Involuntary Servitude: Modern Conditions Addressed in United States v. Mussry

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NOTES

IN VOLUNTARY SERVITUDE: MODERN CONDITIONS ADDRESSED IN UNITED STATES V. MUSSRY

To abolish all conditions of involuntary servitude that resembled African slavery,¹ the nation adopted the thirteenth amendment to the Constitution in 1865.² Although the amendment was self-executing,³ Congress was empowered to enact laws to enforce the prohibition.⁴ A number of criminal statutes were passed subsequently, each addressing a particular condition or aspect of involuntary servitude.⁵ In 1948, Congress enacted a more broadly worded law, 18 U.S.C. § 1584, which forbade holding any person in involuntary servitude.⁶

1. See infra note 6.
2. Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.

U.S. CONST. amend. XIII.

For a discussion of the history and scope of the thirteenth amendment, see Buchanan, The Quest for Freedom: Legal History of the Thirteenth Amendment, 12 Hous. L. REV. 1 (1974) (This lengthy work is composed of eight chapters published in successive issues of the Law Review. Succeeding chapters begin in 12 Hous. L. Rev. at 331, 357, 593, 610, 844, 1070 and in 13 Hous. L. Rev. at 64.); see also Hamilton, The Legislative and Judicial History of the Thirteenth Amendment, 9 NAT'L B.J. 26 (1951); Note, The "New" Thirteenth Amendment: A Preliminary Analysis, 82 HARV. L. REV. 1294 (1969) (analyzing the "expansive" approach to thirteenth amendment application taken by the Supreme Court in Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968)). For an interesting analysis of the congressional debates surrounding the amendment's enactment, see tenBroek, Thirteenth Amendment to the Constitution of the United States: Consummation to Abolition and Key to the Fourteenth Amendment, 39 CALIF. L. REV. 171 (1951). A provocative application of the thirteenth amendment to the practice of diverting arrestees from the criminal justice system in exchange for work as police informants can be found in Misner & Clough, Arrestees as Informants: A Thirteenth Amendment Analysis, 29 STAN. L. REV. 713 (1977).

3. The Civil Rights Cases, 109 U.S. 3, 20 (1883); see also Shapiro, Involuntary Servitude: The Need for a More Flexible Approach, 19 RUTGERS L. REV. 65, 70 (1964) ("self-executing" means that the amendment may be enforced without enabling legislation).
5. See generally The Civil Rights Cases, 109 U.S. at 20; Hamilton, supra note 2, at 59-66.
6. "Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than $5,000 or imprisoned not more than five

In this Note, involuntary servitude is used as a term of art referring to a condition of service that the term does not describe literally. For example, it includes some forms of service that are contracted voluntarily by the servitor, see, e.g., Pollock v. Williams, 322 U.S. 4, 14 (1944), and it encompasses some situations where the person held in involuntary servitude makes difficult, but rational, decisions to remain in service. See, e.g., United States v. Bibbs, 564 F.2d 1165, 1168 (5th Cir. 1977), cert. denied, 435 U.S. 1007 (1978). The condition addressed, therefore, does not preclude the possibility that the servitor can and does exercise willful choice.

Supreme Court decisions provide some guidance regarding the nature of the condition to which the term does apply. Conditions beyond chattel slavery are included in its purview, e.g., The Slaughterhouse Cases, 83 U.S. (16 Wall.) 36, 69 (1873); see also Bailey v. Alabama, 219 U.S. 219, 242-43 (1911), but those conditions must resemble chattel slavery and must produce similar undesirable results. E.g., Butler v. Perry, 240 U.S. 328, 332 (1916), cited with approval in Heart of Atlanta Motel v. United States, 379 U.S. 241, 261 (1964). The Court in Butler explained that certain services traditionally treated as exceptional are not encompassed by the term. Butler, 240 U.S. at 333. Those services include mandatory military service, jury duty, and other labor exacted by governments. Id.

Although involuntary servitude resembles chattel slavery, it does not share all of its incidents. E.g., United States v. Shackney, 333 F.2d 475, 486 (2d Cir. 1964). The unfinished task of the judiciary is to distinguish which incidents of slavery are common to all conditions of involuntary servitude from those which are not. While a discussion of this problem is beyond the scope of this Note, a few gleanings from the case law will be mentioned.

One aspect of the resemblance is inhibition of the servitor’s access to legal remedy for his condition because of state or private action. See, e.g., Pollock, 322 U.S. at 18. The situation may arise due to direct or indirect action on the part of the state. Compare Jaremillo v. Romero, 1 N.M. 190, 197-99 (1857) (where the court described a system of involuntary servitude formally sanctioned by law) with Taylor v. Georgia, 315 U.S. 25, 29-31 (1942) (where the Court struck down state laws which did not sanction involuntary servitude directly but played a key role in its existence).

Similarly, access to legal remedy may be inhibited by a private employer, either by direct actions or by exploiting vulnerabilities in the employee’s character or circumstances. An example of direct inhibition can be found in Davis v. United States, 12 F.2d 253, 255 (5th Cir. 1926), cert. denied, 271 U.S. 688 (1926), where escaped laborers were recaptured and returned to work under armed guard. Fears aroused by beatings and other forms of physical abuse can also hinder pursuit of legal intervention. See, e.g., United States v. Booker, 655 F.2d 562, 566-67 (4th Cir. 1981).

In less blatant but equally effective ways, a private employer may interdict an employee’s pursuit of legal remedy. For example, an employer may make threats that exploit the employee’s ignorance of the law, see, e.g., United States v. Ingalls, 73 F. Supp. 76, 77-78 (S.D. Cal. 1947) (where the servitor was threatened by the employer with imprisonment for an adulterous relationship that had occurred thirty-eight years before the threat), or that exploit the employee’s illegal status. See, e.g., United States v. Mussry, 726 F.2d 1448, 1453 (9th Cir.), cert. denied, 105 S. Ct. 180 (1984) (where the employees were illegal aliens).

At least two other undesirable results of involuntary servitude are noted frequently in the case law. First, involuntary servitude is a condition often characterized by poverty and substandard living conditions. E.g., Ingalls, 73 F. Supp. at 77-78. Second, because employees frequently work for substandard wages, the condition of involuntary servitude undermines competition and depresses working conditions and living standards for people competing for the work done by the servitor. E.g., Pollock, 322 U.S. at 18.

In order to make clear the conditions to which the term involuntary servitude applies, the courts must isolate key features of the condition such as those described. The features must be
Section 1584 consolidated sections of two older laws. The first of these laws, originally passed in 1818, amended an earlier act designed "to prohibit the introduction . . . of slaves into any port or place within the jurisdiction of the United States." The second law was passed in 1874 and was intended to abolish the padrone system. Padrones were men who imported Italian boys to work in New York City as beggars, street musicians, shoeblocks, and providers of other services. Whatever money a boy made went characteristic of chattel slavery in order to fall within the ambit of the thirteenth amendment. At the same time, those features must be common to all forms of involuntary servitude in order to implement the amendment fully. The courts must resolve this dilemma before the amendment can be implemented fully. But see Shapiro, supra note 3, at 84 (The author argued that the legislature is better suited than the courts to the task of defining involuntary servitude. He also noted, however, that Congress did not seem eager to undertake the task.).

7. See 18 U.S.C § 1584 historical and revision notes (1982). For a brief discussion of revisions of the federal Criminal Code, see infra note 34.

8. The earlier law was Act of March 2, 1807, ch. 22, 2 Stat. 426. The 1818 amendment contained one of the sections from which section 1584 was derived. That section stated in part:

That if any person or persons whatsoever shall hold, purchase, sell, or otherwise dispose of, any negro, mulatto, or person of colour, for a slave or to be held to service or labour, who shall have been imported or brought, in any way, from any foreign kingdom, place, or country, or from the dominions of any foreign state immediately adjoining to the United States, into any port or place within the jurisdiction of the United States, from and after the passing of this act, every person so offending, and every person aiding or abetting therein, shall severally forfeit and pay, for every negro, mulatto, or person of colour, so held, purchased, sold, or disposed of, one thousand dollars . . . . Provided, That the aforesaid forfeiture shall not extend to the seller or purchaser of any negro, mulatto, or person of colour, who may be sold or disposed of in virtue of any regulations which have been heretofore, or shall hereafter be, lawfully made by any legislature of any state or territory in pursuance of this act and the constitution of the United States.

Act of April 20, 1818, ch. 91, § 7, 3 Stat. 450, 452 (emphasis added) [hereinafter cited as the 1818 statute].

9. Act of June 23, 1874, ch. 464, § 1, 18 Stat. 251 ("[a]n act to protect persons of foreign birth against forcible constraint or involuntary servitude") [hereinafter cited as the 1874 statute]. In relevant part, it said:

That whoever shall knowingly and wilfully bring into the United States, or the Territories thereof, any person inveigled or forcibly kidnapped in any other country, with intent to hold such person so inveigled or kidnapped in confinement or to any involuntary service, and whoever shall knowingly and wilfully sell, or cause to be sold, into any condition of involuntary servitude, any person for any term whatever, and every person who shall knowingly and wilfully hold to involuntary service any person so sold and bought, shall be deemed guilty of a felony . . . .

Id. (emphasis added).

10. See 2 CONG. REC. 5373 (1874) (statement of Sen. Sargent) (the bill was intended "to prevent the slavery of Italian children"); see also United States v. McClellan, 127 F. 971, 977 (S.D. Ga. 1904) ("about 5,000 Italian children in the United States [were] . . . held in a condition of involuntary servitude").

11. 42 CONG. REC. 1122 (1908) (statement of Sen. Lodge) ("The padrones were men in New York who brought boys out from Italy and let them out for various purposes—shoe-
to his padrone.\textsuperscript{12}

In 1964, the United States Court of Appeals for the Second Circuit in \textit{United States v. Shackney}\textsuperscript{13} provided the first interpretation of section 1584.\textsuperscript{14} In that case, defendant David Shackney was convicted of holding a Mexican family to involuntary servitude on his chicken farm\textsuperscript{15} by threatening to deport them\textsuperscript{16} and by intimidating them with other psychological and economic forms of coercion.\textsuperscript{17} On appeal, Judge Friendly reviewed the relevant legislative and judicial history of section 1584 and concluded that a holding in involuntary servitude existed only if the servant had, or believed he had, no way to avoid continued service or confinement.\textsuperscript{18} To Judge Friendly, the use or threatened use of physical violence, of physical restraint, or of immediate imprisonment was required to create that condition.\textsuperscript{19}

The effect of Judge Friendly's decision was to exclude purely psychological or economic restraints from those actions necessary to create a holding in involuntary servitude under section 1584.\textsuperscript{20} Although subsequent decisions in the lower federal courts were influenced by Judge Friendly's reasoning,\textsuperscript{21} the issue of whether a holding could be established on the basis of psychological and economic coercion alone remained unresolved.\textsuperscript{22}

In 1984, the United States Court of Appeals for the Ninth Circuit ad-
dressed in *United States v. Mussry*\(^2\) what means of coercion were sufficient to constitute a holding in involuntary servitude under section 1584.\(^4\) Judge Reinhardt, considering modern economic realities and the scope of the prohibition under the thirteenth amendment,\(^5\) decided that involuntary servitude could be coerced by any means, including conduct excluded under Judge Friendly's test.\(^6\)

The Mussrys and other defendants were indicted by a federal grand jury on numerous counts of holding poor, non-English-speaking Indonesians in involuntary servitude.\(^7\) After the Indonesians entered the country illegally,\(^8\) their passports and return airline tickets were taken. They were required to work as servants for little money. Living in the defendants' homes, they worked as many as fifteen hours per day without days off or vacations.\(^9\)

The district court dismissed as insufficient under the statute any count which did not satisfy the Friendly test by alleging the use or threatened use of law or physical force.\(^10\) Four counts that alleged actions sufficient to meet those criteria were not dismissed.\(^11\) On appeal, a three-judge panel of the Ninth Circuit decided unanimously to reverse the district court and to remand the case for trial on all of the dismissed counts.\(^12\)

This Note will examine the legislative and judicial history of section 1584

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24. *Id.* at 1451. The court also addressed the question of what constitutes a holding under 18 U.S.C. §§ 1581 and 1583. Section 1581, in relevant part, says, "[w]hoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined . . . or imprisoned . . . or both." Act of June 25, 1948, ch. 645, 62 Stat. 772 (codified at 18 U.S.C. § 1581(a) (1982)) [hereinafter cited as section 1581]. Section 1581 derives from the peonage statute discussed *infra* note 60 and accompanying text.

Section 1583 says, in relevant part, "[w]hoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave" will be fined, imprisoned, or both. Act of June 25, 1948, ch. 645, 62 Stat. 772 (codified as amended at 18 U.S.C. § 1583 (1982)) [hereinafter cited as section 1583]. Section 1583 survives with little change from its original form. See Act of May 21, 1866, ch. 86, § 1, 14 Stat. 50 ("[a]n Act to prevent and punish kidnapping").

This Note focuses on a holding under section 1584. The courts agree that the coercion required for a holding under all three sections is the same. See, e.g., *Mussry*, 726 F.2d at 1451; see also *infra* notes 123, 127.
25. *See Mussry*, 726 F.2d at 1451.
26. *Id.* at 1453.
27. *Id.* at 1450.
28. *Id.* at 1453.
29. *Id.* at 1450.
30. *Id.*
31. *Id.* at 1450 n.1.
32. *Id.* at 1450.
and of other statutes proscribing a holding in involuntary servitude. Particular emphasis will be placed on the 1909 amendments to the parent statutes of section 1584 and on the statutory construction of holding in involuntary servitude. An analysis of Mussry will suggest that its test for a holding in involuntary servitude more nearly implements the intent of the statute than does the Shackney test. Finally, the Note will assess the impact of Mussry on future cases involving a holding under section 1584.

I. THE DEVELOPMENT OF SECTION 1584

A. Statutory History

Although Congress originally may have intended the laws from which section 1584 was consolidated to be applied only to holding in certain types of involuntary servitude, their intended use was expanded in 1909 to prohibit holding in any form of slavery or involuntary servitude covered by the thirteenth amendment. This section will chart the development of the parent statutes of section 1584 and on the statutory construction of holding in involuntary servitude. An analysis of Mussry will suggest that its test for a holding in involuntary servitude more nearly implements the intent of the statute than does the Shackney test. Finally, the Note will assess the impact of Mussry on future cases involving a holding under section 1584.

33. See, e.g., United States v. The Ship Garonne, 36 U.S. (11 Pet.) 73, 77 (1837) ("The object of . . . [the 1818 statute] was to put an end to the slave trade . . . ."); see also supra notes 9-10 and accompanying text. But see United States v. McClellan, 127 F. 971, 977-78 (S.D. Ga. 1904) (arguing that the 1874 statute had a scope broader than the eradication of the padrone system).

34. The 1909 revision was the second such effort by Congress since the first federal criminal laws were enacted in 1790. Prior to 1877, the nation's criminal laws were scattered among the seventeen volumes of the Statutes at Large and were organized by the date of their passage. In 1877, Congress approved the Revised Statutes, the product of an eleven-year effort to analyze, organize, revise, consolidate, and reconcile all federal laws. All the criminal statutes were located in one title. A similar effort directed exclusively at the penal laws culminated in the Criminal Code of 1909, Act of March 4, 1908, ch. 321, 35 Stat. 1088. In 1948, Congress passed the most recent overhaul of the federal criminal laws. See generally H.R. REP. NO. 304, 80th Cong., 1st Sess. 2-3 (1947).

35. For a brief discussion of the scope of the thirteenth amendment, see supra note 6. Although some judges and legislators attempt to draw a distinction between the terms "slavery" and "involuntary servitude," many use the terms interchangeably. See Shapiro, supra note 3, at 73; see also Brodie, The Federally-Secured Right To Be Free from Bondage, 40 GEO. L.J. 367, 386-87 (1952) (urging that to limit the word "slavery" to a pre-Civil War condition would render section 1583 meaningless). Compare The Slaughterhouse Cases, 83 U.S. (16 Wall.) 36, 90 (1872) (Field, J., dissenting) ("slavery" indicates chattel slavery and "involuntary servitude" indicates other forms of compulsory service) and 42 CONG. REC. 1114-15 (1908) (statement of Sen. Hale) (suggesting that the "slavery" forbidden in the statutes being debated was a specific condition that no longer existed, thus making the statutes "absolutely good for nothing") with In re Peonage Charge 138 F. 686, 687 (C.C.N.D. Fla. 1905) (equating peonage, a form of involuntary servitude, and slavery) and 42 CONG. REC. 1115, 1116 (1908) (statements of Sen. Heyburn) ("[the word 'slavery' is older than the foundations of this country" and encompasses many conditions of compulsory service).

This blurring of the terms is significant for at least two reasons. First, as Brodie noted, it makes the statutes applicable to post bellum conditions. Second, it enfeebles arguments that any of the statutes mentioning slavery or involuntary servitude are limited to some particular form of involuntary servitude.
ent statutes of section 1584 through their consolidation in 1948.

As originally enacted in 1818, the slave importation statute forbade the holding of any "negro, mulatto, or person of colour" to slavery or to service or labor. The purpose of the Act was to end the African slave trade. Section 6 of the Act punished both the importer and anyone who bought, sold, or held such persons. As written in 1818, this section applied only to non-whites imported or held as chattel slaves and to anyone holding a slave regardless of how the slave was acquired.

Similarly, the Act of 1874 responded specifically to the padrone system. Its "vivid" language was broader in scope than the 1818 statute. It punished "every person who . . . knowingly and willfully [held] to involuntary service any person . . . sold or bought."

Congruent with the separate purposes for which they were enacted, each statute was broad in certain areas and restrictive in others. Coincidentally, those areas were complementary in some respects. The 1874 statute covered all races but was limited to people bought or sold. The 1818 statute covered only certain races and persons imported but applied regardless of the manner of their acquisition. Both statutes made holding those persons illegal: the one, in involuntary servitude; the other, in chattel slavery. Neither statute, however, specified the means by which a holding was accomplished.

In United States v. Ancarola, a case brought under the 1874 statute, the use of physical force or the threat of legal punishment was not required to prove that Padrone Ancarola held an eleven-year-old Italian boy in involuntary servitude. The court reached its decision without considering the means of coercion. Instead, the court recognized that the youth of the boy and his dependence on Ancarola left him incapable of choosing alternatives. It is unclear whether the court considered irrelevant the means by which Ancarola forced the child to work or whether this decision created an

36. For a more complete rendition of the 1818 statute, see supra note 8.
37. See supra note 33; see also United States v. Haun, 26 F. Cas. 227 (C.C.S.D. Ala. 1860) (No. 15,329).
38. For the full text and citation of the 1818 statute, see supra note 8.
39. See supra notes 9-10 and accompanying text.
41. For a fuller rendition of the 1874 statute, see supra note 9.
42. 1 F. 676 (C.C.S.D.N.Y. 1880).
43. See id. at 677, 678, 682-83. In count four, Ancarola was charged with holding Francesco Libonati to service as a beggar and musician. Id. at 677. Ancarola brought Libonati from Italy and arrived in New York on November 2, 1879. Id. at 678. Authorities at the port took the boy from Ancarola at that time. Id. Six days later, Ancarola was arrested. Id. Presumably, Ancarola and Libonati were reunited during those six days, and Libonati worked for Ancarola during that time.
44. See id. at 682-83.
exception for children because their dependence on adults renders them incapable of choosing alternatives.

In 1909, Congress amended these and other thirteenth amendment enabling statutes so that they would apply to modern forms of involuntary servitude. Both parent statutes of section 1584 were considered in debate. Much of the discussion addressed suggestions that these sections of the Penal Code be repealed because the conditions to which they applied no longer existed. Recognizing that such conditions did persist, Congress enacted both sections into positive law.

In order to reach modern conditions of involuntary servitude under the 1818 statute, Congress substituted the words “any person” for the words “negroes, mulattoes, or persons of color.” Under the new language, the

45. See supra note 7 and accompanying text.
46. See 42 Cong. Rec. 1114 (1908) (statement of Sen. Heyburn). Senator Heyburn chaired the Judiciary Committee that reported S. 2982, a bill “to codify, revise, and amend the penal laws of the United States.” Id. at 1113 (reporter’s note introducing the reading of the bill). Even those who opposed aspects of the bill recognized Senator Heyburn as an authority on the Penal Code. See, e.g., id. at 1116 (statement of Sen. Hale).
Although Congress addressed modern forms of involuntary servitude, it is clear from the deliberations that Congress also intended to remain within the thirteenth amendment limitation requiring that the condition of servitude have some commonalities with slavery. See, e.g., id. at 1122 (statement of Sen. Lodge); see generally supra note 6.
47. See 42 Cong. Rec. 1113-17, 1119-22, 2127, 2130 (1908).
48. Id. at 1114 (statement of Sen. Hale) (Senator Hale said that the sections sounded “like echoes of the dead past.”). Senator Hale moved that the entire chapter on slavery and peonage be repealed, id., and repeal of the parent statutes of section 1584 was suggested by Senator Bacon. Id. at 1119.
49. As amended, the 1818 statute read as follows:
   Whoever brings within the jurisdiction of the United States in any manner whatsoever any person from any foreign kingdom or country, or from sea, or holds, sells, or otherwise disposes of, any person so brought in, as a slave, or to be held to service or labor, shall be fined . . . and . . . shall be imprisoned . . . .
Id. at 2127 (emphasis in original).
   The 1874 statute read after amendment as follows:
   Whoever shall knowingly and willfully bring into the United States, or any place subject to the jurisdiction thereof, any person inveigled or forcibly kidnapped in any other country, with intent to hold such person so inveigled or kidnapped in confinement or to any involuntary servitude; or whoever shall knowingly and willfully sell, or cause to be sold, into any condition of involuntary servitude, any other person for any term whatever; or whoever shall knowingly and willfully hold to involuntary servitude any person so brought or sold, shall be fined . . . and imprisoned . . . .
Id. at 2130 (emphasis in original).
50. Id. at 1114 (statement of Sen. Heyburn) (the broader designation was intended to apply to people of any racial background).
   During the Senate’s consideration of the 1818 statute and other sections dealing with slavery, it was noted that those sections did not apply to situations where the servant was party to a contract. Id. at 1115. “Debt slavery” or peonage was one such situation that Congress discussed. Id. at 1121-22. Peonage is discussed infra note 60.
Involuntary Servitude

The 1818 slave statute was intended to protect from subjection to involuntary servitude people who were vulnerable to control by others because of their age, their environment, or the condition of their lives. Although still limited to persons imported, the 1818 slave statute was made broad enough to prohibit the padrone system which the 1874 statute had been designed to address.

The 1874 statute was expanded also. Changes made in the phrasing of the 1874 statute were less conspicuous but possibly significant. Two senators noted that the statute was intended to prevent involuntary servitude regardless of the racial or ethnic background of the victims. Although still limited in scope to persons purchased, the amended statute addressed crimes of the character of slavery, thereby prohibiting any condition of involuntary servitude, not merely the padrone system.

Following the amendments, holding a person in a condition of involuntary servitude was prohibited regardless of the specific characteristics of the person or of the specific conditions of service. Congress did not address in the 1909 debates the manner in which the holding was enforced. What Congress did make clear was its intent that these statutes prohibit involuntary servitude whatever modern forms it might take.

In 1948, Congress recognized the broad overlap of the two statutes and consolidated them. In the process, the scope of the prohibition was expanded again. Congress omitted limitations in the parent statutes which required that persons held in involuntary servitude must first be bought.

52. Senator Heyburn also noted that the term "slavery" encompassed "[s]lavery . . . for a week as well as for a lifetime," and that the law addressed both the importers of slaves and those who held them to service after their arrival. Id.
53. By changing "every person" in the third clause to "whoever," Congress may have been emphasizing the fact that a person who performs the acts proscribed by any of the three clauses violates the law. Compare the language in supra note 9 with that in supra note 49. The significance of that emphasis is that it was illegal under the third clause to hold a person in involuntary servitude even if that person were not inveigled or kidnapped as required by the first clause. Also, the change in wording from "involuntary service" to "involuntary servitude" may have indicated the legislature's intent to encompass all conditions prohibited by the thirteenth amendment.
54. See 42 CONG. REC. 1122 (1908) (statement of Sen. Lodge); id. at 1120-21 (statement of Sen. Sutherland). But see id. at 1121 (statement of Sen. Bacon). Senator Bacon implied that the Act may have been inspired by political motives and by a "very great misunderstanding of some parts of the country as to conditions in other parts of the country." Id. Senator Bacon believed the Act was unnecessary because other statutes covered the conditions the statute addressed. Id. at 1120-21.
55. Id. at 1122 (statement by Sen. Lodge); cf. McClellan, 127 F. at 975-76 (where the court noted that Congress intended to abolish the state-sanctioned system of peonage in New Mexico but used broad language that abolished the condition of peonage anywhere even if the service were coerced by means other than state law).
56. Cf. Shackney, 333 F.2d at 482 (Judge Friendly noted that Congress did more in 1948
sold, or imported. In the new section, Congress did not qualify its prohibi-
tion of holding a person to involuntary servitude. The breadth of the ban
was emphasized also by its simplicity and by the language that prohibited
selling "into any condition of involuntary servitude." Section 1584 cap-
tured the intent of the 1909 amendments to prohibit all forms of involuntary
servitude using language almost as simple as that of the thirteenth amend-
ment itself.

The significance of the statute’s broad scope is that judicial construction of
the word "holds" should not subvert congressional intent to make criminal
any holding in involuntary servitude. Congress prohibited a condition, not
merely the means by which the condition was created.

B. Judicial Construction of a Holding Under the Peonage Statute

Peonage is a form of involuntary servitude that is distinguished from other
forms by the fact that the servant is indebted to the master. In 1867, Con-
gress abolished state-sanctioned formal systems of peonage and made it ille-
gal to hold anyone in peonage. Some federal courts have ruled that any
than merely consolidate the two sections. He did not say, however, that the change constituted an expansion."

58. The amendment is quoted at supra note 2.
59. Clyatt v. United States, 197 U.S. 207, 215 (1905); see also Jaremillo v. Romero, 1
N.M. 190 (1857).
the System of Peonage in the Territory of New Mexico and other Parts of the United States")
cited as the peonage statute].

Peonage developed in Mexico as the Aztec form of feudalism melded with a system of Spanish
land grants known as the encomienda. Misner & Clough, supra note 2, at 721. The en-
comienda system allowed the exaction of tribute and personal services. Id. at 721 n.36. Over
time, the Aztecs became serfs. Id. at 721. Although the system was abolished in 1720, the
Indians were unable to escape their reduced circumstances and were subjected immediately to
a new system of debt bondage known as peonage. Id.

Peonage came to New Mexico with the Spanish conquest of the area. Id. Just prior to the
Civil War, the system consisted of servants bound to the service of masters. Jaremillo, 1 N.M.
at 194. "The most wealthy and powerful families were flattered in their pride in displaying
their retinues of these dependants." Id.

A peon could leave the service at any time by discharging the debt. Id. "Peons had become so degraded[,] however[,] that in many instances they voluntarily returned to the compulsory
service, being content to give control over their persons and freedom to masters who, in return,
would feed and clothe them and their families." The Peonage Cases, 123 F. 671, 675 (M.D.
Ala. 1903). If a peon attempted to escape without discharging the debt, moreover, the master
and law enforcement officials "pursued, reclaimed, and reduced him to obedience and labor
again." Jaremillo, 1 N.M. at 194. Peons usually owned little or no property and often lived
their lives in service to one family. Id. Fathers were allowed by law to bind their children if
holding in peonage is illegal, regardless of the means of coercion.\textsuperscript{61} Since the requisites for showing a holding under the peonage statute are the same as those for showing a holding under section 1584,\textsuperscript{62} it is instructive to examine the peonage cases. In \textit{Pierce v. United States},\textsuperscript{63} the United States Court of Appeals for the Fifth Circuit upheld the conviction of Joel Pierce on counts of holding young women in peonage.\textsuperscript{64} Pierce operated the Lone Star Club, a roadhouse in rural Georgia.\textsuperscript{65} When young women came to work for Pierce, he would buy clothes for them and then tell them that they had to work for him until the debt was repaid.\textsuperscript{66} The women had to serve and entertain customers in various ways, including "filling dates" with men when Pierce required it.\textsuperscript{67} All of the women testified that Pierce would not allow them to leave.\textsuperscript{68} The court stated that it did not matter what methods were used to force the victim to work.\textsuperscript{69} The law required only that the person was held against her will.\textsuperscript{70} Since two of the counts did not allege the means by which the holding was accomplished,\textsuperscript{71} it is clear that the particular form of coercion employed was not critical to the court's ruling.

In \textit{Bernal v. United States},\textsuperscript{72} another Fifth Circuit case, the court similarly found that the means of coercion was irrelevant as long as the service was forced.\textsuperscript{73} Although a threat of imprisonment was alleged,\textsuperscript{74} the evidence was disputed.\textsuperscript{75} It is unclear from the opinion what weight the court gave to the alleged threat or to other potentially coercive factors.\textsuperscript{76} The court found

their poverty demanded it. \textit{Id.} at 199. The facts in \textit{Jaremillo} provide an interesting account of Mariana Jaremillo, a young girl, who was taken from the service of Jose de la Cruz Romero by her father who was in debt to Romero. \textit{Id.} at 192-93, 199-204, 206-07.

\textsuperscript{61} See, e.g., infra note 69.

\textsuperscript{62} Shapiro, \textit{supra} note 3, at 80-81.

\textsuperscript{63} 146 F.2d 84 (5th Cir. 1944), \textit{cert. denied}, 324 U.S. 873 (1945).

\textsuperscript{64} \textit{Id.}

\textsuperscript{65} \textit{Id.}

\textsuperscript{66} \textit{Id.} at 85.

\textsuperscript{67} \textit{Id.} at 84-86. "Filling dates" meant prostituting themselves. \textit{Id.} at 84. Pierce evidently kept all the money. \textit{Id.} at 84-86.

\textsuperscript{68} \textit{Id.} at 85-86.

\textsuperscript{69} The court said, "[i]n a prosecution for peonage, the law takes no account of the ... means and method of coercion. It is sufficient to allege and prove that a person is held against his will and made to work to pay a debt." \textit{Id.} at 86.

\textsuperscript{70} \textit{Id.}

\textsuperscript{71} Pierce was convicted on six counts. \textit{Id.} Three of the counts alleged the use or threatened use of physical force. Counts two and six made no allegation regarding the means of coercion. Count eight alleged that Pierce had a pistol and that the woman saw it but did not allege that Pierce used the pistol as a means of coercion. \textit{Id.} at 85-86.

\textsuperscript{72} 241 F. 339 (5th Cir. 1917), \textit{cert. denied}, 245 U.S. 672 (1918).

\textsuperscript{73} \textit{Id.} at 342.

\textsuperscript{74} \textit{Id.} at 341.

\textsuperscript{75} \textit{Id.} at 342.

\textsuperscript{76} The woman held to service was Rosenda Nava, a Mexican alien. \textit{Id.} at 341. She
that the evidence was sufficient to show involuntary servitude. Since coercion had been shown, the mode of coercion was not a factor in the court's decision.77

Several federal judges presiding over peonage cases have instructed juries not to consider the means by which the holding was accomplished. One court declared in 1905 that peonage was compulsory involuntary servitude regardless of how it was created.78 To emphasize its point, the court cited the thirteenth amendment, saying that it denounced the condition of involuntary servitude however it was created, wherever it was attempted, and whatever form it took.79

In The Peonage Cases,80 an Alabama district court said that the statute testified that Aurelia Bernal told her the immigration officers would put her in jail for five years if she tried to leave. Id. Bernal disputed her testimony. Id. at 342. Although testimony by two other women corroborated some of Nava's story, other evidence tended to rebut portions of her testimony. Id. at 341-42. Other potentially coercive circumstances upon which the court may have relied were Nava's being in a strange town without money and her being watched constantly by Bernal. Id. 77. Id. at 342.


79. Specifically, the court stated:

This amendment denounces a status or condition irrespective of the manner or authority by which it is created. It forbids slavery and involuntary servitude wherever or however attempted within the jurisdiction of the national government, whether created by contract, by criminal individual force, by municipal ordinance or state law, and in whatever form, or however named.

Id. 80. 123 F. 671 (M.D. Ala. 1903). After its abolition in New Mexico Territory in 1867, peonage rooted itself in the South. Shapiro, supra note 3, at 74. A system of state laws developed that encouraged the exploitation of the freed slaves who remained illiterate, propertyless, and unskilled. Id. at 74 & n.40. For more than 35 years, peonage developed unchecked by the federal government. Id. at 74. The federal grand jury in The Peonage Cases considered some of the first prosecutions brought under the peonage statute. Cf. id. (Shapiro stated that The Peonage Cases were the first cases, but at least one case, In re Lewis, 114 F. 963 (C.C.N.D. Fla. 1902), was brought a year earlier.). Forty years later, the Supreme Court was trying still to uproot the system of state laws used to enslave southern blacks. See Pollock v. Williams, 322 U.S. 4 (1944). Apparently, the class of people most vulnerable to exploitation had not changed—Pollock was black, poor, and illiterate. Id. at 15.

Accounts of conditions in migrant labor camps today are often discouragingly similar. See, e.g., United States v. Harris, 701 F.2d 1095, 1097-98, 1100-02 (4th Cir.), cert. denied, 103 S. Ct. 3554 (1983); Henry, The Black Dispatch, Wash. Post, Oct. 9, 1983, at A1, col. 2 (series of five articles with subsequent installments appearing daily through Oct. 14, 1983) (The "Black Dispatch" is the name of a van which roams eastern cities recruiting people to harvest crops. False promises allegedly are made to lure jobless, poor people from soup kitchens and shelters for the homeless to work in conditions that sometimes resemble slavery.); N.Y. Times, July 14, 1983, at A17, col. 1 (city ed.) (The article cites claims of over 10,000 cases of involuntary servitude annually among East Coast migrant workers and over 100,000 cases per year nationwide. (Groups reporting this data may not have been using "involuntary servitude" in its legal sense.) The article noted that in successful prosecutions for involuntary servitude, it is usually
proscribed any designed and deliberate actions that compelled service. The court also required that the jury consider the individual weaknesses of the servant when it decided whether the force involved compelled the servant to work. These instructions required the jury to focus not upon which means were used but only upon whether they were sufficient to coerce service based on characteristics of the servant.

The Supreme Court has never addressed directly the question of the manner in which service must be compelled in order to prove peonage. Many of the ideas expressed in the district court charges just examined, however, were repeated later in Supreme Court decisions. In *Clyatt v. United States*, the Court said that involuntary servitude was abolished however it was created. Addressing congressional intent behind the peonage statute in *Bailey v. Alabama*, the Court stated that Congress was concerned only with the migrant crew bosses who are held liable. No farmer employing bosses and crews has ever been prosecuted successfully because farmers rarely have contact with the workers. A recently passed North Carolina law would have made it illegal knowingly to employ crew bosses who held others in involuntary servitude. Before passage, however, a powerful farm lobby succeeded in having that provision deleted. A spokesman for a farmers' organization described the deleted provision as an insult to farmers.); van Buren, *A Thriving American Forced-Labor Industry*, N.Y. Times, Feb. 12, 1982, at A34, col. 3 (city ed.) (describing some of the business forces and legal defects that sustain the system). *But see Datt, “The Black Dispatch,”* Wash. Post, Oct. 20, 1983, at A22, col. 3 (The Secretary and Director of the American Farm Bureau Federation responded to the Henry series, supra this note, by citing new federal protections for migrant and seasonal workers, statistics showing average migrant wages exceeding the minimum wage, and figures showing a rapid improvement in migrant work conditions.). For a more thorough exploration of the legal ramifications of the working and living conditions endured by migrant farm workers, see *duFresne & McDonnell, The Migrant Labor Camps: Enclaves of Isolation in Our Midst*, 40 FORDHAM L. REV. 279 (1971).

1. The Peonage Cases, 123 F. at 681.
2. The court stated that the coercive “force, influence, or threats” must be considered in light of “the relative inferiority or inequality between the persons contracting to perform the service and the person exercising the force or influence to compel its performance . . . .” *Id.; see also United States v. Clement, 171 F. 974, 976 (D.S.C. 1909) (charging the jury to determine whether the defendant effected an unlawful condition of peonage by “overmastering [the servants’] weakness by his strength”). The Alabama court’s use of the word “influence” in addition to the words “force” and “threats” intimates consideration of a broad range of constraints beyond legal or physical force.

3. See also, e.g., The Peonage Cases, 136 F. 707, 708 (E.D. Ark. 1905) (emphasizing that factors such as economic necessity and ignorance must be considered in finding involuntary servitude).

4. 197 U.S. 207 (1905).

5. *Id. at 215-16. In Clyatt, the Court indicated that “law or force” was required to show involuntary servitude. Id. As Judge Reinhardt observed in *Mussry*, there was no suggestion in *Clyatt* that the “force” must be physical force. 726 F.2d at 1452 n.5. *But see Shackney, 333 F.2d at 486-87 (Judge Friendly seemed to assume the force described in *Clyatt* was physical force); see also *Mussry, 726 F.2d at 1452 (where Judge Friendly’s reasoning in *Shackney* was described as assuming the *Clyatt* force was physical force).*

6. 219 U.S. 219 (1911).
existence of peonage.\textsuperscript{87} Peonage was abolished, therefore, no matter how it was maintained or enforced.\textsuperscript{88}

Although the Court employed broad language in deciding these cases, the import of the statements is limited by the fact that in each case state laws were used to compel service.\textsuperscript{89} Similarly, in the lower federal courts, most cases revealed evidence of the use or threatened use of physical force or the use of legal sanctions to enforce service.\textsuperscript{90} The fact that physical force or legal sanctions often were used to compel service, however, does not mean that evidence of similar forms of compulsion is required in order to show a holding in involuntary servitude.\textsuperscript{91} The plenitude of such evidence merely reveals that physical force or legal sanctions are employed commonly as a means of compelling service.\textsuperscript{92}

In summary, judicial construction of the word "holding" under the peonage statute does not indicate that the conditions of involuntary servitude prohibited by the statute are limited to cases where certain means of coercion were used to create the condition.

C. Judicial Construction of Section 1584

In \textit{United States v. Shackney},\textsuperscript{93} Judge Friendly concluded that the threat or the use of law or physical force was required to demonstrate a holding in involuntary servitude.\textsuperscript{94} In a concurring opinion,\textsuperscript{95} Judge Dimock concluded that the statute prohibited involuntary servitude regardless of the manner in which the service was effected.\textsuperscript{96} Judge Dimock proposed that the servitor must be rendered incapable of making rational choices.\textsuperscript{97} Judge Friendly focused on the constraints used; Judge Dimock, on the effect of the constraints on the servitor.

In reaching his decision, Judge Friendly first considered the legislative his-

\textsuperscript{87} \textit{Id.} at 242.
\textsuperscript{88} \textit{Id.}
\textsuperscript{89} See e.g., Pollock v. Williams, 322 U.S. 4 (1944); United States v. Gaskin, 320 U.S. 527 (1944); Taylor v. Georgia, 315 U.S. 25 (1942); United States v. Reynolds, 235 U.S. 133 (1914).
\textsuperscript{90} See e.g., \textit{In re Lewis}, 114 F. 963, 964 (C.C.N.D. Fla. 1902).
\textsuperscript{91} \textit{But see supra} notes 18-20 and accompanying text.
\textsuperscript{93} 333 F.2d 475 (2d Cir. 1964).
\textsuperscript{94} See \textit{id.} at 486-87; \textit{see also supra} notes 18-20 and accompanying text.
\textsuperscript{95} Shackney, 333 F.2d at 487-88. Judge Dimock agreed that Shackney's conviction should be overturned because the record lacked evidence showing that Shackney intentionally subjugated an employee's will. \textit{Id.} at 488. \textit{See also Shapiro, supra} note 3, at 82.
\textsuperscript{96} Shackney, 333 F.2d at 487.
\textsuperscript{97} \textit{Id.} at 488.
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After reviewing the original purposes of each of the parent statutes of section 1584, Judge Friendly observed that their purposes and effects were inapplicable to the *Shackney* situation because no one had been bought, sold, kidnapped, or imported. Although he cited the 1909 Code, Judge Friendly did not examine the statutory amendments passed at that time.

After dismissing the statutory history of section 1584 as unhelpful, Judge Friendly found the basis of his test in a survey of the history of the prohibition of involuntary servitude and in the Supreme Court decisions construing a holding under the peonage statute. His survey indicated that laws enacted to enforce involuntary servitude clearly were proscribed. Since the thirteenth amendment applied both to state and to private actions, moreover, its enabling statutes also prohibited private actions that induced involuntary servitude.

To draw a line between private actions sufficient under the section and those that were insufficient, Judge Friendly turned to the plain meaning of the word "involuntary" and bolstered his argument with references to the case law. He concluded that only those forms of coercion that left an employee no choice but to continue in service were sufficient to hold a person in involuntary servitude. A lesser compulsion was insufficient even if

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98. See id. at 481-82.
99. Id. at 482.
100. Id.
101. After noting that the purposes and effects of section 1584 were different from those of its parent statutes, Judge Friendly observed that the 1948 enactment of the Federal Criminal Code was positive law. Id. Although that fact meant that application of section 1584 was not limited by the purposes and effects of its parent statutes, Judge Friendly concluded that the section covered no new ground. Id. He relied exclusively, therefore, on prior judicial construction of the term "holding" and on prior legislative use of the phrase "involuntary servitude" to set the parameters for his test. See id. at 482-86. He did not attempt to address modern forms of coercion. See *Mursy*, 726 F.2d at 1452.
102. *Shackney*, 333 F.2d at 482-87.
103. See id. at 485-86.
104. See id. at 486.
105. See id.
106. Id. at 486-87. Judge Friendly cited *Pierce, Bernal*, and United States v. Ingalls, 73 F. Supp. 76 (S.D. Cal. 1947). For a discussion of *Pierce* and *Bernal*, see supra notes 63-77 and accompanying text. For a discussion of *Ingalls*, see infra notes 114-17 and accompanying text.
107. Id. at 486; see also *Flood v. Kuhn*, 316 F. Supp. 271, 280-82 (S.D.N.Y. 1970), aff'd, 443 F.2d 264 (2d Cir. 1971), aff'd, 407 U.S. 258 (1972) (The court ruled that Curt Flood, a professional baseball player, was not held in involuntary servitude under the reserve clause in his contract with the Philadelphia Phillies. Although the reserve system was very restrictive, see id. at 273-75, Flood could exercise his option to retire. Flood, therefore, failed to show that he had no way to avoid continued service.).
the consequences of defying the force were harsh.\textsuperscript{108} This conclusion necessarily limited the illegal forms of coercion to those enforced by physical restraints, whether by guards, by bars, or by threat of death.\textsuperscript{109} Only such superior and overpowering forces were capable of eliminating alternatives to service and of producing conditions of involuntary servitude akin to chattel slavery.\textsuperscript{110}

Judge Dimock also relied on the plain meaning of the word "involuntary" but reached a different conclusion.\textsuperscript{111} To Judge Dimock, the word "involuntary" dealt only with the will of the servitor and not with the means by which the servitor's will was influenced.\textsuperscript{112} Judge Dimock concluded that where the force used paralyzed the servant to an extent that he was deprived of willpower and rendered incapable of making a rational choice, the service was involuntary regardless of the means employed.\textsuperscript{113}

To illustrate his position, Judge Dimock cited \textit{United States v. Ingalls}\textsuperscript{114} where the court found that Ms. Jones, the servant, had no freedom of action and was controlled wholly by Ms. Ingalls.\textsuperscript{115} Ms. Jones was a black woman held in service by the Ingalls family for twenty-five years. She was required to work long hours without vacation or pay. She had no friends and left the house rarely. Her living quarters and food were substandard. She probably was abused physically and was threatened with imprisonment or psychiatric institutionalization if she left.\textsuperscript{116} Although Ms. Jones was found to be controlled by Ms. Ingalls, the court did not say whether the subjugation was due to Ms. Jones' inability to choose or whether it resulted from Ms. Jones' decision to subject herself to service rather than to suffer the consequences of choosing otherwise. Judge Dimock assumed the former situation to be the case.\textsuperscript{117}

Cases decided subsequent to \textit{Shackney} came to varied conclusions regard-
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the requirements for showing a holding under section 1584. In United States v. Bibbs, a 1977 case, the Court of Appeals for the Fifth Circuit affirmed the lower court’s conviction of defendant Bibbs. Relying on well-established Fifth Circuit precedent, the court stated in dictum that the means of coercion do not affect the law’s application. The court based its ruling, however, upon clearly coercive acts: severe beatings, threats of beatings, and murder threats.

In United States v. Booker, a 1981 case, the Court of Appeals for the Fourth Circuit relied extensively on the Shackney decision in concluding that the physical violence prevalent at a migrant labor camp in Florida was a sufficient means of coercion to establish a holding in involuntary servitude. The Booker court cited with approval Judge Friendly’s distinction between violence and threats of violence, which suffice to show a holding, and lesser threats that are insufficient.

The Booker ruling was followed by the Fourth Circuit in United States v. Harris. In Harris, actual and threatened physical violence prevented mi-

118. 564 F.2d 1165 (5th Cir. 1977), cert. denied, 435 U.S. 1007 (1978).
119. Id. at 1166. William Bibbs and other defendants were convicted under section 1584 of holding farm laborers in involuntary servitude. Id. The workers lived in crowded rooms and were charged excessive prices by the defendants for housing and food. Id. at 1166-67. During certain weeks, they did not make enough to cover their expenses. Id. at 1167. Escape was deterred by severe beatings and murder threats. Id. at 1167.

Interestingly, the court in Bibbs decided the case under section 1584 even though the condition described constituted peonage because the workers were in debt. See generally discussion of peonage, supra notes 59-60 and accompanying text.

The court mentioned Shackney only in reference to its conclusion that the primary purpose of the thirteenth amendment and its enabling statutes was to abolish “all practices whereby subjection having some of the incidents of slavery was legally enforced.” Bibbs, 564 F.2d at 1167 (quoting Shackney, 333 F.2d at 485).

120. The court cited Pierce and Bernal as its authorities. Bibbs, 564 F.2d at 1168. For a discussion of Pierce and Bernal, see supra notes 63-77 and accompanying text.

121. Bibbs, 564 F.2d at 1167.
122. Id.

123. 655 F.2d 562 (4th Cir. 1981). The case was actually decided under section 1583, which forbids kidnapping people with the intent of holding them in slavery. Id. at 563. For the text of section 1583, see supra note 24. Reference to sections 1581 and 1584 and to cases decided under these sections, including Shackney and Bibbs, however, make evident the court’s belief that the criteria necessary to show a holding are common to all the statutes. See Booker, 655 F.2d at 566-67. The court cited Bibbs only as exemplifying a case in which physical force was sufficient to show a holding. Id. at 567. The court did not refer to the broader language in Bibbs.

124. See Booker, 655 F.2d at 566-67.
125. Id. at 567.
126. See id. at 566-67.
127. 701 F.2d 1095, 1100 (4th Cir.), cert. denied, 103 S. Ct. 3554 (1983). Booker involved section 1583 whereas Harris involved section 1584. The court suggested, however, that the
grant farm workers from leaving their jobs or forced them to work faster.\textsuperscript{128} Although the court cited \textit{Bibbs} to support its conclusion that physical violence satisfied the statute, it adopted the Friendly distinction between sufficient and insufficient modes of compulsion.\textsuperscript{129}

In \textit{Turner v. Unification Church},\textsuperscript{130} a federal district court implied that the Friendly test was the standard by which involuntary servitude currently was measured.\textsuperscript{131} In \textit{Turner}, psychological control of the servant was alleged.\textsuperscript{132} The court stated in dictum that it was unclear whether the criteria for showing a holding should be expanded to include psychological domination of a servant.\textsuperscript{133}

The impact of Judge Friendly's opinion on these decisions is evident. The Fourth Circuit followed Friendly in \textit{Booker} and in \textit{Harris}. The Fifth Circuit in \textit{Bibbs} followed its own precedents, which depart from the Second and Fourth Circuits' reliance on the Friendly test. The Fifth Circuit decisions reflect more accurately the intended scope of section 1584. Cases decided by the Fifth Circuit, however, usually involved legal or physical coercion, and the decisions never elaborated an alternative test for showing a holding in involuntary servitude. As the \textit{Turner} court noted, the requisites for showing a holding remained unclear.

In 1984, the Ninth Circuit addressed this noticeable void in the case law in \textit{United States v. Mussry}.\textsuperscript{134} A test was proposed that allowed for prosecution under section 1584 when a person was held in a condition of involuntary servitude compelled by any means.

criteria for establishing a holding under both statutes are identical. See \textit{id.} at 1100; see also supra notes 24 and 123.

\textsuperscript{128} \textit{Harris}, 701 F.2d at 1098.

\textsuperscript{129} After citing \textit{Bibbs}, the court said, "[h]owever, it is clear that a mere reminder by the employer that the consequences of leaving will be exceedingly bad (e.g., deportation) is not enough." \textit{id.} at 1100 (citing \textit{Shackney}, 333 F.2d at 486) (emphasis added) (citations omitted).

\textsuperscript{130} 473 F. Supp. 367 (D.R.I. 1978), aff'd, 602 F.2d 458 (1st Cir. 1979). Shelley Anne Turner alleged that the Unification Church held her in peonage under section 1581 and in involuntary servitude under section 1583, but she sought civil, not criminal, remedies. The court dismissed both claims because neither statute created a civil cause of action. \textit{id.} at 375-76. The court also discussed the fact that Turner's claim under section 1581, the peonage statute, was deficient because she failed to allege debt. \textit{id.} at 375. The cited passages are dicta from the court's discussion of her allegations of being held in involuntary servitude under section 1583. The court also noted deficiency in Turner's proof of involuntary servitude. She did not show that it was domination by Reverend Moon and his followers as opposed to her own fear of religious consequences that caused her to remain in service to the church. \textit{id.} at 376. For a discussion of religious cults and involuntary servitude, see Delgado, \textit{Religious Totalism as Slavery}, 9 N.Y.U. REV. L. & SOC. CHANGE 51 (1979-1980).

\textsuperscript{131} See \textit{Turner}, 473 F. Supp. at 375-76.

\textsuperscript{132} \textit{id.} at 375.

\textsuperscript{133} \textit{id.}

\textsuperscript{134} 726 F.2d 1448 (9th Cir.), cert. denied, 105 S. Ct. 180 (1984).
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II. UNITED STATES v. MUSSRY: SEEKING A MORE FLEXIBLE TEST

In United States v. Mussry,135 the United States Court of Appeals for the Ninth Circuit decided unanimously that section 1584 does not require the use or threatened use of law or physical force to show a holding in involuntary servitude.136 Citing Bibbs, the court followed the Fifth Circuit in concluding that any means of coercing service could be alleged under the statute.137 Most importantly, the court proposed a test that purported to cover any condition of involuntary servitude proscribed by the thirteenth amendment. Although failing to attain that breadth, the Mussry test is superior both to the Friendly test and to the Dimock test. After the Mussry court’s reasoning is reviewed, the three tests will be examined.

A. Reasoning in Mussry

In reaching its decision, the Ninth Circuit assumed that the statute shared the scope of the thirteenth amendment.138 To support this assumption, the court relied on the Booker court’s analysis of the statutory history.139 Based on this assumption, the court reasoned that the statute was designed to outlaw all contemporary circumstances and conditions of involuntary service.140 The court recognized that modern realities have changed the forms of service and the methods of subjugating people’s wills.141 Classes of people once subjected to slavery are now held in involuntary servitude as migrant workers and domestic servants.142 Methods of coercing la-

135. Id.
136. Id. at 1455.
137. Id. at 1453.
138. See id. at 1451-52.
139. Id. (citing United States v. Booker, 655 F.2d 562, 564, 566 (4th Cir. 1981)). Although the analysis of § 1584 in Booker was faulty, its conclusion was not. The focus of the analysis in Booker was the scope of § 1583. Booker, 655 F.2d at 564-65. After showing the scope of § 1583 based on its history, the court twice implied that § 1584 shared the scope of § 1583 without showing any relationship between the history of the two sections. See id. at 564, 565.
140. Mussry, 726 F.2d at 1451. In another error, the court said that McClellan was decided under the statutory predecessor of § 1584. Id. at 565. The basis for the McClellan decision was, in actuality, the statutory derivatives of the 1867 peonage statute. See United States v. McClellan, 127 F. 971, 972 (S.D. Ga. 1904). The peonage statute became §§ 1990, 1991, 5526 and 5527 of the Revised Statutes. The predecessors of § 1584 were §§ 5525 and 5377 of the Revised Statutes. See United States v. Shackney, 333 F.2d 475, 481-82 (2d Cir. 1964); see also supra note 7 and accompanying text.
141. Id. at 1451-52. The court also noted that people of all racial backgrounds are protected by the statute. Id. at 1451-52, 1452 n.4.
142. Id. at 1451.
The court asserted that the Friendly test, which limited the prohibited forms of coercion to those involving law or physical force, did not implement fully the thirteenth amendment's enforcing statutes. Unfortunately, the court addressed only Judge Friendly's conclusions and not his cogent arguments as well. The court turned to Judge Dimock for support in concluding that a test broader than the Friendly test was required.146

To establish the parameters of its own test, the court invoked the Supreme Court's decision in Bailey v. Alabama and the Fifth Circuit's decisions in Pierce and Bibbs. The court concluded that where the service of one person was exacted by control of another, whatever the means by which the control was established, the former person was held in involuntary servitude. Thus, the court chose to focus on the condition of involuntary servitude rather than on the means by which the condition was established. The court intended thereby to formulate a test that encompassed all modern conditions of involuntary servitude.

The Mussry test is composed of three criteria. First, the master must intend to subjugate the will of the servant. Second, a force sufficient to subjugate the will of a reasonable person with subjective characteristics similar to those of the servant must be employed. Finally, the force must cause the servant to believe that there is no alternative to the service demanded.

B. Comparative Analysis of the Mussry, Friendly, and Dimock Tests

All three tests fail to match the intended purview of section 1584 because they misinterpret the role of volition under the statute. Section 1584 forbids conditions of involuntary servitude which have some resemblance to chattel slavery. It is necessary to show evidence of the effect of a master's acts on a servant's will in order to demonstrate a causal link between the master's

143. Id. at 1452.
144. See supra notes 93-110, and accompanying text.
145. Mussry, 726 F.2d at 1452.
146. See id.
147. 219 U.S. 219 (1911). See supra notes 86-88 and accompanying text.
148. See supra notes 63-71 and accompanying text.
149. See supra notes 118-22 and accompanying text.
150. Mussry, 726 F.2d at 1452-53.
151. See id.
152. See id. at 1451-52, 1453.
153. Id. at 1453.
154. Id.
155. Id.
156. See supra note 6.
actions and the resultant condition. The master’s actions either must de-
prive the servant of the capacity to choose alternatives or must create a
situation in which a reasonable person with a background and with charac-
teristics similar to those of the servant would choose a condition of service
resembling slavery over the alternatives to which he believed he was limited.
All three tests, however, maintain that section 1584 prohibits service that is
literally involuntary. The servant must be unable to choose alternatives
either because of physical constraints or because his emotional or mental state precludes the exercise of will. None of the tests recognizes
that “involuntary servitude” is a term of art describing conditions of service
that often are chosen rationally by the servant over other available
options.

Since each test defines the condition of involuntary servitude by interpreting literally the word “involuntary,” each unnecessarily restricts the conditions to which section 1584 may be applied. The Mussry and Dimock tests exclude situations in which the servant chooses the condition of service. The Friendly test includes only situations coerced by use of law or physical force.

All the tests will be compared in terms of the three criteria posited in Mussry. Remedies for deficiencies in the Mussry test will be proposed.

As the Mussry court recognized in its first criterion, the intent to coerce service and action taken pursuant to that intent are crucial. The statute requires that the holding be knowing and willful. In a clear demonstration of the importance of the employer’s role, the Mussry court posed a hypothetical situation in which financial necessity rather than the employer forced a person to accept working conditions which he did not like. Although the employee in this situation might feel that his work was coerced and involuntary, the employer should not be held liable as the coercive agent. Furthermore, an employer who truthfully told an employee that no other jobs were available does not create thereby the circumstances that force the employee to work for him. Even if the employer took advantage of market conditions by paying low wages, he did not act illegally under

157. See Shackney, 333 F.2d at 487 (Dimock, J., concurring).
158. Mussry, 726 F.2d at 1453.
159. See discussion of the Friendly test, supra notes 105-10 and accompanying text.
160. See discussion of the Dimock test, supra notes 111-13 and accompanying text.
161. See Mussry, 726 F.2d at 1453.
162. See supra note 6.
163. Mussry, 726 F.2d at 1453.
164. For the text of § 1584, see supra note 6.
165. Mussry, 726 F.2d at 1453.
166. Id.
167. Id.
Requiring intent to coerce involuntary servitude protects employers from disgruntled workers. In *Shackney*, Judge Friendly expressed the fear that an employee might misuse the statute against an employer who made hot-headed threats in response to conflicts at work. Judge Friendly sought to preclude such abuses by fashioning a narrow test. The *Mussry* test, however, accentuates the fact that merely establishing the existence of threats is not enough. To satisfy the statutory intent requirement, the government must prove that the threats were made with the intent to hold an employee in involuntary servitude.

The second criterion to be met under *Mussry* is proof that the means of coercion used by the employer would subject to involuntary servitude a reasonable person of the same general background and experience as the employee. As illustrated in the long history of case law brought under the involuntary servitude statutes, it is usually the weak, the dependent, and the helpless who are subjected to degrading conditions of service by the strong and masterful. It is therefore necessary to consider the servant's individual vulnerabilities to coercion if the focus of the test is to remain on the condition of servitude rather than on the means by which the condition is produced.

As can be inferred from the *Mussry* criterion, adopting a purely objective standard would allow some instances of involuntary servitude to exist because the means of coercion employed are not adequate to force service from a person with a background different from that of a servant who is particularly vulnerable to the type of coercion employed. The allegations in *Mussry* demonstrate the inadequacy of a purely objective standard. The government alleged that the Mussry families used their knowledge of Indonesian culture

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168. *Id.*
170. *See id.*
171. *Mussry*, 726 F.2d at 1453.
172. *See United States v. Clement*, 171 F. 974, 976 (D.S.C. 1909); *see also*, e.g., *Pollock v. Williams*, 322 U.S. 4, 22 (1944) ("a necessitous and illiterate laborer"); *United States v. Reynolds*, 235 U.S. 133, 150 (1914) (Holmes, J., dissenting) ("impulsive people"); *Ex parte Drayton*, 153 F. 986, 995 (D.S.C. 1907) ("The petitioners in this case are the poorest and humblest class of citizens."); *In re Turner*, 24 F. Cas. 337, 339 (C.C.D. Md. 1867) (No. 14,247) (argument by counsel for petitioner) ("The decision of this case would affect the condition of thousands of colored minors whose term of slavery had been protracted for five to ten years by this illegal mode of apprenticing them.").

Compare the vulnerability to coercion of the people described *supra with* the ingenuity of their oppressors. *In re Peonage Charge*, 138 F. 686, 689 (C.C.N.D. Fla. 1905) (where the court noted the many artful methods devised for subjecting people to involuntary servitude).
to coerce service.  In Indonesia, each citizen must carry an identification card or be subject to arrest. The Mussrys allegedly intended to coerce service and took the passports as a means of effecting their intent. The servants would not leave because they feared being arrested. By an objective, American standard, taking passports usually would not be considered a means of forcing someone to work. To those servants, however, this act may have been a potent force.

Again, the statutory intent requirement protects the employer. The statute requires that the act be a knowing act. If the employer's actions work upon unknown, idiosyncratic vulnerabilities and thereby subjugate the employee in an unforeseen manner, the employer would not be liable to prosecution. Although this protection is implicit in the intent requirement, none of the judges discussed it.

Among the tests proposed, only the Mussry test clearly emphasizes the need to consider subjective characteristics. According to the Mussry court, the effect of the challenged conduct on a reasonable person with a similar background and similar characteristics must be determined. If the force is sufficient to make service involuntary, it meets the Mussry test.

Judge Dimock vividly demonstrated that the effect of a force varies depending on the subjective characteristics of the person against whom the force was used, but he did not articulate this principle as clearly as did the court in Mussry. As Judge Dimock noted, threatening an addict's drug supply could overwhelm his will. To a nonaddict, a similar threat would have a lesser effect.

Under the Friendly test, contemplating individual characteristics is superfluous. The servant's volition is limited by physical restraints. Those constraints prevent any person subjected to them from pursuing alternative work conditions regardless of his individual characteristics.

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173. Brief for the Appellant at 12, Mussry, 726 F.2d 1448 (9th Cir. 1984) (citing Record at 254).
174. Id. at 12.
175. Id.
176. Id. at 12-13.
177. Cf. Shackney, 333 F.2d at 487 (Dimock, J., concurring):

   It is impossible to generalize the means by which the will of man can be subjugated. What to one man is a paralyzing threat is to another merely a harsh alternative. Threats of force are the most extreme of threats to most of us but there are many who can brave this risk and will crumble in the face of others.

178. For the text of § 1584, see supra note 6.
179. See Shackney, 333 F.2d at 487.
180. Id.
181. Id.
182. See supra notes 105-10 and accompanying text.
The danger of considering subjective factors was discussed by Judge Friendly in *Shackney*.

He considered a hypothetical situation in which an employer threatened to prevent an employee's son from being admitted to Yale if the employee left his service. Judge Friendly said:

> With the most profound respect for the illustrious university at New Haven, we cannot believe that retention of an employee by a threat to prevent his son's admission there was quite what Congress had in mind when, in the great words of the 13th Amendment, it forbade a holding in involuntary servitude . . .

Judge Friendly's warning is well-taken. The hypothetical situation falls outside the parameters of section 1584, however, not because the means of coercion are insufficient but because denial of admission to Yale usually does not produce conditions resembling chattel slavery.

The final criterion in *Mussry* focuses on the condition of involuntary servitude in which the servant is held. The 1909 amendments to section 1584's statutory predecessors reveal the legislature's intent to prohibit all modern variations of that condition. Showing the means by which a person is held in that condition is important only in that it is necessary to establish a causal link between an employer's action and the fact that the person labors in a condition of involuntary servitude. To effectuate fully congressional intent, therefore, a test must encompass any form of coercion that produces these working conditions. As noted, none of the proposed tests achieves the goal of fully and accurately implementing congressional intent because

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183. 333 F.2d at 480.
184. *Id.*
185. *Id.*
186. It is important to recognize that it is the condition suggested by the Yale hypothetical that makes it seem beyond the scope of the thirteenth amendment, not the means of coercion per se. The coercion described in the Yale hypothetical normally would not produce a condition of involuntary servitude for two reasons. First, the hypothetical conjures images of financial and social status that are beyond those contemplated under the thirteenth amendment. See generally supra notes 6 and 80 (for overviews of the financial and social situations more prevalent in cases of involuntary servitude). Second, the average person could not be subjected to the degraded conditions that are within the scope of the amendment by means of the threat considered. If a person with peculiar subjective characteristics were threatened in the way suggested, however, a condition might result that would be prohibited by the amendment. For instance, if a person with extreme psychological problems were threatened by his employer in the way suggested, a condition similar to chattel slavery could result. In such a case, the condition would be one of involuntary servitude as contemplated by the thirteenth amendment.
188. See generally discussion, supra notes 45-58 and accompanying text.
189. See, e.g., Clement, 171 F. at 976.
each focuses on the will of the servitor when considering whether the crime has been accomplished.

The *Mussry* test requires that an employee believe that there is no alternative to performing the required labor.\(^{190}\) Taken literally, the criteria require a dysfunctional mental state that renders the employee incapable of recognizing alternatives. Simply refusing to work is usually a recognizable alternative even though the consequences of defiance may be extremely unpleasant. Rarely would a prosecution succeed if it had to be shown that the employee believed that no other options existed. Viewed more generously, the *Mussry* test could be construed as requiring a belief that no reasonable alternative exists. Though less restrictive, this interpretation raises the problem of defining "reasonable" and makes the reasonableness of the condition paramount over the statutory standard forbidding work conditions resembling slavery whether they seem reasonable or not.

While the *Mussry* test contemplates a cognitive dysfunction, the Dimock test requires a psychological or emotional paralysis.\(^{191}\) Judge Dimock rightly noted that this test avoids placing limits on the means by which this condition is created.\(^{192}\) What he did not consider, however, was that paralysis and inability to choose were extreme reactions normally experienced only briefly even by people facing death. Under this test, a person whose alternative to service is death but who rationally chooses to serve rather than to die would not be set free by the law.\(^{193}\)

The Friendly test is overly restrictive because it adopts the limitations discussed in connection with the first two criteria\(^{194}\) and because it attempts to limit section 1584 coverage to situations that physically remove the possibility of pursuing alternative conditions of service. Judge Friendly also bypassed significant case law. The *Pierce* decision, for example, indicated that involuntary servitude could be caused by any method of compulsion.\(^{195}\) Finally, Judge Friendly overlooked the 1909 amendments to the Criminal

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\(^{190}\) *Mussry*, 726 F.2d at 1453.

\(^{191}\) *See Shackney*, 333 F.2d at 487-88.

\(^{192}\) *See id.* at 487.

\(^{193}\) *Cf. Bibbs*, 564 F.2d at 1168 (where the court noted that slaves often had opportunities to escape but did not because of fear). Judge Dimock's test is so restrictive that even Ms. Ingalls in *United States v. Ingalls*, 73 F. Supp. 76 (S.D. Cal. 1947), could not be prosecuted successfully under the test if it could be shown that Ms. Janes chose to remain in service rather than to be hospitalized. *See supra* notes 114-17 and accompanying text. *But see Shapiro*, *supra* note 3, at 69, 82-83 (the Dimock approach would be more flexible than the Friendly test).

\(^{194}\) *See supra* notes 163-86 and accompanying text. Judge Friendly also was concerned that a less stringent test would be unconstitutionally vague. *Shackney*, 333 F.2d at 487. *But see Mussry*, 726 F.2d at 1454-55; *see also Shackney*, 333 F.2d at 488 (Dimock, J., concurring). A discussion of this issue is beyond the scope of this Note.

\(^{195}\) *See supra* notes 63-71 and accompanying text.
Code and thus wrongly assumed that section 1584 was not intended to prohibit modern conditions of service and modern methods of coercion. All of these reasons contribute to his having fashioned a test that is incapable of fully applying the law to modern realities.

None of the tests captures the intended purview of section 1584, but the Mussry court clearly stated its intent to address all modern conditions of involuntary servitude. Also, the Mussry test best elaborates the intent and subjective characteristics criteria. The Mussry test is superior to the Friendly test because it forbids involuntary servitude regardless of the means of coercion used and because it has greater potential for conforming to the intended scope of section 1584.

The Mussry court's goal of fully implementing section 1584 could be realized by utilizing a four-part test: first, the employer must intend to subject the employee to a condition of involuntary servitude; second, the employer must take actions to hold the employee in involuntary servitude; third, the employer's actions either must render the employee incapable of making a choice or must create a situation in which a reasonable person with a background and personal characteristics similar to those of the employee would choose the condition of involuntary servitude over the alternatives to which he believed he was limited; and, fourth, a condition of involuntary servitude must result.

III. Conclusion

In United States v. Mussry, the United States Court of Appeals for the Ninth Circuit formulated a test according to which a holding in involuntary servitude under 18 U.S.C. § 1584 may be effected by any means of coercion. The test does not comprehend fully the intended scope of the statute because the court unnecessarily limited its interpretation of the condition of involuntary servitude. If the suggested revisions were adopted, the test would be broadened in a manner that comports with congressional intent. Despite this weakness, however, the Mussry test is superior to previous tests.

The Mussry opinion exacerbates the division among the federal circuit courts of appeals on the issue of what constitutes a holding in involuntary servitude. Although the intended breadth of the Mussry test and its consideration of the servitor's personal vulnerabilities to coercion have cogent ap-

196. See supra notes 100-01 and accompanying text.
197. See Shackney, 333 F.2d at 482.
198. See supra notes 163-70 and accompanying text.
199. See generally supra notes 89-92 and accompanying text.
200. See generally supra notes 171-86 and accompanying text.
201. See generally supra note 6.
peal, the court's reasoning, especially its analysis of legislative history, is weak and undermines its potential for influencing other courts. Unfortunately, many courts may find Judge Friendly's detailed analysis in *Shackney* more persuasive and adopt his more limited test.

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