The Rhetorical Use of the Language of Slavery in the 21st Century:
Immigrant Workers, Prisoners and Trafficked Workers

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About ten years ago, Professor James Grey Pope said “Imagine the gun rights movement without the Second Amendment. This is labor without the Thirteenth Amendment.”¹ This observation struck me as critical because effective social change requires two things: an identifiable change agent and a coherent legal theory. I have argued that the Thirteenth Amendment can provide the coherent legal theory to help certain groups of workers.² Since then, many groups of workers have claimed the rhetoric of slavery, if not the Amendment itself, to advocate for their cause. Examining how these non-legal groups have used the rhetoric of slavery provides a possible window into how contemporary society views the Thirteenth Amendment as a tool for understanding and addressing workers’ rights. It also provides an opportunity to view the Thirteenth Amendment through the lens of work and class.

This paper presents the results of a systematic survey of the use of the rhetoric of slavery by non-legal groups. The first section describes the methodology used and summarizes its findings. The second section examines the use of the rhetoric of slavery to advocate on behalf of two different groups of workers: immigrant workers and trafficked workers.³ The final section discusses what this tells us about popular conceptions of slavery and the Thirteenth Amendment

¹ New Labor Forum article.
² Chicago Legal Forum article.
³ In “Unpaid Interns, NCAA Athletes and the Language of Slavery: Insensitive but not Ineffective”, (forthcoming, Michigan State Law Journal), I analyzed the use of the language of slavery to advocate for unpaid interns and NCAA athletes. I concluded that, although the use of the language was contested, it effectively framed these individuals as workers and employees deserving of some protection under the labor and employment laws, even though they weren’t paid for their labor. The use of the slavery rhetoric was powerful because it showed that unpaid workers are still workers and that the lack of pay should not preclude their protection.
and explores how these conceptions can be linked to legal advocacy. It focuses on the differences between compares how the government portrays slavery in addressing trafficking and how advocacy groups portray slavery in addressing employment issues for immigrant workers, including guest workers.

I. A Survey of the Language of Slavery in the 21st Century

A. Methodology

In order to discern popular uses of slavery rhetoric, this survey focused on non-legal, non-academic online resources, such as press releases, newspaper articles and blogs. The survey did not include cases, law review articles or academic journals. Within these sources, searches were constructed for three different types of language: literal language (“thirteenth amendment,” “slave” and “slavery”); connected language (“trafficking”) and symbolic language (symbolic language includes those words or phrases which carry a strong symbolic meaning such that a majority of Americans would associate them with slavery. Charles Lawrence, The Id, The Ego and Equal Protection).

B. Results

The survey resulted in approximately 100 data points. These data points contained four recurring phrases that were used to describe six different employment categories. The four most commonly used phrases were “slave/slavery;” “modern day slavery;” “plantation;” and “Jim Crow”). The survey covered a ten year time period, from 2004-2014, with most examples being found in the last five years. The survey was constructed to focus on breadth, rather than depth. The goal of the search was to find a representative sample of the use of the language of slavery, rather than compile a comprehensive list of every use of the language. As a result, once approximately 25 references were found per topic, no more references were logged for that topic. A search for images was also conducted in “Bing” using similar terms.

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Crow or Juan Crow.” The six employment categories associated with these terms were trafficking; immigrant or guest workers; prison workers; sports; unpaid interns; and other (coal miners, adjunct professors, etc.). Few references were found to “Thirteenth Amendment”.

The recurring phrases broke down as follows:

<table>
<thead>
<tr>
<th>Phrase</th>
<th>Number of Instances</th>
<th>Percentage of Instances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slave/ Slavery</td>
<td>54</td>
<td>55%</td>
</tr>
<tr>
<td>Modern (Day) Slavery</td>
<td>25</td>
<td>26%</td>
</tr>
<tr>
<td>Plantation</td>
<td>7</td>
<td>8%</td>
</tr>
<tr>
<td>Jim Crow (3)</td>
<td>11</td>
<td>11%</td>
</tr>
<tr>
<td>Juan Crow (8)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

None of these phrases were used to describe workers, in general. Each instance was tied to a particular type of employment.

The types of employment broke down as follows:

<table>
<thead>
<tr>
<th>Type of Employment</th>
<th>Number of references</th>
<th>Percentage of references</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trafficking</td>
<td>34</td>
<td>37%</td>
</tr>
<tr>
<td>Immigrants, Immigrant workers and Guest Workers</td>
<td>21</td>
<td>24%</td>
</tr>
<tr>
<td>Prison labor</td>
<td>14</td>
<td>16%</td>
</tr>
<tr>
<td>Sports</td>
<td>12</td>
<td>13%</td>
</tr>
<tr>
<td>Unpaid Interns</td>
<td>8</td>
<td>9%</td>
</tr>
<tr>
<td>Other (adjunct professors and coal miners)</td>
<td>2</td>
<td>1%</td>
</tr>
</tbody>
</table>
Some connections were noted between the phrases used and the types of employment categories. When mapping language upon employment categories, the following connections emerged:

* the terms “slave,” “slavery” and “modern day slavery” were used to describe all the employment categories;
* the term “plantation” occurred in the categories of sports, prison labor, and immigrants, immigrant workers and guest workers;
* the term “Jim Crow” matched prison labor; and
* the term “Juan Crow” matched immigrant issues.

When mapping employment categories upon language, the following matches were observed:

- trafficking was described with the terms slave, slavery and modern day slavery;
- unpaid interns were described with the terms slave and slavery;
- Immigrants, immigrant workers and guest workers used all the phrases; and
- Prison labor also utilized all the various phrases.

II. Trafficked Workers, Immigrant Workers and the Rhetoric of Slavery

This section of the paper presents snapshots or representative examples of how the rhetoric of slavery has been used to advocate for two different groups of workers – trafficked workers and immigrant workers. Obviously, in actuality, there is significant overlap between these two groups because most “trafficked workers” are from another country. Interestingly, it was fairly easy to separate these two groups for analytical purposes because the advocacy groups associated with each rhetorical instance chose to privilege or focus upon one aspect of their identity – the workers were either primarily described as victims of trafficking or as immigrant workers.
A. Trafficked Workers and the Rhetoric of the U.S. Government

Interestingly, the most active purveyor of the language of slavery with respect to trafficked workers is the United States Government. One of the earliest uses of the rhetoric occurs in a 2006 describing a million dollar settlement for a trafficking case that was brought as a national origin discrimination case. The EEOC stated, “At least 17 of the workers were told if they tried to leave the location where they were being forcibly held, the police and immigration officials would be called to arrest them. EEOC also contends that all the workers were made to pay exorbitant “fees” to the recruiting company which kept them in involuntary servitude. Ultimately, some of the workers escaped the slave-like conditions.”

Since then, the federal government has become a leader in the use of the rhetoric of slavery to fight trafficking. Many agencies, including the F.B.I., the State Department and the Department of Health and Human Services use this rhetoric as an official part of their public presence.

1. F.B.I.

An article in the Houston Chronicle reports on conditions in that Texas City, quoting the F.B.I. who said “‘It is absolutely modern day slavery,’ said Shauna Dunlap, spokeswoman for the FBI's Houston Division. ‘These people are being forced into labor or prostitution against their will.’” On their website, the F.B.I. states “It’s sad but true: here in this country, people are being bought, sold, and smuggled like modern-day slaves. They are trapped in lives of misery—often beaten, starved, and forced to work as prostitutes or to take grueling jobs as migrant, domestic, restaurant, or factory workers with little or no pay.”

Describing how trafficking works, the F.B.I. focuses on force. It reports:

5 http://www.eeoc.gov/eeoc/newsroom/release/12-8-06.cfm
“Human trafficking—nothing less than modern-day slavery—often involves the most vulnerable populations and takes the form of forced prostitution, forced labor, and domestic servitude. There was less subtle coercion as well. “These girls and women were physically beaten and were held in apartments so they couldn’t escape,” said Special Agent Tricia Whitehill in our Los Angeles Field Office. “Members of the Vasquez-Valenzuela family would sleep by the doors with knives,” Whitehill added. “So not only were they physically held captive, but they were also under constant threat.”

2. U.S. State Department, Department of Homeland Security and Department of Justice

When the U.S. State Department issued its 2012 Trafficking in Persons Report, U.S. Secretary of State Hillary Clinton said “The stories of human trafficking victims remind us what kind of inhumane treatment we are capable of as human beings. They are living, breathing reminders that the war against slavery remains unfinished.” President Obama used similar rhetoric when he said, “I’m talking about the injustice, the outrage, or human trafficking, which must be called by its true name – modern slavery.” U.S. Attorney General Eric Holder added his voice stating, “This modern-day slavery is an affront to human dignity, and each and every case we prosecute should send a powerful signal that human trafficking will not be tolerated in the United States.”

The National Institute of Justice, the research arm of the Department of Justice, makes the connection between trafficking and slavery like this:

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9 https://ncjrs.gov/pdffiles1/nij/240701.pdf
10 http://www.state.gov/documents/organization/210737.pdf
Most countries banned “chattel slavery” — one person owning another person as property — in the 1800s. Despite this, slavery continues in the modern day. Although owning slaves used to be a major investment formalized through legal documents, today’s slaves are held through debt bondage, indentured servitude or other forms of control. For more than a decade, the phrase “human trafficking” has been used to describe the act of holding a person in forced service — the very definition of slavery. The term can cause confusion, however, because it implies that traffickers always transport victims across borders; in actuality, victims can also be held in their own homes. Experts maintain that when considering the issue of human trafficking, it is important to do so in an accurate context — acknowledging that trafficking is modern slavery and that trafficked persons are slaves.¹²

The Department of Homeland Security established its Blue Campaign to unite anti-human trafficking programs and provide resources for law enforcement and the public, to raise awareness, and provide much training.¹³ The images provided by the Blue Campaign give a good idea of how slavery and trafficking are linked.

They both focus upon the types of coercion suffered by trafficked workers.

¹² https://ncjrs.gov/pdffiles1/nij/240701.pdf
¹³ https://www.dhs.gov/blue-campaign
The website of the U.S. Department of Health and Human Services contains a comprehensive definition of human trafficking, which it equates to modern-day slavery. Its contents are as follows:

Human trafficking is a form of modern-day slavery. Victims of human trafficking are subjected to force, fraud, or coercion for the purpose of commercial sex or forced labor. They are young children, teenagers, men and women. Trafficking in persons occurs throughout the world, including in the United States. Traffickers use various techniques to control their victims and keep them enslaved. Some traffickers hold their victims under lock and key. However, the more frequent practice is to use less obvious techniques including:

- Debt bondage – enormous financial obligations or undefined/increasing debt
- Isolation from the public - limiting contact with outsiders and making sure that any contact is monitored or superficial in nature
- Isolation from family members and members of their ethnic and religious community
- Confiscation of passports, visas and/or identification documents
- Use or threat of violence toward victims and/or family members
- The threat of shaming victims by exposing circumstances to family
- Telling victims they will be imprisoned or deported for immigration violations if they contact authorities
- Control of the victims' money - e.g., holding their money for “safe-keeping”\(^\text{14}\)

B. Immigrants and Immigrant Workers

Many different groups representing immigrants and immigrant workers have adopted the rhetoric of slavery to advocate on their behalf. Four groups, in particular, have utilized this language: domestic workers; agricultural workers; guest workers; and those fighting against restrictive state immigration laws. These four will be discussed separately.

Initially, there are a few other instances of rhetorical usage worth noting. First, the only example which refers to the Thirteenth Amendment deals with a variety of different immigrant workers. It reads:

The 250-year legacy of slavery continues to permeate throughout contemporary United States. However, these days, the images we see are likely to be those of immigrants from the

global South...Often described as “modern-day slavery,” human trafficking and exploitation are pervasive in domestic worker and farm worker industries. Trafficking in these industries is highly documented. According to a survey of domestic workers, the majority of live-in domestic workers work close to 60 hours per week, and almost 40 percent of domestic workers were not paid for their work or not paid on time. Meanwhile, almost 80 percent of farm workers are underpaid, and more than half of farm contractors violate the Migrant and Seasonal Agricultural Worker Protection Act, according to the National Employment Law Project...Employment laws that distinguish historically-slave industries from other forms of work should be eradicated once and for all. Almost 150 years after the end of the “peculiar institution,” the promise of the Thirteenth Amendment’s abolition of slavery and involuntary servitude requires more vigorous measures to protect all workers.\(^\text{15}\)

A blog written by social scientists described immigrant labor in general:

Immigrant labor in the United States is not just any type of labor. Like slavery, the importation of foreign workers to fill the lowest sectors of the U.S. labor market allows many citizen workers to move into the middle-class, where they enjoy cheap and abundant goods (especially food) made possible by the underpaid labor of others. This system of exploitation is legitimized by the systematic differentiation of immigrant and non-white workers that diminishes their claims to rights and resources in the United States.\(^\text{16}\)

ABC News, reporting on workers at 7-Eleven franchises described the system this way:

The owners of 7-Eleven franchises in New York and Virginia created a "modern day plantation system" in which undocumented workers were furnished with stolen identities and forced to work 100 hours a week for a fraction of their wages, according to a federal authorities...

"These defendants ruthlessly exploited their immigrant employees, stealing their wages and requiring them to live in unregulated boarding houses, in effect creating a modern day plantation system," [Federal Prosecutor] Lynch said.\(^\text{17}\)

\(^{15}\) [http://rhrealitecheck.org/article/2011/01/13/slavery-home-fields/](http://rhrealitecheck.org/article/2011/01/13/slavery-home-fields/)


A leading anti-slavery group discusses different types of workers: “As the Policy and Legal Services Director at the Coalition to Abolish Slavery & Trafficking (CAST), I have personally worked on behalf of human trafficking survivors for more than 10 years. The survivors I’ve worked with have been forced to labor against their will in California in diverse industries such as honey production, Christmas tree farms, apparel factories and agricultural fields. Forced labor is happening in our own backyards, and yet few people acknowledge that modern-day slavery exists in the United States and is used to make the products that we use every day.”

1. Domestic Workers

The National Domestic Workers Alliance, in July 2011, in arguing for the importance of a Domestic Worker’s Bill of Rights described the situation this way:

In the fight over domestic worker rights, we can see issues of ethnicity, gender, and immigration intertwine. Many domestic workers – nannies, housekeepers, and caregivers for the elderly – are women of color. Many of them are immigrants. However, these women are often not viewed as regular workers. Due to the nature of the work, these jobs are perceived more as the duty of the woman, a holdover from a time when women were bound to the privacy of their homes. Domestic work has been historically linked to particular socio-economic groups, such as indentured servants, slaves, or immigrants. In our current era of globalization, the work has often become a form of modern-day slavery, using immigrants, particularly Caribbean and Latina women, to provide the labor.

The Alliance sometimes refers to these workers as trafficked:

“Unfortunately, Shanti’s case is not unique — this modern day slavery continues in our midst. Trafficked workers, particularly women domestic workers, are forced to toil for slave wages with extremely long hours, no days off, fraudulent and false promises, and coercion, including passport theft and threats of deportation. The lack of fair labor standards and

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regulations, society's low regard for women's work, and the isolation of these women workers in the privacy of employers' homes all contribute to the extreme exploitation of trafficked domestic workers.”

2. Agricultural workers

The Coalition of Immokolee Workers and the work they have done on behalf of agricultural workers provide a good example of how the rhetoric of slavery is being used to described the conditions of work for agricultural workers in Florida. The CIW in their Florida Modern Day Slavery Museum booklet contains the following:

There is real slavery in the fields of Florida. This is not about lousy jobs, but violent control, vicious exploitation, and the potential for serious harm and even death. Even more heartbreaking is the fact that there has never been a day in the history of Florida agriculture without some amount of slavery tainting the food grown there. That food leaves the hands of slaves and ends up in the meals we eat with our families. Modern-day slavery in Florida agriculture cannot be understood in a vacuum. It is not separate from the past, rather its roots extend deep in the state’s history. While the phenomenon of forced labor has taken many forms over the past four centuries in Florida agriculture, the industry has never been entirely free of the scourge of slavery. Though the extent of slavery in Florida agriculture has diminished over the centuries, one thing has remained constant: farmworkers have always been, and remain today, the state’s poorest, least powerful workers. If we are to abolish slavery once and for all in Florida agriculture, we must pull it up from the roots by addressing farmworker poverty and powerlessness. Today the Florida agricultural industry remains mired in a human rights crisis made possible by the continuing poverty and powerlessness of farmworkers. In 2008, during a fact-finding visit to Immokalee – a small town at the epicenter of Florida tomato production – Senator Bernie Sanders described the conditions he encountered with these words: “[For Florida farmworkers], the norm is a disaster, and the extreme is slavery.” Four hundred years of slavery in Florida, and 145 of those coming after the Civil War, are the result of the continued violation and debasement of workers’ human rights.

A CIW press release from 2008 described the conditions which gave rise to federal prosecutions:

Vargas, along with her co-defendants, are connected to an Immokalee business operation allegedly designed to hold workers in involuntary servitude and peonage. “Slavery, plain and

21 http://ciw-online.org/museum/booklet0811.pdf
simple,” said Chief Assistant U.S. Attorney Doug Molloy. . . Sadly, this is the worst of what happens when you have across-the-board degradation of labor and conditions that allow slavery to take root and flourish,” said Laura Germino of the Coalition of Immokalee Workers, which has helped prosecute six slavery cases that freed more than 1,000 workers in the past decade.22

In 2012, a Washington Post Op-Ed summarized the work that was done, “Since 1997, the Justice Department has prosecuted seven cases of slavery in the Florida agricultural industry — four involving tomato harvesters — freeing more than 1,000 men and women. The stories are a catalogue of horrors: abductions, pistol whippings, confinement at gunpoint, debt bondage and starvation wages.”23

3. Guest Workers

The Thai Community Development Center, Slavery Eradication and Rights Initiative focuses upon workers trafficked into the United States from Thailand. They describe the problem “On the surface, it looks like the workers were legally contracted. But upon closer inspection, it’s slavery. Their passports were confiscated and threats were made if any of them dared to escape. The (US) guest worker program can be legalized slavery if it is not constantly monitored.”24

The Southern Poverty Law Center has been active in this as well. They stated,

The Southern Poverty Law Center announced that five more lawsuits have been filed this week against Signal International LLC, accusing the shipbuilder and its network of recruiters and labor brokers of trafficking 500 Indian guest workers to the United States and forcing them to work under barbaric conditions. “The Indian workers who came to this country through Signal’s recruitment effort were skilled laborers seeking opportunity, but they were forced into modern-day indentured servitude,” said Daniel Werner, SPLC senior supervising attorney. “These cases highlight the urgent need for stronger foreign labor recruiter regulations and better protections for workers – some of which are included in the U.S. Senate’s comprehensive immigration reform bill.”25

22 http://ciw-online.org/blog/2008/01/slavery_plain_and_simple/
24 http://thaicdc.org/humanservices/slavery-eradication-rights-initiative/
4. State immigration laws

As individual states have started to pass oppressive immigration laws, commentators have started to use the rhetoric of slavery, especially the Jim Crow era of Bull Connor and segregation to describe the system. The Nation summarized it like this:

They are growing up in a racial and political climate in which Latinos' subordinate status in Georgia and in the Deep South bears more than a passing resemblance to that of African-Americans who were living under Jim Crow. Call it Juan Crow: the matrix of laws, social customs, economic institutions and symbolic systems enabling the physical and psychic isolation needed to control and exploit undocumented immigrants. In fact, the surge in Latino migration…is moving many of the institutions and actors responsible for enforcing Jim Crow to resurrect and reconfigure themselves in line with new demographics. Along with the almost daily arrests, raids and home invasions by federal, state and other authorities, newly resurgent civilian groups like the Ku Klux Klan, in addition to more than 144 new “nativist extremist” groups and 300 anti-immigrant organizations born in the past three years…are harassing immigrants as a way to grow their ranks.26

The Washington Examiner in an Op-Ed described the Alabama experience, “This law seeks to frighten undocumented immigrants into leaving the state or going deeper underground, where they will be vulnerable to exploitative employers, unscrupulous landlords and violent criminals. While today's bigots have found more sophisticated ways to intimidate minority groups, there's a short distance between Bull Connor and today's slumlords, sweatshop owners and anti-immigrant demagogues.”27 Politics 365 reported, “As Georgia continues down immigration enforcement road, it will continue to attract criticism for being harsh and specifically targeting immigrants, even those who are in the state legally. While Jim Crow may be a thing of the past, Juan Crow is alive and well in the peach state.”28

26 http://www.thenation.com/article/juan-crow-georgia
The connection between Jim Crow and Juan Crow has been made by those in the African American community, as reported by Immigration Impact.

In fact, many in the African American community have called Alabama’s harsh anti-immigrant law a “Juan Crow Law,” comparing it to our nation’s Jim Crow laws which encouraged legalized racial segregation against African Americans. And it’s not hard to see the connection with the racially suggestive phrasing in the law like “reasonable suspicion” and provisions that aim at limiting basic needs, like water, to undocumented immigrants. Wade Henderson, President of the Leadership Conference on Civil and Human Rights, denounced Alabama’s law even before the Governor Bentley signed it. Henderson said the law “is designed to do nothing more than terrorize the state’s Latino community” and characterized it as “so oppressive that even Bull Connor would be impressed.”

III. Insights into Popular Conceptions of Slavery and Thirteenth Amendment through the Lens of Class and Labor

This section will offer some analytical observations about the differences between the ways that the federal government uses the rhetoric of slavery in addressing trafficking and the way that advocacy groups use the rhetoric of slavery on behalf of immigrants and immigrant workers.

A. Trafficking: The Thirteenth Amendment Through the Lens of Labor

1. Looks at private arrangements
2. Focuses on Labor plus coercion

B. Immigrant Workers: The Thirteenth Amendment Through the Lens of Class

1. Advocates look at Context, History, Race and Labor (more of a class approach)
2. Sees as systemic problem, involving government action

C. What does this mean for advocates and connection to legal action?