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A Journal of Rhetoric in Society

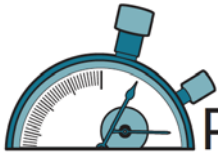
Rhetoric Matters: Race and 'Slavery' in the Trafficking Victims Protection Act

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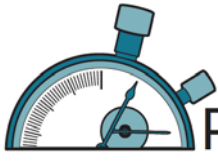
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In this article, I contend that the Trafficking Victims Protection Act (TVPA) tells us a story through which we can more closely examine how the law has functioned in both constructing and affirming certain cultural discourses about human trafficking. All stories leave out details—sometimes by design, sometimes by accident. This article, to some extent, relies on assumptions about the deliberative nature of the legislative process. U.S. legislation does not come into being spontaneously; rather, the underlying intent, words chosen, and words omitted are carefully deliberated upon and selected or stricken from the text, going through multiple versions and revisions before passage and signage into law. We see, then, a story that is told by both the legislative text *and* its omissions. Indeed, it tells us something about what has been deliberately deemed important/worthy as well as that which has been chosen to be hidden, silenced, ignored, or masked. This article is rooted in the belief that the TVPA's chosen words and omissions are purposeful and by design (i.e., they have been *deliberated upon*).

The TVPA arose out of a unique convergence of forces in the mid-to-late 1990s. A broad coalition had formed, comprised of a range of "interested parties spanning the political spectrum" united by their efforts to combat a problem that was increasingly connected to domestic concerns about human trafficking as a funding pipeline for organized crime and terrorist organizations

(Bewley 232). Groups active in this movement included legal rights groups and victim service providers as well as "feminists, human rights organizations, government agencies and religious groups" (232). Religious groups, which exerted considerable influence, viewed the issue as a potential in-road to address core concerns of the "religious right" about the nation's moral standing, seeking to draw a clear link between human trafficking and perceived vices such as sex work and pornography (Stolz 318). It is important to note that the legal framework for human trafficking extends *beyond* sex trafficking; indeed, it encompasses numerous types of exploitation, including forced labor, debt bondage, and forced marriage, among others.¹

I aim to explore what story is told by looking *beyond* and *around* the TVPA's plain meaning. An important toolkit for engaging in this type of analysis is provided by Hortense Spillers,² who once wrote that she was struck by "the *doubleness of ... law*—its bare-faced two-facedness" (20). Spillers, in her own analytical work with specifically situated legal codes, repeatedly refers to this doubleness—the plain text and the ways in legal construction creates alternate, two-faced meanings through both textual ambiguity and textual omission. In essence, Spillers tells us that there is no plain meaning when it comes to the law; rather, to arrive at a truer understanding of how the law actually operates we must "examine [the]



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rhetoical features of a...symbolic structure of ideas that purport to describe, illuminate, and valorize the truth about its subject" (153). Embracing Spillers' understanding of legal texts, this essay contends that federal human trafficking legislation contains a structure of complexly, often implicitly, conveyed ideas that—while not always immediately apparent—can and must be unpacked, analyzed, and decoded. In other words, this essay views the TVPA as a rhetorical device that masks intent, obscures contradiction, and creates ambiguity.

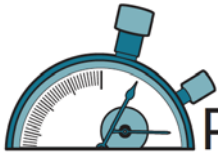
The passage of the TVPA marked a significant alteration in the ways in which slavery was represented in the national consciousness through law. In one sense, it stood as a noteworthy rhetorical event by moving conversations about slavery from the past to the present and re-characterizing the state's role in and around those conversations. Instead of placing the power of the state in support of the slave trade, as did the Fugitive Slave Act, the TVPA appeared to firmly situate the power of the state in opposition to slavery. Additionally, the TVPA fundamentally shifted the focus of the national discourse around slavery by deemphasizing racial considerations and accentuating issues of gender and sexuality.

This article's arguments about race and slavery within the TVPA rest on two points: 1) that antebellum chattel slavery, as a legally sanctioned institution (see, e.g., the Fugitive Slave Act of 1850), was explicitly racial/ized, and 2) that human trafficking in the present, while not legally sanctioned, remains an issue that *should* be recognized as implicating race. This second assertion is rooted in the oft-ignored fact that racial minorities remain the primary subjects of exploitation; indeed, human trafficking is inherently discriminatory and

minority race/ethnicity has been shown to be a risk factor for being subjected to trafficking: 74.4% of sex trafficking incidents reported in the U.S. involved racial minorities, while 98.4% of labor trafficking incidents involved racial minorities, according to a report issued by the National Center for Victims of Crime ("NCVRW Resource Guide"). Certainly while *all* trafficking is not racial, the racialized aspects of trafficking have, to date, not been adequately addressed, and are often instead framed around the ill-informed belief that white females are the most impacted trafficking targets. This being what we know, then, we can say with some confidence that racism is deeply embedded within the practices—and discourses—surrounding human trafficking.

Race & Slavery in the TVPA

The TVPA's stated purpose is to combat "a contemporary manifestation of slavery" (§102.a). The legislation follows a typical U.S. legislative format and, as such, is rooted in 24 "findings" that outline the rationale and necessity for the law. The first of these findings is that "the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today" (§102.b.1). This textual rendering of a complex, multilayered, multidimensional issue serves as a powerful example of what Patricia Williams would refer to as purposely simplifying complication (8). In other words, if we decode this initial "finding," the law rhetorically de-links *slavery* from *race*. The effect is two-fold: first, by glossing over the connection of slavery in U.S. history to the issue of race, the text ignores and, indeed, *erases* the voice of African Americans, who both embody and continue to be impacted by the legacy of historical slavery in the United States. This is an



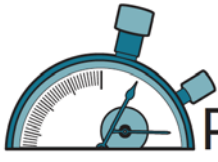
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important recognition because, in situating the TVPA as a response to "slavery," the text operates to devalue both the historical and contemporary African American experience and is a potentially harmful use of a term that might be better reserved to recognize and represent a significant, profound wound that continues to cause immense pain. A second effect of the TVPA's glossing over of the complex history and nature of slavery in this country is that, by disconnecting race and the African American experience from the use of the word "slavery," the fundamental, intrinsic aspect of slavery's history in the U.S.—its racial dimension—is at once rewritten and used to consign the racial realities of slavery beyond "the collective public state of mind" (22). In other words, by de-linking race from slavery, the TVPA shifts public attention and discursive focus from slavery's racialized past in this country to a more racially neutral use of the term; in so doing, it repurposes the word for a new racially-neutral—and thus more "palatable"—use in public discourse.

Interestingly, in the TVPA's twenty-second "finding," the text draws a connection between the TVPA itself, the Thirteenth Amendment, and the Declaration of Independence:

The right to be free from slavery and involuntary servitude is among those unalienable rights. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded. (§102.b.22)

While the gist of this appears to be generally laudable, we are in reality again faced with the two-facedness of the law. In decoding this passage, we must consider the rhetorical features of its symbolic structure. The passage invokes the universality of human rights by reference to the Declaration of Independence and then connects that to the abolishment of slavery in the U.S. through the Thirteenth Amendment. What is particularly striking about this passage is that while it *implies* the historical reality of slavery in the U.S., it in no way directly or meaningfully addresses it. Notably, the text here only frames the historical reality in a *positive* light—that is, the legislature asserts the moral high ground by reminding that slavery was abolished *in/by* the United States. This is, for very significant reasons, a highly problematic construction. Instead of placing historical slavery in America as a singularly important reality, it moves to recast that reality in a new light whilst seemingly asserting a claim that the history of race and slavery in the U.S. no longer warrants discussion. Indeed, as Juliette Hua observes, "framing human trafficking as a new expression of an old evil works to establish a narrative unfolding that, by linking an institution fundamental to the establishment of modern racism to an international human rights issue, casts racism as *a largely national problem long past*" (98). Hua's arguments on this particular aspect of the TVPA compellingly demonstrate the multiple problems with this construction. For instance, she observes that describing slavery in a way that paints a picture of it being antithetical to American principles both renationalizes black Americans and operates to suggest that "transatlantic slavery was an aberration" rather than a "constitutive condition to the founding of the nation-state" (99, 100).



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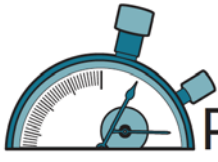
Considering that the history of racialized slavery in the U.S. is used in this way to frame the TVPA, this passage can be read as a purposeful move to assert a claim of American exceptionalism while redirecting discourse away from the realities—and *contemporary impacts*—of historical slavery in the U.S. In framing human trafficking as a form of "slavery,"³ the TVPA engages in a complex rhetorical maneuver that shifts national understanding about institutionalized slavery by *reconfiguring* the use of the term slavery in American discourse. Omi and Winant's theory of racial formation tells us that racial formations are constantly in flux, continually being reinvented (212). The de-linking of slavery from race in the TVPA is a reinvention through legislation, implicitly redefining "African American" by de-linking the racial component from "slavery" and, in so doing, reconfiguring the use of the term itself. Such a reinvention holds profound implications because this serves *not* to contextualize the human trafficking issue in light of America's history with the enslavement of African Americans but rather to present a *new use* of the term "slavery" that, at its operational core, obscures contemporary African American discourses about slavery's past and continued legacy. We can see this manifest itself by cursorily surveying the academic literature, media articles, public awareness campaigns, and law enforcement rhetoric—all of which reflect the TVPA's framing through the use of such phrases as *modern slavery* and *contemporary slavery*, which, in practice, operates in a way that takes "slavery" away from African American identity/history and moves it into the discursive realm of global human rights. We see this made explicit in the TVPA's persistent casting of "contemporary slavery" as a primarily an international issue.⁴ Within the TVPA, it is described as a "transnational crime" (§102.b.3)

and "a matter of pressing international concern" (§102.b.23). The movement away from a domestic focus is further solidified in sections 104, 109, and 110, all which focus on holding *foreign* countries accountable in combating the problem.

Further, considering the many textual omissions in the TVPA and the ways in which those omissions are operationalized in legal interpretation, we can—indeed we must—read the TVPA as a text that de-links the issue of slavery from race and problematically uses slavery to frame the human trafficking issue. In so doing, TVPA actively reconfigures both national discourse and national memory about slavery, in effect engaging in an act of erasure and elision. The broad concept of trafficking, then, as presented in the TVPA, represents a disowning of the racial aspects of slavery and constitutes a figurative whitewashing of both contemporary and historical realities. The absence of racial considerations in the text places racial minority narratives about slavery "outside the marketplace of rights" and "beyond the bounds of valuation" (Williams 21). Racial minorities are in effect disowned and disallowed from expressing "themselves in the language of power and assertion and staked claims—all those who are nevertheless deserving of the dignity of social valuation, yet those who are so often denied survival itself" (21).

Conclusion

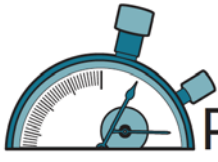
Stated another way, one could read the use of slavery in the TVPA as colonialist, an exercise of *ownership over* and *appropriation of* the words, stories, and narratives of the African American experience. Connected to the use of this term as a framing device is the way in which the TVPA de-links "slavery" from race, which



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serves to both further the reconfiguration of the term's use in cultural discourse and to silence discussions about race in relation to human trafficking. In so doing, the TVPA ignores the reality that human trafficking is a form of racialized violence and exploitation. The TVPA's text, therefore, constructs limited *and* limiting discourses about human trafficking.

In considering the rhetorical framing of the TVPA, we can see a narrative shorthand at work that favors some stories while obscuring or silencing others, and that operates to advance specific agendas (white, patriarchal, colonial) through textual ambiguity, textual omission, and textual privileging. By explicitly ignoring race and invoking "slavery" as an overarching rhetorical frame, the act ultimately rejects racialized violence as a legitimate area of state interest. This flawed framework has real impacts on real lives, and the ways in which it operates to encourage multiple layers of violence upon subjects of trafficking, particularly racial minorities, cannot be ignored. The fact that fifteen years after its initial passage race remains unaddressed by the TVPA, and that impacts on racial minorities remain largely undiscussed, forces us to consider that the text is both nonobjective, nonfactual, and rooted in a culturally situated disregard for racial issues generally. Current racial circumstances in the U.S.—the events in Ferguson and Baltimore being just two recent examples—should remind us that the United States has both a deeply racialized past *and* present. Conversations, then, around issues like police brutality and systemic discrimination can and should be informed by discussions about how the law operates to reinvent definitions and reinforce racial/ized constructs. The issue of human trafficking is but one example of this at work.



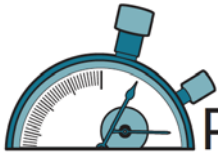
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Endnotes

1. While it is beyond the scope of this article to address problematic connotations of human trafficking with sex work, such connotations operate to render silent important narratives including that human trafficking has impacts across both gender and race.
2. While Spillers' work was very specifically situated to slave codes, her approach—including the use of notion of narrative shorthand—is, I think, useful to thinking about and theorizing legal texts. Borrowing from Spillers also seems an appropriate move to further problematize the use of the term "slavery" in contemporary law.
3. It is worth noting that the "forms of slavery" mentioned in the TVPA's text falling under the umbrella of trafficking *need not actually be slavery*, either in practice or in legal construction. Mohamed Mattar, a legal scholar, has noted that trafficking and slavery are *not* actually interchangeable terms, even though they are often used that way both in the law and in cultural discourse, because the wording of the TVPA paints trafficking in relation to slavery with such broad brushstrokes. Mattar's observation, that the word slavery is actually neither a reflection of reality nor a viable legal frame for the trafficking issue is, I think, incredibly important in thinking about the TVPA's text, and should give us pause in considering what is done by the invocation of slavery in addressing the issue of human trafficking. This may well be its own form of violence.
4. I do not question the international scope of human trafficking; rather I question the lack of the TVPA's consideration for *domestic* implications of the use of the word "slavery" that are connected, messily, to issues of race, gender, and historical impact.

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