

THE ROOTS OF “MODERN DAY SLAVERY”: THE PAGE ACT AND THE MANN ACT

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ABSTRACT

Usage of the phrase “modern day slavery” to describe human trafficking, especially sex trafficking, is widespread despite work by numerous scholars and activists to point out how such usage harms attempts to remedy both slavery and trafficking. In order to more clearly recognize the continuing harms of this usage, it is imperative that we know its history. This Article describes two origin points in American law, the 1875 Page Act and the 1910 White Slave Traffic Act, that can be understood as the precursors to contemporary usage of “modern day slavery” as well as to contemporary usage of criminal and immigration law to address trafficking. In the late 1800s and the early 1900s, claims of a “new slavery” that was depicted as “worse” than chattel slavery were used to create restrictive, racialized immigration laws and racialized federal policing of domestic movement that in fact exacerbated the harms of chattel slavery while also expanding the reach of anti-Asian stereotypes and solidifying

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white supremacy in the structure of U.S. government. This same impact continues with the use of “modern day slavery” language today. By examining the rhetoric used by activists and politicians in both 1875 and 1910, this Article illustrates how contemporary usage of “modern day slavery” upholds and furthers the white supremacist tropes and racist stereotypes created to justify immigration restriction in 1875 and federal criminalization of Black and immigrant men in 1910. Further, this Article shows how these white supremacist stereotypes were used immediately after the passage of the Reconstruction Amendments and into the early 20th century toward the same ends that they are often used toward today in discussions of human trafficking. First, to claim that slavery is most importantly a harm to whiteness and that redressing the continuing impact of hundreds of years of enslavement of Africans and African Americans must be put aside in order to address the ostensibly more urgent impact of “modern day slavery” fashioned as a harm to white women. Second, to solidify U.S. imperialism and racial capitalism through anti-Asian stereotypes depicting Asian women as vulnerable and submissive and Asian people as the source of contagious illness.

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INTRODUCTION

In January 2019, Donald Trump once again declared the month “National Slavery and Human Trafficking Prevention Month.”¹ Throughout the month, Trump wove a graphic narrative of “modern slavery” into his speeches, claiming that women were being “thrown into the backseat of a car” with “no windows, no form of air” and “tape over their mouths,” adding with odd specificity, “electrical tape.”² Trump gave these speeches to seek support for a border wall between the United States and Mexico, claiming that such an erection “could “eliminate” human trafficking from Mexico, or at least “ninety, ninety-five percent; a tremendous percentage would stop.”³ Although experts derided the narrative as “misleading,” Trump’s fear-mongering about human trafficking became a cornerstone of his platform.⁴

This deployment of racialized “modern slavery” rhetoric, and the impact of such rhetoric,⁵ has a long history in the United States. Soon after the formal end of chattel slavery of African Americans in the United States,⁶ a new system of forced labor was being instituted through the American

1. National Slavery and Human Trafficking Prevention Month, 2019, Proclamation No. 9835, 84 Fed. Reg. 79, 80 (2018).

2. Daniel Dale, *Trump’s Tales About Gagged Women Are Misleading Americans About Human Trafficking, Experts Say*, TORONTO STAR (Jan. 15, 2019), <https://www.thestar.com/news/world/us/2019/01/14/trumps-tales-about-gagged-women-are-misleading-americans-about-human-trafficking-experts-say.html> [<https://perma.cc/Y2WA-UEN5>].

3. *Id.*

4. *Id.*

5. One contemporary impact of this rhetoric is the spread of trafficking conspiracy theories, promoted by Trump and his followers, often referred to as “QAnon” and the related “Save the Children Campaign.” Melissa Gira Grant has described the direct connections between these conspiracy theories and the mainstream trafficking movement. See Melissa Gira Grant, *QAnon Is Using the Anti-Trafficking Movement’s Conspiracy Playbook*, NEW REPUBLIC (Aug. 19, 2020), <https://newrepublic.com/article/158974/qanon-operation-underground-railroad-sex-trafficking> [<https://perma.cc/7B5V-HJYZ>]. Some in the mainstream anti-trafficking movement have tried to distance themselves from QAnon, using what this Article demonstrates as an ahistorical description of the movement’s origins. See Freedom Needs Truth, *An Open Letter to Candidates, the Media, Political Parties, and Policy-Makers*, MEDIUM (Oct. 21, 2020), <https://freedomneedstruth.medium.com/freedom-needs-truth-5224c632557b> [<https://perma.cc/6Z77-QAN4>].

6. While the Thirteenth Amendment, U.S. CONST. amend. XIII, formally ended slavery as a legal institution in the United States, the exact date of when slavery came to the American colonies is disputed. MARK V. TUSHNET, *SLAVE LAW IN THE AMERICAN SOUTH: STATE V. MANN IN HISTORY AND LITERATURE* 7 (2003).

penal system.⁷ Anti-immigration activists joined with white feminists and religious purity groups to create a new gendered and sexualized discourse of “modern slavery,” racialized as harm to whiteness itself.⁸ This Article discusses how this coalition portrayed “modern slavery” as a contagion brought by immigrants—and after the turn of the nineteenth century, by Black men—threatening both the moral and physical health of white Americans and framing America as a freedom of contract, anti-slavery nation.⁹

While usage of “new slavery” language never ceased,¹⁰ it increased again after the fall of the Soviet Union.¹¹ A subsequent increase in international migration during the 1990s, among other factors, contributed to another rise in American¹² public concern about human trafficking,¹³ with a focus on sex trafficking.¹⁴ Anti-trafficking advocates, calling sex trafficking “modern day slavery,” drew an explicit comparison between

7. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 31 (2012) (“In a landmark decision by the Virginia Supreme Court, *Ruffin v. Commonwealth*, issued at the height of Southern Redemption, the court put to rest any notion that convicts were legally distinguishable from slaves . . .”); see also James Gray Pope, *Mass Incarceration, Convict Leasing, and the Thirteenth Amendment: A Revisionist Account*, 94 N.Y.U. L. REV. 1465, 1465 (2019) (“Today, even the fiercest critics of mass incarceration generally accept that the Punishment Clause permits practices they condemn as brutal and exploitative. This stance reflects prevailing jurisprudence.”).

8. See *infra* Parts II–III.

9. *Id.*

10. See generally Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, G.A. Res. 317 (IV) (Dec. 2, 1949) (referencing the International Agreement of 1904 for the Suppression of the White Slave Traffic).

11. See Karen E. Bravo, *The Role of the Transatlantic Slave Trade in Contemporary Anti-Human Trafficking Discourse*, 9 SEATTLE J. FOR SOC. JUST. 555, 557 (2011) (“Media and other reports disseminated frightening statistics and horrific tales of the purchase and sale of women and young girls from the former Soviet Union, in particular, into Western Europe. The images of forced sexual slavery on a large scale created alarm that spread around the world.”).

12. While this concern was also expressed internationally, this Article focuses primarily on domestic events.

13. Bravo, *supra* note 11, at 557.

14. These concerns culminated in 2000 with the passage of the Trafficking Victim’s Protection Act (TVPA) in the United States and the U.N. Palermo Protocol, both of which created (contested) definitions of and responses to sex trafficking. See *id.* at 558; see also James C. Hathaway, *The Human Rights Quagmire of ‘Human Trafficking’*, 49 VA. J. INT’L L. 1, 4 (2008) (describing some of the debates around the Palermo Protocol’s definition of, and response to, human trafficking).

trafficking and American chattel slavery.¹⁵ This comparison and the use of “slavery” language has since become ubiquitous in anti-trafficking discourse. In recent years, activists and politicians have claimed, for example, that “i) there are more slaves now than at any point in human history; ii) human trafficking is one of the fastest growing criminal industries in the world; and iii) trafficking has become the third largest global criminal industry.”¹⁶ Many contemporary anti-sex trafficking activists describe themselves as “abolitionists,” implying or explicitly claiming a lineage with antebellum anti-slavery activists.¹⁷ However, as Karen Bravo writes, “it is the fight against white slavery, rather than the transatlantic slave trade, to which the typical modern trafficking combatant owes her intellectual debts.”¹⁸ To that early 1900s lineage, this Article adds the influence of the “yellow slavery” rhetoric of the late 1800s.¹⁹

Numerous scholars and anti-trafficking advocates have pointed out the impact of the contemporary use of “slavery” language to describe human trafficking.²⁰ Annie Bunting and Joel Quirk argue that “many of the interventions that have followed in the wake of [‘contemporary slavery’ awareness campaigns] remarkable success have not only struggled to

15. See Elena Shih, *Not in My “Backyard Abolitionism”: Vigilante Rescue Against American Sex Trafficking*, 59 SOC. PERSP. 66, 67–68 (2016) (providing a concise history of the development of “modern day abolitionism” arising in conjunction with the passage of the TVPA).

16. Annie Bunting & Joel Quirk, *Contemporary Slavery as More than Rhetorical Strategy? The Politics and Ideology of a New Political Cause*, in CONTEMPORARY SLAVERY: POPULAR RHETORIC AND POLITICAL PRACTICE 5, 6 (Annie Bunting & Joel Quirk eds., 2017).

17. See, e.g., *About Us*, UNITED ABOLITIONISTS, <https://www.unitedabolitionists.com/about-us/> [https://perma.cc/FR49-CGRS] (“150 years ago, abolitionists led the effort to outlaw slavery in our country. Today, we need an army of people equally as committed to abolishing modern-day slavery in our community.”).

18. Bravo, *supra* note 11, at 555 (“[T]he focus of late nineteenth and early twentieth century activists on sex and the protection of women continues to limit understanding of the fundamental similarities among the transatlantic slave trade, white slavery, and contemporary trafficking in humans.”). For further analysis on the legacy that anti-sex work “abolitionists” draw from, see Kathi Weeks, *Sex Work, Utopia, and What We Can Learn from Prison Abolitionism*, OPEN DEMOCRACY: BEYOND TRAFFICKING AND SLAVERY (Mar. 14, 2016), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/sex-work-utopia-and-what-we-can-learn-from-prison-abolitionism/> [https://perma.cc/MBR3-CZE9].

19. BRIAN DONOVAN, *WHITE SLAVE CRUSADES: RACE, GENDER, AND ANTI-VICE ACTIVISM 1887-1910*, at 110 (2006) (explaining how rhetoric of “yellow slavery” developed as reformers, politicians and journalists used it to stoke concern about the “trafficking” of “Chinese slave girls”).

20. See generally Bunting & Quirk, *supra* note 16 (anthologizing analyses of contemporary slavery language and its impact).

make an impact, but they have also been complicit in a larger series of questionable political and ideological agendas.”²¹

Karen Bravo argues that comparisons between the “new slavery” and the “old slavery” are “superficial, counterproductive, and harmful to the fight against human trafficking.”²² Janie Chuang writes:

One does not have to be a legal purist to appreciate the risks that come with building a global movement around a broadly-defined, made-up concept of ‘modern-day slavery’. Each of modern-day slavery’s purported component practices—slavery, trafficking and forced labour—is separately defined under international law, subject to separate legal frameworks and overseen by separate international institutions [C]onflating trafficking (and forced labour) with slavery risks implicitly *raising* [sic] the threshold for what counts as trafficking.²³

Trafficking survivor and anti-violence activist Christy Croft explains similarly: “[i]n the historical context of the United States . . . most people associate ‘slavery’ with one specific model: chattel slavery All forms of chattel slavery fit the U.S. definition of human trafficking; not all forms of human trafficking fit the definition of chattel slavery.”²⁴ Croft goes on to argue, as this Article will, that this is more than just semantics; rather, use of “slavery” language to describe trafficking obscures slavery’s actual lineage in the United States, namely, structural racism.²⁵ Modern-day anti-trafficking discourse not only obscures, but even contributes to this structural racism.

In public awareness campaigns and other media, sex trafficking is frequently racialized as the kidnapping and enslavement of white²⁶ and

21. *Id.* at 5.

22. Bravo, *supra* note 11, at 562.

23. Janie Chuang, *The Challenges and Perils of Reframing Trafficking as “Modern-Day Slavery,”* 5 ANTI-TRAFFICKING REV. 146, 146 (2015).

24. Monika Johnson-Hostler & Christy Croft, *Human Trafficking Prevention Toolkit*, N.C. COAL. AGAINST SEXUAL ASSAULT 9 (2020), https://drive.google.com/file/d/1KJTgZmQX9dCjbfhQ9fXfqRRxZuxiV_vC/view [<https://perma.cc/9PJ4-DW9P>].

25. *Id.* at 10.

26. See Juno Mac & Molly Smith, *Trafficking in Lies*, THE BAFFLER (Nov. 5, 2018), <https://thebaffler.com/latest/trafficking-in-lies-mac-smith> [<https://perma.cc/7679-93NR>] (describing the racist tropes of modern-day anti-trafficking campaigns); see also Cheryl Nelson Butler, *The Racial Roots of Human Trafficking*, 62 U.C.L.A. L. REV. 1464, 1468 (2015) (describing the role of race in present day human trafficking discourse); Anna Szörényi & Penelope Eate, *Saving Virgins, Saving the USA: Heteronormative Masculinities and the Securitisation of Trafficking Discourse in Mainstream Narrative Film*,

Asian²⁷ women. Contemporary American politicians frequently ignore forced labor that does not involve the sex trade,²⁸ describe all sex work²⁹ as

24 Soc. SEMIOTICS 608, 609 (2014). (describing the xenophobic and white masculinity-centered narratives of widely consumed fictional films such as *Taken* and *Trade*.) The authors write that the films “appropriate the problem of trafficking in the service of a U.S.-led neo-imperialism bolstered by masculinism and xenophobia Such narratives offer little help in dealing with the global conditions that give rise to trafficking, given that *they participate in, rather than challenge*, gendered and raced distributions of power and precarity.” (emphasis added)). Organizer, former sex worker, and survivor Leila Raven analyzed this false narrative, saying, “[o]ur experiences—it’s not one or the other, it’s a spectrum, and, you know, those of us who have, those of us who are already trading sex are those who are most likely to face violence and exploitation in the sex trades, just like in any other industry.” Leila Raven, *Sex Work 101*, CORNELL L. SCH. at 16:58 (Oct. 26, 2020) (on file with the *Columbia Human Rights Law Review*) (panel discussion at Cornell Law School including a discussion of racist tropes in anti-trafficking and anti-sex work discourse).

27. As Aya Gruber has pointed out, contemporary policing of massage parlors has much in common with nineteenth-century policing of Asian women’s sex work. See Aya Gruber, *The Complicated History of Feminism’s Impact on Incarceration*, LITERARY HUB (July 23, 2020), <https://lithub.com/the-complicated-history-of-feminisms-impact-on-incarceration> [<https://perma.cc/G7K6-BGKT>]. For more on contemporary massage parlor policing, see Sandra Song, *How Red Canary Song Is Advocating for Migrant Sex Workers*, PAPER (Oct. 30, 2019), <https://www.papermag.com/red-canary-song-interview-2641163041.html?rebelltitem=21#rebelltitem21> [<https://perma.cc/VL4L-93JU>]; Melissa Gira Grant & Emma Whitford, *Family, Former Attorney of Queens Woman Who Fell to Her Death in Vice Sting Say She Was Sexually Assaulted, Pressured to Become an Informant*, THE APPEAL (Dec. 15, 2017), <https://theappeal.org/family-former-attorney-of-queens-woman-who-fell-to-her-death-in-vice-sting-say-she-was-sexually-d67461a12f1> [<https://perma.cc/ZGF6-5339>]; see also Elizabeth Nolan Brown, *Massage Parlor Panic*, REASON (Mar. 2020), <https://reason.com/2020/02/02/massage-parlor-panic> [<https://perma.cc/3CPF-CSCQ>] (describing racist, anti-Asian trends and tactics in policing of massage parlors).

28. This focus is reflected in federal and state police investigations. For example, a recent report noted that while 80% of victims identified by law enforcement between 2007 and 2010 were victims of sex trafficking, data from the victims’ service providers indicate that 64% were victims of labor trafficking only, 22% of sex trafficking only, and 10% were victims of both. Amy Farrell & Rebecca Pfeffer, *Policing Human Trafficking: Cultural Blindness and Organizational Barriers*, 653 ANNALS AM. ACAD. POL. & SOC. SCI. 46, 47 (2014). One supervisor of a unit receiving federal funding explained this disparity by saying, “[p]art of it was strategic in that we wanted to get some attention and we knew that [sex trafficking] would get us better attention.” *Id.* at 51.

29. “Sex work” is an umbrella term used to describe any form of sexual labor in exchange for anything of value and was coined by sex worker Carol Leigh in 1979 or 1980. See Carol Leigh, a.k.a. Scarlet Harlot, *Inventing Sex Work*, in WHORES AND OTHER FEMINISTS 225, 225 (Jill Nagle ed., 1997). Leigh used the term initially to describe her own sense of agency in her work and as a response to more objectifying terminology being employed by anti-sex-work feminists. While other activists have argued that sex work and trafficking are discrete categories of experience, sex workers and activists, including

“slavery,” call “slavery” un-American, blame its existence on foreign cartels,³⁰ push to strengthen existing criminal laws from the Progressive Era, and advocate for new criminal laws or anti-immigration laws as a remedy against “slavery.”³¹

In April 2018, for example, Congress amended the Mann Act through the Fight Online Sex Trafficking Act (FOSTA) by adding new criminal provisions that mirror the original 1910 provisions. Among other changes, the amendment makes it a federal crime to “promote or facilitate” the “prostitution of another person” using a website.³² In congressional hearings on FOSTA, Senator Bill Nelson’s remarks explicitly compared sex trafficking to chattel slavery:

Women and children are being forced into sex slavery in modern-day America. It could very well happen to someone you know . . . We have heard, over and over, the untold stories of the inhumanity of stacking people body-to-body in the holds of these slave ships. It finally took a civil war to settle the issue. That was slavery. That was

the author, have more recently used “sex work” not to inherently imply any specific level of agency, but rather as an assertion of sexual labor as labor. Just as with other forms of labor, sexual labor or sex work can be performed by choice, coercion, or circumstance. For examples of this usage, see Laura LeMoon, *Trafficking Survivors Don’t Want SESTA, We Want to Not Be Dying in Poverty*, MEDIUM (Mar. 19, 2018), <https://medium.com/@lauralemoon/trafficking-survivors-dont-want-sesta-we-want-to-not-be-dying-in-poverty-35fa80623f00> [<https://perma.cc/TWL9-NVTS>]; see also Lorelei Lee, *Cash/Consent: The War on Sex Work*, N+1 (Fall 2019), <https://nplusonemag.com/issue-35/essays/cashconsent/> [<https://perma.cc/A867-WQKE>] (describing the author’s own experiences in sex work under varying conditions of choice, coercion, and circumstance, as well as the ways that the sex work/trafficking binary impedes sex workers’ ability to describe our own experiences with nuance and in our own words); JUNO MAC & MOLLY SMITH, *REVOLTING PROSTITUTES: THE FIGHT FOR SEX WORKERS’ RIGHTS* 40–55 (2018) (providing an in-depth look at the international sex workers’ rights movement and situating it within all workers’ larger struggles to be free from exploitation and violence at work, regardless of whether that work is “good” or “desirable,” and regardless of whether workers like their jobs); see generally FEMI BABYLON F.K.A. SUPRIHMBÉ, *HEAUXTHOTS: ON TERMINOLOGY AND OTHER (UN)IMPORTANT THINGS* (2019) (covering—among other topics—the grey areas of consent and work, the utility and racialization of various sex work terms, and sex work as “antiwork”).

30. See Michael Hobbes, *Hey Ivanka Trump: You’ve Got the Wrong Definition of ‘Human Trafficking,’* HUFFINGTON POST (Dec. 11, 2018), https://www.huffpost.com/entry/hey-ivanka-youve-got-the-wrong-definition-of-human-trafficking_n_5c059e6ce4b07aec57519779 [<https://perma.cc/C9TY-LQYF>].

31. See Shawn Setaro, *Is the War on Sex Work the New War on Drugs?*, COMPLEX (July 24, 2018), <https://www.complex.com/life/2018/07/war-on-sex-work-new-war-on-drugs/> [<https://perma.cc/YU5C-J8V9>].

32. See 18 U.S.C. § 2421A (2018).

slavery we opposed and now all of our laws try to protect against, but here in modern-day America, the same thing is happening.³³

However, the “remedies” passed by federal and state legislators—almost exclusively penal and carceral³⁴ in nature—directly recreate some of the horrors of chattel slavery, namely forced labor³⁵ and family separation,³⁶ which are inflicted primarily on Black and Brown people in the United States.³⁷ Failing to fund his campaign-promised border wall, the border defense implemented by Trump has, like that of his predecessors, been comprised of violence and labor exploitation,³⁸ as well as new

33. 164 CONG. REC. S1857 (daily ed. Mar. 21, 2018) (statement of Senator Nelson), available at <https://www.congress.gov/congressional-record/2018/3/21/senate-section/article/S1849-8> [<https://perma.cc/2N3N-KB98>].

34. Elizabeth Bernstein has described the commitment to “carceral paradigms of social, and in particular gender, justice” by bipartisan coalitions of anti-trafficking activists in the United States as “carceral feminism.” Elizabeth Bernstein, *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns*, 36 SIGNS 45, 47 (2010).

35. See Azedeh Shahshahani, *Why Are for-Profit U.S. Prisons Subjecting Detainees to Forced Labor?*, THE GUARDIAN (May 17, 2018), <https://www.theguardian.com/commentisfree/2018/may/17/us-private-prisons-forced-labour-detainees-modern-slavery> [<https://perma.cc/6U4E-XJE9>]; see also Whitney Bennis, *American Slavery, Reinvented*, THE ATLANTIC (Sept. 21, 2015), <https://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177/> [<https://perma.cc/TCJ3-YQ9A>] (discussing how forced labor in prisons “reinvented” slavery).

36. See Adam Serwer, *Trumpism, Realized*, THE ATLANTIC (June 20, 2018), <https://www.theatlantic.com/ideas/archive/2018/06/child-separation/563252/> [<https://perma.cc/6U4E-XJE9>] (comparing family separation under Trump’s immigration policies to family separation under chattel slavery of African Americans).

37. ALEXANDER, *supra* note 7, at 97–139 (describing evidence of and contributing factors to racial bias in policing, judicial procedure, and sentencing); see also Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENT’G PROJECT (June 14, 2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/#II.%20Overall%20Findings> [<https://perma.cc/8PBW-XXK9>] (“African Americans are incarcerated in state prisons across the country at more than five times the rate of whites, and at least ten times the rate in five states.”). For a historical overview of the development of the criminal “justice” system as an intentionally-developed system of racial subjugation, see generally KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2010) (exploring the development among white Americans of deeply embedded notions of Black people as a dangerous race of criminals in contrast with working-class white and European immigrants).

38. See Serwer, *supra* note 36; see also Madison Pauly, *A Judge Says Thousands of Detainees May Sue a Prison Company for Using Them as a “Captive Labor Force,”* MOTHER JONES (Dec. 5, 2019), <https://www.motherjones.com/crime-justice/2019/12/immigration-detainee-geo-forced-labor-lawsuit/> [<https://perma.cc/Q92A-MTM6>]

limitations and increased wait times for T-visas and asylum applications,³⁹ thereby contributing to people’s vulnerability to trafficking rather than decreasing it.

“Modern day slavery” rhetoric in the twenty-first century has, by focusing on punishment and exclusion of individuals, created a perception that economic exploitation is primarily a harm enacted by individuals without structural causal factors.⁴⁰ The framing of modern human trafficking as the legacy of American chattel slavery therefore obscures chattel slavery’s actual legacy: the continued legal implementation of anti-Black policies of racial subjugation through the twentieth and twenty-first centuries.⁴¹ Additionally obfuscated by this rhetoric is the continuation of anti-Asian racism that developed out of nineteenth century postbellum

(describing a series of lawsuits alleging violations by GEO Group’s for-profit immigration detention centers of labor and anti-trafficking laws); Rachel Treisman, *Whistleblower Alleges ‘Medical Neglect,’ Questionable Hysterectomies of ICE Detainees*, NPR (Sept. 16, 2020), <https://www.npr.org/2020/09/16/913398383/whistleblower-alleges-medical-neglect-questionable-hysterectomies-of-ice-detainees> [https://perma.cc/8N84-GS85] (describing a whistleblower complaint of forced hysterectomies and medical neglect at private immigration detention center run by for-profit company LaSalle Corrections, followed by congressional demand for a Department of Homeland Security investigation).

39. Christine Murray, *Trump Declares Anti-Human Trafficking Push But Some Stay Away*, REUTERS (Jan. 31, 2020), <https://www.reuters.com/article/us-usa-trafficking-trump-trfn/trump-declares-anti-human-trafficking-push-but-some-stay-away-idUSKBN1ZU31Q> [https://perma.cc/2XFC-EW4C].

40. See Bravo, *supra* note 11, at 568 (describing a tactic in human trafficking discourse that Bravo names “assumption of the mantle of righteousness”). Bravo writes:

Assumption of the mantle of righteousness serves to hide from the listener-reader (and perhaps from the analogy user herself) the fact that the structural apparatus which facilitated past exploitation has remained in place even after its legal abolition. In so doing, the similarity in economic rationales and incentive structures—and the participation of “legitimate” enterprises and institutions in both transatlantic slavery and modern trafficking in humans—are obscured.

Id.

41. For an account of the continuous legal and institutional subjugation of Black Americans after the formal end of chattel slavery, see Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> [https://perma.cc/J27T-2S38]. See generally ALEXANDER, *supra* note 7 (arguing that modern mass incarceration is, at least in part, a system of racialized social control which can trace its history directly back to Jim Crow); MUHAMMAD, *supra* note 37 (arguing that the creation of Black criminality in urban spaces established a system of racial subjugation throughout the country after the end of chattel slavery).

descriptions of slavery as a contagion brought into the United States by Chinese migrant workers—particularly by Chinese migrant workers in the sex trades.⁴² The contagion rhetoric and othering that characterized so much of the outcry against Chinese women’s sex work in the nineteenth century can be seen again in contemporary anti-Asian racism, most recently heightened as a response to the novel coronavirus.⁴³ Similarly, the legacy of raids by white missionaries in nineteenth century U.S. Chinatowns continues in modern-day massage parlor raids in the United States.⁴⁴ and “rescue” missions by anti-trafficking NGOs abroad.⁴⁵

This Article provides a detailed account of the racialized, classed, and gendered roots of “modern day slavery” language, showing that such usage has, since its origins, impeded rather than supported attempts to prevent and remedy the harms of chattel slavery and human trafficking and exploitation. Part I examines several of the sexualized white capture narratives that preceded the popular use of “slavery” to describe Asian and white women’s sex work. Part II describes how, in the late 1800s, “slavery” language was deployed to describe both Chinese male immigrant labor and Chinese immigrant women’s sex work, and how this language led to the Page Act, effectively closing U.S. borders to Chinese migrant women. Part III describes how, by the 1900s, after the Chinese Exclusion Act had all but

42. See Angela R. Gover et al., *Anti-Asian Hate Crime During the COVID-19 Pandemic: Exploring the Reproduction of Inequality*, 45 AM. J. CRIM. JUST. 647, 648–49 (2020) (situating anti-Asian hate crimes during COVID-19 within the history of anti-Asian racism in the United States).

43. *Id.*

44. See Gruber, *supra* note 27.

45. See generally Elena Shih, *Duplicious Freedom: Moral and Material Care Work in Anti-Trafficking Rescue and Rehabilitation*, 44 CRITICAL SOCIO. 1077 (2018) (describing modern day “rescue” of sex workers in the Asia Pacific region by American NGO workers and “rehabilitation” of those sex workers through low-wage sewing, jewelry making and other forms of gendered labor). Shih argues that “the *moral* care work involved in global ‘anti-trafficking’ rescue performed mainly by first world women operates in opposition to the *material* care work of supporting families and households performed by migrant sex workers who are being rescued.” *Id.* at 1078. Shih, who has written in depth about these contemporary forms of anti-Asian racism and U.S. imperialism, describes how:

The racial politics of the human trafficking abolition movement...reproduces the unequal power relations that have made the earnings from sex work higher than that of factory work for...Thai and Chinese women. In particular, the ‘whiteness’ of Global North activists speaks both to the racial demographics of anti-trafficking activists, and the symbolic power of whiteness to confer global authority, moral superiority, and ethical consumption....

Id. at 1079–80.

ended immigration from China to the United States, the narrative shifted to a sensationalized focus on the allegedly widespread corruption, kidnapping, and seduction of white women by Black and immigrant men. The Article then discusses how this led to the passage of the White-Slave Traffic Act in 1910. The analysis demonstrates that the use of “slavery” language in describing the “un-American”—despite the institution being embedded in the development of America’s national ethos⁴⁶—and the concurrent focus on white women’s moral and racial purity was deployed at the turn of the twentieth century just as it is today: to close the nation’s borders and justify U.S. imperialism, to police the movement of non-white men domestically, and to uphold strict anti-miscegenation legal and social codes.

I. WHITE CAPTURE NARRATIVES

Before the rhetoric of “modern-day slavery” developed, sensationalist narratives reflected the hysteria over the moral and racial purity of white women. Sensationalist narratives of the victimization of white women by non-white men in America date back to at least the 1600s.⁴⁷ A colonist literature of “white capture” narratives told stories of white women who had been held captive by Indigenous Peoples during early conflicts over the theft of Indigenous land. Some of these were told as religious allegory, but the stories that most troubled white colonists were those of white women who joined Indigenous tribes, married Indigenous men, and refused to return to white colonial life.⁴⁸

As manifest destiny pushed colonial land theft and genocide deeper into the American West, tales of Indigenous capture of white women became increasingly violent, presenting Indigenous people as amoral and barbarous.⁴⁹ By the mid-1700s, these narratives had turned into lurid and sexualized tales, containing scenes of nude white women being burned at

46. See Nikhil Pal Singh, *Universalizing Settler Liberty: An Interview with Aziz Rana*, JACOBIN (Aug. 4, 2014), <https://www.jacobinmag.com/2014/08/the-legacies-of-settler-empire/> [<https://perma.cc/EB5C-G8HZ>] (“[T]he expansive notion of freedom as self-rule . . . developed precisely out of close proximity to its living negations: slavery and native expropriation.”). See generally Wendell Phillips, *The Constitution: A Pro-Slavery Compact*, in *AGAINST SLAVERY: AN ABOLITIONIST READER*, 241 (Mason Lowance ed., 2000) (describing the Constitution as a document deliberately designed to preserve slavery).

47. See FREDRICK K. GRITNER, *WHITE SLAVERY: MYTH, IDEOLOGY, AND AMERICAN LAW* 15 (1990).

48. *Id.* at 15–16.

49. See *id.* at 16.

the stake by Indigenous captors.⁵⁰ General George Custer's 1874 memoir contains several similarly violent stories, in some of which he paints himself as the hero "rescuer."⁵¹ Even once rescued, however, the white women of Custer's stories—having been subjected to sexual violence by nonwhite men—have already suffered "fates worse than death."⁵² This theme arises continually in "modern slavery" narratives: the construction of white women's innocence and sexual purity as more valuable than their lives, at least to the men who were their husbands and fathers.⁵³ This theme justified the protection of such innocence through any manner of violence.⁵⁴ Custer himself was so committed to this belief that he reportedly told his officers to shoot his wife rather than allow her to be taken captive.⁵⁵

In the 1800s, white audiences continued to consume tales of white and western women's capture and sexual victimization by nonwhite men.⁵⁶ For example, in 1851, *The Greek Slave*, a statue of a nude, shackled white woman, toured in Europe and the United States, capitalizing on the claim that Turkish soldiers had seized Christian women in the recent Greek War of Independence and sold them on the auction block.⁵⁷ Viewers saw the statue's subject as headed for a Turkish harem yet retaining her innocence because she was "clothed" by her whiteness and by her Christianity.⁵⁸ Professor Charmaine Nelson notes:

50. *Id.* (describing a scene in a 1794 edition of the pamphlet AFFECTING HISTORY OF THE DREADFUL DISTRESSES OF FREDRIC MANNHEIM'S FAMILY (1794)).

51. *Id.*

52. *Id.* at 28.

53. Thanks to Professor Sheri Lynn Johnson for the insight that the value in question was not a measure of absolute value or of the value these women placed on their own lives, but rather the value of their lives to Custer himself. Email from Sheri Lynn Johnson, James and Mark Flanagan Professor of L., Cornell L. Sch. to the author (Sept. 13, 2020, 12:37 EST) (on file with the *Columbia Human Rights Law Review*). For further discussion of the difference between protectionism of white women and protectionism of "white womanhood," see Raven, *supra* note 26.

54. See, e.g., Barbara Holden-Smith, *Lynching, Federalism, and the Intersection of Race and Gender in the Progressive Era*, 8 YALE J.L. & FEMINISM 31, 42 (1996) (explaining that while more African Americans were lynched during the Progressive Era for alleged murders of white people than alleged rapes of white women, up to 33% of lynchings were motivated by rape allegations, and Congress's refusal to pass an anti-lynching law was based on protecting white womanhood).

55. See GRITTNER, *supra* note 47, at 27–28.

56. See *id.* at 30–32 (giving an overview of nineteenth century captivity literature, in which, in addition to nonwhite men, the villains also included Mormons and Catholics).

57. *Id.* at 17–18.

58. *Id.*

[Sculptor Hiram] Powers' decision to represent his slave as a white, Greek woman in the midst of the political turmoil of American slavery, speaks to the supposed aesthetic impossibility of the black female subject as a sympathetic and beautiful subject of American "high" art of the time If one looks at the landscape of black female subjects in neoclassical sculpture of the era, we see not the absence of black female subjects as slaves, but their absence as beautiful subjects rendered in compositions which produced narratives that called for the dominantly white audience to view them as equals and/or as sympathetic victims of slavery.⁵⁹

Another example of the "white slave" trope in nineteenth century popular entertainment was Bartley Campbell's nationally-toured 1880 play, *The White Slave*, in which an "illegitimate" white child named Lisa's whiteness is concealed by her grandfather, who enslaves her on his plantation.⁶⁰ As an adult, Lisa's "womanhood" is threatened when she is sold, and she is only saved by the revelation of her birth certificate, which certifies her whiteness.⁶¹ American Studies Professor Diana Paulin describes Lisa's character as offering a site for "all the transgressive desires that white audiences identified with black bodies," which are "transformed into an acceptable sentiment once her white status is established."⁶² As will be the case with later legal and political narratives of "white slavery," this conception of white womanhood is constructed only through a kind of dialectic with white supremacist constructions of Black womanhood. The "tragedy" of the play for white audiences relied on the idea that Lisa was subject to sexual exploitation that such audiences believed only appropriate for Black women to endure⁶³. This ideology is cemented at the play's end when Lisa, her whiteness revealed, takes her place as plantation owner and enslaver of those with whom she was formerly, "illegitimately" enslaved, "support[ing]," in Paulin's words, "the notion that all possessions that were

59. Menachem Wecker, *The Scandalous Story Behind the Provocative 19th-Century Sculpture "Greek Slave,"* SMITHSONIAN MAG. (July 24, 2015), <https://www.smithsonianmag.com/smithsonian-institution/scandalous-story-behind-provocative-sculpture-greek-slave-19th-century-audiences-180956029/> [https://perma.cc/B7XR-AUPV].

60. See GRITTNER, *supra* note 47, at 28.

61. *Id.* at 28-29.

62. Diana Paulin, *Forbidden Desire: Interracial Unions, Surrogacy, and Performance*, 49 THEATRE J. 417, 426 (1997).

63. *Id.*

confiscated from white landowners during and after the war should be returned to their 'rightful' owners."⁶⁴

The idea of "white slavery," constructed against the reality of chattel slavery, was in use throughout the eighteenth and nineteenth centuries not only in fictional narrative, but as a political, philosophical, and often colonialist and eugenicist symbol.⁶⁵ By the end of the nineteenth century, however, its usage to describe trading sex would become ubiquitous. In 1870, novelist Victor Hugo wrote in a letter to white British feminist Josephine Butler, that "the slavery of black women is abolished in America; but the slavery of white women continues in Europe."⁶⁶ This letter is commonly cited as the first time that white women's sex work was explicitly called slavery.⁶⁷ Hugo's analogy would become widespread in turn-of-the-century American political discourse.⁶⁸

64. *Id.* at 429.

65. "White slavery" discourse thus precedes its application to the sex trades; for example, Revolutionary-era colonists protested their figurative "enslavement" by Britain. AZIZ RANA, *THE TWO FACES OF AMERICAN FREEDOM* 50–55 (2010). "White slavery" was similarly used during the nineteenth century to describe white wage labor. *See, e.g.*, Sen. James Henry Hammond, "Cotton Is King" Speech (Mar. 4, 1858), <https://teachingamericanhistory.org/library/document/cotton-is-king/> [<https://perma.cc/RV3U-5CCP>] (describing Hammond's "mud-sill theory" of social systems).

66. Jonathan Todres, *Law, Otherness, and Human Trafficking*, in *HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION* 91, 93 (Burns H. Weston & Anna Gear eds., 2016).

67. *See* Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 *HARV. J.L. & GENDER* 335, 338 n.7 (2006); *see also* KEELY STAUTER-HALSTEAD, *THE DEVIL'S CHAIN: PROSTITUTION AND SOCIAL CONTROL IN PARTITIONED POLAND* 119 (2015) (citing Hugo's letter to Butler as the first use of "white slavery" in a "sexual context"). *But see* JESSICA PLILEY, *POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI* 15 (2014) (describing a London doctor who, in the 1830s, called Jewish brothel keepers "white-slave dealers").

68. Hugo's framing of white women's prostitution as "slavery" may have been an attempt to "uplift" public understanding of such women's positions, as the prevailing metaphor for the prostitute in nineteenth century France (and elsewhere) was a sewer—namely a necessary waste disposal system that cannot be abolished so must be controlled through regulation. *See* Briana Lewis, *The Sewer and the Prostitute in Les Misérables: From Regulation to Redemption*, 44 *NINETEENTH CENT. FRENCH STUDS.* 266, 266–67 (2016). Hugo had hyperbolically argued for the "redeemability" of the prostitute through the character of Fantine in his 1845 novel *Les Misérables*, a fictional symbol that has played heavily into contemporary public anti-trafficking narrative through the film portrayal of Fantine by actress Anne Hathaway, who echoed nineteenth century Missionary Donaldina Cameron's dehumanizing of women in sex trades. *See infra* note 127 and accompanying text. Hathaway said of her research for the role, "[T]here was a

II. "YELLOW SLAVERY" AND THE PRECEDENT TO CHINESE EXCLUSION

The development of "yellow slavery" rhetoric traces to the post-Civil War period. The post-Civil War period was marked by growing capitalist industrialization and an expanded pool of workers, both immigrant and migrant, seeking employment.⁶⁹ Driven by war, food shortages, and "the simultaneous opening of Asia and the American west," under the Burlingame Treaty,⁷⁰ Chinese men began to sojourn to the United States in large numbers in the mid-1800s.⁷¹ Many sought the "Gold Mountain" of California⁷² and were initially welcomed by white industrialists and politicians seeking cheap labor for rapidly advancing capitalist enterprises.⁷³ These industrialists saw Chinese laborers as "more dependable and less demanding than white workers."⁷⁴

Most Chinese laborers who came to the U.S. in the 1800s were sojourner workers; they intended to return to China after working for a

police raid on one of the brothels and... there was a small crawl space up in the ceiling... fourteen girls came out of it and they were all so tiny and crunched up... *They were unrecognizable as human beings...*" Joel D. Amos, *Les Miserables: Anne Hathaway on Dreaming a Dream*, MOVIE FANATIC (Dec. 24, 2012), <https://www.moviefanatic.com/2012/12/les-miserables-anne-hathaway-on-dreaming-a-dream/> [<https://perma.cc/R965-GA87>] (emphasis added). For a deeper analysis of Hathaway's part in modern anti-trafficking discourse, see Johanna, *Misérable Politics: Why Anne Hathaway Should Go-Away*, TITS & SASS (Feb. 21, 2013), <http://titsandsass.com/miserable-politics-why-anne-hathaway-should-go-away/> [<https://perma.cc/QE75-FXDC>]; see also Juniper Fitzgerald, *Celebrity and the Spectacle of the Trafficking Victim*, TITS & SASS (Aug. 7, 2015), <http://titsandsass.com/celebrity-and-the-spectacle-of-the-trafficking-victim/> [<https://perma.cc/USG3-975P>] (describing dehumanizing practices in celebrity depictions and discussions of trafficking).

69. See ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 1863-1877*, at 82 (1988).

70. The Burlingame Treaty between China and the United States prohibited restrictions on Chinese immigration to the U.S. See Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 644 (2005).

71. Michael Park, *Asian American Masculinity Eclipsed: A Legal and Historical Perspective of Emasculation Through U.S. Immigration Practices*, 8 MOD. AM. 5, 6 (2013).

72. BENSON TONG, *UNSUBMISSIVE WOMEN: CHINESE PROSTITUTES IN NINETEENTH-CENTURY SAN FRANCISCO*, xv (1994).

73. See Park, *supra* note 71, at 6-7.

74. See *id.* It is worth noting, however, that at least one impetus for the passage of the Burlingame Treaty was to ensure "a sufficient supply of Chinese labor for the U.S. railroad project" after the Chinese railroad workers' strike in 1867. See Yu-Fang Cho, *Domesticating the Aliens Within: Sentimental Benevolence in Late-Nineteenth Century California Magazines*, 61 AM. Q. 113, 119 (2009).

temporary period.⁷⁵ They frequently married in China prior to departure, and their families did not travel with them to the United States.⁷⁶ “Decent” Chinese women like these sojourners’ wives were discouraged or forbidden from travelling abroad.⁷⁷ During the 1850s, however, a number of Chinese women (like their white American counterparts) also travelled to California and worked in the region’s burgeoning sex trade.⁷⁸ These women left few first-person accounts of their experiences,⁷⁹ and their stories have been told through a variety of ideological lenses.⁸⁰ For white Americans in the second half of the nineteenth century, the specter of the Chinese immigrant as both “enslaved” and “enslaver” would provide a potent tool for reifying structural white supremacy during a time of national cultural change.

That cultural change comprised, among other factors, legal and economic shifts that required reconceptualizing race and gender as social constructs and as tools for social ordering. Following the passage of the Thirteenth Amendment, the labor contract had new salience.⁸¹ As Sherally Munshi puts it, “the idea of contract had become charged with the promise of delivering the nation from its history of slavery and ushering in a new era of freedom and equality.”⁸² Despite the legal premise that the primacy of the contract would end status-based systems, however, “residues of status

75. See Lucie Cheng Hirata, *Free, Indentured, Enslaved: Chinese Prostitutes in Nineteenth-Century America*, 5 SIGNS 3, 5 (1979).

76. *Id.*

77. *Id.* at 6.

78. See *id.* at 8. See generally Carol Huang, *Inscription on the Past from Present Inquiries: Historiography of Nineteenth Century Chinese Immigrant Public Women*, ADVANCING WOMEN LEADERSHIP J. (2005), http://www.advancingwomen.com/awl/fall2005/19_2.html [<https://perma.cc/T7J2-GZV5>] (describing the lives of nineteenth century Chinese immigrant women who worked in the sex trades in the United States).

79. See Barbara L. Voss, “Every Element of Womanhood with Which to Make Life a Curse or Blessing:” *Missionary Women’s Accounts of Chinese American Women’s Lives in Nineteenth-Century Pre-Exclusion California*, 21 J. ASIAN-AM. STUDS. 105, 105–06, 112 (2018). This paucity of the archive on present-day understanding of the experiences of Chinese women working in the nineteenth century American sex trades likely has a great impact. As Saidiya Hartman writes, “Every historian of the multitude, the dispossessed, the subaltern, and the enslaved is forced to grapple with the power and authority of the archive and the limits it sets on what can be known, whose perspective matters, and who is endowed with the gravity and authority of historical actor.” SAIDIYA HARTMAN, *WAYWARD LIVES, BEAUTIFUL EXPERIMENTS: INTIMATE STORIES OF SOCIAL UPHEAVAL* xiii (2019).

80. See Huang, *supra* note 78 (providing an overview of the varying narratives used to describe Chinese immigrant sex workers who lived in the United States in the 1800s).

81. See PLILEY, *supra* note 67, at 17.

82. Sherally Munshi, *White Slavery and the Crisis of Will in the Age of the Contract*, 30 YALE J.L. & FEMINISM 327, 333 (2018).

would persist in the form of naturalized difference—gender and race,”⁸³ and understandings of consent within sex, work, and sex work would be unevenly applied by both the public and the law. A British captivation with sexual “slavery” of white virgins, spurred by British feminists and by sensationalist journalists like W.T. Stead, had been adopted by an American “purity” movement that would come to focus on both “white slavery” and calls for temperance.⁸⁴ The purity movement was animated by the same rhetoric, and by a number of the very same activists, as the antebellum abolitionist movement had been.⁸⁵ Simultaneously, in the late nineteenth century, the “pseudo-scientific rationale of modern racism” was developed⁸⁶ alongside concepts of “blood purity” and race as a product of lineage.⁸⁷ Racial boundaries were policed in public spaces,⁸⁸ and the institutionalization of resource-allocation⁸⁹ and public power according to racial categorization required the regulation of “sexual intimacy within and between groups.”⁹⁰

Anti-Chinese “yellow peril” discourse evolved within these cultural influences and attached to conceptions of “modern slavery” through which stereotypes about Chinese women working in prostitution were molded. Although anti-Chinese racism and “yellow slavery” rhetoric would reach across the country,⁹¹ its origin was in California. By 1900, almost half of California’s Chinese immigrant population lived in San Francisco.⁹² As Nayan Shah describes, “when Chinese female prostitutes were perceived as providing sexual services exclusively to Chinese men, white critics viewed them as merely immoral. But once they were believed to solicit white males,

83. *Id.* at 334.

84. *See* GRETCHEN SODERLUND, *SEX TRAFFICKING, SCANDAL, AND THE TRANSFORMATION OF JOURNALISM 1885-1917*, at 79 (2013).

85. *Id.* at 6–7 (2013).

86. *See* PLILEY *supra* note 67, at 16.

87. DONOVAN, *supra* note 19, AT 11 (2006).

88. *See* ANDREA RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR 29* (2017) (describing policing of Black women under the Black Codes).

89. *See* DONOVAN, *supra* note 19, at 10 (“Racial categories often become codified in policies and laws that distribute resources along racial lines. These categories form a mechanism for creating social hierarchies by restricting or providing access to jobs, credentials, and legal rights to marry and emigrate.”).

90. *Id.* at 12.

91. *See, e.g.*, JACOB RIIS, *HOW THE OTHER HALF LIVES: STUDIES AMONG THE TENEMENTS OF NEW YORK 93–103* (1890) (using all of the tropes of 19th century anti-Chinese racism in a chapter ostensibly describing conditions in New York City’s Chinatown).

92. DONOVAN, *supra* note 19, at 111.

their presence was considered even more dangerous.”⁹³ Two San Francisco County Supervisors described Chinese women’s sex work as “the most abject and satanic conception of human slavery” and the “source of contamination and hereditary diseases.”⁹⁴

Presaging present day nativist fears about immigration and labor, white workers in San Francisco in the late 1800s lashed out against Chinese workers who had been employed as strikebreakers and as cheap labor.⁹⁵ White laborers claimed that Chinese immigrants were reintroducing now-un-American slavery into the United States in the form of “coolie”⁹⁶ labor and prostitution. In the 1870s, the white labor-focused Workingman’s Party gained control of San Francisco’s city government.⁹⁷ Members of the Workingman’s Party claimed that nine-tenths of California’s syphilis cases had been caused by Chinese women working in the sex trades.⁹⁸

Other rhetoric focused on the gender imbalance among Chinese immigrants as “proof of sexual and social deviancy.”⁹⁹ The Workingman’s Party furthered these claims by arguing that the Chinese male servants lacked masculinity, and thus had a competitive edge in the market for domestic labor because, they warned, “he is not a man!”¹⁰⁰ This, they suggested, put the Chinese male laborer in direct economic competition not with white men, but with white women, thereby pushing white women into prostitution.¹⁰¹ Another alleged cause for alarm was that white male laborers were regular visitors to Chinatown brothels.¹⁰² As one reformer described it, Chinese prostitutes were “infusing a poison into the Anglo-

93. NAYAN SHAH, *CONTAGIOUS DIVIDES: EPIDEMICS AND RACE IN SAN FRANCISCO’S CHINATOWN* 79 (2001).

94. *Id.* at 80 (citing WILLARD B. FARWELL, *THE CHINESE AT HOME AND ABROAD* 14 (1885)).

95. *Id.*

96. “Coolie” is a slur originally used to describe indentured laborers working under British colonization in India. The word may have evolved from the Tamil word *kuli*, meaning wages. For a discussion of the word’s origins and history, see Lakshmi Gandhi, *A History of Indentured Labor Gives ‘Coolie’ Its Sting*, NPR: CODE SWITCH (Nov. 25, 2013), <https://www.npr.org/sections/codeswitch/2013/11/25/247166284/a-history-of-indentured-labor-gives-coolie-its-sting> [<https://perma.cc/KY6V-4NNM>].

97. See DONOVAN, *supra* note 19, at 111.

98. *Id.*

99. See PLILEY, *supra* note 67, at 16; see also Park, *supra* note 71 (describing the emasculation of immigration practices).

100. CLARE SEARS, *ARRESTING DRESS: CROSS-DRESSING, LAW, AND FASCINATION IN NINETEENTH CENTURY SAN FRANCISCO* 125 (2014).

101. *Id.*

102. DONOVAN, *supra* note 19, at 112.

Saxon Blood."¹⁰³ Anti-Chinese sentiment thus focused on anxieties regarding the sexual purity and gender purity of both white men and white women as well as competition in the labor market.

These narratives were extremely effective, giving a moral imperative to nativist racism and white supremacy while also justifying the "white man's [and woman's] burden"¹⁰⁴ of imperialist intervention. In 1865, the San Francisco city government ordered the removal of "Chinese women of ill fame" from within the city limits, and in 1866, the San Francisco chief of police "boasted that he had used the law to expel three hundred Chinese women."¹⁰⁵ Between 1866 and 1905, Californians passed eight laws designed to restrict immigration by Chinese women for the purposes of prostitution.¹⁰⁶

While the federal government struck down several of California's anti-immigration laws as an unconstitutional usurpation of federal power,¹⁰⁷ in 1874, Representative John S. Hager asked Congress, on behalf of "the laboring men of the State of California" to modify the immigration provisions in the Burlingame Treaty. He claimed that the treaty conflicted with the 1807 "law to suppress the African slave trade." "Under the Burlingame treaty," Hager said, "there is gradually being introduced into the United States a species of slavery . . . next to the African slave trade it will prove to be the greatest curse that ever befell our country, unless some remedy be administered here to prevent this importation of servile labor."¹⁰⁸ Chinese laborers' "low standard of living and morality," he announced, "menaces the communities in which it may reside with pestiferous disease . . . Mongolian labor has driven from employment large numbers of our people." He continued by reading a newspaper account of a

103. Huang, *supra* note 78 at 2 (quoting Dr. Mary Sawtelle, *The Foul Contagious Disease: A Phase of the Chinese Question: How the Chinese Women Are Infusing a Poison into Anglo-Saxon Blood*, MEDICO-LITERARY J. 1, 3 (1878)).

104. The concept of the "white man's burden" is expressed in Rudyard Kipling's 1899 poem of that title as the burden of bringing "freedom" to nonwhite peoples, framed in opposition to those peoples' "sloth and heathen Folly." Rudyard Kipling, *The White Man's Burden*, FORDHAM UNIV. MOD. HIST. SOURCEBOOK (1899), <https://sourcebooks.fordham.edu/mod/kipling.asp> [<https://perma.cc/SA4U-LYZR>]. The same ideology has been described contemporarily as the "white-savior industrial complex." Teju Cole, *The White-Savior Industrial Complex*, THE ATLANTIC (Mar. 21, 2012), <https://www.theatlantic.com/international/archive/2012/03/the-white-savior-industrial-complex/254843/> [<https://perma.cc/SA4U-LYZR>].

105. RITCHIE, *supra* note 88, at 146.

106. DONOVAN, *supra* note 19, at 113.

107. See SEARS, *supra* note 100, at 123.

108. 43 CONG. REC. H2228-29 (1874) (remarks of Rep. Hager).

brothel raid in San Francisco, saying that Chinese men did not immigrate with families, but instead “bring females under contracts for purposes too vile for me even to mention in this Chamber.”¹⁰⁹

By 1875, the narrative that Chinese immigrants had reintroduced slavery into the U.S. through “coolie” labor and prostitution had taken hold in the federal government to such an extent that President Ulysses S. Grant made reference in his State of the Union that December to “the importation of Chinese women, but few of whom are brought to our shores to pursue honorable or useful occupations.”¹¹⁰ The Page Act, named for its author, Representative Horace Page—who had already “made a career out of drafting and advocating anti-Chinese Legislation”¹¹¹—was passed on March 3, 1875.¹¹² It was the first federal law to limit immigration into the United States.¹¹³ The Page Act prohibited the “importation into the United States of women for the purposes of prostitution” and the entering by immigrants from China, Japan, or “any Oriental country” into a contract for “lewd and immoral purposes.”¹¹⁴ The Act further prohibited the importation of workers from the aforementioned countries “without their free and voluntary consent.”¹¹⁵

Men holding the office of the Hong Kong consul, each of whom developed various methods of examining Chinese women to determine whether they “intend[ed] to live a virtuous life in the United States,” enforced the Page Act.¹¹⁶ The methods used by the three men who held the position between 1875 and 1882 included extensive interrogations and

109. *Id.* at H2300. While Hager’s attempt to modify the Burlingame Treaty was unsuccessful in 1874, anti-Chinese rhetoric eventually prevailed in Congress. The treaty was modified in 1880 and overturned by the Chinese Exclusion Act of 1882 as well as the Scott Exclusion Act passed in 1888 to ensure the Chinese Exclusion Act’s enforcement. *See Chae Chan Ping v. United States*, 130 U.S. 581, 600 (1889) (stating that the Scott Exclusion Act of 1888 overturned the Burlingame Treaty).

110. President Ulysses S. Grant, Seventh Annual Message (Dec. 7, 1875) (transcript available at *Presidential Speeches*, UVA MILLER CTR., <https://millercenter.org/the-presidency/presidential-speeches/december-7-1875-seventh-annual-message> [<https://perma.cc/JV92-Z2AB>]).

111. Between 1873 and 1875, Page sponsored four anti-Chinese bills and three House resolutions aimed at restricting Chinese immigration. ABRAMS, *supra* note 70, at 690–91.

112. George Anthony Peffer, *Forbidden Families: Emigration Experiences of Chinese Women Under the Page Law, 1875–1882*, 6 J. AM. ETHNIC HIST. 28, 28 (1986).

113. *Id.*

114. Immigration Act, ch. 141, § 1, 3, 18 Stat. 477, 477 (1875) (repealed 1943).

115. *Id.* § 2.

116. Peffer, *supra* note 112, at 32.

cross-examinations, bribes, and requirements that women submit declarations of “personal morality.”¹¹⁷ Chinese women who wished to enter the United States had to subject themselves to the approval of not only the American consul, but also the British Harbor Master and a committee of prominent Chinese businessmen, in order to obtain certificates of character allowing them to board a boat to the United States.¹¹⁸ Between 1876 and 1882, the already low number of Chinese women entering the United States declined by 68%.¹¹⁹ “[T]hat’s ethnic cleansing,” says historian Jean Pfaelzer. “Without women there won’t be family; progeny; lineage; children—and so the population will just die off. And it was intended to die off.”¹²⁰

Despite the Page Act and the subsequent 1882 Chinese Exclusion Act eliminating almost all immigration from China, “yellow slavery” discourse continued in the United States. Across the country, purity activists and sensationalist journalists continued to publish racist tracts warning of the perils of Chinese brothels,¹²¹ developing into an industry of “moral entrepreneurs.”¹²² Noteworthy among these was Donaldina Cameron, who, “guided by ideas of social Darwinism and Christian uplift” ran a “rescue” home at 920 Sacramento Street in San Francisco’s Chinatown, often called “Nine-twenty.”¹²³ Cameron joined forces with local police officers to conduct brothel raids and “rescues” that she later wrote about and widely publicized.¹²⁴ The women she “rescued” were taken back to the “rescue” home, where they were intensively supervised and made to sew and clean so that they might be appropriately re-feminized to “marry Christian Chinese” men. The women were not allowed to leave the “rescue”

117. Peffer, *supra* note 112, at 32.

118. *Id.*, at 31–33.

119. *Id.* at 29.

120. *American Experience: The Chinese Exclusion Act*, PBS (2018) <https://www.pbs.org/wgbh/americanexperience/films/chinese-exclusion-act/> [<https://perma.cc/SGQ9-NRFF>].

121. These publications were extremely prevalent in the late 1800s and early 1900s. *See, e.g.*, RLS, *supra* note 89, at 95 (describing New York City’s Chinatown as “teeming” with “white slaves” or “victims of passion”—white women supposedly lured by Chinese men’s opium dens); *see also* DONOVAN, *supra* note 19, at 113 (quoting JEAN ZIMMERMAN, *WHITE OR YELLOW? A STORY OF AMERICA’S GREAT WHITE SLAVE TRADE WITH ASIA* (1916)) (claiming that white women were sold into prostitution in China in exchange for Chinese women sold into prostitution in the United States and describing San Francisco’s Chinatown: “We were surrounded on every side by . . . thousands of Chinese . . . [f]rom all sides came the smirk of hideous yellow faces . . .”).

122. *See* DONOVAN, *supra* note 19, at 113.

123. *Id.* at 117–18.

124. *Id.* at 119–20.

home without permission.¹²⁵ Their contact with anyone outside of the mission home was limited, and the mission staff read all incoming and outgoing mail.¹²⁶ Cameron described, with no apparent sense of irony, the reaction of a group of women she had recently “rescued” from “slavery” upon finding themselves confined to the “rescue” home:

What pandemonium reigned for a time when these half-frenzied creatures found themselves prisoners! They shrieked and beat themselves with their hands; they spat upon the furniture and clean floors, and cursed in English and Chinese. The scene was one of horror and yet pathos. Some were liberated that day; but a number were left in our care until further investigation could be made. They neither ate nor slept for the first day and night.¹²⁷

The anthropologist Barbara Voss writes that high-profile “rescue” missions targeting Chinese women in the sex trades “provided middle-class European American women an opportunity to cross racial boundaries and experience intercultural exchanges that would otherwise compromise their respectability.”¹²⁸ American missionaries described the work as being equivalent to evangelizing in China, but without the lengthy travel, and highlighted Chinatown mission work’s “‘foreign’ adventure and mystery.”¹²⁹ These missionaries believed that the work they were doing mirrored the “civilizing” work being done by Christian missionaries abroad, and like Cameron, they believed such civilizing could be accomplished not merely through religious conversion, which many Chinatown residents resisted,¹³⁰ but through feminizing labor. “For the missionaries, sewing work had spiritual significance,” as it enabled Chinese American women to “earn money by sewing for it [rather] than by degrading their bodies.”¹³¹

125. *Id.* at 118.

126. *Id.*

127. *Id.* at 120.

128. Voss, *supra* note 79, at 110.

129. *Id.*

130. *Id.* at 113.

131. *Id.* at 126. As Elena Shih points out, these attitudes have continued for over a century, and labor that is gendered as feminine is used both to prevent and rehabilitate from sex trade work. “Anti-trafficking NGOs have created a cottage industry of victim repair through vocational training. . . . Jewelry, tote bags, blankets, and placemats are . . . sold by anti-trafficking NGOs at anti-trafficking fairs and conferences, and by online vendors in the United States.” Shih writes that one such NGO “trains former sex workers to make the jewelry and sells this jewelry as fair trade and slave-free labor in the United States as part of their human trafficking movement. . . . The ‘victim of trafficking’ label adds tremendous market value to such products sold as slave-free goods” despite the fact that the workers who make those products are typically low-wage laborers, and in fact

Whether Chinese immigrant women were primarily forced to work in the California brothels is unclear. Purity movement feminists Katharine Bushnell and Elizabeth Andrew wrote in 1907, confusingly, that "practically all the Chinese prostitutes in the United States are literal slaves. Some are *willing* slaves, some *unwilling*."¹³² Many sources note the existence of auctions at California docks as Chinese women arrived in the United States and compare such auctions to auctions of enslaved Africans and African Americans.¹³³ At least one writer, however, describes California's nineteenth century dockside auctions as selling Chinese women's sexual services rather than their person.¹³⁴ One story, presented in the records of the Presbyterian San Jose Women's Board of Missions "as an example of Chinese American Women's slavery" was actually a more complicated story of a woman with rheumatism who had developed affection for "the opium dealer who supplied her pain medicine."¹³⁵ She no longer wished to stay with her husband, and her husband accepted a payment which "released [his wife] to marry her new lover, sparing her the stigma of being accused of infidelity."¹³⁶

As Carol Huang makes clear, documenters of this specific history have interpreted the lives of nineteenth century Chinese migrant women not just through a variety of lenses, but through opposing feminist interpretations of the meaning of sex work.¹³⁷ The slippage with which feminist, philosophical, and religious activist writings since (and prior to) the 1900s have used "selling oneself" to describe the sale of sexual services,¹³⁸ as well as the instrumentalization with which these writings

make "a fraction of what they previously earned as sex workers." Elena Shih, *The Anti-Trafficking Rehabilitation Complex*, 1 CONTEXTS 21, 21–22 (2014).

132. ELIZABETH ANDREW & KATHARINE BUSHNELL, HEATHEN SLAVES AND CHRISTIAN RULERS 146 (1907).

133. See, e.g., JULIA FLYNN SILER, THE WHITE DEVIL'S DAUGHTERS: THE WOMEN WHO FOUGHT SLAVERY IN SAN FRANCISCO'S CHINATOWN 13 (2019) ("Shockingly, auctions of Chinese women took place openly on the docks, in full view of policemen and the waterfront crowds." Siler goes on to describe invasive physical examinations the women underwent, citing a contemporary source that such examinations were "after the fashion of African slave-dealers not many years ago.").

134. May Jeong, *Ah Toy, Pioneering Prostitute of Gold Rush California*, N.Y. REV. OF BOOKS (June 19, 2020), <https://www.nybooks.com/daily/2020/06/19/ah-toy-pioneering-prostitute-of-gold-rush-california> (on file with the *Columbia Human Rights Law Review*).

135. Voss, *supra* note 79, at 122.

136. *Id.*

137. See Huang, *supra* note 78.

138. See Jaqueline Comte, *Decriminalization of Sex Work: Feminist Discourses in Light of Research*, 18 SEXUALITY & CULTURE 197, 200 (2014) (providing an overview of

treat the lived experiences of the sex workers they describe,¹³⁹ has turned the sex worker into a contested political symbol rather than a person with a complexity of lived experiences. Documenters of the sex trades then often come to their projects assuming one or another meaning of “sex work,” and the contemporary understanding by some feminists that all sex work is slavery is easily cast backward. Similarly, the assumption that sex work is “empowering” or, somewhat less reductively, is a means to live outside the confines of traditionally gendered roles, can be cast backward to describe nineteenth century Chinese sex workers as “capable free agents who were able to see through the pretense of the Victorian women” and use their rescuers intentionally to avoid deportation or to marry clients they had developed affection for.¹⁴⁰ The truth is likely more complex and varied than either of these accounts. Further, to say that some women were likely trafficked by force or fraud into sex work in the 1800s,¹⁴¹ (their experiences thus falling into the current definition of trafficking under U.S. law), is not to say that this was the primary means by which women entered into the nineteenth century sex trades.¹⁴² Neither does analysis lead directly to the conclusion

contemporary “abolitionist” feminist arguments constructing sex work as the sale of the body).

139. This Article contends that sex work stigma is distinct from the gender, race, class, and other stigmas with which it frequently intersects, and joins other writers and sex worker activists in arguing that anti-sex work feminist writings themselves have done much to contribute to the popular objectification of sex workers. See MAC & SMITH, *supra* note 27, at 11; see also Lee, *supra* note 22 (describing anti-sex work feminist writings and their impact); MELISSA GIRA GRANT, PLAYING THE WHORE: THE WORK OF SEX WORK 35-48 (2014) (analyzing the statements, actions, and writings of anti-sex work feminists).

140. Huang, *supra* note 78 (describing the writing of Peggy Pascoe).

141. See Voss, *supra* note 79, at 121 (noting, in the late nineteenth century records of the Presbyterian San Jose Woman’s Board of Missions in California, at least three cases of Chinese immigrant women who were beaten and physically coerced into prostitution by their husbands).

142. To complicate this analysis even further, it is important to note that the period in question is one of widespread worker exploitation and forced labor—circumstances that would change for some Americans by the development of labor law regimes, the New Deal, the economic stimulus of World War II, the Civil Rights Act of 1964, and globalization, among other factors. Those societal changes may have contributed to the false binary in contemporary public discourse between “consensual work” and “trafficking.” See LeMoon, *supra* note 29; Lee, *supra* note 29 (discussing how the binary impedes the ability to speak about experiences with nuance); MAC ET AL. *supra* note 29 (situating the international sex worker movement within larger labor movements). Yet that binary—the belief that there is a categorical difference between wage labor that is exploitative and wage labor that is “consenting”—can also be seen in the writings of nineteenth and early twentieth century American Purity Movement, feminist, and Missionary activists. Noteworthy among these writings is that of feminist

that such coerced, defrauded or forced labor was equivalent to the institution of chattel slavery of Africans and African Americans. What is clear is that the framing of enslavement and rescue used by political actors of the past and present to describe nineteenth century Chinese immigrant workers in the sex trades reduces those workers' experiences in a way that has been, and continues to be, instrumentalized to center whiteness and uphold white supremacy. As Huang writes,

The image of women as victims of Chinese tradition is a stereotype in which both Western scholars and Chinese May Fourth (1917-24) Western-educated intellectuals were complicit... Chinese prostitutes were associated with heathen practices, female infanticide, and viewed as victims of the powerful and abusive patriarchy... Given the interest in "civilizing" the Chinese, it is not surprising that missionary reports on "women's status" in China emphasized their victimization and weakness. This discourse paved the way for intervention... Reports of Chinese women's subordination were thus used to validate Western ideas about China's perceived cultural backwardness.¹⁴³

This perceived cultural backwardness is directly visible in the writings of nineteenth century missionary women. For example, Voss describes how the records of the San Jose Woman's Board of Missions render Chinese American's speech in pidgin English while rendering the speech of recent immigrant missionary women in standard English.¹⁴⁴ In these same records, "Chinese American women are typically referred to as 'idolaters', their homes cloaked with 'thick darkness and heathen superstition' and their challenging lives 'full of thrilling pathos.'"¹⁴⁵ In another example, Andrew and Bushnell combined racist othering with contagion rhetoric when they wrote, "[i]f the women of America have not the decent self-respect to refuse to tolerate the Oriental slave-prostitute in this country, the balance will be lost, libertines will have their own way through the introduction into our social fabric of their slaves, and Christian womanhood will fall before it."¹⁴⁶

and religious activists Katharine Bushnell and Elizabeth Andrew, who wrote in 1907 that a Chinese migrant woman, after being "rescued . . . is pursuing a professional career now, after fine opportunities in training. It is worthwhile to save such material, even from a slave-pen." ANDREW & BUSHNELL, *supra* note 132, at 144.

143. Huang, *supra* note 78.

144. Voss, *supra* note 79, at 113.

145. *Id.*

146. ANDREW & BUSHNELL, *supra* note 132, at iii.

Like Huang, literature professor Lily Wong attributes the American obsession with “rescuing” Chinese women as directly connected to the U.S. neocolonial involvement in China, which was being utilized by the United States to gain global positioning as a world power.¹⁴⁷ Chinese women, Wong says, were presented as “degrading figures that could potentially debase white manhood and, as such, threaten the health of the United States’ social body as a modern nation and imperial power.”¹⁴⁸ As she describes it, “[t]he legalized policing of Chinese female bodies justified both the anti-Chinese ‘yellow peril’ discourse and U.S. civilizing rescue narratives of imperial expansion into Asia.”¹⁴⁹ Elena Shih points out how these attitudes have continued into the present day, “[s]uggesting that human trafficking can be explained by bad family values, or cultural norms that consider girl children to be disposable, facilitates the heroic, paternalistic, and caring interventions that have now been well-documented by activists and scholars of trafficking.”¹⁵⁰ Thus, the anti-Chinese racism of which slavery language is a part has taken the form of inviting both exclusion and “rescue” or other forms of intervention. As the next Part describes, the way that slavery language was deployed to uphold anti-Black racism in America throughout the next century took a different character.

III. “WHITE SLAVERY” AND THE MANN ACT

The rhetoric of “modern-day slavery” came to the fore in the twentieth century. As the twentieth century dawned, the new narrative of “slavery” that was being written positioned white womanhood at its center. This happened concurrently with violent anti-Black racism in the United States. The Progressive Era was a time of widespread lynching and the rise of Jim Crow laws.¹⁵¹ Not coincidentally, it was also a time when panic about racial purity peaked, a time when something called “white slavery” was feverishly decryed by politicians, social reformers, white feminists, and journalists in both North America and Europe.

The Thirteenth Amendment, of course, did not end institutionalized forced labor of Black Americans. The Black Codes, passed by Southern Democrats in 1865 and 1866, used a broad reading of the Thirteenth

147. LILY WONG, *TRANSPACIFIC ATTACHMENTS: SEX WORK, MEDIA NETWORKS, AND AFFECTIVE HISTORIES OF CHINESENESS* 25–27 (2018).

148. *Id.* at 27.

149. *Id.* at 26–27.

150. Shih, *supra* note 45, at 1078.

151. Holden-Smith, *supra* note 54, at 46.

Amendment’s penal exception to take advantage of this loophole.¹⁵² For example, some states prohibited formerly enslaved women employed as domestic workers from leaving their employers’ property during the period of their work contract, or, as in Mississippi, declared that any free Black woman over the age of eighteen without lawful employment could be arrested and fined.¹⁵³ Women who left their employer’s property were arrested and forcefully returned, and women who could not pay their vagrancy fines were hired out by the sheriff to anyone willing to pay those fines.¹⁵⁴ These laws were upheld by the very same state police forces that had been previously formed as slave patrols,¹⁵⁵ and the practice of “convict leasing” maintained forced labor by private parties until the last convict-leasing allowance expired in 1928.¹⁵⁶ This period of American history in which “contract was above all a metaphor of freedom,”¹⁵⁷ was also a time when, if you were Black, you could be put into peonage by signing a contract you were unable to read.¹⁵⁸ One man described his experience of peonage in the early 1900s—which included long hours of forced

152. Thanks to Aaron Roy Hall and Aziz Rana for discussions of a more nuanced understanding of forced labor under the Thirteenth Amendment. Despite modern understandings of the Thirteenth Amendment, it is very unlikely that the Amendment’s original framers intended for the exception in punishment clause to be used as it was by Southern Democrats, and as it is within our system of mass incarceration. The clause was understood by the Amendment’s Republican framers as a narrow exception. Rather than allowing for one’s protection against slavery to be entirely stripped upon conviction of a crime, the clause can be read as only allowing involuntary servitude to itself be imposed as punishment. Under this reading, any involuntary servitude imposed for a purpose other than as punishment for the specific crime of which a person has been convicted—forced labor imposed, for example, toward the aim of improving “prison discipline” or as “preparation for labor market re-entry”—would be constitutionally outside of the amendment’s exception. See Pope, *supra* note 7, at 1468–69. Further, it is possible that Republicans, failing to foresee how it would come to be used by Southern Democrats, left the clause in the amendment as a kind of “boilerplate language” taken from the Northwest Ordinance on which the amendment was modeled, which itself was modeled after other anti-slavery laws. *Id.* at 1474–77.

153. RITCHIE, *supra* note 88, at 29.

154. *Id.*

155. *Id.* at 6.

156. Pope, *supra* note 7, at 1524.

157. Munshi, *supra* note 82, at 333 (citing AMY DRU STANLEY, FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE, AND THE MARKET IN THE AGE OF SLAVE EMANCIPATION 2 (1998)).

158. See Anonymous, *Story of a Negro Peon* in THE LIFE STORIES OF UNDISTINGUISHED AMERICANS AS TOLD BY THEMSELVES 183–199 (Herbert Holt, ed., 1906).

agricultural work, bondage, and whippings—by saying, “we had made ourselves lifetime slaves.”¹⁵⁹

During this same time period, the lynching of African Americans in the South had become commonplace, barbarous, mass-mob entertainment for white Southerners.¹⁶⁰ Mob leaders severed victims’ body parts before their executions, which were then fought over by those in attendance.¹⁶¹ Newspapers announced lynchings in advance and sent reporters and photographers to the scene.¹⁶² “Mob members could then enjoy seeing pictures of themselves beside the victim’s charred remains as they read the newspapers’ accounts of the incident.”¹⁶³ State and local laws prohibiting lynching were ineffective or unenforced,¹⁶⁴ and while well over one hundred federal anti-lynching bills were introduced in Congress between 1882 and 1951, not a single one was passed into law.¹⁶⁵ Instead, Congressmembers focused on the passage of a new law to combat what they called “white slavery.”¹⁶⁶

The concept of “white slavery” (like “yellow slavery”) brought together several racist frameworks that were pervasive in the early 1900s. Fears of interracial sex were manifest in conceptions of Black men as “brute rapist beast[s],’ lusting after white women”¹⁶⁷ and in conceptions of white women as vulnerable and weak “keepers of white racial purity.”¹⁶⁸ White nationalist anxieties, discussed above, reflected the racialized privilege of the white working class; prior to the use of “white slavery” as a description of white women’s sex work, the term had been used to describe the conditions of white wage laborers during the early to mid-1800s.¹⁶⁹ The growing medicalization of “hygiene” at the turn of the century and a focus on its impact on military successes also played a role in “white slave” panic.¹⁷⁰ For example, as the United States entered World War I, Congress

159. *Id.* at 191–92.

160. Holden-Smith, *supra* note 54, at 37.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.* at 39–40.

165. *Id.* at 44.

166. *Id.* at 60.

167. *Id.* at 47.

168. *Id.* at 48.

169. See *supra* note 66.

170. See DAVID J. PIVAR, PURITY AND HYGIENE: WOMEN, PROSTITUTION, AND THE “AMERICAN PLAN” 1900–1930, at 9, 25 (1933) (noting that the slur “hooker” was coined to describe sex workers who followed the camps of General Hooker during the Civil War, a phenomenon that “pioneer in physical education,” Dr. Dio Lewis, responded to by

passed an Amendment to the Selective Service Act allowing the Secretary of War "during the present war to do everything by him deemed necessary to suppress and prevent the keeping or setting up of houses of ill fame, brothels, or bawdy-houses within such distance as he may deem needful of any military camp."¹⁷¹ The Navy and War Departments created a Commission on Training Camp Activities, whose investigators went across the country threatening municipal authorities to close red light districts or to have their military bases removed.¹⁷² Finally, the "white slavery" panic came out of fears surrounding the spread of industrialization and the concurrent shift of populations from rural areas to urban centers; the prototypical "white slave" of early 1900s discourse was a young white girl from a rural area who was lured into prostitution after moving to an urban center and thus being separated from the supervision of her family.¹⁷³ As one tract described it, "white girls able to state definitely where they were staying at the time of the first act [of prostitution] . . . traced it to a period when they were living in a rooming or boarding house alone."¹⁷⁴ This protectionism of young white women was largely based on fears of interracial sex and miscegenation.¹⁷⁵

In 1885, London newspaper editor W.T. Stead wrote *The Maiden Tribute of Modern Babylon*, a serial exposé which described a pervasive underground market in kidnapped and seduced virgins.¹⁷⁶ In his

promoting "rest and recuperation centers"). Medical focuses on hygiene, like numerous other Progressive Era scientific theories, were commonly deployed toward racist and white supremacist ends. See, e.g., Huang, *supra* note 78 (citing Sawtelle, *supra* note 103, at 3).

171. SCOTT W. STERN, *THE TRIALS OF NINA MCCALL* 45 (2018).

172. *Id.* at 48–50.

173. See Hsin-ying Li, *White Slavery Writing Contemplates China: Jean Turner Zimmerman's The Social Menace of the Orient*, 82 *HUMANITAS TAIWANICA* 161, 163 (2015) (describing the formula of "White Slave Narratives"). The work highlights the "socio-cultural concerns of the Social Purity Movement: an innocent white girl is lured from the farm [to] the ghetto by promises of marriage or work in the city, sometimes by amusements, or she is drugged or kidnapped, then forced into prostitution by procurers of Southern or Eastern European origins").

174. MARK THOMAS CONNELLY, *THE RESPONSE TO PROSTITUTION IN THE PROGRESSIVE ERA* 36 (1948) (quoting FRED ROBERT JOHNSON, *THE SOCIAL EVIL IN KANSAS CITY* (1911)). Connelly also mentions evangelical and Purity groups' focus on another "problem" of industrialization and urban living "dangerous . . . low class amusements" such as prizefighting. *Id.* at 36. These amusements too would be tied to "white slavery" through the most notorious prosecution under the Mann Act, that of African American prizefighting champion Jack Johnson. *Id.* at 145.

175. Holden-Smith, *supra* note 54, at 61, 63.

176. SODERLUND, *supra* note 84, at 5.

journalistic enthusiasm, he had gone so far as to “purchase” a thirteen-year-old girl.¹⁷⁷ His wildly popular story, which was constructed with a focus on white, working-class villains,¹⁷⁸ was soon adopted by other crusading journalists and reformers who recast the abductor as nonwhite and/or non-native. African American men,¹⁷⁹ Chinese men,¹⁸⁰ Jewish men,¹⁸¹ and immigrants from Eastern and Southern Europe,¹⁸² were all considered potential enslavers of white women. White American feminists exploited this myth, suggesting that white women, as Victorian keepers of domesticity and religiosity, were “endowed . . . with a natural moral authority;” thus, granting them the vote would combat “white slavery” in the United States.¹⁸³ They made these arguments in explicit white-nationalist terms, positioning themselves in opposition to the alleged negative influence of Southern Black male voters and the Northern “ignorant foreign vote.”¹⁸⁴

Reformers who had previously campaigned to end the enslavement of African Americans in the United States were at the center of campaigns against the “new slavery.” An 1895 survey of American Purity leaders showed that twenty-eight of the thirty-five who were old enough to have participated in the antebellum abolitionist movement had done so.¹⁸⁵ Aaron Macy Powell, who had given up his college education to become an anti-slavery speaker before the Civil War,¹⁸⁶ said that government regulation of prostitution (as had been controversially attempted in St. Louis in 1870)

177. *Id.* at 2, 24–25.

178. *Id.* at 35.

179. Holden-Smith, *supra* note 54, at 64; *see also* Nelson Butler, *supra* note 26, at 1492 (outlining the role of race in human trafficking discourse).

180. *See* RIIS, *supra* note 91, at 95.

181. *See* Holden-Smith, *supra* note 54, at 63–64 (discussing the stigmatization of foreign Jewish people as responsible for trafficking and enslaving white girls for prostitution).

182. *See* SODERLUND, *supra* note 84, at 69; *see also* DAVID J. LANGUM, CROSSING OVER THE LINE: LEGISLATING MORALITY AND THE MANN ACT 16–17 (1994) (criticizing the Mann Act as driven by hysteria over white slavery.).

183. SODERLUND, *supra* note 84, at 71.

184. *Id.* at 71–72; *see also* Li, *supra* note 173, at 164 (quoting purity movement activists Elizabeth Andrew and Katharine Bushnell, “[w]e must realize what may happen to American women if almond-eyed citizens, bent on exploiting women for gain, obtain the ballot in advance of educated American women”).

185. PLILEY, *supra* note 67, at 19–20.

186. *See* Elizabeth Powell Bond, Aaron Macey Powell, 56 FRIENDS’ INTELLIGENCER, 443, 443 (1899) (eulogizing Aaron Macey Powell, written by his sister).

"consigns a victim class of women to an odious form of slavery."¹⁸⁷ He called W.T. Stead "the 'John Brown' of white slaves."¹⁸⁸ An image of a Black woman, half-clothed and in chains, her hands clasped and face turned toward the sky, was captioned "Am I not a Woman and a Sister?" when it appeared in William Lloyd Garrison's abolitionist paper *The Liberator* in 1832. By the early 1900s, this iconography had been transformed to an image of a caged young white woman in Victorian dress, hands clasped and face up-tilted, captioned "A Christian Girl. What if this were your child? What if this Girl were your Sister?"¹⁸⁹

Thus, descriptions of "white slavery" did not merely borrow from antebellum abolitionism, they rewrote the story of American chattel slavery, making explicit claims that the "new slavery" of white women was worse than enslavement of African American people had ever been. British activist Alfred Dyer wrote, "[white] slavery [is] infinitely more cruel and revolting than negro slavery, because it is slavery not for labour but for lust; and more cowardly than negro slavery because it falls on the young and the helpless of one sex only."¹⁹⁰

This rewriting ignored the pervasive sexual violence committed against enslaved Black women, whose rape was not a crime,¹⁹¹ and who were "routinely stripped naked when at auction or as part of punishment."¹⁹² Rape and sexual assault of Black women were, in the words of Angela Davis, "essential dimension[s] of the social relations between slavemaster and slave,"¹⁹³ and this violence did not end with "emancipation," but continued during Reconstruction, Jim Crow, and beyond.¹⁹⁴

187. Aaron M. Powell, *State and Municipal Regulation of Prostitution*, 59 INT'L REC. MED. & GEN. PRAC. CLINICS 715, 716 (1894).

188. See PILEY, *supra* note 67, at 20.

189. See SODERLUND, *supra* note 84, at 8–9 (images are reprinted side by side).

190. ALFRED STACE DYER, *THE EUROPEAN SLAVE TRADE IN ENGLISH GIRLS: A NARRATIVE OF FACTS* 6 (1880).

191. See RITCHIE, *supra* note 88, at 28.

192. *Id.* at 26.

193. *Id.* at 27 (quoting Angela Y. Davis). As Saidiya Hartman writes, "the law's selective recognition of slave humanity nullified the captive's ability to give consent or act as an agent and . . . acknowledged the intentionality and agency of the slave but only [in] the form of criminality . . . the enslaved was either a will-less object or a chastened agent." SAIDIYA V. HARTMAN, *SCENES OF SUBJECTION: TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH CENTURY AMERICA* 80 (1997).

194. See RITCHIE, *supra* note 88, at 29.

Black women also worked as sex workers during the Progressive Era, “participat[ing] in transformations that shaped the racial and sexual landscape in cities like Chicago in this period.”¹⁹⁵ Rather than being seen as victims of male exploitation, Black women in the sex trades were described in vice reports as setting a “dangerous example . . . in front of ‘innocent’ white children.”¹⁹⁶ Black sex workers became the targets of purity movement pressure on police, who responded by conducting raids on brothels where Black women worked and demanding bribes and “protection money.”¹⁹⁷ The very concept of “white slavery” was constructed on racialized notions of white women’s victimhood enacted in contrast to the justification of sexual assault of Black women through “a set of myths about Black women’s supposed promiscuity.”¹⁹⁸

By the early 1900s, Congress had been convinced that “white slavery” was a problem urgently in need of a federal solution. The United States responded to the outcry during the first decade of the twentieth century by passing increasingly strict prohibitions on immigration.¹⁹⁹ While popular accounts of “white slavery” presented it as primarily victimizing white, non-immigrant women, the Page Act had set a precedent by which immigration controls were a necessary response to the “contagion” of slavery ostensibly spread by both immigrant men and immigrant women.²⁰⁰ Just as it is today,²⁰¹ such exclusion was also presented as a form of protectionism.²⁰²

195. CYNTHIA M. BLAIR, *I’VE GOT TO MAKE MY LIVIN’: BLACK WOMEN’S SEX WORK IN TURN-OF-THE-CENTURY CHICAGO* 3 (2010).

196. RUTH ROSEN, *THE LOST SISTERHOOD: PROSTITUTION IN AMERICA 1900–1918*, at 44 (1982).

197. See BLAIR *supra* note 195, at 136, 190.

198. See Butler, *supra* note 26, at 1491.

199. These included the Immigration Act of 1903, targeting “procurers of prostitutes,” and the Immigration Act of 1907, targeting “persons who admitted the commission of a crime involving moral turpitude, and women coming to the United States for immoral purposes.” PLILEY, *supra* note 65, at 34.

200. See *id.* at 34–36.

201. See *supra* notes 1–3 and accompanying text.

202. Kristofer Allerfeldt writes, “[w]ith the depiction of undesirable immigrants as ‘unfree,’ those charged with regulating access could claim that those being denied entry were being excluded for their own protection. These apparently protective measures shielded and freed these exploited immigrants from deprivation and physical harm.” Kristofer Allerfeldt, *Marcus Braun and “White Slavery”: Shifting Perceptions of People Smuggling and Human Trafficking in America at the Turn of the Twentieth Century*, 4 J. GLOB. SLAVERY 343, 351 (2019).

After the passage of the Immigration Act of 1903, President Roosevelt appointed the publicity-seeking²⁰³ journalist Marcus Braun to enforce the new immigration policies.²⁰⁴ Braun developed the practice of pretending to hire women from brothels, picking them up, and driving them directly to the immigration office.²⁰⁵ The women Braun targeted were, he said, primarily French, Belgian, Jewish, and Japanese.²⁰⁶ Braun, despite being an immigrant himself,²⁰⁷ had motivations that were more nativist than they were reformist.²⁰⁸ He described the women he deported as "hardened" professionals who had entered the United States for the purpose of earning income in the brothels²⁰⁹ and believed that sex workers were manipulating the U.S. immigration system by marrying U.S. citizens to avoid deportation.²¹⁰ "The moment an American Citizen stoops to be willing to marry a Prostitute," Braun wrote, "I would declare him to be unworthy of his American citizenship, and if possible deprive him of it."²¹¹

In 1909, Chicago U.S. Attorney Edwin W. Sims declared, "with complete moral certainty," on the authority of collected "legal evidence," that "the white slave traffic is a system operated by a syndicate which has its ramifications from the Atlantic seaboard to the Pacific Ocean, with 'clearing houses' or 'distributing centers' in nearly all of the larger cities."²¹² The causes of this "traffic" according to Sims included both immigrant "contamination" and the vulnerability of white, American-born "country girls."²¹³ Sims teamed up with the equally passionate Clifford G. Roe, a Chicago state's attorney who had devoted his adult life to stopping the "white slave traffic" and, as part of that campaign, had drafted the Illinois White Slave Bill, enacted in 1908.²¹⁴

203. Braun was frequently in the papers as a supporter—and perhaps a friend—of Theodore Roosevelt and as an immigration activist. Famously, his early experience with press-seeking occurred at the Chicago World Exposition of 1893, where he "publicly bet a fellow Hungarian he would eat his lunch locked in with circus lions." *Id.* at 347–49.

204. Braun targeted not only people in the sex trades, but anyone he considered "liable to become a public charge," including "criminals, ex-convicts, prostitutes and [the] diseased." *Id.* at 350–51.

205. See PLILEY, *supra* note 67, at 37.

206. See *id.*

207. *Id.* at 36.

208. *Id.* at 37–41.

209. See *id.* at 38.

210. *Id.* at 37–41.

211. *Id.* at 39.

212. LANGUM, *supra* note 182, at 38.

213. See PLILEY, *supra* note 67, at 66.

214. *Id.* at 61.

Together, Sims and Roe drafted a bill that would make it a federal crime to “knowingly transport or cause to be transported . . . in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose.”²¹⁵ Their bill, known as the White-Slave Traffic Act, was introduced in the House in December 1909 by Illinois Congressman and Chairman of the House Committee on Interstate and Foreign Commerce James R. Mann, and was referred to his own Committee.²¹⁶ A few days after its introduction, President Taft told Congress that he thought it would be constitutional to federally prohibit the transportation of persons across state lines for the purposes of prostitution.²¹⁷ The United States had, in 1904, become a signatory to an international agreement to prevent “white slave traffic,” and the Congressional proponents of Mann’s bill said that it was simply an attempt to uphold the requirements of the 1904 agreement.²¹⁸

Opponents of the bill called it unconstitutional. Representative William C. Adamson said that the bill did not, as its proponents claimed, look “to the protection of female virtue,” but rather attempted to “purify interstate commerce, making character the test.”²¹⁹ It was not the place of Congress, he argued, to “stamp out prostitution and immorality.”²²⁰ Nonetheless, Adamson admitted that if the bill were for the protection of female virtue, “we would unanimously support it.”²²¹ Other opponents made similar remarks, ensuring that it was states’ rights and federalism that they were arguing over, “not . . . prostitution of women. We are all opposed to that.”²²²

The bill’s proponents responded using the hyperbolic new slavery rhetoric they had helped to create. Representative Mann said, “the white-slave traffic, while not so extensive, is much more horrible than any black-slave traffic ever was in the history of the world.”²²³ Representative Coy of Indiana said that white slavery was “a thousand times worse and more degrading in its consequences and effects upon humanity than any species of human slavery that ever existed in this country.”²²⁴

215. White-Slave Traffic Act of 1910, ch. 395, § 2, 36 Stat. 825, 825 (1910).

216. 45 CONG. REC. H804 (daily ed. Jan. 26, 1910).

217. See LANGUM, *supra* note 182, at 40.

218. 45 CONG. REC. H1036 (daily ed. Jan. 26, 1910).

219. 45 CONG. REC. H1030–31.

220. *Id.* at 1031.

221. *Id.*

222. See LANGUM, *supra* note 182, at 43.

223. *Id.*

224. *Id.*

By June 25th, 1910, the "White-Slave Traffic Act" had passed both houses of Congress and been signed by President Taft, and by February of 1915, according to Attorney General T.W. Gregory, there had been 1,014 convictions under the Act.²²⁵

In the name of preventing "slavery," the federal government had created a new tool to criminalize interactions between white women and non-white men. While Congress conceived of "white slavery" as describing prostitution (and possibly the importation of a woman to be a mistress),²²⁶ the plain language of the bill was much more broad than that, covering interstate travel for "debauchery" and for "any other immoral purpose."²²⁷ The Federal Bureau of Investigation, which had been created in 1908 as a small sub-agency of the Department of Justice, acquired jurisdiction over Mann Act cases and these cases soon overshadowed its other work.²²⁸ Several scholars have said that the Mann Act was responsible for the making of the FBI into the massive agency that it is today.²²⁹

Perhaps due to the sweeping breadth of the Mann Act's language, the Supreme Court handed down multiple rulings as to its legal parameters. The Court determined that the Act was a constitutional use of Congress' Commerce Clause powers, which may occasionally be exercised by means that "have the quality of police regulations."²³⁰ The Act, said the Court, applied to travel within any territory or within the District of Columbia even when that travel was not interstate in nature.²³¹ The Act reached not only "commercialized vice" but also non-commercial adultery.²³² The term "debauchery" reached as far as to cover transporting a woman for the purpose of making her a "chorus girl" under conditions that "would necessarily and naturally lead to a life of debauchery of a carnal nature relating to sexual intercourse between man and woman."²³³ The Mann Act could also be used to prosecute a woman for procuring transportation for *herself* for immoral purpose, lest the penal code "not be

225. 52 CONG. REC. H3740 (daily ed. Jan. 14, 1892).

226. See LANGUM, *supra* note 182, at 43.

227. White-Slave Traffic Act of 1910, ch. 395, § 2, 36 Stat. 825, 825 (1910).

228. See LANGUM, *supra* note 182, at 49.

229. See *id.*; see also PLILEY, *supra* note 67, at 8 (stating that "policing of sexuality was [central] to the development of the FBI as a national agency with the capacity to conduct . . . political surveillance" and that Mann Act cases were "routinely among the largest category of cases pursued by the Bureau during the years before World War II").

230. *Hoke v. United States*, 227 U.S. 308, 323 (1913).

231. See *United States v. Beach*, 324 U.S. 193, 195 (1945).

232. See *Caminetti v. United States*, 242 U.S. 470, 489-90 (1917).

233. *Athanasaw v. United States*, 227 U.S. 326, 333 (1913).

as broad as the mischief.”²³⁴ The Court ruled that in a case in which a man was accused of transporting his wife across state lines for the purposes of prostitution, he had no spousal privilege to prohibit her to voluntarily testify against him and she in turn had no spousal privilege to refuse to testify against him.²³⁵ This ruling was necessary because a primary purpose of the Act was “to protect women who were weak from men who were bad.”²³⁶ The Court said that “any other immoral purpose” included the transportation of a plural wife for the purpose of cohabitating with her, regardless of that cohabitation being based in a religious belief and regardless of marriage being a state matter.²³⁷ Further, the Court said, the Mann Act prohibited transportation for “immoral purpose” even when that purpose was not accomplished.²³⁸

The rewriting of the meaning of “slavery,” then, turned the regulation of sexuality into a moral imperative with sweeping breadth, despite the fact that “white slavery” hysteria likely had no basis in fact. Multiple investigations and analyses showed that a system of organized, forced prostitution was likely a fiction, and that fewer than 10% of sex workers working during the Progressive Era had likely been forced into the work.²³⁹ Nonetheless, the Mann Act could now be used as a legal tool to enforce white supremacist social codes prohibiting sexual interaction between white women and nonwhite men.

The most infamous of these prosecutions was the targeting of African American World Boxing Champion Jack Johnson.²⁴⁰ After extensive investigation into Johnson’s relationships with white women, the FBI charged him with multiple counts under the Mann Act, including the transportation for the purposes of debauchery of Belle Schrieber.²⁴¹ Schrieber, an adult, testified that she had crossed state lines with Johnson consensually.²⁴² Nonetheless, Department of Justice officials called

234. *United States v. Holte*, 236 U.S. 140, 144 (1915).

235. *Wyatt v. United States*, 362 U.S. 525, 529–30 (1960).

236. *Id.*

237. *Cleveland v. United States*, 329 U.S. 14, 19 (1946).

238. *Id.* at 20.

239. *See Holden-Smith, supra* note 54, at 70; *see also CONNELLY, supra* note 172, at 130 (critiquing claims that sex workers were part of an organized “white-slave trafficking”).

240. *Butler, supra* note 26, at 1494.

241. *Id.*

242. *See GRITNER, supra* note 47, at 100–02; *see also Butler, supra* note 26, at 1494 (discussing Jack Johnson’s prosecution and Belle Schrieber’s testimony).

Johnson’s fraternizing with the white woman “a crime against nature.”²⁴³ Several Southern newspapers suggested that Johnson should be lynched.²⁴⁴ Johnson was also charged and convicted under the Mann Act for his relationship with another adult white woman, Lucille Cameron, who refused to testify against him, and whose mother initiated the case against Johnson.²⁴⁵ White newspapers presented Cameron as a “victimized innocent,” and prosecutors used standard “white slavery” narratives to build the case.²⁴⁶ These narratives left out the fact that Schreiber and Cameron had both worked trading sex in midwestern brothels prior to ever meeting Johnson.²⁴⁷ Black activists at the time decried the double standard in these prosecutions, highlighting the rape of a Black seventeen-year-old, Mator McFerrin, by a white man while she was in a Chicago hospital being treated for tuberculosis, which had gone ignored by white newspapers.²⁴⁸ The prosecution of Jack Johnson underscored two things: the obfuscation of racism enacted by the Mann Act and, as Professor Barbara Holden-Smith has made clear, the federal government’s willingness to legally uphold white women’s “purity” through the regulation of morality and marriage—despite these being ostensibly the realm of the states.²⁴⁹ Meanwhile, that same government justified its refusal to act against Southern lynchings by claiming it would be an intrusion on states’ police powers.²⁵⁰

CONCLUSION: THE CAPTURE OF SLAVERY DISCOURSE AS AN ENDURING LEGACY

The lasting influence of “modern slavery” discourse is pervasive, and many scholars and activists have pointed out that such rhetoric is reductive, inaccurate, and even harmful.²⁵¹ American History textbooks still

243. See Butler, *supra* note 26, at 1494.

244. GRITNER, *supra* note 47, at 102.

245. BLAIR, *supra* note 195, at 192–93.

246. *Id.*

247. See *id.* at 193 (discussing charges related to Lucille Cameron); see also Joanne Weintraub, *A Real Knockout Milwaukee Prostitute Was Jack Johnson’s Downfall*, MILWAUKEE J. SENTINEL (Jan. 17, 2005), https://madison.com/lifestyles/a-real-knockout-milwaukee-prostitute-was-jack-johnsons-downfall/article_af87971b-51e0-5a40-b672-b9fe74c414ab.html [<https://perma.cc/76KJ-BX7B>] (discussing charges related to Belle Schreiber).

248. See BLAIR, *supra* note 195, at 189–90.

249. See Holden-Smith, *supra* note 54, at 66–68.

250. See *id.*

251. See Bunting & Quirk, *supra* note 16, at 6–10; Bravo, *supra* note 11, at 555–56 (critiquing comparisons between the transatlantic slave trade and modern anti-trafficking efforts); Chuang, *supra* note 23 (examining the risks of using the phrase

present institutionalized chattel slavery of African Americans in sanitized and sentimental terms.²⁵² Meanwhile, hyperbolic claims about “modern slavery” made by present-day activists and politicians echo the claims of their last-century counterparts.²⁵³ The enslavement of African Americans was foundational to the development of American culture, government, economy, and national identity,²⁵⁴ but “contemporary slavery” rhetoric is deployed to distance American institutions from that foundation. Contemporary “modern day slavery” discourse also retains nineteenth century implications of contagion through immigration and undergirds contemporary racist tropes that portray Asian men as improperly or insufficiently masculine,²⁵⁵ Asian women as inherent victims,²⁵⁶ and Asian families as improperly, even cruelly, parenting their children.²⁵⁷ The rhetoric of “modern day slavery,” is thus presented as an individualized evil stripped of historical context, and based in reductive accounts and questionable or non-existent data.²⁵⁸ This rhetoric presents ever-more restrictive national borders and an ever-expanding prison industrial complex as not merely necessities, but moral imperatives. Perhaps by understanding the historical development of this rhetoric, we can prevent it from not only obfuscating, but furthering the actual sites and sources of present-day inequities. As Christy Croft and Monika Johnson-Hostler write, “due to the complex history of systemic racism and oppression in the United States, systems we rely on to help frequently cause harm or perpetuate inequity. . . . [O]ur history impacts the frameworks we have traditionally used to describe human trafficking, and our frameworks

“modern-day slavery”); Johnson-Hostler & Croft, *supra* note 24, at 9 (describing why “modern-day slavery” and chattel slavery are distinct).

252. See Melinda D. Anderson, *What Kids Are Really Learning About Slavery*, THE ATLANTIC (Feb. 1, 2018), <https://www.theatlantic.com/education/archive/2018/02/what-kids-are-really-learning-about-slavery/552098/> [<https://perma.cc/ZPC3-TLE9>].

253. See *supra* notes 26–31.

254. RANA, *supra* note 65, at 3 (“Many settlers believed that the preservation and enhancement of their own . . . institutions required . . . the coercive use of dependent groups, most prominently slaves, in order to ensure that they themselves had access to property and did not have to engage in menial but essential forms of work.”). Rana has written extensively on the roles of African American enslavement and Indigenous genocide both in the development of America as a nation and in the development of American identity.

255. See Michael Park, *Asian American Masculinity Eclipsed: A Legal and Historical Perspective of Emasculation Through U.S. Immigration Practices*, 8 MOD. AM. 5, 9 (2013).

256. See Gruber, *supra* note 27.

257. See Shih, *supra* note 45, at 1078.

258. See Bunting & Quirk, *supra* note 16, at 2.

impact which kinds of solutions we can imagine."²⁵⁹ If we ever hope to dismantle the structural racism that has upheld white supremacy and white nationalism since America's founding, it is imperative that we decode racist tropes that have become coded in contemporary language and imbued with moralism, as well as the ways that subordination-language has been captured for use by the white supremacist hegemony.²⁶⁰ It is my hope that an account of the past can clarify the forces of the present such that we can collectively re-imagine what futures are possible.

259. Croft goes on to diagram comparisons between chattel slavery and human trafficking, and between chattel slavery and institutionalized racism, demonstrating the distinctions between the former and likenesses between the latter, noting how each is formally upheld or condemned by legal and social institutions and policies as well as whether opposition movements are developed and led by those with lived experience. "We cannot end trafficking," Croft writes, "without ending the intersecting oppressions that create vulnerability. This includes being thoughtful about our engagement with the criminal justice system, avoiding prevention strategies that create additional harm to people from marginalized populations." Johnson-Hostler & Croft, *supra* note 24, at 5.

260. The appropriation of subordination language has a long history in American law, particularly in 14th Amendment jurisprudence. For example, one can look to the activism of Edward Blum, who has funded a string of cases in which white people argue that they are subordinated under affirmative action programs. See Sarah Hinger, *Meet Edward Blum, the Man Who Wants to Kill Affirmative Action in Higher Education*, ACLU (Oct. 18, 2018), <https://www.aclu.org/blog/racial-justice/affirmative-action/meet-edward-blum-man-who-wants-kill-affirmative-action-higher?page=2> [<https://perma.cc/QB58-CVUG>].