham marriages and civil partnerships (House of Commons Library, 2015). Overall, basic survival has become much harder for irregular migrants and refused asylum seekers as a result of it being far more difficult to work in the UK. But there are four specific ways in which the hostile state undercuts the ostensible intentions of the MSA.

First, for refused asylum seekers and other irregular migrants, the Immigration Acts 2014 and 2016 create new compulsions to enter, new points of vulnerabilisation within, and new barriers to exit forced labour situations. Refused asylum seekers with dependent families whose asylum claim was finally rejected on or after 1 July 2016 will have 90 days to leave the country after which all financial support and any accommodation will be removed, except those with outstanding further submissions or a medical or other practical reason outside their control why they cannot leave the UK. Separate to the Immigration Acts, destitute refused asylum seekers will have to find cash to pay NHS charges for primary care, ambulance services and Accident and Emergency. Similarly, since 2012, legal aid is now restricted to only those with the lawful right of UK residence, largely excluding refused asylum seekers. All of these hostile environment measures mean that refused asylum seekers will need to find independent financial means to survive.

Secondly, third party exploitation of asylum seekers barred from working legally will be compounded by measures to criminalise illegal work and further restrict migrants' banking access. Part 1, Section 34 of the Immigration Act 2016 makes illegal working a criminal offence in its own right and is specifically defined in relation to immigration status, with a maximum custodial sentence of 6 months, an unlimited fine, the prospect of wages being recoverable by the state under the Proceeds of Crime Act 2002 and deportation without appeal (House of Commons Library, 2015: p.11). The Act also criminalises employers who employ someone whom they 'know or have reasonable cause to believe' is an illegal worker, raising the maximum custodial sentence on indictment from two years to five years (in addition to a civil penalty of £20,000 per 'illegal' employee), and meaning they must now proactively check their employees immigration status as a defence against prosecution (Ibid. pp.16-17). Indeed, the Chief Inspector of Borders and Immigrations' inspection of the Home Office's approach to Illegal Working identifies employer sanctions as likely to produce 'modern slavery', and Immigration and Compliance Enforcement teams as ill-equipped to deal with identification (ICIBI, 2019). Banks and building societies are now required to prevent irregular migrants from opening a bank account in the UK, conduct quarterly checks on the immigration status of all existing current account holders (temporarily suspended since May 2018 after the Windrush scandal) and report on customers who are potentially breaching immigration controls. In our view, these measures will only make irregular migrants living in destitution and in fear of returning home even more desperate to ensure that they have

access to other 'legal' citizens' genuine identity papers and bank accounts. This will further empower and make more lucrative the renting of third party passports, NINos, and other documents, allowing their owners to charge more for this precious commodity and acquire more power over those they 'help' (see Migrants' Rights Network 2015:1).

Third, the Right to Rent scheme introduced across England and Wales (and to Scotland as part of the devolved powers) under the Immigration Act 2016 makes it illegal for private landlords to let their properties to adult migrants (aged 18 and over) who do not have the right to remain in the UK. Landlords are now required to examine their prospective tenants' passport or biometric residence permit prior to a new tenancy agreement with failure to comply resulting in a possible civil penalty of up £3000 and being blacklisted. In other words, refused asylum seekers and other destitute irregular migrants no longer have the right to rent, shutting down spaces of shelter and refuge in ways that could lead to increased incidences of domestic and sexual servitude. Many of our interviewees rented rooms in private sector housing and given their genuine fears of persecution if deported to their country of origin, would have no alternative but to turn to less-detectable informal lodgings 'within the shadow housing market' as the government's own impact assessment accepted (Home Office, 2013c: p.19). Although rogue landlords are one of the intended targets of the Right to Rent policy, shutting down the housing options of destitute irregular migrants in general gives rogue landlords even more power to exploit them as it will only apply to new tenancy agreements, and landlords must obey the immigration-checking law only if their tenants pay 'rent'. By making a clear legal distinction between existing and new tenants, the state is enabling the existing landlord to identify and exploit a new vulnerability of a tenant they know or suspect is 'illegal' by allowing them to stay and not be reported to the authorities.

Fourth, and more broadly-speaking, our research suggests there is a fundamental problem with the state's approach to identifying and supporting 'victims' of modern slavery that the MSA does not address. Home Office guidance issued in March 2016 (Home Office, 2016) states that for modern slavery to be present, there must be a combination of 'service' (any form of labour) and 'means' or 'penalty' (e.g. threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, and denunciation to the authorities). In other words, the UK state has decided that forced labour is always a *bilateral* affair between *individual* perpetrators and their victims, in which

the state's own policies and the wider political economic system can never be held responsible for pushing migrants into and then entrapping them in forced labour (Lerche, 2007). This expressly excludes from consideration forms of involuntariness and menace from *economic compulsion or coercion*, whether through the absence of any alternative or acceptable income opportunities, or the need to stay in a severely exploitative job because of poverty or a family's need for an income (O'Connell Davidson, 2010; O'Neill, 2011). Our research, however, clearly shows that wider economic and social contexts are vital for understanding why workers become trapped in forced and severely exploitative labour. In the majority of our 23 non-trafficked migrants' forced labour experiences, most were *physically free* to refuse to take an exploitative job or accept any deterioration in conditions or to exit exploitative situation but either *felt* unable or *chose* not to refuse or exit because they had no alternative. In theory, extending the NRM and the GLAA to oversee all forms of modern slavery and providing a statutory defence to victims who commit criminal acts as part of their severe exploitation should protect and assist with exit for the many more refused asylum seekers and irregular migrants in forced labour being generated by the hostile state. However, in practice, the new criminalisation of 'illegal' migrant workers under the government's hostile environment would mean our 23 cases would be far more likely to end in criminal conviction, imprisonment and deportation.

Conclusion

In this paper we have shown how the UK Government is currently pursuing two completely *divergent* policy and jurisdictional tracks (Strauss, 2017); publicly posturing against modern slavery while simultaneously overseeing both the further deregulation of the UK labour market and an intensification of the exclusionary asylum and immigration policies under a hostile environment to migrants that underpin the exploitation of asylum seekers, refugees and irregular migrants more generally. While the MSA 2015 expands the scope of people considered to be in severe exploitation, forms and spaces of labour exploitation, and the remit of existing rescue and enforcement agencies, it continues to use a binary understanding of forced labour whilst strengthening the relationship between immigration enforcement and modern slavery. This creates an absurd contradiction at the heart of the British state's modern slavery crusade in which the clear

abuse of vulnerability generated by the state's hostile environment towards immigration is not admissible.

In our view, tackling severe and forced labour exploitation among asylum seekers, refugees and the wider precarious irregular migrant workforce in the UK must address the root causes, not the symptoms. The deliberate policy of enforcing the destitution of refused asylum seekers which lies at the heart of the current asylum system (Joint Committee on Human Rights 2007, APPG, 2017) must be recognised as inhumane and ended. The core remedy is to give the right to work to both asylum seekers *and* refused asylum seekers who cannot be returned to their country of origin so that they can legally meet their basic needs and enjoy the legal protections and rights afforded to workers and employees. This must go hand in hand with the state providing 'end-to-end' asylum support until point of return, ensuring access to legal aid and provision of legal representation throughout asylum claims, and improving the quality of asylum decision-making as these are all central to ending asylum seeker destitution (for a fuller discussion of these remedies see JRCT, 2007; Williams and Kaye, 2010; Crawley et al., 2011; Gillespie, 2012). The reinstatement of the right to work should be part of a wider and permanent *regularisation* of all undocumented or irregular migrants living in the UK. By regularisation we mean granting all irregular migrants Indefinite Leave to Remain with full legal rights to reside, work and claim benefits. We also mean wiping clean any criminal records for working illegally or for other need-based crimes such as stealing food or squatting whilst destitute and homeless. As we showed, such criminalisation acts as a major barrier to decent work and can empower unscrupulous employers to exploit those who subsequently receive Leave to Remain in the knowledge that they lack employment and livelihood options. We believe that these measures would go a long way to tackling some of the root causes of severe and forced labour exploitation of migrants in the UK. However, the stark reality is that unless the political climate in the UK shifts dramatically towards a more progressive agenda, none of these ideas will feature in any manifesto of the main political parties in the coming years.

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