The Thirteenth Amendment and Unconstitutional Servitude: The Punishment Exception Clause as a Legal Gateway to Involuntary Servitude

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/ The Thirteenth Amendment and Unconstitutional Servitude: / The Punishment Exception Clause as a Legal Gateway to Involuntary Servitude

by

William L. Twisdale

A Master’s Thesis Submitted to the Faculty of

Montclair State University

In Partial Fulfillment of the Requirements

For the Degree of Master of Arts in Law and Governance

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Abstract

Did the “except for punishment for a crime” (exception punishment) clause of the first section of the Thirteenth Amendment provide a platform for states to revise, and create if necessary, laws to target blacks and imprison them, thus denying them their rights and create a labor force through the agency of mass incarceration? This author begins with the assumption that it did. The purpose of this thesis study is to explore this question and find if the author’s assumption is correct – whether the exception punishment clause permitted slavery and involuntary servitude to exist as a labor system despite the intent of the Thirteenth Amendment. This thesis begins with the exploration of the Thirteenth Amendment and its relationship to systems of involuntary servitude from 1890-1920, which serves as the period covered for the duration of the study. The main intent of this study is to review the construction and meaning of the exception punishment clause of the Thirteenth Amendment; explore vagrancy laws; define peonage as well as identify the conditions and the mechanics of its perpetuation; and address as well as discuss the role of the state and state actors in peonage enforcement or the lack thereof. Mississippi operates as the unit of analysis for exploring the state statutes regarding vagrancy. Alabama is the focus of the exploration of state and state actors’ activity in peonage. Numerous cases are discussed to interpret the roles of state and federal governments. Most of the cases are federal in nature (two of the cases are state-level). The study ends with the author’s finding and determination of his assumption.
THE THIRTEENTH AMENDMENT AND UNCONSTITUTIONAL SERVITUDE: THE PUNISHMENT EXCEPTION CLAUSE AS A LEGAL GATEWAY TO INVOLUNTARY SERVITUDE

A THESIS

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Introduction

Forms of involuntary servitude have been discussed by numerous scholars and historians who have inquired about its existence after the ratification and adoption of the Thirteenth Amendment. Pete Daniel focuses on the life of peonage from the beginning of the twentieth century to 1969, which persisted under economic, political and legal justification.\(^1\) Douglas Blackmon writes on the various forms, paying particular attention to peonage and its legal counterpart, convict-leasing and discusses criminal-surety and vagrancy.\(^2\) These systems often interlocked; however, they could also exist separately. Why were these systems so difficult to eradicate, even after the adoption of the Thirteenth Amendment and the enactment additional legislation necessary to enforce the Amendment?

This question has led to this author’s inquiry of the “except as punishment for a crime” clause (referred to as the punishment exception clause throughout the thesis) of the Thirteenth Amendment to seek an answer. Was it possible that states may manipulate through legislative enactments the punishment exception clause to target a population and submit its members to slavery and involuntary servitude? Was there any motivation for it? This author argues that there was an overuse of police power, or manipulation of legislative enactments to punish a target population, motivated by a desire to carry on the social hierarchy of slave times.

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Analysis and Method

This author has consulted and reviewed the Congressional Globe with particular focus to the Thirty-Eighth and Thirty-Ninth Congresses, the Thirteenth Amendment of the U.S. Constitution, U.S. Government Archives online (www.archives.gov and www.memory.loc.gov), the Government Publishing Office website (www.gpo.gov), cases, the Peonage Abolition Act of 1867, articles and law reviews. The cases, Peonage Abolition Act, articles, and law reviews were accessed via JStor, Westlaw and LexisNexis databases. The scope of the period covered is limited: 1890-1920. Any information outside of this period is meant to support the viral persistence of involuntary servitude in its various forms. One exception is the peonage story at the beginning of the second chapter. The details help explain the depth and potency of peonage as a system.

The study is broken down into an introduction, three chapters, and a conclusion. Three appendices are included to share with the reader primary documents as well as supplementary information and sources. The thesis is completed with the bibliography, which is categorized by type of source.

The first chapter explores public understanding, the Court’s doctrinal approach to Thirteenth Amendment interpretation, and scholarly understanding of the Thirteenth Amendment – its power, reach, scope, interpretation, and application – with particular attention to the punishment exception. Sources utilized are the Thirteenth Amendment text as well as supporting articles from legal scholars to include Alvani Hasini, Steve A. Howe, William M. Carter, Jr., George Rutherfalen, and Darrell A. H. Miller. This chapter is also informed by the historical works Paul Finkelman, Pete Daniel and Douglas
Blackmon. Additional sources consulted were popular websites devoted to the constitution as well as academic and educational material. The focus of the first chapter is on the punishment exception clause in the first section of the Thirteenth Amendment. This author contends that the clause permitted slavery and involuntary servitude so long as it was punishment for a crime for those duly convicted and the South took full advantage of the clause, criminalizing nearly every aspect of black life in the South. Immigrants, briefly mentioned, are sure not to escape the entire conversation as they suffered the plight of involuntary servitude masked as labor opportunities, though short in comparison with African Americans.

The second chapter discusses vagrancy laws. While vagrancy laws operated as one of the gateways through which a person could enter the punishment exception-justified slavery and involuntary servitude, it has a longer history than all other criminal statutes enacted. Vagrancy is treated differently based on this fact and its association with crimes against the public rather than a violation of contractual obligation. This chapter will explore vagrancy statutes, their enforcement by officers of the law and judicial administrators and their constitutionality based on U.S. courts' jurisprudence, and scholarly reasoning and interpretation. Attention to how Southern states used vagrancy laws in support of the Black Codes is extremely important to this study, for it will provide a fundamental understanding to its involvement in systems of involuntary servitude. Mississippi's vagrancy statutes will take the primary role in analysis.

For this chapter, the author has consulted and reviewed books, articles and law reviews as well as statutes. The statutes, articles as law reviews were found in JStor, Westlaw, and LexisNexis databases. The chapter provides a brief legal history of
vagrancy, which transitioned from the English legal system to the U.S. legal system as well as a brief overview of the theories of crime and their relation to social control. It also analyzes vagrancy laws used in the post-Civil War South to provide an understanding of how it operated within the context of the Thirteenth Amendment, if at all. The interconnectedness and exchangeability between vagrancy and other systems of involuntary servitude are intermittently referenced. Lastly, it reviews the constitutionality of the vagrancy statutes, with attention to court rulings as well as constitutional attacks on vagrancy laws. The table provided provides a simple visual of the legal information acquired from the law. The image of the labor contract was adapted from the National Archives webpage.

The third and final chapter focuses on peonage and its counterpart, the convict-leasing system. This author chiefly consults the works of Daniel, Blackmon and N. Gordon Carper as well as the *Congressional Globe* and a series of peonage cases and other laws pertaining to peonage. This chapter endeavors to explore the history of peonage in America from 1890-1920, to convey the legality, yet illegality, of the peonage and convict-leasing systems under the Thirteenth Amendment of the U.S. Constitution and the Peonage Abolition Act (PAA). What were the conditions of peonage? How did one enter into peonage? What was the socioeconomic atmosphere that contributed to peonage? Who was principally affected, or victimized, by peonage? This study endeavors to explore these questions and provide descriptions and responses to them. It also discusses the existence of peonage as a form of involuntary servitude, its abolishment by law, its perpetuation by local and state governments and the U.S. Supreme Court decisions and doctrines that establish case law concerning peonage.
Since peonage and vagrancy were different modes of entry into involuntary servitude, they are treated as such. Peonage primarily functioned under civil law whereas vagrancy functioned under criminal law – one concerned private parties before the judge, and the other was an exercise of state police power, characterized by public encounters of law enforcement officials and private persons. Peonage resulted from both contract labor drawn between an employer and laborer privately, or by sanction of law. It is important to note the distinctions and treat them differently based on those distinctions.

Chapter 1: The Thirteenth Amendment

The Thirteenth Amendment is the first constitutional amendment that expanded federal government power to regulate activities that were otherwise governed by states. Slavery had existed before the founding fathers drafted the Constitution and the states ratified it. States bickered over where slavery would legally exist – primarily in the South. As citizens began to question the morality of slavery, abolitionism grew and spread as a movement. The issue, which became embedded in the fabric of the nation, became one that tore the nation apart and sparked a war.

Not only did the controversy over the legal institution of slavery disrupt social, economic and moral life, it disrupted politics. Its virility incited secession. Southern states began to secede and the remaining states’ representatives continued to debate the political and legal status of slavery within the United States. Politicians mounted

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impassioned attacks against the institution of slavery as well as in support of it. The stagnation of Congress on the issue became so politically disheartening that it prompted President Lincoln to implore it to pass the amendment, which Congress passed one month later. Exactly one year after Lincoln’s imploring, the Thirteenth Amendment became part of the Constitution.

The first clause prohibits the existence of slavery and involuntary servitude anywhere within the United States, including its territories. It is not a question that the Thirteenth Amendment was drafted to deal with the issue that was at hand at the time – African enslavement (chattel slavery) in the U.S., but the language suggests that it is reaches beyond chattel slavery and abolishes any system of involuntary servitude.

4 Congressional Globe, 38th Cong., 1st Sess. (1863), 17-21. On December 14, 1863, Senator John P. Hale of New Hampshire introduced a bill to quell the rebellion in the South, which declared equality among all persons within the United States and abolished any claims to personal service with the exception of that held in contractual obligation, parental claim to service performed by a child and service performed in execution of a sentence for criminal punishment. Representative Owen Lovejoy of Illinois introduced a similar bill. Lovejoy’s bill contained three sections: 1) forever abolish slavery and involuntary servitude except as criminal punishment upon due conviction and declaration of those held in slavery or involuntary servitude to be free; 2) provide protections to the freed person and give them legal rights — sue, be sued and testify in court cases; and 3) criminalize the act of returning, or attempting to return, a person freed under the act, subjecting offenders to an indictment and prosecution of a high misdemeanor and sentencing to be limited to not less than one year but not to exceed five and a fine of $1,000 - $5,000. Representative James F. Wilson of Iowa introduced a joint resolution in the House to submit to Congress, which was designed with legislative intent to forever abolish slavery, permit involuntary servitude only as punishment for a crime. The second section of the joint resolution gave Congress the power to enforce the first section through the means of appropriate legislation. Each of these resolutions endeavored to bring an end to slavery.

5 Ibid., 2nd Sess. (1865). 3. Lincoln states, in his message to Congress, “At the last session of Congress a proposed amendment of the Constitution, abolishing slavery throughout the United States passed the Senate, but failed for lack of the requisite two-thirds vote in the House of Representatives. Although, the present is the same Congress, and nearly the same members, and without questioning the wisdom or patriotism of those who stood in opposition, I venture to recommend the reconsideration and passage of the measure at the present session. Of course the abstract question has not changed; but an intervening election shows, almost certainly, that the next Congress will pass the measure if this one does not.”

However, an important question has yet to be answered: What was meant by “except as punishment for a crime whereof the party shall have been duly convicted?” Or, more to the point, how was it meant to be used as a public policy provision? The above clause is similar to the exception clause in sixth article of the Northwest Ordinance (1787). What motivated this clause to be included in the Ordinance? The Journals of the Continental Congress does not provide much on the matter. Article VI does not appear in the second reading of the ordinance on July 11, 1787; however, it appears on the day of voting.

Paul Finkelman notes that there was very little debate about including the provision in the Ordinance. He suggests that no slavery in the Northwest Territory may have been perceived as a benefit by the Southern states and thus permitted to be part of the Ordinance. The clause that prohibited slavery also allowed for it, a contradiction due to ambiguity. The lack of clarification, Finkelman argues, made it insufficient to deal with the regulations of slave treatment and slave status. The incorporation of this text into the Thirteenth Amendment presents the same issue, which is discussed in the ‘Academic Understanding of the Thirteenth Amendment’ section.

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7 U.S. Constitution, amend. 13, § 1.
8 U.S., Second Continental Congress, Journals of the Continental Congress, Vol. 32 (1787), 333. The day before, the draft had been revised and still the sixth article was nonexistent. See also Ibid., 319-20.
11 Ibid., 66.
Popular Understanding

Popular understanding focuses on the explicit language of the Thirteenth Amendment insofar as the prohibition of slavery and involuntary servitude. However, the punishment exception clause is not discussed much. Various sources available to the public, influential in shaping and determining what the Thirteenth Amendment did, describe the Amendment in part – possibly in an attempt to succinctly describe the intent and purpose of the Amendment. Primary and secondary material relating to the Thirteenth Amendment have expressed similar sentiments regarding the intent and purpose of the Amendment. Contemporary government sources that discuss the Constitution and the Amendments, available to the public, have reiterated this understanding of the intent and purpose of the Thirteenth Amendment.

"History.com" also maintains this understanding of the Amendment’s intent – abolition of slavery. These sources are among the most sought by the American public, which influence its conception of the intent and purpose of Thirteenth Amendment. These sources are correct, in part; however, each source neglects to mention or place any emphasis on the limitation of the Amendment – the punishment exception clause. The sources containing this explanation of the Thirteenth Amendment are numerous; they

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meet the citizenry before most other sources. Thus, the limitation is often neglected in learning about and understanding the Thirteenth Amendment.

**The Court's Interpretation of the Thirteenth Amendment**

Although ratified first, the Thirteenth Amendment (overshadowed by the Fourteenth Amendment) remained in the bottom of the Court's toolbox, only brought under review when the Court deemed it necessary—a rare occasion.\(^{15}\) The first time it received recognition by the Court was in *The Slaughterhouse Cases* (1872). While Congress had been chiefly concerned with African enslavement and its abolition, the Court expanded the definition of the Thirteenth Amendment to include "Mexican Peonage" and the "Coolie labor system" in *The Slaughterhouse Cases*.\(^{16}\)

The Court reasoned that these are systems of involuntary servitude and that the Amendment forbids involuntary servitude of any nature, under any name.\(^ {17}\) That is the extent to which the Court interpreted the Thirteenth Amendment. The Court defined the Thirteenth Amendment in response to the legal question at hand: whether a Louisiana law granting a corporation exclusive rights to manage and control slaughterhouses, cattle farms, and regulation of fees charged for renting out such premises that are otherwise unavailable to any other enterprise performing in the same industry created a monopoly and violated the first section of the Thirteenth Amendment and the first and second sections of the Fourteenth Amendment. The challenger contended that the Louisiana law

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\(^{15}\) Litigants would bring this up in cases, but in most cases, the Supreme Court would rule that the Thirteenth Amendment did not apply.

\(^{16}\) *Slaughterhouse Cases*, 83 U.S. 36 (1873).

\(^{17}\) Ibid.
was an act that did violate these provisions. The Supreme Court of Louisiana held that act
did not, and the U.S. Supreme Court affirmed its decision.18

The next case the Court interpreted the meaning and power of the Thirteenth
Amendment was the Civil Rights Cases (1883). The Court mentions that the first
provision is self-executing, meaning it does not need the aid of legislation for its force to
be realized.19 This case includes the first judicial mention of "badges and incidents of
slavery," which the Court construes to be a foundation for the congressional power
inherent in the Thirteenth Amendment. In this case, the Court tested the validity of the
Civil Rights Act of 1875. The act forbade the denial of equal accommodations in private
and public places, to include inns, railroad cars, and theatres. It sought to provide equal
social treatment among blacks and whites.

The Court struck down the sections (sections one and two), which ordered equal
accommodations and held that Congress, while having power to enact laws that are
necessary and proper to the enforcement of the first section of the Thirteenth
Amendment, cannot enact a law that prohibits denial of equal accommodations that are
based on "mere discriminations on account or race or color" because they were not
regarded as badges of slavery.20 This decision effectively gave rise to the legal enactment

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18 See generally Slaughterhouse Cases.
20 Civil Rights Cases, 25. See also U.S., Congress, Senate, The Constitution of the United States of
The report explains that the Court perceived the badges and incidents and slavery to be denial of certain
rights (rights of civil freedom) - the right to: marry; sue in court; be sued; testify; submit evidence; inherit;
draft, sign and enforce contracts; and purchase, sell, lease and convey property, which were subject to
congressional power; however equal access to accommodation and places of public amusement were not
included in the package of badges and incidents of slavery.
of Jim Crow policies. Southern states could resume a social hierarchy akin to that of slavery, interrupted by Radical Reconstruction.

Laws that protected the chastity of white women from black men were enacted. Accusations of black men were often invoked to either criminalize black men or kill them.\textsuperscript{21} However, sexual aggression of white men toward black women were justified by the rationalization that suggested black women loved to engaged in adulterous acts with white men and thus, they could not claim rape.\textsuperscript{22} Miscegenation laws were aimed at black men.\textsuperscript{23} Such a faulty notion of black women influenced the legal perception of black women who were raped.

As already established, the badges and incidents of slavery is a foundation of congressional power inherent in the Thirteenth Amendment. Since the Court did not view the racial discrimination as such, it did not fall within the scope of congressional power granted by the Thirteenth Amendment. Social attitudes of the time played a role in the decision of the Court. As legal scholar William M. Carter, Jr. argues, interest convergence is a great contributor to positive applications of the Thirteenth Amendment in cases where it is brought as a claim.\textsuperscript{24} In the \textit{Civil Rights Cases}, the law did not converge with the interest of the dominant class in society. Thus the Thirteenth Amendment was not positively applied; instead, the Court found that it did not apply.\textsuperscript{25}

\textsuperscript{21} Blackmon, 100.
\textsuperscript{22} Ibid., 305.
\textsuperscript{23} Ibid., 100.
\textsuperscript{25} \textit{Civil Rights Cases}, 25-6. The Court did recognize that the force of the 13\textsuperscript{th} and 15\textsuperscript{th} amendments could exercise power over equal rights: “Mere discriminations on account of race or color were not regarded as badges of slavery. If, since that time, the enjoyment of equal rights in all these respects has become established by constitutional amendment, it is not by the force of the Thirteenth Amendment (which merely
Hence, the Court acknowledges in its definition the congressional power to prohibit by enactment of law anything reminiscent of slavery, but it did not include in its interpretation racial discrimination. Jack Balkin and Sanford Levinson remark that the jurispathic treatment of the Thirteenth Amendment by the Court is predicated upon not wanting to establish precedent that would disrupt the social, political and economic atmospheres of the time.26

The limitation on the congressional power granted by the Thirteenth Amendment in the Civil Rights Cases provided a basis to permit the separate but equal doctrine established in Plessy v. Ferguson (1896).27 The Court cites the proposition presented in the Civil Rights Cases as support that the scope of the Thirteenth Amendment does not extend to exercise power over social relations.28 It reasons that Congress does not have the power nor does the Thirteenth Amendment contain the force to end racial prejudices or forbid distinctions based on physical appearance. Thus, laws enforcing separate but equal remained constitutional until the Court overruled the decision in Brown v. Board of Education of Topeka (1954), which determined that separate but equal was unconstitutional because it violated the Equal Protection Clause.29 Such laws permitted abolishes slavery), but by force of the Thirteenth and Fifteen Amendments.” Thus, a combination of the two in a claim maybe prevented sections one and two from being declared invalid.

27 See generally Plessy v. Ferguson, 163 U.S. 537 (1896). This case is about a man that is prosecuted under a Louisiana statute because he refused to remove himself from a railroad car reserved for whites. The statute required that railroad companies provide difference cars for black persons and white person while providing separate but equal accommodations. Nurses accompanying children of other races was an exception to the segregated railroad cars.
28 Plessy, 542-43.
and reinforced Jim Crow, perpetuating the suffering of blacks at the hands of Southern whites. \(^{30}\)

The subject of labor contracts fell within Thirteenth Amendment exceptions. One case in which the Court identified the inapplicability of the Thirteenth Amendment was *Robertson v. Baldwin* (1897). Four sailors had been working for a commercial liner, Arago, when they became discontent with their employment. They departed from a port in San Francisco, made a stop in Washington, at a port in Knappton, and continued to other ports. Somewhere along this tour, the sailors became dissatisfied with their employment and departed the ship in Astoria, Oregon.

There, they were arrested for desertion. They were tried and sentenced to imprisonment until the Arago was ready to depart again. Sixteen days later, when the Arago had been prepared for departure, a marshal escorted the sailors from jail back to the commercial liner. They refused to return to work but remained on board the ship. They had made it to San Francisco, the place where they would be arrested and charged with refusal to work. They sued on a writ of habeas corpus, which was dismissed upon hearing by the California district court. The court also issued an order that remanded the sailors to return to the custody of the marshal who had escorted them. They petitioned to the U.S. Supreme Court. \(^{31}\)

The Court noted that the reach of the Thirteenth Amendment is extended to public and private service; however, it stated that maritime service is an exception, created by a labor contract in which the sailor surrenders his personal liberty to serve on the high


seas. It reasoned that since the legislation punishing members who desert and are absent without leave had existed some 60 years before the constitutional adoption of the Thirteenth Amendment, it is doubtful that the amendment was drafted with the intent to apply to labor contracts. The Court ruled that maritime labor contracts do not fall within the scope of involuntary servitude. Thus, it affirmed the decision and had restricted the reach of the Thirteenth Amendment to labor contracts.

Labor contracts became subject to scrutiny when they did bring about a condition of peonage, which the Court correctly identified as involuntary servitude. Peonage, coerced or compulsive labor served to liquidate a debt, was outlawed yet it flourished in the Southern states. The first time it had come under legal scrutiny was in 1902. The Court established, in Clyatt v. United States (1905), the validity of the Peonage Abolition Act of 1867, holding positively that the Thirteenth Amendment did apply and that the Act was constitutional (this case will be discussed more in the chapter on peonage). The stark contrast, as legal scholar and attorney Cynthia A. Bailey notes, was the Court’s interpretation of involuntary servitude in the Clyatt case. In Clyatt, the Court found that the nature of service was essential to determining involuntary servitude. The nature of the contract determined in Clyatt was contrary to the Court’s criteria for involuntary servitude in Robertson, which looked at the mode of origin. It would not be until the

32 Robertson, 282.
33 Robertson, 287-88.
34 Black’s Law Dictionary, 2nd ed., s.v. “involuntary servitude” defines the term as “The condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor to another, whether he is paid or not.” Thus, involuntary servitude includes chattel slavery, among other forms like peonage, and convict-leasing.
35 See generally Clyatt v. United States, 197 U.S. 207 (1905).
surge of peonage cases that the Court would reassess its approach towards labor contracts.

Academic Understanding of the Thirteenth Amendment

Collegiate-level textbooks that inform the academic mind have followed the same notions as popular understanding. Darlene Clark Hine’s *The African American Odyssey* notes that the Amendment was ratified in 1865 and outlawed slavery.37 *The American Promise*, a history textbook, shares the same message – the Thirteenth Amendment abolished slavery.38 Harrison and Harris’s *American Democracy Now* also notes that the Thirteenth Amendment abolished slavery.39 *Freedom On My Mind: A History of African Americans, with Documents*, also acknowledges the abolition of slavery throughout the United States.40

The discourse between members of the academic community engaging each other in scholarly discussion has focused more on the type of rights the Thirteenth Amendment establishes.41 In establishing the context through which they debate the meaning and

39 Brigid Harrison, Jean Wahl Harris and Michelle D. Deardorff, *American Democracy Now*, 2nd ed. (New York: McGraw-Hill, 2011), 75. See note in side tab. The authors also note the Thirteenth Amendment to be the legal end to slavery on p. 99.
41 In January 2012, a symposium, hosted by Columbia Law Review, explored doctrinal relationship of the Thirteenth Amendment to concepts of liberty and equality. A number of historians, political scientists and legal scholars participated in intellectual discourse to better understand the doctrinal relevance of the Thirteenth Amendment to such concepts and their relationship to contemporary issues. The participants include Jack Balkin, Sanford Levinson, Mark A. Graber, George Rutherglen, Alexander Tsesis, Jennifer Mason McAward, Rebecca Zietlow, Eric Foner, Aviam Soifer, Darrell A. H. Miller, William M. Carter, Jr., Richard Delgado and Andrew Koppelman.
scope, they appeal to the historic nature and origin of the Thirteenth Amendment – meant to address American chattel slavery. Slavery, however, becomes another topic of debate.

Jack Balkin and Sanford Levinson explore the "danger" (their use of quotations around the term indicate misapplication) associated with the Thirteenth Amendment. They maintain that the Amendment's restrictive interpretation is based on the possible threat it poses to political and market/commercial interests and practices if construed broadly. Balkin and Levinson finds an issue to be the contemporary connotation and association of the term *slavery*, which, according to them, is narrow in its content of historical practices and thus, anachronistic. They maintain that slavery meant something different in colonial America because it included in its definition the following: 1) illegitimate domination – wrongly acquired position of agency over an individual; 2) political subordination – lack of political equality (and political voice) between members of society; and 3) the absence of republican government – lack of political representation.

Chattel slavery, which shapes the contemporary notion of slavery, is a most extreme example of the slavery understood in colonial times. This distinction leads them to inquire about the interpretive nature of the Thirteenth Amendment, which has language adopted from the *Northwest Ordinance* (1787) that predates the Constitution. They suggest that if construed in the colonial context, there is a possibility that the Amendment's prohibition may apply to a variety of social and civil ills.

42 Balkin and Levinson, 1470-1477.
43 See generally Balkin and Levinson, 1459-1499.
44 Ibid., 1482-1485.
45 Ibid., 1470-1471. Balkin and Levinson suggest that slavery was repugnant to the Founding Fathers' ideal of republican government. They find that since the punishment exception clause was adopted from the *Northwest Ordinance* of 1787, the meaning of slavery ought to have been adopted as well.
This broad definition in application to the Thirteenth Amendment provides an array of activities that may be considered to be slavery. More importantly, it suggests that criminal conviction would forfeit the protection against slavery against more than the extreme conditions commonly associated with chattel slavery. This implicit notion is concurrent with Scott Howe's originalist interpretation of the punishment exception clause. This type of interpretation focuses on reading the text within the context of the how the text was understood by the public when it was originally presented and published – its historical context. Howe focuses on how, if using the originalist interpretation, the punishment exception clause permits slavery and involuntary servitude that would be otherwise prohibited by the remaining text of the Amendment. He notes the basis for reading the punishment exception clause in this manner: proponents of the antislavery measure did not specify a limited definition nor did Northwest Ordinance provide a specific definition. Howe observes an applicable rule to how the clause should be read in District of Columbia v. Heller (2008) – the clause must be interpreted by its original meaning among ordinary citizens of the time, which he finds permits slavery and involuntary servitude. Although Howe argues that the challenges of an originalist interpretation of the punishment exception clause cannot be overcome, in a convincing manner, his work alludes to the 38th Congress's yield to a clause that enables both slavery and involuntary servitude to be modes of punishment for the government to utilize.

\[46\] Ibid., 1475-1477, 1484.  
\[48\] Ibid., 990. The term this author uses, "punishment exception clause," is synonymous with Howe's "slavery-as-punishment" term. Both terms reference the same clause of the Thirteenth Amendment.
should it decide to do so. In effect, by the originalist interpretation of the Thirteenth Amendment, slavery nor involuntary servitude is completely abolished.

While Howe discusses the legislative history leading up to the passage and the ratification containing the punishment exception clause, Alvaro Hasini recaps a piece of legislative history post-ratification of the Thirteenth Amendment. Two years after the ratification of the Amendment, Representative John A. Kasson of Iowa introduced a resolution to the House to resolve the issue of the vagueness inherent in the punishment clause in response to an advertisement which contained in bold print the selling of negroes as punishment for a crime.\(^{49}\) The resolution sought to define the clause by limiting control of prisoners to the official capacity of the government and the class of servitude to be performed by convicts would be limited to imprisonment or servitude – the condition of involuntary servitude must directly correlate with the criminal conviction and punishment, if including hard labor in “the regular and ordinary course of law” in the sentence is extent to which such a punishment would be constitutional.\(^{50}\) The resolution passed the House; however, it failed to pass the Senate. Since the resolution failed in the Senate, the meaning of the clause remained unchanged.\(^{51}\) Hasini argues that prisoners are exempted from slavery and involuntary servitude that are not directly related to the prison sentence of the convicted. He applies this argument to the situation of prison sexual slavery – ‘stronger’ inmates subjecting ‘weaker’ inmates to badges and incidents of slavery.\(^{52}\)

\(^{49}\) *Congressional Globe*, House of Representatives, 39th Cong., 2nd Sess. (1867), 344-45.
\(^{50}\) Alvaro Hasini, “You Are Hereby Sentenced to a Term of... Enslavement?: Why Prisoners Cannot Be Exempt from the Thirteenth Amendment,” *Barry Law Review* 18 (Spring, 2013): 285-86.
\(^{51}\) Ibid., 286.
\(^{52}\) Ibid., 290.
Pete Daniel's *The Shadow of Slavery* sheds light on peonage as it operated throughout the Progressive Era to the Civil Rights Era, where his study ends and peonage cases were no longer in focus.\(^{53}\) He begins with the story surrounding *United States v. Clyatt* (1905) – a case that lasted for eight years (it was remanded and sent back to the lower courts for rehearing and the Justice Department held on to the prosecution until the one who brought the case requested it be dropped). Daniel discussed the trajectory, sure to note the success and failure of the case. The success was the validity of the *Peonage Abolition Act* of 1867 (PAA), yet Clyatt was acquitted on a technicality and prosecution had failed.\(^{54}\)

Daniel also discusses what constituted peonage, how it managed to operate though outlawed, the patterns it operated in and where, methods by which one was placed in peonage and who it affected. The primary targets were blacks, followed by immigrants. Peonage succeeded slavery as a system of bondage. Those sucked into the "vortex of peonage," as Daniel calls it, suffered tremendously. Poor whites suffered from its effects on the labor economy as well. Daniel also discusses the social, economic, and political factors that impacted the South and cultivated peonage. Debt, imposed over and over again, replaced the legal status of slavery in that one was compelled to service. Between the Freedmen’s Bureau, the U.S. Army (who lost the drive to protect freedmen after a while) and the lack of capital and land, peons became ensnared in a system of peonage. Contracts ensured the laborers employment, but they also risked entanglement

\(^{53}\) See generally Pete Daniel, *The Shadow of Slavery.*

\(^{54}\) Ibid.
into a system of neo-slavery and the ultimate price to be employed could carry serious consequences, as it often did.55

Throughout his work, Daniel recounts peonage cases, some of which revealed how employers and justices of peace would collaborate to keep peons in bondage. One of the cases conveys the lengths that some employers would go – pretend to be an official court and have a peon (in the case he highlights, the peon was black) under the impression that his term of employment was extended by the court.56 Other methods that Daniel presents are practices used to compel a person to become a peon: falsely charge the employee and told him that the only mode of evasion was to sign a labor contract; judges issuing fines to poor persons knowing that they could not pay; and laws that infringed upon the laborer's right to quit and work elsewhere without notifying the current employer.57

Daniel dedicates one chapter to tell the story about Alonzo Bailey and his journey before the Supreme Court twice, in 1908 and 1911, to free himself of the conditions of peonage.58 Daniel also discusses how the South lured immigrants with advertisements of "the land where it never snows."59 Northern labor agents played an active role in recruiting and transporting immigrant labor to the South, where the immigrant laborers would be promised quality working conditions; the reality when they arrived was far from what they were promised.60 Prosecution of peonage violators in the immigrant

55 Ibid., 19-42. Peonage spread across the South in three forms: cotton farms, turpentine farms and naval stores, and railroad construction camps.
56 Ibid., 51-2.
57 Ibid., 47-8.
58 Ibid., 65-81.
59 Ibid., 82.
60 Ibid.
peonage cases were less successful than the cases of black peons, but immigrant peonage cases declined in 1910, which left peonage to the blacks.  

Peonage, as Daniel explains, was hard to root out. It was embedded in social custom and perceived as a social norm. Anyone who dared challenge it would be receive retaliation. Although the PAA abolished peonage, it flourished anyway. States passed labor-contract laws to protect the interest of the employers and disadvantaged the laborers. Employers would also sabotage prosecutions by making witnesses disappear or through acts of bribery. Moreover, the narrowness of the PAA presented prosecuting attorneys with a nearly impossible challenge. Although Bailey caused a period of cessation in peonage claim in Alabama, the claims reemerged, though most were dismissed on technicalities or lack of witnesses. By 1920, peonage seemed more visible, but there were fewer complaints, according to Daniel. Nonetheless, peonage remained as strong as its predecessor, slavery; it was protected and nourished by local law enforcement, judicial officials and sympathetic juries and fortified by custom. It reigned supreme with little federal interference.

Douglas A. Blackmon began his research under a separate, yet related inquiry – in applying the lens of historical confrontation used to examined the benefits reaped by German corporations and Swiss banks from actions committed toward the victims of the Holocaust to American corporations, what would be revealed? His exploration led to him to findings that inextricably linked such corporations to the nation’s history of

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61 Ibid., 106-7.
62 Ibid., 7-12, 147.
63 Ibid., 14, 108.
64 Ibid., 108, 138.
66 Ibid., 148.
67 Blackmon, 3.
compulsory labor. *Slavery by Another Name* examines the multiple forms of involuntary slavery, which succeeded slavery. Blackmon does so by identifying the practices that were the same under slavery and the systems of involuntary servitude it bore post-Civil War. One such practice was the leasing of slaves as human capital and labor. This practice existed before the Civil War, carried through the Civil War and when slavery was abolished, it carried on under the moniker of convict-leasing, which often led to debt slavery, introduced through vagrancy and reinforced by the practices of peonage and criminal-surety. Among its participants were industrial actors, such as Tredegar Iron Works and Brierfield Iron Works.⁶⁸

Although Blackmon’s story centers on forced laborer Green Cottinham, he discusses the history of slavery and its impact on Cottinham. Moreover, he provides an account of slavery – plantation and industrial – and the transition of its badges, incidents, vestiges and relics, deeply woven into the social fabric of the South post-Civil War that emerged into the various forms of involuntary servitude. Clothed in custom, supported by rationalizations and economic dependence, protected by legal structures and violent acts of Southern whites, forced labor had lived long after the Thirteenth Amendment’s abolition. He references the punishment exception clause and briefly discusses its implications on this system.⁶⁹

Blackmon discusses the similarities between slavery and the convict-leasing system and prison conditions of convicts that were leased. He identifies former slave masters that became heavily involved with and greatly influenced the judicial administrative system. Former slave masters would become justices of peace as well as

⁶⁸ Ibid., 15-21.
⁶⁹ Ibid., 53. Blackmon makes a clear reference to the punishment exception.
store owners and persons with commercial interests in the developing industrial complex, which depended on raw materials mined, which in turn depended on cheap labor inevitably provided by those convicted of crimes.\(^7\)0

Like slaves, convicts could be leased out. Debts operated as tradable units – they could be sold at a full or discounted price or swapped. Sheriffs operated as slave masters would, exercising authority over the leasing of convicts. Judges, not paid by the county, received their wages by assessing court fees. Fees also paid law enforcement officers, certain court officials and witness that testified. Often, black offenders, possessing little money and property, could not pay. Summary proceedings took precedence over trials as each official act exercised by sheriffs, court official and judges were combined with fines and penalties ordered by the judge. They were either sent to prison and leased out or a person would act as surety, taking responsibility for the financial obligation and ensuring good behavior of the convicted.\(^7\)1 In a system rested upon summary proceedings, records were ill-maintained. It was not uncommon for a convict (or an alleged convict) to have no record as a convict, though laboring as one.\(^7\)2

Mine and prison camps contained horrid conditions. Convicts were flogged for resisting orders,\(^7\)3 whipped, and received water torture when whippings or floggings were deemed ineffective; much of these punishments were performed while the convicts were

\(^{70}\) Ibid., 63-78.  
\(^{71}\) Ibid., 61-6.  
\(^{72}\) Ibid., 76, 109. Reginald Dawson, chief prison inspector of Alabama in 1883, discovered a number of convict laborers held by at the Newcastle and Coalburg prison mines that had not been paid for nor listed on prison rosters that were required to be maintained by law (p. 76). Thomas Parke, a health officer in Jefferson County of Alabama, visited another Coalburg mine and noted that the records of at least 500 convict laborers did not exist in the official state records (p. 109).  
\(^{73}\) Ibid., 373.
under restraint. Scant clothing, poorly maintained sleeping quarters, little or no medical attention and treatment, and meager rations were provided to the convict laborers. The lack of adequate needs to be provided by the employer in exchange for labor prompted the untimely expiration of the laborers – their value less than that of slaves as they could be replaced cheaply and the criminal system ensured adequate supply.

Often, those running the farms, mines and prison camps falsely proclaimed that the convict laborers were cared for and well-maintained; furthermore, they fired back with statements that blamed the black convict laborers for their own maltreatment and demise. Such claims were contended by government and medical officials appalled by what they had witnesses; however, such claims had little bearing on convict-labor conditions. Most significantly, and implicitly, Blackmon argued convict-leasing as a form of peonage sanctioned by the state and its government officials through criminal

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74 Ibid., 71.
75 Ibid., 75-8, 96, 108-10,135. Dawson began inspection visits to state prisons. The legislature engaged in this investigation to preserve the practice of convict-leasing rather than out of concern for the treatment of the convicts. Throughout these inspections, Dawson witnessed deplorable acts of inhumane treatment and no effective change upon return visits. In response, he made recommendations to revamp the convict-leasing program, but such imploded recommendations went largely ignored (pp. 75-8).
Blackmon states, “slaves of the earlier era were at least minimally insulated physical harm by their intrinsic value. Their owners could borrow money with slaves as collateral, pay debts with them, sell them at a profit, or extend the investment through production or more slave children. But the convicts of the new system were of value only as long as their sentences or physical strength lasted. If they died while in custody, there was no financial penalty to the company leasing them. Another black laborer would always be available from the state or a sheriff. There was no compelling reason no to tax these convicts to their actual physiological limits” (p. 96).
Their owner Parke observed the primitive sleeping quarters of the convict laborers, onerous work days and lack of medical care afforded to the convict laborers. He also found a large number of the laborers died due to the overall conditions. The greatest effect of the criticism was embarrassment of those leasing convicts (p. 108-10).
A medical inspector reported to the Board of Inspectors of Convicts, the same agency of which Dawson was chief inspector, that he found a man to have died of frostbite to his feet, which lacked protection (socks and shoes; some had the little protection of was wrapped around their feet) from the cold (p. 135).
76 Ibid., 109.
77 Ibid., 75-8, 108-10,135
prosecution and conviction; involuntary servitude was initiated through the nexus of minor offenses to vagrancy laws and other criminal statutes.78

Darrell A. H. Miller explores the concept of custom and its relevance to the meaning and scope of the Thirteenth Amendment. Custom, he explains, has contextual meaning and has existed in various forms in the American nation. He states custom as a source of law before the generation of positive law, suggesting instances and circumstances in which private actions were predicated on customary law rather than positive law, such as right to abortion, bear arms and sovereign immunity of states from its citizens. He also discusses other contexts in which custom exists: cultural, social and behavioral norms, and as a legal source of common and legislated law.79 Customs, in these contexts, influenced and continues to influence laws and jurisprudence without having to be memorialized in texts.80

Custom, he maintains, helped to support and reinforce slavery. The cultural implications of internalized customs, as well as external social customs, placed free blacks in danger of experiencing the conditions of chattel slavery.81 Custom provided the foundation for laws, and often materialized into legislative enactments, to protect slave-owner interests;82 and sometimes, it functioned, when integrated into statutes, to restrict customary practices (i.e. legal mandates of manumission to slaves that converted to Christianity).83 The practice of racial solidarity among whites, although working and not part of the slave-owning class, to discriminate against blacks operated within the context

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78 See generally Blackmon, *Slavery by Another Name*.
79 Ibid., 1814-1815.
80 Ibid.
81 Ibid., 1825, 1830.
82 Ibid. 1824-1825
83 Ibid., 1827-1828.
of custom, as did keeping slaves in compliance (and not revolt) and ensuring that blacks did not disrupt or incite disruptions. According to Miller, custom had three implications on the American legal institution. It provided justifications to treat humans as property, legitimized morally abhorrent slavery, and influenced resistance to legal abolition of slavery were predicated on social, cultural and behavioral norms.

**Southern Resistance**

Hasini, Daniel, Blackmon and Miller each hint on Southern resistance to federal laws, and the flawed construction of the Thirteenth Amendment and synchronicity of the punishment exception clause with its then-current legal practice. Representative Kassan had seen an advertisement that sought to utilize the punishment exception clause to suit commercial interests and reinforce white supremacy, supported by rationalized ideological structures that whites were to be respected and feared by whites that had long pervaded the antebellum slavery period. This observation promoted a reaction on his behalf to introduce a joint resolution to define, and thereby restrict, the police power to be exercised by state governments that may seek to oppress and marginalized the disadvantaged blacks that were recently emancipated. As Hasini explains, the resolution saw a cease to its momentum in the Senate where it was stopped indefinitely.

Stephen Kantrowitz notes in *Ben Tillman and the Reconstruction of White Supremacy* that the resistance to Reconstruction in the South was underway before the

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84 Ibid., 1832.
85 Ibid., 1834.
86 *Congressional Globe*, 39th Cong., 2nd Sess. (1867), 345. The clerk of the House reads the advertisement, "NEGROES SOLD AS PUNISHMENT FOR CRIME."
87 Ibid.
Radical Republicans had begun *their* reconstruction.\(^88\) Benjamin Tillman, renowned racist and white supremacist Southern politician, led an activist agenda to nullify federal power and implementation of the Thirteenth Amendment and the legislation that passed from it.\(^89\) One Southern delegate rationalized and justified Ku Klux Klan (KKK) intimidation, stating that the KKK was acting as a vigilante group intent upon punishing the black criminal that the Republican authorities would not.\(^90\) Punishment for crime was Governor Tillman’s message to South Carolinian white men. He deplored lynching, which was often carried out as entertainment or for imagined socio-legal violations of racial respect. Punishment for a crime was to replace outright murders. Lynching reduced the number of black laborers available to agricultural employers, like Tillman, and drove up the price of labor.\(^91\)

Miller’s examination of custom is a pertinent subject to exploring conduct that undermines the power and reach of the Thirteenth Amendment. It is what is invoked by Daniel and Blackmon as a protective force of systems of involuntary servitude. Daniel and Blackmon challenged the established view of the Thirteenth Amendment’s protection by exposing systems of involuntary servitude that operated under the protection state criminal laws as well as custom. Blackmon even makes mention of the punishment exception as the one apparatus in which slavery and involuntary could continue to exist. The very construction of the Amendment permits slavery and involuntary servitude so


\(^{89}\) Ibid.

\(^{90}\) Ibid., 1253-1254 of 10238.

\(^{91}\) Ibid., 3463 of 10238.
long as it is punishment for a crime upon one who has been duly convicted. States exercise police powers to convict those within its bounds of crimes.

Coupled with custom, the Southern States undermined the Thirteenth Amendment and clung to systems of bondage to preserved their beloved social hierarchy. Thus, peonage, abolished by the PAA, remained alive and thriving in Southern states, protected by state laws,\footnote{See generally Daniel, The Shadow of Slavery.} and vagrancy laws, often invoked as states’ police power to regulate criminal activity, remained untouched by the Court until 1972.\footnote{Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).} The systems persisted and the federal government, by error of legislative construction and design, was limited in its power to end it. The South saw it and took advantage of the opportunity inherent in the punishment exception clause.

**Chapter 2: Vagrancy**

It is a widely held historical fact that the Jim Crow era was one in which nearly every aspect of black life was criminalized in the U.S. Crimes for disrespect of white women, adultery – which was disparagingly applied towards black men, carrying a weapon, taking work elsewhere without a written document of employment termination by previous employer, failure to obtain a labor contract by a state-mandated deadline and vagrancy, which was defined so equivocally that an offender can be in violation for nearly anything.\footnote{Blackmon, 53-4.} Vagrancy was the easiest tool of the state in gathering criminals. Once gathered and convicted, the court could lease them out.
Often when people think of crimes, they think of robbery, arson, murder, treason, etc.; however, vagrancy is not a crime that comes to the forefront when considering criminal conduct. Why is that? As Forrest W. Lacey states, “vagrancy is the principle crime in which the offense consists of being a certain kind of person rather than having done or failed to do certain acts.” Often crime is associated with action or inaction; however, the association is linked to one class of crime. Vagrancy is in the class of crime that identifies with personal condition rather than action or inaction.

Crimes of personal condition are a peculiar class of legal violations that have been grandfathered into the U.S. legal and criminal justice system from the English legal and criminal justice system. It appears to have been necessary as England attempted to deport vagrants to Virginia. Aware of vagrancy in England, it is possible that Virginia adopted such laws for similar reasons, to regulate movement of the unemployed and those that did not own land, provide a sufficient pool of cheap laborers and prevent

96 See Lacey, 1206. Lacey states, “vagrancy legislation in the United States which began in colonial times, closely follows English models.” See also Arthur H. Sherry, “Vagrants, Rogues and Vagabonds - Old Concepts in Need of Revision,” California Law Review 48, no. 4 (1960): 557-58. Sherry traces vagrancy back to terminology, vagrom men, used in William Shakespeare’s Much Ado about Nothing reflecting the presence of vagrancy in 14th-century England. The term is a classifying nomenclature of men had a personal condition that was considered immorally criminal. Sherry identifies the notion behind English vagrancy law that transitioned into American vagrancy law, which is a person whose rights are guaranteed, or supposed to be guaranteed, by the government is still subject to criminal punishment “by virtue of personal condition or of belonging to a particular class.” See also Robin Yeamans, “Constitutional Attacks on Vagrancy Laws,” Stanford Law Review 20, no. 4 (1968): 782. Yeamans also traces the origins of vagrancy to 14th-century England, not by review of theatrical manuscripts, but by identification of the law, the first Statute of Labourers, which, as she suggests, limited the movement of the unemployed and those who did not own land for purposes of fortifying the English feudal structure and securing a sufficient pool of laborers that would work following the Black Plague. See also C.J. Ribton-Turner, A History of Vagrants and Vagrancy and Beggars and Begging (Montclair, NJ: Patterson Smith Publishing Co., 1972), 3. Ribton-Turner assumes from inference regarding the “axioms of law” that vagrancy existed as early as the Anglo-Saxon rule over the Isles, currently known as the U.K., premised upon why laws are created - not in anticipation for wrongs that have a possibility or probability of occurring, but as a remedy for wrongs that are already existent.
97 Ribton-Turner, 141.
A Virginia court, in 1937, defended the state's vagrancy statutes. Its defense makes one wonder: how is it that vagrancy laws fit into a system that is supposed to permit one pursue life, liberty, and property, which may be deprived with due process of law?

**History of Vagrancy Laws**

The origins of vagrancy laws are oriented in fourteenth-century England. Legal scholars and historians identify the first written record as the first Statute of Labourers. In 1348, Black Death, which originated in the East and stormed all of Europe, appeared in England. The aftermath included a labor shortage as the population had been devastated. Another effect of the Black Death aftermath was a shift in labor economics; laborers charged high wages for their labor as they emerged with labor economics in their favor. With prices for their services high and the supply of laborers numerous, laborers became idle. Their idleness gave rise to other issues.

The Black Death aftermath and laborers' idleness created an uneasy atmosphere for landowners and employers; it created economic and social disorder. Thus, Parliament found it necessary to enact a legal tool – vagrancy – to help regulate the economic issues of labor supply and wage compensation for labor, as well as socially unacceptable behavior of the laborers. The tool was the Statute of Laborers, which provided in detail what is expected of laborers and a mechanism for labor control, which provided support

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98 Sherry, 1206; Yeamans, 782.
99 Emphasis added to “first” as there are subsequent statutes under the same title. See footnote 96.
100 Ribton-Tumer, 42-4. The author does not specify what the other disorders are (this author references those disorders as issues); however, this author believes it to be criminal activity - i.e. prostitution, theft, loitering, begging, etc. - as the following section of the author’s narrative quotes the Statute of Laborers, which discusses the other issues further.
101 Ibid., 43.
for the feudal-type system that had been in place. The ordinance, which later came to be held as statute by authority of 2 Rich. II, Stat. 1, c. 8 (1378) was the tool enacted by Parliament; its preamble reads as follows:

Because a great part of the people, and especially of workmen and servants, late died of the pestilence, many seeing the necessity of masters and great scarcity of servants, will not serve unless they may receive excessive wages, and some rather willing to beg in idleness than by labour to get their living...

The preamble was a direct response to the social and economic phenomenon that England had been experiencing. It was drafted with the purpose of addressing the economic turmoil that emerged from laborers who sought higher wages for their work and contributed to the surplus of unemployed laborers. The preamble continued on to declare that every able-bodied individual within England, up to the age of sixty that was not a merchant, did not have a craft (i.e. masonry, smithing, etc.), live on his own land, or right to his own land where he may live and not in service to a master already, be bound to serve if he or she was required to serve. Should a person not have completed his or her time of service under the terms of the agreement, he (or she) would be imprisoned.

The preamble, which became law in 1378 as mentioned above, had, in effect, sought to ensure laborers were ‘contributing their part’ to the labor economic system. The law was meant to reinforce the socioeconomic status and position of the aristocracy, landowners, and masters, and to keep the laborers in a position to labor only. Furthermore, it created a degree of involuntary servitude that was punishable by law - imprisonment for failure to complete service under contracted terms, or more simply, a breach of contract.

102 Ribton-Turner, 43; See also Sherry, 558.
103 2 Rich. Stat. 1, c. 8 quoted in Ribton-Turner, 43.
104 Ibid., 43-4. This author finds a similarity, if not a predisposition in the law, to peonage support by breach of contract, which also seeps into the American legal system. See also University of Missouri, St. Louis, Statute of Labourers, 1351, http://www.umsl.edu/~gradyf/medieval/statute.htm (accessed Dec. 11, 2015).
Vagrancy laws were designed as a legal tool of social behavioral and economic control. English vagrancy laws had three functions: control the labor market, add to and support poor relief laws, and prevent incidents of criminal activity.\textsuperscript{105} As English colonists began to settle in the New World, they carried with them vagrancy laws, among other badges and relics of English life. The element of idleness found in the English Statute of Labourers is found in American vagrancy statutes.\textsuperscript{106} The commonality between the two suggests an importation of vagrancy laws from the English legal system into the American legal system. Sherry notes, however, an essential difference in the English Vagrancy Act of 1824 and American vagrancy law - the English Vagrancy Act of 1824 virtually limited its emphasis to conduct and did not focus on attaching criminality to a person based solely on his or her status.\textsuperscript{107} This distinction would begin to appear in the U.S. court jurisprudence and interpretation of the scope of vagrancy laws in the mid-twentieth century.

**Social Theories of Vagrancy Law**

Vagrancy law may be considered a legal tool to aid and regulate labor supply and enhance social control ability. There are two basic theories of crime that David Bright considers when he begins his analysis of vagrancy in Calgary, Canada. The first theory that he presents and discusses is the functionalist theory of crime. The functionalist theory contends that laws are not merely reflections of the interests of individuals and groups that exist in a society, but transcends them and reflects the aggregate moral consensus of society as a whole. The works of Talcott Parsons and Emile Durkheim, and

\textsuperscript{105} Lacey, 1206.  
\textsuperscript{106} Ibid., 1208.  
\textsuperscript{107} Sherry, 564.
other sociologists, provide the foundation for this theory. The perspective of this theory suggests that those who performed criminal acts did so as a result of insufficient internalization of social norms and values. When the question of the relevance of the functionalist theory to social control emerges, the response is that social control is vested into the criminal justice system to remedy poor internalization of accepted social values within a respective society.\(^{108}\)

The second theory that he presents is the conflict theory of crime. The conflict theory purports that laws and legal institutions function at the behest of those that are dominant in society and the principal concern is preserving the system. The framework of this theory provides that a criminal was one who acted contrary to the interests of the dominant members of a respective society and was thus under subjection to that force of its legal system. This theory gained much support and momentum from the works of Karl Marx. Regarding the question of social control, the conflict theory does not place primary importance on the internalization of values but contends that social control is vested in the enforcers and administrators of law to accommodate the interests of the dominant class by suppressing those who performed the actions that are contrary to such interests.\(^{109}\) The functionalist theory emphasizes the legal system as a form of social correction; the conflict theory emphasizes the actors performing within the system to accommodate interests of the dominant class, highlighting the influence of political motivations upon criminal law implementation.


\(^{109}\) Ibid.
Bright also presents a more refined version of the conflict model theory, which emerges from the results of recognizing the rising bourgeoisie class in England. E.P. Thompson, Douglas Hay, and other scholars refined the conflict model when they observed the criminal justice procedure on the role of the bourgeoisie in the process. Thompson and Hay identified the capacity of the law to make a ruling class’s exercise of power - obtained from the nature of social and economic relations - legitimate. The refined theory suggests that the essential feature in the function of law is its capacity rather than it a coercive design and function. Thompson and Hay reason that the law functions adequately when both the ruled and rulers abide by it, which provides the function of law with an essence of justice and fairness, imbuing a degree of absolutism in that it does not apply only to certain members of society.\textsuperscript{110}

Which theory is applicable to vagrancy law during the Jim Crow Era in the United States? While it is idealistic and typical to suggest the extended version of the conflict theory model, history suggests that the original model is more applicable to the situation. Further exploration of the mechanics and operative use of vagrancy laws during the Jim Crow era throughout the remainder of this chapter will reveal why the Marxian conflict theory model is most applicable.

**Mississippi’s Vagrancy Laws**

In 1857, Mississippi submitted to Congress its state laws. Within its statutes were its criminal statutes, which included vagrancy, some acts that constituted public indecency were included in the vagrancy provisions, and other acts were covered in

\textsuperscript{110} Ibid., 42.
separate provisions. Article (Art.) 344 provides a statutory definition of vagrancy.

Vagrants were defined as:

All able bodied persons who live without employment or labor have no visible means of support or maintenance; Any person who shall abandon his wife or family without just leaving them without support and in danger of becoming a charge; Keepers of houses of public gaming or houses of prostitution and common prostitutes who have no other employment for their support or maintenance; Any able bodied person who shall be found begging for a livelihood; and Common gamblers or persons who for the most part maintain by gaming.112

| Table 1111 |
| Mississippi Vagrancy Statutes |
| Condition/Act | Vagrancy Qualification |
| no visible means of employment and person is seen to be able-bodied | Vagrant |
| deserted family or spouse without a means of support | Vagrant |
| Running brothel or gambling house | Vagrant |
| able-bodied and begging | Vagrant |
| Person whose occupation is gambling; gambler | Vagrant |

The statutory language is consistent with that of the English vagrancy laws. A series of conditions could subject a person to vagrancy offenses.

Art. 345 orders judges to administer vagrancy provisions and issue warrants.

When an officer brings up an offender on vagrancy charges, the judge is to examine the

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111 Adapted from 64 Laws of Mississippi §69, art. 344.
112 64 Laws of Mississippi §69, art. 344. The livelihood by gambling is also considered a vagrancy offense under art. 338.
facts to find evidence of vagrancy. If the offender is found guilty of vagrancy, he is to pay a bond $200 and behave in a manner so as to not violate the law again. If the term of good behavior is successfully completed, the bond is returned within a year; if not proceedings will be reinstated and the bond will be forfeited. If unable to pay, the offender is sentenced to prison for ten days.\textsuperscript{113} A second offense carries 20 days of imprisonment without the option of a bond.\textsuperscript{114} The offender is also to be ordered by the judge to pay court fees and imprisonment costs associated with his, or her, trial and conviction.\textsuperscript{115} Considering that a majority of the African-descended population consisted of chattel slaves,\textsuperscript{116} this law focus more on the class stratification.

Mississippi continues to have statues for vagrancy. Its codes defined vagrants, and tramps, under which able-bodied beggars are classified.\textsuperscript{117} Offenses to the statutes are minor; nonetheless, they still exist. Until they statutes are subject to constitutional testing before the courts or its legislature repeals the laws, they will remain in effect.

**Mississippi’s Revision of Vagrancy Laws in its Black Codes**

Between the period Mississippi’s vagrancy laws passed in 1857 and the laws that are currently effective as of 2015, Mississippi passed a special set of vagrancy laws to which targeted blacks. This special set of vagrancy laws were part of Mississippi’s Black

\textsuperscript{113} 64 Laws of Mississippi §69, art. 345.
\textsuperscript{114} 64 Laws of Mississippi §69, art. 347.
\textsuperscript{115} Demoral Davis, “A Contested Presence: Free Blacks in Antebellum Mississippi, 1820–1860,” Mississippi History Now (August 2009) http://mshistorynow.mdah.state.ms.us/articles/45/a-contested-presence-free-blacks-in-antebellum-mississippi-18201860 (accessed December 21, 2015). Davis states, “Blacks in Mississippi, and elsewhere in the South, became free in several ways. Prior to 1825, it was common and legal for slaves to become free either by purchasing their freedom or by slaveholders freeing them. Beginning in the mid-1820s, both forms of emancipation became increasingly less common and even illegal. The primary pathways to free status for blacks were blocked... The consistently small number of free blacks in Mississippi between 1810 and 1860 was a direct result of a network of controls, backed by laws and race prejudice.”
\textsuperscript{116} Miss. Code Ann. § 97-35-29.
\textsuperscript{117} Miss. Code Ann. § 97-35-37.
Codes. These laws of the black codes were amended from the vagrancy laws of 1857. The laws did not solely focus on blacks, as they had included whites, but they did target blacks.

The first section of the act expands the definition that was provided in the 1857 provision for vagrancy:

All rogues and vagabonds, idle and dissipated persons... jugglers... persons practicing unlawful plays, runaways, common drunkards, common night-walkers, pilferers, lewd, wanton, or lascivious persons, in speech or behavior, common railers and brawlers, persons who neglect their calling or employment, misspend what they earn... all who neglect all lawful business... The first section made nearly any aspect of 'immoral' life a crime. Even what was perceived as social disrespect toward white women was punitive under the black codes.

The second section declared all blacks, between the ages of 18 and 60, to be vagrants if they were able-bodied and without labor or employment and unlawfully assembled no matter the time of day; it declared whites to be vagrants if they were engaging in social relations with blacks as equals to include sexual relations with black women. The fines for blacks could not exceed $150 and for whites, $200; imprisonment for blacks was not to exceed ten days and for whites, six months. The punishments imposed were at the discretion of the court.

The third section vested jurisdiction to hear matters concerning vagrancy to the court officials and mayors, and it charged law enforcement with the duty of enforcing vagrancy laws. Should law enforcement officials choose not to enforce the vagrancy laws.
laws, they could be subject to a fine up to $100. The fourth section reinforced Article 344 of the Vagrancy Laws of 1857. The fifth section subjected blacks to being hired out if they could not pay their fines by the fifth day following the imposition of the fines. Preference was given to the employer; blacks were hired out to the amount that was paid off and the law permitted the employer to deduct from paid wages the amount to be paid for imposed costs. If blacks could not be hired out, they were to be treated like paupers.

The sixth section permitted a tax to be levied against blacks to support a fund for those considered to be poor blacks or mulattos. The seventh section declared that those who failed or refused to pay as vagrants and failure or refusal to pay should function as prima facie evidence of a vagrancy offense and subjected blacks to be hired out as stated in the fifth section. The eighth section provided a right to appeal; fees assessed to appeal were established not to be less than $25 or more than $150.
The image to the right is a contract between Henry Bledsoe (Freedman) and Abraham Bledsoe. Should Henry wish to protect himself from a vagrancy charge, he was informed by the Freedman’s Bureau to carry this document on him at all times and furnish it to law enforcement when necessary. That very document is a representation of a contract that could also enter Henry Bledsoe into peonage under his contractual master, Abraham Bledsoe.

Mississippi’s Black Codes and Marxian Conflict Theory

Mississippi’s Black Codes were aimed at ensuring the demarcation of the social status of blacks and whites remained. As evidenced above, restrictions were heavily placed upon blacks to work, not be outside in any type of association that could be identified as illegal regardless of time of day, pay taxes or be hired out, and ensure that they could not be identified as vagrants. The statutory definition was so broad that it would be virtually impossible not to fall into the category. Moreover, the economic hardship that blacks faced after the Civil War was exacerbated by these cumbersome laws, which demanded much of them economically - provide support for family, do not engage in illegal economic or commercial activity, pay taxes to assist poor blacks and mulattos, and if prosecuted on vagrancy charges pay or be hired out to an employer. The social function of Mississippi’s Black Codes had not been to rehabilitate, but to exert
control over blacks and marginal social control of whites. Whites, so long as they did not violate the status quo set by the laws - a reinforcement of socioeconomic relations from pre-Civil War Mississippi - they were not subject to the harshness of the vagrancy laws. The body of vagrancy laws carried a brutal legal force that descended upon on blacks, reinforced by its punitive justice system. Equality - social, political, economic - of blacks and whites was an interest that ran counter to that of the dominant class and political order.

**Enforcement and Support of Vagrancy Laws**

Vagrancy law, in its most principal purpose, was a body of law that was enforced and administered by police. Vagrancy statutes gave police a great deal of authority - profiling, demand of account of oneself, swift arrest if account is not satisfactory or adequate in officer's judgment.¹²³ Vagrancy suspects were often to subject to summary proceedings and judgment, meaning they were denied an indictment proceeding and a jury proceeding.¹²⁴ In the U.S., vagrancy statutory classifications varied from state to state but often included: able-bodied beggars; common thieves; fences or those that receive an income from black market (illegal market) activity; moral dissenters (i.e. prostitutes, gamblers, alcoholics, bootleggers); and common-law vagrants, which meant

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¹²⁴ Foote, 608-9. See also Bright, 54-5. Bright shares a story of an American businessman visiting in Canada. In the midst of back and forth traveling to his hotel room and the coffee shop where he had a cup of coffee with his friend, he was stopped by two policemen. Despite sharing with the officers the details of his business trip, he was arrested. He spent twenty-four hours in jail. The magistrate dismissed the vagrancy charge, but that did not satisfy the businessman; he returned to the United States and commissioned a lawyer to petition the Secretary of State of Ottawa to formally prosecute the officers and compensate him for their mistreatment of him.
those who became suspects and were stripped of the ability to provide a good account of himself if found idle, begging or wandering.\textsuperscript{125}

It was very likely a person could be arrested for possibly committing a crime, without proof or evidence, through a vagrancy charge.\textsuperscript{126} When brought before the court, the vagrancy law would operate as a last-resort prosecution, should the alleged criminal prosecution be dismissed.\textsuperscript{127} There have also been historical incidents in which having association with a vagrant or a person suspected of committing a vagrancy offense was admitted as evidence, aiding in prosecution.\textsuperscript{128} Often, record or testimony of past conduct that supports the condition of vagrancy was often used as evidence in cases against vagrancy suspects; it is worthy to note some courts deemed the evidence of past conduct as inadmissible.\textsuperscript{129} The broad, sweeping statutory language virtually made many actions an offense should the officers deem it so and the judges sustain their judgment.

Some courts supported and upheld vagrancy statutes, despite their broad language. The New Jersey Court of Appeals maintained that:

\begin{quote}
states, as a part of their police power, have a large measure of discretion in creating and defining criminal offenses, and a statute of this character does not violate the due process provision of the federal constitution, nor deny the violators of the statute the equal protection of the laws, where it operates without discrimination on all persons, and classes of persons, similarly situated; nor does it violate the provisions of the state constitution.\textsuperscript{130}
\end{quote}

and contended that "to challenge the power of the state to prevent the commission of such crimes by legislation of this character, is to challenge its power to denounce and punish

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\textsuperscript{125} Sherry, 558-61. Lacey, 1207.
\textsuperscript{127} Lacey, 1218-1219.
\textsuperscript{128} Ibid., 1214. Lacey asserts that there are several cases in Alabama in which a suspect could be prosecuted of a vagrancy offense by association to one the court deems to be dissolute or of disreputable character.
\textsuperscript{129} Ibid., 1213-1214.
\textsuperscript{130} Levine v. State, 110 N.J.L. 467 (1933).
\end{flushleft}
the crime itself." The court defended the sovereignty of the state rather than the rights of the people; it had opted not to perform an analysis to see if the vagrancy statute violated any fundamental rights.

**Vagrancy is Constitutional?**

Vagrancy has been supported and gone uncontested for much of its life in the United States. Constitutional attacks toward vagrancy laws have stated violations of fundamental and constitutional rights as well as constitutional protections afforded to the people by the amendments. Challenges have been on the basis of the right to travel, the immunities and privileges' clause of the Constitution, the due process clauses of the Fifth and Fourteenth Amendments, the equal protection clause of the Fourteenth Amendment, protection against self-incrimination, involuntary servitude under the Thirteenth Amendment, excessive punishment under the Eighth Amendment and necessity of a warrant under the Search and Seizures' clause of the Fourth Amendment. The U.S. Supreme Court began establishing principle that chiseled away at the effectiveness of vagrancy law enforcement and prosecution. In *Griffin v. Illinois* (1956), the Court stated:

> In this tradition, our own constitutional guaranties of due process and equal protection both call for procedures in criminal trials which allow no invidious discriminations between persons and different groups of persons. Both equal protection and due process emphasize the central aim of our entire judicial system -- all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court'... a State can no more discriminate on account of poverty than on account of religion, race, or color.

The Court also addressed the constitutional infringement by vagrancy statutes that restricted travel. In *Edwards v. California* (1941), the Court holds that restriction of travel

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131 *Levine*, 470-71.
132 See generally Yeamans, 782-93.
violates the commerce clause, an enumerated constitutional power belonging to Congress. In *United States v. Guest* (1966), the Court maintained that the right to travel is recognized as a constitutional right. Therefore, wandering or roaming could no longer be considered a crime because the person is traveling, in a sense. Not once, but twice, the Court declared traveling to be a fundamental constitutional right; state criminal statutes that infringed upon it were, therefore, unconstitutional. Congress was held as the only governmental body that could address traveling via the commerce clause.

The Court held in *Garrity v. New Jersey* (1967) that testimonies received under coercion are inadmissible as it infringes on testimony rights granted in the Fifth Amendment; The principle in the above case was extended from *Miranda v. Arizona* (1966) in which the Court maintained that an interrogation without notification of one’s rights and the option to have an attorney present was unconstitutional. The rendering in both cases struck at the policing practice of vagrancy that asked ‘idling’ suspects to give good account.

The Court has also attacked the vagueness of vagrancy statutes, pinpointing broad language or the usage of very general words without providing a statutory definition. Ambiguity in a statute renders unawareness of an offense prior to being charged with the offense, which means nearly any activity could be subject to criminal prosecution. The courts have sought to remedy this by attempting to provide clarity or declaring statutes

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138 Yeamans, 791.
unconstitutional for such ambiguity. The Court found in *United States v. Margeson* (1966) that proof must be provided that a person could not give good account, thereby producing a restraint on the broad power that police and courts had in the prosecution of vagrancy suspects – another strike by the Court at the exercise of state police powers in enforcing vagrancy laws.

Personal condition rather than conduct as an element of the criminal offense of vagrancy was challenged and found to be unconstitutional in *Fenster v. Leary* (1967). The New York Court of Appeals declared:

This view of the matter does, of course, raise the possibility of interesting Thirteenth Amendment problems, and plaintiff strenuously urges these as grounds for reversal, and it also raises an interesting ‘equal protection’ question as to whether persons of means are entitled any more than the poor to enjoy the allegedly debilitating effects of idleness, but on a more fundamental level, we feel the statute is defective on the ground that, whatever purpose and role it may or may not have served in an earlier day, and however valid or invalid may be the proposition that the able-bodied unemployed poor are a likely source of crime... If it is only to allow arrests and criminal prosecutions for vagrancy to continue against individuals such as these that the Attorney-General would have us uphold the statute, then it must fall. And despite certain fairly recent cases upholding similar statutes, we can, in fact, see no other purpose in our statute today and, therefore, find it invalid.

The court based its decision its view of the operation of the vagrancy statute. It found that the purpose of the operation was outmoded and no longer justified in practice and thus, declared the statute invalid. It considered that the statute might infringe upon protections afforded to citizens by the Thirteenth Amendment by seeking to coerce them to seek work. Furthermore, the court considered the ambiguity in defining the offense, which subjects the offender to disparate treatment under the color of the law.

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139 Ibid., 790-91.
141 *Fenster v. Leary*, 20 N.Y.2d 309 (1967)
142 Ibid., 315-17.
In *Papachristou v. City of Jacksonville* (1972), the U.S. Supreme Court rendered the city’s vagrancy ordinance unconstitutional. It reasoned that the classifications within the ordinance were outmoded, making acts that were contemporarily seen as “normally innocent” criminal. It also contended the ambiguity of the ordinance made it void. The declaration functioned to limit police power that the Court viewed as unrestrained and implicitly, abused. The rule of invalidating a law for vagueness was followed again in *City of Chicago v. Morales* (1999); however, the plurality opinion suggests laxation from the Court on other principles, which it was once stringent upon.

**Mississippi’s Black Codes and the Thirteenth Amendment**

The Black Codes of Mississippi operated outside of the scope of the Thirteenth Amendment. It was enacted before the Amendment was passed. The Union did not readmit Mississippi until 1870, and it was readmitted although it had not ratified the Thirteenth Amendment prior to readmission. The state had not considered itself violating the laws of a nation to which it did not belong. Afterward, the state continued to disregard the law to some degree as it had not ratified the Amendment until 1995; moreover, the exception clause was the prefect tool for manipulation. By declaring nearly everything a crime, the state could subject who it desired to slavery and involuntary servitude, once the criminal was ‘duly’ convicted.

Therefore, the vagrancy laws of the Mississippi’s Black Codes did not operate to violate the Thirteenth Amendment as it had been abolished prior to the ratification of the Thirteenth Amendment, but the laws lived on through other means. Vagrancy laws, for a

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143 See generally *Papachristou*.
long time, managed to utilize the punishment exception clause to undermine the entire Amendment. It was not until the 1930s that Supreme Court began its torrent of constitutional attacks on methods used to enforce vagrancy laws. Such attacks on what could be done under state police powers affected enforcement; however, Papachristou administered quite the strike to the effect of vagrancy laws, by effectively limiting the broad range of offenses covered under vagrancy statutes.

Vagrancy laws operated from the gray area overlap of police powers that faced restriction in beginning in the mid-twentieth century. It traveled from England and became customarily accepted. Although the statutory definitions presented many complications and challenges to the protection of constitutional rights, they survived fairly intact until the mid-twentieth century. Vagrancy was rampant and widespread in times of economic transition and new labor system incipience to ensure an adequate supply of labor.

The function of vagrancy laws of the Mississippi Black Codes fared no different; it ensured the labor supply for the economic transition of the state from slave labor to free labor. Amidst the transition, the laws descended upon the blacks, natives and migrants to the state, with blunt forces. The laws were not only designed to provide a pool of available labor, but to maintain the socioeconomic hierarchy that had existed before the Civil War disrupted life, not only in Mississippi but the South. When restrictions began to flood in from court rulings, Mississippi, like other states, had to find ways to create vagrancy laws that did not infringe on the constitutional rights of its citizen, and it did. Today, laws still exist in Mississippi’s Code that defined and punish those committing
acts of vagrancy. It appears that the Thirteenth Amendment was ineffective then and remains so now.

Chapter 3: Peonage

In June 1924, two black men named George Diamond and Galvester Jackson began working for M.B. Davis (alias Mood Davis) at Camp Sanders in Florida. Approximately two weeks after they began their employment, Diamond and Jackson left, with permission, with a promise to retrieve Diamond’s family from River Junction to bring them to Camp Sanders. Camp Sanders was one of two farms operated by Davis.\textsuperscript{145} The other turpentine farm\textsuperscript{146} was called Farmdale. Camp Sanders was ten miles west of a town named Wewahitchka and Farmdale was twenty-five miles southwest of the town.\textsuperscript{147} To paint a visual picture of Wewahitchka, consider the following details. Wewahitchka is a town located in the panhandle of Florida, not very far from Panama City. It is known for its two unique features: twin lakes, almost identical in size – the Dead Lakes and Tupelo Honey. The name comes from the Seminole language and means “two eyes.”\textsuperscript{148} It is about 174 miles from Mobile, AL (212 miles in driving distance).\textsuperscript{149}

\textsuperscript{145} Daniel, 140.
\textsuperscript{146} It should be noted that turpentine is a hazardous substance. See U.S., Department of Health and Human Services, Center for Disease Control, National Institute for Occupational Safety and Health, “International Chemical Safety Cards,” http://www.cdc.gov/niosh/ipcsneng/negl063.html (accessed November 18, 2015). It states different symptoms that may occur as a result of contact with turpentine, to include skin irritation (redness and pain), respiratory irritation (coughing, shortened breathing, sore throat), and eye irritation (redness, pain and blurred vision). See also U.S., Department of Health and Human Services and U.S. Department of Labor, “Occupational Health Guideline for Turpentine,” (September 1978), 1. It expands on some of the information in the safety cards, stating that “greater exposure may result in “unconsciousness or death.”
\textsuperscript{147} Davis v. United States 12 F.2d 253, 254 (5th Cir. 1926).
The hunt began for the human capital that took leave and failed to return. On August 8, Diamond and Jackson, who had not yet returned to Camp Sanders, were arrested on charges of larceny of Davis’s property valued at $8.50, at the behest of Davis and taken to the county jail in Blountstown, Calhoun County. When Diamond and Jackson appeared before the court to plead their case, Davis was present. He made a statement insinuating that the defendants should plead guilty, for if they did not, they would be sentenced to eight months in prison. The defendants plead guilty. Simultaneously, the court was also hearing a case against Henry Sanders, who was alleged to have committed larceny of the property of Charles Land’s brother, valued at $2.75; he also plead guilty. The judge ordered each of the defendants to be released on payment of costs. Davis paid the costs against each defendant - $37.28 total against Diamond and Jackson and $25 against Sanders – and also assumed responsibility for a debt claimed against Sanders by Land’s brother amounting to $100. Having paid the costs, the defendants were released and Davis took them to Farmdale. There, Diamond, Jackson and Sanders were held upon their agreement to work of their debts, incurred when he paid their costs and debts as well as the additional indebtedness he initially claimed against Diamond and Jackson. Another laborer, by the name of Dewitt Stonan, was also being held for a debt.

Up until the night of September 29, the four peons had remained under surveillance and kept in compulsory service because they feared physical punishment and perfectly round lakes nestled into the heart of this community add to the community’s relaxed charm, and make a special backdrop to the city’s downtown Lake Alice Park.”

150 Davis, 254-55.
151 Ibid., 255. Judge Bryan’s opinion suggest that there is no evidence reflecting that Stone had been criminally charged.
further criminal prosecution; however, this would be the night of they intended to escape the clutches of peonage at the Farmdale turpentine farm. The wives of both Sanders and Stonan accompanied the four peons in making their escape, secretly leaving the farm in the darkness of night. The following morning, they went to the home of a woman named May Bell McGee in a town near Wewahitchka, where they left the women and continued on. They traveled around the town and stayed in the woods near West Arm highway bridge until night, when they planned to cross the bridge as night would decrease their chances of being caught and apprehended.\textsuperscript{152}

That same morning, Davis and his employees, Carey Whitfield, Frank Daniels, and Will Proctor, went to the town to search for the escaped peons. Davis, accompanied by another man, went to the home of Sander’s father-in-law, Matthew Brown. Assured that Sanders was not there, Davis continued the hunt and headed up the road toward Blountstown. Following Davis’s departure, Brown went into his vehicle and began searching for his daughter; he found her and Stonan’s wife at McGhee’s house. He intended to bring them to his home. He began this operation, but it was not completed. They encountered Davis and his employees who overtook them and captured the women, taking them back to Wewahitchka. There, Proctor took charge and kept watch over the captured women.\textsuperscript{153}

After the ordeal, Davis consulted with Land, Whitfield and Daniels. Following the consultation, he departed with Land in Land’s vehicle. That night, Whitfield and Daniels found and captured the escaped peons at the north end of the bridge. In less than half an hour, Davis and Land arrived to the scene in Land’s vehicle; Davis and the other

\textsuperscript{152} Ibid.
\textsuperscript{153} Ibid.
defendants (Whitfield, Daniels, Proctor and Land), each one armed, collected Stonan, Diamond, Jackson and Sanders, had Stonan whip the others, and then put them in the vehicle and brought them back to Wewahitchka. Once there, the peons and the wives of the two already in Proctor’s charge were split up; Diamond was given to Land and the remaining peons and the two wives were returned to Farmdale.\textsuperscript{154}

Within the following days, a series of events ensued, which led to the conviction of Davis, Land, Whitfield, Daniels and Proctor. Davis queried deputy marshal H. H. Bowles to learn what constituted peonage. Such a question led to Bowles’s permission to testify in court over objection. The case was heard in the District Court of the United States for the Northern District of Florida by Judge William B. Sheppard. The jury considered the following indictments: (1) “holding Henry Sanders to a condition of peonage,”\textsuperscript{155} which consisted of a single count; (2) “holding George Diamond, Galvester Jackson and Dewitt, [sic] Stonan in a condition of peonage,”\textsuperscript{156} which consisted of four counts; (3) the arrest of and return to, “separately and severally, Diamond, Jackson, Sanders and Stonan, respectively, to a condition of peonage, in order to compel to work for Davis in payments of debt which they owed him,”\textsuperscript{157} which consisted of eight counts, four for the arrest and four for the return; and (4) “aiding and abetting.”\textsuperscript{158} Davis was convicted on all the counts of the first, second and third indictments. He was sentenced to pay a fine of $500 and thirteen months of imprisonment. Land was convicted on the counts of arrest on the third indictment and sentenced to pay a fine of $500 and one year

\textsuperscript{154} Ibid.
\textsuperscript{155} Ibid., 254.
\textsuperscript{156} Ibid.
\textsuperscript{157} Ibid.
\textsuperscript{158} Ibid.
and one day of imprisonment. Whitfield, Daniels and Proctor were also convicted on several counts of the third indictment. The case was appealed, but certiorari was denied.\footnote{159}

This is just one type of scenario of debtors came to know the involuntary servitude system known as peonage. It was also another case in a string of peonage cases that began in 1902. Peonage, one of the many forms of involuntary servitude that occurred in the post-slavery era, is a topic that is under-discussed in the American historical narrative. While its roots are in Latin America, it took on a monstrous development of its own in the U.S.\footnote{160} It appeared as an economic tool and relegation of blacks and immigrants to a second-class status.\footnote{161}

Peonage, defined most simply, is coerced servitude based on debt; the peon is the individual held in compulsory service against his or her will until the obligation of debt is fulfilled.\footnote{162} Peonage, along with other systems created from local and state laws, were intrinsically forms of involuntary servitude. Peonage could develop within the context of private contractual relations or as the aftermath of a conviction by which the convicted

\footnote{159} Ibid., 253. 
\footnote{161} See generally Daniel, \textit{The Shadow of Slavery}; also, see generally Blackmon, \textit{Slavery by Another Name}. 
\footnote{162} N. Gordon Carper, "Slavery Revisited: Peonage in the South," \textit{Phylon} 37, no. 1 (1976), 85. N. Gordon Carper suggests that peonage is involuntary servitude based on debt or "alleged debt or indebtedness." He states, "The origins of peonage are as varied as they are complex. Through law, custom and racism as well as the political, economic and social chaos resulting from the Civil War-Reconstruction era, men were shackled physically and spiritually and compelled to labor for those who constituted the 'Establishment'."
would be handed over to the care of a surety or leased to a private company; the latter became known as convict-leasing.\textsuperscript{163}

Peonage, although abolished by law, existed well into the twentieth century because state and local governments enacted laws and permitted situations that carried the vestiges and badges of slavery or created a condition of peonage. The “peon” would not be identified as a slave. Nonetheless, he or she would be placed in situations, supported by law and enforced by the courts and law enforcement, that created peonage, thus utilizing the punishment exception clause of the Thirteenth Amendment to create laws that restricted freedom to move from employer to employer and made breach of contract and fraud statutory criminal offenses. It appears that there was a power struggle between state governments of the South and the federal government in governing the jurisdictions where the Thirteenth Amendment, or the statutes that were built from it, were not being followed.

**American Peonage, An Overview**

In an article examining the historical context of peonage in post-Civil War and Jim Crow Florida, N. Gordon Carper describes peonage – how it came to exist and how it was an interlocking form of involuntary servitude that provided for and received from other forms of involuntary servitude: vagrancy, convict-leasing and the criminal-surety

\textsuperscript{163} See generally Blackmon, *Slavery by Another Name*. Blackmon implies this connection his explanation of how people would enter the convict-leasing system, often under contractual obligation; the courts would contract with private parties to lease out convicts. Those who bid highest or took full advantage of this contractual opportunity tended to be industrial actors and officials of the government. See also 42 U.S.C.A. §1994. Within the language of the first section of the statute provides a legal definition: “the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise.” which most simply declares peonage as voluntary and involuntary servitude to pay off a debt. See also *Black's Law Dictionary*, 6th ed., s.v. “peonage.” Here, peonage is defined as a “condition of servitude (prohibited by 13th Amendment) compelling persons to perform labor in order to pay off a debt.”
system. One who owes a debt by way of contractual agreement can be subject to involuntary servitude because of what he owes. He reasons that some people did not owe a debt but would find themselves caught up in the peonage system. The social attitudes at the turn of the century were residual from the Civil War-Reconstruction Era.

Three patterns of peonage, according to Daniel, stretched across the South – the cotton belt, the turpentine areas and railroad construction camps. The cotton belt consisted of land stretching from the Carolinas to Texas and included the Mississippi Delta. The turpentine camps and naval stores were abundant in northern Florida, southern Georgia, Alabama and Mississippi. The railroad construction camps ran along three lines that intersected in Mississippi: the first extended from Mississippi to Florida, cutting through the turpentine belt; the second ran northward from the lower Mississippi River through Mississippi, Louisiana and Arkansas; and the intersecting line between the two, which accounts for the third line, ran from Mississippi through the cotton belt to South Carolina.165

The state and local laws were shaped by the attitudes and thus influenced the dynamic of the labor force procured by peonage. Carper’s statement identifies and proffers that the elements and tools that created and perpetuated peonage can be found in a plethora of contexts and influences that affected the United States during the period extending from the Civil War to post-Jim Crow. The justice system, legal system and law enforcement institutions operated as tools that perpetuated involuntary systems and

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164 Carper, 85.  
165 Daniel, 21-2.
conditions that were in keeping with the "badges and incidents" of slavery. His statement also highlights the struggle historians, and scholars to some extent, have had with developing an expansive definition - the variety of origins of peonage. Historians and scholars often look to the origins to establish a clear starting point and identify patterns and changes to create a trajectory of origin to a contemporary understanding of their topic.

The Peonage Cases (1903) was a response issued to a grand jury who had question regarding peonage and involuntary servitude. The questions asked were material to three peonage cases that were before the federal courts: United States v. Lewis, United States v. Lewis and United States v. Clyatt. The jury was curious as to what elements constitute peonage and what constitutes involuntary servitude. Judge Jones, who delivered the response, declares, "Peonage was not slavery, as it formerly existed in this country. The peon was not a slave. He was a freeman, with political as well as civil

166 Hodges v. United States, 203 U.S. 4, 19 (1905). Justice Brewer presents an example of the badges and vestiges of slavery in the following statement: "But that it was not the intent of the Amendment to denounce every act done to an individual which was wrong if done to a free man and yet justified in a condition of slavery, and to give authority to Congress to enforce such denunciation, consider the legislation in respect to the Chinese. In slave times in the slave States not infrequently every free Negro was required to carry with him a copy of a judicial decree or other evidence of his right to freedom or be subject to arrest. That was one of the incidents or badges of slavery." Carrying around freedom papers as a prescribed action is a vestige/badge/relic/incident of slavery, as Justice Brewer sees it. See also Ibid., 32-3. Justice Harlan states, "But I stood with the court in the declaration that the Thirteenth Amendment not only established and decreed universal civil and political freedom throughout this land, but abolished the incidents or badges of slavery, among which, as the court declared, was the disability, based merely on race discrimination, to hold property, to make contracts, to have a standing in court, and to be a witness against a white person." In this statement, he identifies rights that follow after the elimination of badges and vestiges of slavery. The rights that he mentions are those which were not permitted to slaves; thus, granting such rights to those who were once slave and became freedmen was to dismantle and eliminate some badges and vestiges of slavery.

167 W. Howe, 281.
rights. He entered into the relation from choice, for a definite period, as the result of mutual contract. The relation was not confined to any race.” 168

In this statement, Judge Jones begins to draw the distinctions between peonage and slavery. In slavery, members of the Negro race were enslaved, children that were born to an enslaved mother and the condition of enslavement was lifelong. Enslaved Africans had no political or civil rights. They could not sue in court, enter into contracts or testify before a judge.169 While there are some badges of slavery that seeped into the system of peonage, the two were not one and the same. It was necessary for him to do to clear misunderstandings and misconceptions. He continues to distinguish between the two, stating that the condition of peonage was not passed from parent to child and the service of the child could not be contracted away by his or her parent, with the exception or rare cases, and the terms of service was negotiable between the peon [laborer] and master [employer].170 Judge Jones explains the voluntary and original nature of peonage, which clearly distinguishes it from chattel slavery, his initial reference for comparison.

After this explanation, Judge Jones concludes that this system of voluntary servitude was perverted by those who administered the law.171 The legal rights of peons were not carefully guarded against the wills and desires of their employers. On the

168 *The Peonage Cases*, 123 F. 671, 673 (District M.D. Ala. 1903).
169 Trotter Jr., 64; White, Bay, and Martin, 59. The two aforementioned sources discuss colonial laws that subjugated blacks to the lowest rung of the social hierarchy, stripping them of political and civil rights as well as humanity. Some of the laws were enacted as early as 1661. Colonial Virginia enacted a law that made declared all blacks to be slaves and their condition of slavery was to be “durante vida,” for the duration of life, in simpler words, lifelong. See also Trotter, 77. He discusses the adoption of *Slave Codes* in Colonial America, which systematically deprived blacks of their civil and human rights and identified them as property.
170 *The Peonage Cases*, 673-74.
171 Ibid., 674.
contrary, Judge Jones finds that they were “unscrupulously disregarded.”\textsuperscript{172} Such administration was akin to another involuntary servitude system – vagrancy, discussed at length in the previous chapter. Judge Jones finds that it “resulted in citizens becoming bound, in constantly increasing numbers and length of service, to compulsory ‘service or labor’ to coerce payment of debt or compel the performance of real or pretended obligations of personal service.”\textsuperscript{173} In the losing battle, the peon found himself, or herself,\textsuperscript{174} performing involuntary servitude. Thus, the procedural mishandling of the peons’ rights perverted the system, from voluntary, into one of involuntary servitude.

Peonage was a peculiar system of labor. It was a system in which a person that was indebted to another would agree to work out the debt through a means of labor and coerced to remain in service until the debt was repaid. A person could enter debt through various means - an advance on transportation costs to work site, a debt incurred by one employer paying of the debt of a laborer to another employer, becoming part of the convict-leasing system, owing employers for providing basic human needs (clothing, shelter and food), etc. Once indebted, the term of service could be extended because the value of labor was often determined, or interpreted, by the employer. Not every person that entered into peonage endured lifelong servitude, some found relief through court remedy - rescission of the contract, release from contractual obligation, or release by nullification of the law that incriminates breach of contract.

\textsuperscript{172} Ibid. 
\textsuperscript{173} Ibid. 
\textsuperscript{174} Peonage was not a system of gender discrimination; both men and women worked on peonage farms. Women could perform services connected with domestic care, home economics and textile labor, or they could be subject to perform sexual services. A case discussed later in the paper is about a woman who runs a brothel and subjects her female laborers to compulsory sexual service.
In the following narrative, which, according to *Freedom on My Mind: A History of African Americans, With Documents*, first appeared in the *Independent* in 1904, there is a reflection on the state of peonage in the U.S. at the turn of the twentieth century. A black peon shares his account and experience of peonage. He begins his account with a bit of information about him. He was born in Elbert County, Georgia during the war, but reveals that he is unclear of his age. He immediately begins discussing his experience of peonage. When the time came to settle accounts and discuss account balances, he learned that none of his debt nor that of other peons, which had accumulated over the course of a few years, had been settled; rather the debts accumulated to $100 or more. He owed the Senator, his obligor, $165.

He maintains that this information was according to the bookkeeper, implicitly disagreeing with the records. He expresses a sentiment that was a badge of slavery - refuting a white man. The apprehension that comes from refuting a white man had consequences as it was a disruption to the social order during slavery. He and the others were told that they may be released if they sign their acknowledgements; his desire to be released from the Senator’s employ drove him to sign a document. The narrative reflects that he nor the other read it; instead, they signed it and went on their way, believing they were released. Shortly after they left, they were pursued and retrieved by a search party, which consisted of a constable and a number of men. They were confined in the Senator’s stockade and informed the next morning by the guards that papers they signed were not only an acknowledgement of their debt but also an agreement to continue their
employment under the Senator until the debts were liquidated.175 The account given above is representative of the fact that a majority of blacks were uneducated. The lack of education is often to blame for them signing contracts, for they just had confidence in the “master’s” words.

As he explains above, they were willing to do anything, and he does not express that they read. Moreover, he says that the following morning the meaning of the acknowledgement was explained to them, instead of being free, they had signed on for a longer period of servitude. He also explains that the debt amounts did not change, or appear to change, at least. The account expressed above is an example of the system-wide effect of peonage. At no point did the justice system see an unfair bargaining advantage in the master-peon relationship or deception, misrepresentation or fraud on the part of the master. It is clear that the peon had not been aware of what he signed. According to the account of the black peon, he was: (1) informed that he might be released from his contractual obligation, should he sign the document, which had been revealed afterward to be an acknowledgement of debt and an agreement to extend the term of contracted service; and (2) after signing and leaving that night, he was pursued, apprehended and imprisoned.

Apprehension and imprisonment of a peon is prohibited by the PAA. There is no clear misrepresentation for telling him that he might be released and then placed in servitude that would be deemed violative of the PAA. It is clear that he had signed (not necessarily agreed to) an unconscionable contract, which should have been deemed void by the court. In the final sentence of the above quote rests a striking statement. The peon

declares that he and the other peons were treated like convicts. He makes no distinction between the slavery and peonage when regarding the conditions. While he can identify the legal term *peon*, he finds the condition of being a peon and being a slave to be the same thing. He suggests that no matter which name the “hell on earth” he was experiencing had been all the same to him.\(^{176}\) Thus, the badges of slavery, expressed in his narrative, existed, although the Thirteenth Amendment and additional legislation were aimed at ending them. At the foundation lies the contradiction found such laws and a political figure, the Senator, who had violated them.

**Convict-Leasing, Legal Peonage**

Convict-leasing existed as a legal form of peonage. It was administered by a justice of the peace. It served two purposes: 1) to accrue funds that were so desperately needed by local and county governments and provide cheap, or virtually free, labor to planters and corporations; and 2) terrorization of blacks to comply with white supremacy.\(^{177}\) Those who opposed so-called bargains or contracts were exposed to mob threats and terrorism.\(^{178}\) It was the misfortune of blacks that they would experience the horrors of such a system.

Carper suggests that there was a causal relationship between the convict leasing system and peonage and that the convict leasing system, in effect, provided labor the system of peonage. He finds vagrancy to be the origin of the labor pool.\(^{179}\) Vagrancy, discussed in the previous chapter, was a crime of personal condition. One could be

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\(^{176}\) Ibid.
\(^{177}\) Blackmon, 68-9.
\(^{178}\) Ibid., 121.
\(^{179}\) Carper, 86.
arrested for idleness; if he could not furnish documentation as proof of gainful employment or provide a “good account,” he received a summary judgment and was imprisoned. Afterward, he would be leased out to the highest bidder. Following that, he would enter into peonage. If the service is extended beyond the term of the sentence, the condition of peonage is met.\textsuperscript{180} Since the process began with incrimination, he would be deprived of certain liberties normally reserved to free persons.

Carper interpreted from a statement made by the Assistant Attorney General of the United States, Charles W. Russell, in 1906, that a positive relationship existed in the convict-leasing system and peonage. According to Russell, once a person was tried and convicted, he would be “held in involuntary servitude by the man who has leased him.”\textsuperscript{181} The lessee would pay nothing for the leased person’s labor and the state would receive no money for the period in which the convict is “detained.”\textsuperscript{182}

“Everybody knows that the great bulk of convict is Negroes. Everybody knows the character of a Negro and knows that there is no punishment in the world that can take the place of the lash with him. He must be controlled that way.” This was the statement of a Sumter County, Alabama representative at the Alabama constitutional convention. The statement reveals so much – a resistant ideology to any type of equality with blacks, justification for abuse towards blacks and a desire to wield and maintain control over the population once subject to political, social, economic and spiritual inferiority, protected by laws.\textsuperscript{183}

\textsuperscript{180} Carper, 86.
\textsuperscript{182} Ibid.
\textsuperscript{183} Ibid., 122.
On September 10, 1901, John Davis, a black man, set off to go to see his wife, Nora, who was in declining health. The season demanded working the farm from dusk to dawn; it was impossible to take care of Nora and their two children, so he sent them off to her mother’s home to be cared for while he remained home to take care of their farm. Although he was home and toiled to bring in their cotton crops, he made the decision to see Nora as she continued to live in her ailing condition. He feared her death was impending, though he prayed it would not come, especially before he could see her. Davis traveled down the railway of the Center of Georgia rail line to a bend in the outskirts of Goodwater where he, and other blacks, knew the train would have to slow down; when it did, they aware of the possibility of jumping onto the empty cars and travel to various cities to include Goodwater, Alabama, Davis’s destination, and Birmingham.184

Davis departed the train in Goodwater and continue his journey, pedestrianly during the dusk hours of the day. As he reached some homes a short distance away from the Goodwater train station, an officer of the law, Robert N. Franklin, called to him asking if he had any money. Franklin was an appointed constable of the town as well as a local businessman who ran a dry goods store. His question was a method of determining whether one was a vagrant. Davis responded that he had no money then quickly adjusted his answer to reflect that he had money, but none to spare. Franklin inquired when he was going to pay the money he was owed. Davis rebutted that he owed Franklin nothing.

184 Ibid., 117-22.
Franklin walked off; however, Davis knew that it was not the last he would see of Franklin.\textsuperscript{185}

Davis arrived at the home of Nora’s parents. A few hours after being united with his family, Franklin appeared at the house. This time, Franklin came demanding the money, telling Davis to pay him or he will be arrested; Davis refused his ultimatum, maintaining that he owed him nothing. Franklin left and returned with another constable, Francis M. Pruitt, who came claiming he had a warrant for Davis, which was never served upon him.\textsuperscript{186} Hours later, Davis had been locked in calaboose with four other blacks, who had been detained within the past forty-eight hours. Jesse London, the justice of peace, swiftly administered the case. The warrant identified Pruitt rather than Franklin as the victim of wrongful appropriation and Davis plead guilty. How or why is unknown. Nonetheless, he was ordered to pay a fine and court costs; the amount went unrecorded. Unable to pay, Davis was brought to John Pace’s farm and forced into a contract with Pace – his entry into peonage.\textsuperscript{187}

Davis’s experience is an example of how one entered into legal peonage. The details of his cases were lost in memories as records of such proceedings were scant. Those accounts iterated in later indictments captured inconsistent details.\textsuperscript{188} It was under the name of crime and punishment that he entered a system of involuntary servitude, clout with conditions akin to, and sometimes, worse than slavery.

\textsuperscript{185} Ibid., 123-26.  
\textsuperscript{186} Ibid., 126.  
\textsuperscript{187} Ibid., 126-33.  
\textsuperscript{188} Ibid.
Conditions of Peonage

The conditions presented in the scenarios above are not fabricated illusions, but real conditions that laborers endured. The peon served until his time was complete (the expiration of term sometimes being his or her own expiration of life). The peon in the narrative provided in the section of this thesis titled, “American Peonage, An Overview” explained the conditions on the peonage farm. Some of the descriptions included filthy sleeping quarters, deaths of peons, at least two (he recalled) to have been killed by the guards for committing minor offenses, severe and brutal whippings, workdays were from dusk to dawn regardless of weather conditions and timed and rationed meals.\(^{189}\) The conditions of the peon farm where he labored possessed the badges of slavery. What does not appear in his account in any remedy or litigation of his case and situation; instead, he served his whole time there. The accounts of the medical examiners and prison inspectors, discussed by Douglas, reiterate these conditions. The connection between the conditions of peonage and convict-leasing imply that were shared rather than distinct and very much reminiscent of slavery.

The State’s Role in Peonage

Such accounts were not uncommon. A major source that permitted, and in some cases, allowed for maintenance of the system of peonage was the black codes' sections of various state laws. It was one of several tools used to create and perpetuate forms of involuntary servitude. The legislative actions of the Black Codes were retaliation against the victors of the Civil War to legalize a form of slavery and oppression amongst blacks,

\(^{189}\) "A Negro Peon,” 476-77. The reports of prison inspectors reflect similar conditions in the prison mines to which convict laborers were leased. See footnotes 72 and 75 for more details.
thus exercising their police powers. It would not be until 1901, that such police powers
would begin to be eclipsed and preempted by federal powers, modestly.

As Pamela Brandwein has noted, “Some referred simultaneously to the end of
slavery and the continuation of it, despite its formal prohibition.” Brandwein captures
the perception of some that the powers of the Thirteenth Amendment would be limited; it
was construed to not have done enough to combat all forms of slavery or involuntary
servitude. The statement also addresses that some forms and systems of involuntary
servitude - vagrancy, peonage and convict-leasing - persisted and states passed a set of
laws that aided, if not supported these systems.

Alluding generally to the Black Codes, Senator Henry Wilson of Massachusetts
stated, "In several of these States new laws are being framed containing provisions
wholly inconsistent with the freedom of the freedmen." Senator Wilson had identified
the purpose and target of the Black Codes, which was to distinguish the black population
that was in its jurisdiction and curtail their constitutional rights. The stringent set of laws
was designed to restrict those freedoms granted by the Thirteenth and Fourteenth
Amendments. Although the Thirteenth Amendment legally prohibited slavery and
involuntary servitude, the Black Codes provided the South with legalized involuntary
servitude by criminalizing breach of contract, restricting a laborer’s right to choose
amongst competing employers and failure to pay a debt.

Peonage and contract-based disputes that ended up in court had criminal penalties,
although they are civil in nature. According to Judge Jones (1903), “On these lines


legislation cannot move at all, when the act complained of is not a crime, but the mere breach of the obligations of a contract... in all free governments the good sense of mankind, since the days when imprisonment for debt was abolished, has condemned and frowned down any attempt to coerce the performance of civil obligations by criminal penalties."\textsuperscript{192} Such reasoning led the Court to declare invalid the Alabama statute that made breach of contract a crime. The construction of the Thirteenth Amendment did not wholly confront predisposition of unconscionable laws against blacks, thus allowing for the legislation of the Black Codes.

As noted already, the Black Codes functioned as a legal apparatus for continuing the condition of involuntary servitude for blacks. The ideology of the Supreme Court justices also played a significant role in ensuring this. Thomas Davis asserts that considerations of social and racial inequality and subjugation influenced the justices to declare the Civil Rights Acts of 1875 unconstitutional. The consensus of the decision, 8-1, reflects the ideology regarding the protection of citizens irrespective to race and class. The majority opinion reflects that such an enactment (the Civil Rights Act of 1875) is not within congressional expression power of the Thirteenth and Fourteenth Amendments.\textsuperscript{193} Thus, the Thirteenth Amendment began to lose effectiveness. A striking feature of the decision is the Court’s interpretation of the Thirteenth Amendment, which limited the Amendment’s ability to reach private actors. If it could not be applied to social

\textsuperscript{192} The Peonage Cases, 690-91.
\textsuperscript{193} Thomas J. Davis, Race Relations in America: A Reference Guide with Primary Documents, (Westport: Greenwood Press, 2006), 109. See also Brandwein, 326. Brandwein discusses how the slave society operated – meaning that blacks were to be denied personal and civil rights; much of that was reflected in the conservative political ideology. She further argues that the Moderate Republicans in the 39th Congress had even found that such social views and behaviors conflicted with republican government.
situations,\textsuperscript{194} it also could not affect economic situations as well, which was what initially occurred with peonage.

The justice who delivered the majority opinion, Justice Joseph P. Bradley, stated that Congress could not declared such an enactment through authorization of the Thirteenth and Fourteenth Amendments to stipulate what may be called “social rights of men and races.”\textsuperscript{195} He further went on to exclaim that social discrimination was not aligned and did not signify any type of “slavery or servitude,” and to allow it to apply “every act of discrimination” to slavery arguments would make it redundant.\textsuperscript{196} Nonetheless, the attitudes and policies of private whites were based on badges and incidents of slavery. Furthermore, scholars of the Thirteenth Amendment argue that the amendment applies to both private and state actors.\textsuperscript{197} However, in the historical perspective, the consensus shaped the jurisprudence based on the surrounding political, social and economic environments – each expressing racial discrimination to some degree. Thus, the argument of the Thirteenth Amendment reaching private actors was not one considered by the majority opinion.

The influences and implications of this judicial opinion can be found in the legal systems of involuntary servitude, which appeared in a variety of ways, to include

\textsuperscript{194} Social situations refer to how blacks treated whites and how whites treated blacks. Blacks could be mistreated by whites and social situations and still needed to maintain a level of respect towards whites, or else they could risk injury or death. Congress even recognized a need to pass the Ku Klux Klan (KKK) Act of 1871 because it was aware of the KKK acting to demean, demoralize and kill black people.

\textsuperscript{195} Davis, \textit{Race Relations in America}, 109.

\textsuperscript{196} Ibid. It should be noted that social discrimination of this sort, racial social discrimination, was a badge and relic of slavery. Since Bacon’s Rebellion and the passing of the law that provided slavery a racial foundation, which targeted Africans and those of African descent only, it was embedded into social interactions between whites and blacks.

peonage. Its suggestion that social discrimination did not violate the Thirteenth and Fourteenth Amendments enabled Southern local and state legislatures to design legal mechanisms that used the suggestion as a foundation for the discrimination to follow – vagrancy, peonage, convict-leasing, criminal-surety, etc. Officers of the law worked cooperatively with private white citizens to ensure that blacks wound up in a condition of compulsory service.

Carper, among other historians and scholars, have found the Black Codes of southern states hosted a set of laws that were purposed on controlling the black population.\(^{198}\) Considering the historical context – racism, badges and incidents of slavery, superior attitudes of Southern whites, desire to keep the social and economic systems that they have developed in place, refusal to be told to do otherwise by the federal government – bring about an understanding of how to identify exactly who the legislatures intended to target. Embedded within the black codes of various Southern states was a set of laws that made breach of contract and fraud, or intent to, a criminal act.\(^{199}\)

Southern state legislatures passed statutes that were designed to keep the undesired population in a system similar to that of chattel slavery, to reinforce their socioeconomic hierarchy and to keep in place their traditions of superiority and respected (warranted or unwarranted).\(^{200}\) They reasoned that laws that called for compulsory action sanctioned by the courts to have the person who breached the contract detained and made criminal and replaces remedy for civil liability creates and satisfies, or at a minimum,

\(^{198}\) Other historians and scholars include Joe William Trotter Jr., Deborah Gray White, Mia Bay, Waldo E. Martin Jr., Douglas Blackmon, Pete Daniel, and Glen Rutherglen.


\(^{200}\) Trotter, 297.
sanctions a condition of peonage and held that it was invalid.\textsuperscript{201} Thus, the courts had interpreted the congressional power used to protect civil rights as having prohibited such actions.

Douglas is also sure to bring attention to the links between government and private interests. Government officials influence policy, and leveraged state policy and resources to their private interests. Alabama governor Robert M. Patton leased out convicts to a cover company – legitimate on paper, but functions as a concealer – which had called itself Smith and McMillan; the lease was controlled in part by a company that Patton would become president of three years later, the Alabama and Chattanooga Railroad. Former Confederate officials also engaged in the leasing. Politics leaned more in the interests of commerce than protecting individual rights.\textsuperscript{202}

\textit{Alabama, a Domicile for Peonage}

Like other Southern states, Alabama found itself before the Supreme Court of the United States quite a few times in the first half of the twentieth century. Twice, Alabama found itself before the federal court in 1903 for the \textit{Peonage Cases}. Alabama also went before the Court with respect to its handling of Bailey’s cases, once in 1908 and again in 1911. Again, Alabama found itself before the Court in \textit{United States v. Reynolds} in 1914. Alabama seemed to frequent the Supreme Court during the Progressive Era, primarily because it enacted statutes that the Court found unconstitutional and in violation of the Reconstruction Amendments.

\textsuperscript{202} Blackmon, 53-4.
The courts in Alabama initially acted against statutes that regulated contractual relations. In 1887, the Alabama Supreme Court heard two cases appealed from Pike County on the same day, July 11. The first case, *Smith v. State* (1887), concerned a man who was charged with violating a social law. Green Smith was tried and convicted for using "abusive, insulting and obscene language" in the presence of females. M.C. Enfinger moved to be his surety for the fine of $10 and court costs. Smith signed a contract, which included in its provisions that he would have to work off the fine, court costs and advances made to him before he could satisfy his debt and be released from labor.  

The court ruled fines and costs are not included in the Alabama constitutional definition of debt regarding the "imprisonment for debt" clause; therefore, the court could have imprisoned Smith. However, the debt had been satisfied before the debtor moved from the custody of the prosecutor to the custody of the contracting master; the remaining debt – advance – cannot be coerced upon the debtor. The court noted that holding a convict until he has liquidated his debt is "imprisonment for debt" within the constitutional meaning and illegal; thus, the holding Smith for the debt he owed for advances constituted involuntary servitude. The court reversed the decision and remanded it to the lower court.  

*Wynn v. State* (1887) was the second case the court heard. Monroe Wynn, a minor was convicted on a charge of petit larceny. M. D. Floyd moved to be his surety to pay off the fines and court costs that ensued. Wynn entered into a contract to work for Floyd until

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203 *Smith v. State*, 82 Ala. 40, 41.
204 The clause expressed a violation of the law if one was imprisoned for a debt.
205 Ibid.
he liquidated the debt. Wynn began his labor but not as efficiently as Floyd wanted. After repeated attempts to have him do so, Floyd sought and attained a warrant for Wynn. The court refused to observe that Wynn was a minor and had a right to not uphold the contract. The court cited Smith, which it had ruled on earlier in the day, and maintained that a person could not be held in service to liquidate debt for advances as doing so would constitute involuntary servitude. The court also noted that the state law under which the case was brought recognized leaving or escaping for service as a misdemeanor but make no provision for inefficient service. The court reversed the decision, but did not remand the case, and released Wynn.\footnote{\textit{Wynn v. State}, 82 Ala. 55.}

Such judicial victories on behalf of debtors were short-lived. The social attitudes of white-influenced government control over the black population in Alabama, as it arguably had done in other Southern states. Whites viewed blacks as useful, indispensable workers that lacked accountability and were irresponsible; they also viewed blacks as creatures prone to criminal activity, if not employed. They acted in a manner that discredited the honesty and integrity of a black person’s testimony or accounts of incidents, whether actively or passively.\footnote{Carl V. Harris, “Reforms in Government Control of Negroes in Birmingham, Alabama, 1890-1920,” \textit{The Journal of Southern History} 38, no. 4 (1972): 568.} Such attitudes and beliefs persisted from the antebellum period through Reconstruction into the Progressive Era.

Reforms that came before the government in Birmingham contained four issues in controversy regarding the “Negro Problem,” as Carl V. Harris puts it: 1) regulation of black saloons; 2) vagrancy law enforcement; 3) government use of the convict-labor
system; and 4) the county fee system. Blacks had become a commodity to be fought over by special interest groups, like an object fought over by children for possession, each contending for their interest in what should be done with the object. The lawmakers are like the parents or mediators, managing the allocation of the object to whoever comes up with the most convincing argument or reason.

The growing industrial sector in Birmingham attracted black and white laborers seeking employment. The large corporations depended on black laborers to perform menial tasks – coal and ore mining and railroad construction among other jobs. The economic structure included blacks at the base; socioeconomically, they were the wrung of society. Corporate and middle-class white interests aligned with strict enforcement of vagrancy laws. Though labor union organized movements to combat strict enforcement of vagrancy laws for fear of the impact on all laborers, their attempts were unsuccessful.

World War I interrupted vagrancy law enforcement, which had become relaxed due the war. Vagrancy enforcement resurged toward the end of 1920. Vagrancy operated as a mode for the disadvantaged to enter into convict-leasing. Convict-leasing programs were supported by both the city and corporate interests. It covered the expenses accrued for prison maintenance and care for the convicts. It also cost corporations less to lease convicts than to hire free laborers.

Since the fees were used to pay civil servants of the justice system and law enforcement officials as well as witnesses came from the revenue brought in from

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208 Ibid., 569.
209 Ibid., 570.
210 Ibid.
211 Ibid., 579-80.
convict-leasing, it had been supported. However, support shifted in 1913 as convict-leasing revenue could no longer cover funds used to pay civil servants, law enforcement officials and witnesses. Corporate interests moved from supporting the fee system to developing and supporting an anti-fee system in Jefferson County, claiming that law officials harassed black workers, which produced an adverse effect on the available black laborer population.\(^{212}\)

Those with corporate interests were concerned with the availability of cheap labor. Those in the social environment were concerned with government control over blacks. Amidst the clash, blacks became entangled in systems of involuntary servitude to protect the interests – social, economic and commercial – of the dominant white class.

**Federal Cases Dealing with Peonage**

The first case, *United States v. Clyatt* (1905) brought to the Supreme Court regarding peonage had failed to produce a conviction; nonetheless, it was successful in testing the constitutionality of the PAA.\(^{213}\) The PAA proved valid and cases began to appear before the Court. The background of the peonage landmark case, *Bailey v. Alabama* (1911) is a storied one. Alonzo Bailey had brought suit before the Court once in 1908. He had been denied habeas corpus after being convicted of violating an Alabama statute that declared breach of a labor contract without having repaying the money as an intent to defraud the employer and denied the defendant the opportunity to present their testimony. The burden of proof had not lain on the prosecuting party since the act of breach of contract without repaying the money served as *prima facie* evidence, which

\(^{212}\) Ibid., 582-599.  
\(^{213}\) See generally *Clyatt*. 
made conviction easier. The law effectively circumvented due process by precluding a defendant’s right to testify and defend himself.\textsuperscript{214}

In the first case, \textit{Bailey v. Alabama} (1908), the Court affirmed the judgment of the Alabama Supreme Court. The Court heard \textit{Bailey} as a writ of error case, but determined that Bailey’s treatment was not an error of the court. It reasoned that the court could act within its own volition to determine how it would precede to handle a case—denying the writ of habeas corpus motioned on behalf of Bailey. The claim against the Alabama law that had made criminal the contract breach—intent to defraud—lack sufficient evidence for the Court to test the law.\textsuperscript{215} Therefore, Alabama was victorious this round; however, Bailey and his support system refused to give up.

Bailey returned again in 1911 to the Supreme Court with his contender, Alabama. The law that made intent to defraud prima facie evident or criminal intent was yet again before the Court. The Court recognized that Bailey’s previous case was prematurely brought before it, and intended to hear the case and review the constitutionality of the Alabama statute that placed Bailey in jail.\textsuperscript{216} Justice Hughes, who had delivered the opinion, traced the intent of the law prior to and after amendment, noting that conviction was difficult before amendment because intent to defraud needed to be proven. The lack of direct evidence to make a judgment made indictment and conviction near impossible, as a breach of contract did not constitute an intent to injure or defraud.\textsuperscript{217}

\textsuperscript{214} Daniel, 67.
\textsuperscript{216} \textit{Bailey v. Alabama}, 219 U.S. 219, 229 (1911). Justice Hughes recites the language regarding crime in the Alabama statute: “And the refusal of any person who enters into such a contract to perform such an act or service, or refund such money, or pay for such property without just cause, shall be prima facie evidence of the intent to injure his employer, or to defraud him.”
\textsuperscript{217} \textit{Bailey}, 232.
After the amendments to the Alabama statute, the refusal or failure to pay back money or perform service that one was contracted for constituted prima facie evidence for intent to injure or defraud. The Court found that this was not invalid if the violator was permitted the opportunity to testify on his or her own behalf. However, the Alabama statute denied Bailey testimony. Such a statute was repugnant to the Thirteenth Amendment and the PAA; the PAA also nullified laws that sought to submit a person to peonage, which is what the Alabama statute effectively did. Essentially, a state could not utilize its police power to create laws that are intent upon providing a nexus to slavery and involuntary servitude. Therefore, the Court nullified the Alabama statute. Justice Holmes, who had delivered the opinion on Bailey’s first case in 1908, held the position that the punishment exception clause permits states to enact statutes that criminalize acquisition of money under false pretenses, thus, subjecting the convict to slavery and involuntary servitude.

J.A. Reynolds along with B. W. Broughton appeared before a U.S. district court, indicted for violation of the PAA. Reynolds and Brought were indicted for having held a convict laborer, Ed Rivers (convicted for petit larceny), in a condition of peonage. Reynolds stood as surety for Rivers in court and paid his court costs and fees, assigned to Rivers by the court in accordance with his conviction. Rivers entered a written contract with Reynolds to perform labor for nine months and twenty-four days. He worked for one month and two days, then refused to continue to perform labor. Reynolds petitioned the

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218 Bailey, 236-39.
219 Bailey, 236.
220 Bailey, 240-45. Justice Holmes notes that slavery meant more than chattel slavery, as the language was adopted from the Northwest Ordinance of 1787, which guarantees the civil freedoms of all persons. Furthermore, he states that involuntary servitude’s definition is broader than that of slavery.
221 Bailey, 245-50.
county court for a warrant and one was issued for Rivers. Rivers was again before the county court. This time, Broughton offered to be his surety and Rivers entered into a contract with him for fourteen and one-half months. As with Rivers, Broughton stood as surety for E. W. Fields, who had been convicted for selling a mortgaged property. Fields entered into a written labor contract with for a term of nine months and twenty-nine days. He refused to labor after two months under this contract after allegedly enduring threats of arrest and imprisonment. Broughton did as Reynolds had done and secured a warrant for Fields, whereupon Fields was arrested. They were brought up on indictment charges; however, the court found Reynolds and Broughton not guilty.\(^{222}\)

The Supreme Court reviewed this case as it had reviewed Bailey, ruling that states cannot make laws to circumvent constitutional provisions and federal enactment; moreover, states cannot pass laws that are repugnant to the Thirteenth Amendment and the PAA, which was enacted to enforced the Thirteenth Amendment against peonage as a form of involuntary servitude.\(^{223}\) Justice Day, who delivered the opinion, identified the criminal-surety system in the actions of Reynolds, Broughton and the county court, sanctioned by Alabama law and found it unconstitutional under Thirteenth Amendment and the PAA. Justice Holmes, who had dissented in Bailey (1911), reluctantly agreed that the criminal-surety system was unconstitutional.

A woman named Aurelia P. Bernal encountered another woman, Rosenda Nava. Nava, a Mexican alien, had been employed as a domestic servant earning four dollars per week in Laredo, Texas. Bernal, marketing herself as a small hotel proprietor in San Antonio, Texas to Nava, offered employment as a chambermaid with a wage of six

\(^{223}\) Reynolds, 235 U.S. 133, 143-49.
dollars per week, an increase of two dollars per week. She told her that if she had not liked the work and wanted to leave, she would pay her fare back to Laredo. Nava accepted the proposition and began employment.224

Bernal brought Nava to a brothel to perform acts of prostitution. Nava refused to perform acts of prostitution. Bernal refused to release her until she paid back the fare from Laredo to San Antonio. She threatened that she would contact immigration and have Nava taken into custody, whereupon she would serve five years in prison. Nava was able to contact one of her cousins while out on errands. Her cousin sent a friend with a police officer to Bernal’s brothel to seek out Nava. The friend and police requested Nava’s presence and Bernal replied that no one by that name was there; however, Nava made herself known and was taken from the brothel by the police officer and brought back to her family.225

While working for Bernal, Nava and another woman named Sofia Vivar performed all of the domestic work. Nava was not given much to eat nor was she compensated for the work she performed. In all, three women were in service to Bernal, but Nava appeared to have been the only one coerced into service.226 A case was brought Bernal for holding Nava in peonage. Bernal was convicted for having held Nava in a state of peonage.227 In response, Bernal brought suit against the U.S. government, Bernal v. United States (1917), claiming the court erred in its judgment. The court reviewed 11 assignments of error cited by Bernal, all of which were denied by the court. The court affirmed the judgment of Bernal’s conviction.

225 Ibid.
226 Ibid.
227 Ibid., 339.
The federal courts had been presented with opportunities. In some instances, it restricted its ability due to lack of evidence or technicality. Nevertheless, there were some victories for victims of peonage. The courts had proven that justice could be served for victims of peonage. How long it would hear peonage cases was a different matter entirely.

**Peonage After 1920**

States actively sought to undermine the federal government’s enforcement of the law. Throughout the 1910s and even in the 1920s, the Court had taken an active role in striking down laws and convicting violators that contributed to the plague of peonage. However, as implied by Daniel, the fire that burned so bright during the 1910s and the 1920s had been dampened, and over time, it had extinguished. Resources had to be allocated elsewhere and the hope of eradicating peonage entirely had been oversight.\(^{228}\) Peonage had to be rooted from the tucked away pockets of the Deep South. That was an impossible task.

**Conclusion**

The inquiry that this thesis has investigated – Was it possible that states may manipulate through legislative enactments to punish via crime a target population and submit them to slavery and involuntary servitude? – has argued that it was indeed possible. It is implied in the sources reviewed that states in the South accomplished this feat. Peonage ran rampant across the South in three areas: the cotton belt, the turpentine

\(^{228}\) Daniel, 147-48, 190-91.
area and railroad construction lines. Laborers became peons through the means of contracts enforced by labor-contract statutes. Laborers also became peons through convict-leasing. They were often brought up on vagrancy or minor criminal infractions and leased to corporations. Vagrancy, protected fiercely by the states, often created legal entry way into peonage, convict-leasing and criminal-surety. Criminal statues were enacted as part a broader scheme in the South to uphold and maintain white supremacy. Social laws were enacted to uphold the sanctity of white women while devaluing black women into sexual deviants that lacked legal protection as well as other laws that prescribed racial etiquette, leveraged against blacks and supported white supremacy. They were also enacted to ensnare immigrants within the systems of forced labor, though the focus was primarily on blacks.

Was there any motivation for it? Racial oppression and socioeconomic hierarchy protection and reinforcement as well as economic hardship motivated the persistence of involuntary servitude in various forms. Government officials who had not believe blacks to be their equals were adamant about maintaining the pre-Civil War social hierarchy; moreover, blacks were perceived as revolting, criminally inclined, evil creatures that needed white supervision. Justification for abuses stemmed from recollections of slavery – its social acceptance and legal enforcement. Involuntary servitude was another means by which they could relive slavery and retain their superiority. Cheap labor often led planters and industrialist to seek out convicts for lease. They were also inclined to seek out immigrants for the same purpose. Moreover, the convict-leasing and peonage provided labor and funds to private actors and governments, respectively.
States enacted laws that criminalized black life, threatened whites that went against it and trapped immigrants as they were a source of cheap labor. Blacks happened to be the primary targets. Whether expressed or implied, this inquiry has revealed that a possibility to exploit the punishment exception clause to punish a target population exists. Stronger is the support that states had manipulated the punishment exception clause. Clyatt, Bailey, Reynolds and Papachristou are examples of cases that discovered state sponsorship and permission of involuntary servitude in its various forms. The accounts discussed in this thesis represent a small number of cases, though most were unrecorded or received and never examined. Nonetheless, involuntary servitude existed, largely through criminal sanction, at great benefit to the governments and industrial-commercial interests of the South.
Bibliography

Primary Sources

42 U.S.C.A. §1994

64 Laws of Mississippi §69, art. 344-47.


Civil Rights Cases, 109 U.S. 3 (1883).

Clyatt v. United States, 197 U.S. 207 (1905).


--- 2nd Sess. 1864.

---, 39th Cong., 2nd Sess. 1867.

Davis v. United States 12 F.2d 253 (5th Cir. 1926).


December 22, 2015).


Miss. Code Ann. § 97-35-29

Miss. Code Ann. § 97-35-37


The Peonage Cases, 123 F. 671 (District M.D. Ala. 1903).

Plessy v. Ferguson, 163 U.S. 537 (1896).


Slaughterhouse Cases, 83 U.S. 36 (1873).

Smith v. State, 82 Ala. 40.

Wynn v. State, 82 Ala. 55.


Secondary Sources


Goluboff, Risa L. "Dispatch from the Supreme Court Archives: Vagrancy, Abortion, and What the Links Between Them Reveal About the History of Fundamental Rights."


Lacey, Forrest W. "Vagrancy and Other Crimes of Personal Condition." Harvard Law


------. “Congressional Authority to Interpret the Thirteenth Amendment to Professor Tsesis.” *Maryland Law Review* 71, no. 40 (2011): 60-82.


**Additional Sources**

Appendix I

From Congressional Globe, 38th Cong., 1st Sess., 1489-1490.

The amendment proposed by Senator Saulsbury is as follows:

Sec. 1. All persons shall have the right peaceably to assemble and worship God according to the dictates of their own conscience.

Sec. 2. The use of the public press shall not be obstructed; but criminal publications made in one State against the lawful institutions of another State shall not be allowed.

Sec. 3. The right of citizens to free and lawful speech in public assemblies shall not be denied. Access of citizens to the ballot box shall not be obstructed either by civil or military power. The military shall always be subordinate to the existing judicial authority over citizens. The privilege of the writ of habeas corpus shall never be suspended in the presence of the judicial authority.

Sec. 4. The militia of a State or of the United States shall not be employed to invade the lawful rights of the people of any of the several States; but the United States shall not be hereby deprived of the right and power to defend and protect its property and rights within the limits of any of the States.

Sec. 5. Persons held to service or labor for life, in any State under the laws thereof, may be taken into any Territory of the United States south of north latitude 36° 30', and the right to such service or labor shall not be impaired thereby, and the territorial Legislature thereof shall have the exclusive right to make and shall make all needful rules and regulations for the protection of such right and also for the protection of such persons; but Congress or any territorial Legislature shall not have power to impair or abolish such right of service in the said Territory while in a territorial condition without the consent of all the States, south of said latitude, which maintain such service.

Sec. 6. Involuntary servitude, except for crime, shall not be permanently established within the District set apart from the Seat of government of the United States; but the right of sojourn in such District with persons held to service or labor for life, shall not be denied.

Sec. 7. When any territory of the United States south of north latitude 36° 30' shall have a population equal to the ratio of representation for one member of Congress, and the people thereof shall have formed a constitution for a republican form of government, it shall be admitted as a State into the Union, on an equal footing with the other States; and the people may, in such constitution, either prohibit or sustain the right to involuntary labor or service, and alter or amend the constitution at their will.
Sec. 8. The present right of representation in section two, article one, of this Constitution, shall not be altered without the consent of all the States maintaining the right to involuntary service or labor south of latitude 36° 30', but nothing in this Constitution or its amendments shall be construed to deprive any State south of said latitude 36° 30' of the right of abolishing involuntary servitude at its will.

Sec. 9. The regulation and control of the right to labor or service in any of the States south of latitude 36° 30' is hereby recognized to be exclusively the right of each State within its own limits; and this Constitution shall not be altered or amended to impair this right of each State without its consent; Provided, This article shall not be construed to absolve the United States from rendering assistance to suppress insurrections or domestic violence, when called upon by any State, as provided in section four, article four, of this Constitution.

Sec. 10. No State shall pass any law in any way interfering with or obstructing the recovery of fugitives from justice, or from labor or service, or any law of Congress made under article four, section two, of this Constitution; and all laws in violation of this Section may, on complaint made by any person or State, be declared void by the Supreme Court of the United States.

Sec. 11. As a right of comity between the several States south of latitude 36° 30' the right of transit with persons held to involuntary labor or service from one State to another shall not be obstructed, but such persons shall not be brought into the States north of said latitude.

Sec. 12. The traffic in slaves with Africa is hereby forever prohibited on pain of death and the forfeiture of all the rights and property of persons engaged therein; and the descendants of Africans shall not be citizens.

Sec. 13. Alleged fugitives from labor or service, on request, shall have a trial by jury before being returned.

Sec. 14. All alleged fugitives charged with crime committed in violation of the law of a State shall have the right of trial by jury, and if such person claims to be a citizen of another State, shall have a right of appeal or of a writ of error to the Supreme Court of the United States.

Sec. 15. All acts of any inhabitant of the United States tending to incite persons held to service or labor to insurrection or acts of domestic violence, or to abscond are hereby prohibited and declared to be a penal offense; and all the courts of the United States shall be open to suppress and punish such offenses at the suit of any citizen of the United States or the suit of any State.

Sec. 16. All conspiracies in any State to interfere with lawful rights in any other State, or against the United States, shall be suppressed; and no State, or the people
thereof, shall withdraw from this Union without the consent of three-fourths of all the States, expressed by an amendment proposed and ratified in the manner provided in article five of the Constitution.

Sec. 17. Whenever any State wherein involuntary servitude is recognized or allowed shall propose to abolish such Servitude, and shall apply for pecuniary assistance therein, the Congress may in its discretion grant such relief not exceeding one hundred dollars for each person liberated. But Congress shall not propose such abolishment or relief to any State.

Congress may assist free persons of African descent to emigrate and colonize Africa.

Sec. 18. Duties on imports may be imposed for revenue; but shall not be excessive or prohibitory in amount.

Sec. 19. When all of the several States shall have abolished slavery, then and thereafter slavery or involuntary servitude, except as a punishment for crime, shall never be established or tolerated in any of the States or Territories of the United States, and they shall be forever free.

Sec. 20. The provisions of this article relating to involuntary labor or servitude shall not be altered without the consent of all the States maintaining such servitude.
Appendix II

The table provided the dates of ratification by the states up until the date of constitutional adoption, December 6, 1865.  

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U.S., Congress, Senate, *The Constitution of the United States of America: Analysis and Interpretation, Centennial Edition*, “Amendments to the Constitution of the United States of America,” report prepared by the Congressional Research Service (Washington, DC: 2013), 30. Oregon, California, Florida, Iowa, New Jersey, Texas, Delaware, Kentucky and Mississippi ratified the amendment after the three-fourths ratification threshold was met. Mississippi was the last state to ratify. Although, its legislature ratified the amendment in 1995, the notification was not received by the archivist until 2012, which officially marks the state’s ratification.
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Appendix III

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BUREAU R. F. & A. L.,
10th DISTRICT, LEX., SUB DISTRICT, KENTUCKY.

CONTRACT.

Know All Men by These Presents, That

Abraham Bledsoe

of the County of Mason, State of Kentucky, am held and firmly bound to THE UNITED STATES OF AMERICA, in the sum of FIVE HUNDRED DOLLARS, for the payment of which

bind

Heirs, Executors, and Administrators, firmly by these presents, in this contract:— That I am to furnish the person whose name is subjoined (freed laborer) quarters, fuel, substantial and healthy rations, all necessary medical supplies in case of sickness, and the amount set opposite his name, per month; one half to be paid at the expiration of every three months, for the services rendered for each three months preceding, the balance at the expiration of the year, Abigail Bledsoe agrees to work faithfully for the said Abraham Bledsoe obeying all his instructions in good faith, and in case he leaves his service before the expiration of this contract (provided not driven off or maltreated.) He is to forfeit all wages due at the time of leaving.

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Said Abigail further agrees to increase Harry's wages to one hundred dollars per year if he works well and faithfully.

This contract is to commence January 1st 1866 and close with the year.

Given in triplicate, at Maysville, this 16th day of June 1866.

Abigail Bledsoe

Witness:

J. D. B. Bledsoe

Registered at Maysville, Ky., this 16th day of June 1866.