ARTIFICIAL INTELLIGENCE SUBORDINATION:
CONSEQUENCE OF THE FAILURE TO GOVERN

EMILE LOZA DE SILES†

ABSTRACT

This Article considers the impacts of the ongoing failure to govern artificial intelligence (AI) systems and uses for which humans are the computational and decisional subjects. Ungoverned AI systems and uses can have profound, devastating impacts upon those humans, their families and communities, and society at large. Because the law in its current state is grossly inadequate for the Algorithmic Age, these AI systems and uses threaten a digital form of AI-mediated involuntary servitude and subordination. This Article proceeds in three Parts. First, it discusses the scope of involuntary servitude and other forms of enslavement as they have evolved from the ratification of the Thirteenth Amendment to diverse and contemporary forms. Second, it considers the nature of what it means to be an increasingly digital person, and how data about people are used and owned, as property and input, for AI-driven systems of economic production within the public-private power conglomerate Apple CEO, Tim Cook, has decried as the Data Industrial Complex. Third, it theorizes that ungoverned AI results in conditions of AI-mediated subordination that may be seen as analogous to conditions in many systems of involuntary servitude and other forms of enslavement.

† Emile Loza de Siles will become Assistant Professor of Law with the University of Hawai‘i at Mānoa William S. Richardson School of Law (August 2022) and is a Fellow of the Carl G. Grefenstette Center for Ethics in Science, Technology, and Law of Duquesne University. She also serves as Associate Professor (adjunct) teaching cybersecurity graduate courses at the University of Maryland Global Campus. Since founding Technology Law Group in 2003, she has represented Cisco, HP, Accenture, and numerous other tech innovators. She also has served with the U.S. Department of Commerce, Office of General Counsel and the U.S. Federal Trade Commission. Professor Loza de Siles’ interdisciplinary scholarship addresses artificial intelligence (AI) and law emphasizing AI governance and social justice. In 2019, she created the country’s first Artificial Intelligence and Social Justice law school course. Honored as a nominee to the United States’ inaugural National Artificial Intelligence Advisory Committee, she is a member of the Institute of Electrical and Electronics Engineers (IEEE) and serves on its Artificial Intelligence Policy Committee and its P2863 working group on the organizational governance of AI. She also chairs the 1200-member Section on Minority Groups of the Association of American Law Schools.

Professor Loza de Siles holds a B.S. in technology, an MBA, a J.D. from The George Washington University, a graduate certificate in cybersecurity strategy management from Georgetown University, and has completed work toward a data science graduate certificate from Harvard University. Thanks to many colleagues for useful comments at the LatCrit XXI Biennial Conference; the University of Massachusetts, Amherst Center for Justice, Law, and Societies’ New Directions in Law and Society Junior Scholar Workshop; and the Latina Law Scholars Workshop. Special gratitude to Tayyab Mahmud, Neil Gotanda, Enrique Guerra-Pujol, Jean Alejandro De la Loza, Douglas Rice, Brendon O’Connor, Sejal Chandak, Fernando Delgado, Charles Booth, Erika Dowid, and Isabella Hermann for sharing comments, ideas, and resources in support of this work. Thanks to the members of the Denver Law Review for their helpful and careful efforts. Contact: eloza@hawaii.edu.
INTRODUCTION

“That cable of tangled world lines is history. Seeing where it has been, it is clear where it is going—it is a matter of simple extrapolation.”

Artificial intelligence (AI) ventures are among the most richly funded ventures and are frequently courted for merger and acquisition. AI companies and global technology giants, through their remarkable AI innovations and applications, are creating a market poised to impart the same level of impact that electric light and power had on the Industrial Revolution. Valued at an estimated $27 billion, the global AI market is massive and is forecast to grow almost tenfold to roughly $267 billion by 2027. North America accounted for a major share of the 2019 market, with the United States’ portion equaling $11.4 billion alone. Government spending on AI is also considerable; within the 2019 global AI market, government spending accounted for almost one-fifth of the market or $4.9 billion. U.S. federal government spending accounted for a predominate share at more than one-fifth or $1.1 billion of the 2019 government AI market.

Within the enormous AI market there are numerous types of AI with increasingly numerous and beneficial ways to be used. For example, the

7. See, e.g., AI FOR GOOD, https://aiforgood.itu.int/ (last visited Apr. 27, 2022) (offering details about online informational sessions that explore the many advantageous uses of AI).
U.S. Veterans Administration uses AI to predict the likelihood of service members’ near-term death from the COVID-19 virus.\(^8\) The computed risk of proximate death further informs physicians as they consider potentially more protective treatment protocols.\(^9\) AI-for-good is not the focus of this Article\(^10\) and neither is the focus the contrary that AI and AI uses are one hyperbolic, catastrophic trope.\(^11\) Rather, this Article considers the use of AI systems that have the potential to deprive people of liberty, family, health, and home. Specifically, AI systems that have humans as computational subjects and use data about those people. This Article’s examples generally draw from such AI uses by governments, which uses are outsourced to private sector companies, creating an unfettered combinatorial power structure that Apple CEO, Tim Cook, warningly calls the “Data Industrial Complex.”\(^12\)

There are serious concerns with these AI systems and their uses and two issues are principal among those concerns. First, despite AI operating within markets for decades,\(^13\) AI governance and control laws are either too weak, too narrow, or are altogether absent.\(^14\) Existing laws purportedly govern in AI contexts, but the vast majority have not been interpreted, applied, or otherwise contextualized for AI.\(^15\) In addition, there have long

---

9. See id.
10. See, e.g., AI FOR GOOD, supra note 7.
12. Tim Cook, CEO, Apple Inc., Keynote Address Before 40th International Conference of Data Protection & Privacy Commissioners: Debating Ethics: Dignity and Respect in Data Driven Life, at 5:40 (Oct. 24, 2018), https://www.youtube.com/watch?v=kVhOLkls20A. In his keynote address, Mr. Cook stated,

   Today that trade has exploded into a data industrial complex. Our own information, from the everyday to the deeply personal, is being weaponized against us with military efficiency. Every day, billions of dollars change hands, and countless decisions are made, on the basis of our likes and dislikes, our friends and families, our relationships and conversations, our wishes and fears, our hopes and dreams. These scraps of data, each one harmless enough on its own, are carefully assembled, synthesized, traded, and sold. Taken to its extreme, this process creates an enduring digital profile and lets companies know you better than you may know yourself.

   Id.
14. There are some limited exceptions to this statement. For example, the U.S. Food and Drug Administration applies its medical device regulations to some devices that incorporate AI within them, How FDA Regulates Artificial Intelligence in Medical Products, PEW CHARITABLE TRS. (Aug. 5, 2021), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2021/08/how-fda-regulates-artificial-intelligence-in-medical-products.
15. See 24 C.F.R pt. 100 (2020); HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard, 85 Fed. Reg. 60,288, 60,290 (Sept. 24, 2020) (revising burden-shifting test for determining whether given practice, including use of risk predictive analytical systems, has unjustified
been needs for AI-numerate and AI-specific regulation considering frequent reports of AI bias, AI-mediated discrimination, and other harms resulting from ungoverned AI use.\textsuperscript{16} Clinging to an absolutist narrative that regulation extinguishes innovation,\textsuperscript{17} many elected and appointed to govern largely look the other way, adopting a laissez-faire position despite these AI-related injustices.\textsuperscript{18}

The second concern is partly a consequence of the first—the legal vacuum that exists where AI law should be—and it presents a grave matter of social injustice. The people who are the subjects of, and exposed to, AI technologies and uses (often nonconsensually or illegally) are being injured at a perpetuating and propagating scale.\textsuperscript{19} Their own AI-mediated injuries are but the beginning, however. The harms resulting from ungoverned use of AI cascade, resulting in devastating impacts on the injured’s families and communities, and to the rule of law, civil society, and democracy as a whole.\textsuperscript{20} Failing to meaningfully regulate AI technologies allows compounding toxic feedback loops to form which then corrode the rule of law and the protection it affords.\textsuperscript{21}

This Article contributes the new view that unregulated AI system development and use may result in a digital form of AI-mediated involuntary servitude and subordination (collectively, AI subordination). Specifically,
this Article constructs a logical relationship between identity and data, where one’s personhood and indicia of that personhood are simply units of productive inputs for the AI market, much like people were once involuntary productive inputs for large-scale plantation farming.

The Article proceeds in three Parts. First, it considers the historical and subsequently evolved definition of involuntary servitude and other forms of enslavement. Second, the Article examines what constitutes a human person (“person”) in the Algorithmic Age and how the Data Industrial Complex exploits AI systems to turn people into property. Third, it presents the conditions of chattel slavery and draws parallels to the conditions of AI subordination.

This Article aims to reframe the role of government regulation of AI systems and uses, and particularly AI procured and employed by governments. It illustrates what is at stake: liberty, the rule of law, the innovation economy, and democratic institutions. By naming and demonstrating the dangers of AI-mediated enslavement, this Article hopes to inspire promulgation of informed, reasonable regulation of AI. Importantly, this Article aspires to foreclose the further subordination of people, this time in digital form.

I. INVOLUNTARY SERVITUDE AND OTHER FORMS OF ENSLAVEMENT

The Thirteenth Amendment to the U.S. Constitution was ratified in 1865. It bans slavery and other forms of involuntary servitude, except for persons convicted of crimes:

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.

Further, since its 1948 inception, article four of the Universal Declaration of Human Rights forbids slavery, involuntary servitude, and other slavery-like conditions: “No one shall be held in slavery or servitude . . . .” Despite the law’s universal disdain for involuntary servitude and other forms of slavery, the practice still has not been eradicated. For example,
slavery is a widely continuing practice in Mauritania, despite having been ostensibly criminalized in 2007. Enslavement in this historical and continuing sense is the keeping of individuals in a state of bondage or involuntary servitude by their subordination to another person due to the latter’s absolute power over their life, liberty, and fortune. Modern conceptions of slavery include chattel slavery and other forms of involuntary servitude, together with attendant trafficking and other crimes. The U.S. Department of State defines slavery as compelled labor, including sexual labor, and transportation of trafficked persons to their places of enslavement. That definition includes forced labor—including as secured by bondage for the trafficked persons’ “debt” to the traffickers or the debt imposed on one’s trafficked ancestors, including as domestic servants and child soldiers—and sex trafficking, including the trafficking of children as sex slaves.

The United Nations (UN) holds an even broader definition, however. Beyond traditional slavery, the UN deems that other contemporary forms of involuntary servitude include “forced labour, debt bondage, servdom, children working in slavery or slavery-like conditions, domestic servitude, sexual slavery, and servile forms of marriage.” Just as the conception of slavery has broadened beyond traditional slavery, the means of carrying out the trade likewise have modernized. Social media and online platforms, for example, are among the modern instruments of the capture, subjugation, and trade of the trafficked.

31. Id.
32. Id.
34. See, e.g., Jon Gambrell & Jim Gomez, Apple Once Threatened Facebook Ban Over Mideast Maid Abuse, AP NEWS (Oct. 25, 2021), https://apnews.com/article/the-facebook-papers-maid-abuse-94909f43c725af9522704348ec35bd25 (discussing Apple threatening to ban Facebook and Instagram from App Store over concerns they were being used as tools to trade and sell maids in the Middle East).
36. See id.
II. AI SUBORDINATION

AI subordination is a compelled form of labor effectuated by the unregulated use of AI systems that focus on humans and use their data as inputs to AI production. To illustrate this concept, it is necessary to understand two things. First, the scope of what it means to be a human person in the Algorithmic Age must be properly conceived to encompass the increasing sphere of data that surrounds each person. Second, this broader, modern conception of a human person—one contextualized within AI systems and attendant technologies and uses—clearly establishes that people and their data are property and inputs for AI-driven production and the attendant growth of the capitalist economy.

A. What Is a Person?

What is a person? This ancient and perhaps unanswerable question is persistent. Conceptions as to what constitutes a person have slowly evolved over the course of human development and the development of human law.37 In the past, boundaries were drawn to differentiate between the self and an extrinsic thing.38 Here, however, the boundary that circumscribes personhood extends beyond the corporeal to the digital orbit encompassing data about the person.39 The corporeal self, the flesh, comprises the minimum indivisible constituent of one person.40 The confines of personhood and the notions of self extend beyond the physical body, however.41 In a slow, steady march, the law has expanded its view from the corporeal self as person to something more intangible, but vital to personhood.42 This unmistakable trend shows that personhood is becoming increasingly digital.43

Since 1785, courts in the United States have recognized that human persons are not restricted to their corporeal embodiment. In *Respublica v. De Longchamps*,44 the Pennsylvania Supreme Court decided a case involving a heated exchange between the Chevalier De Longchamps and Francis Barbe Marbois, France’s Consul General to the fledging nation, that resulted in one party striking the cane of the other.45 At that time, although

38. *Id.* at 966.
39. A digital orbit of data around a human being is in quantum greater than the digital exhaust of data that people “emit” through their online activities. *See* SHOSHANA ZUBOFF, *THE AGE OF SURVEILLANCE CAPITALISM* 69–70 & fig. 1 (2019).
40. Radin, *supra* note 37, at 963 n.18–20, 966 (stating that the body is “literally constitutive of one’s personhood”).
41. *See* id. at 967.
42. *See supra* Section II.A.
45. *See* id. at 114–15.
the law of battery required contact with the victim’s body, the Court nonetheless held that cane-striking constituted a battery. It rested its decision on international norms requiring respect for such diplomats; here, respect for the dignity of one’s person. Respublica recognized that the sphere of one’s personhood extends beyond the physical body to inanimate objects attached to one’s body. The Court imbued the object with the dignity afforded to persons, thus bringing the extension of the person within the protection of law.

Since Respublica, the law has increasingly recognized that harm to individuals extends beyond the corporeal. For example, the tort of intentional infliction of emotional distress, which once required a physical-harm element, evolved to encompass a “zone of danger” extending beyond the body. The Family Medical Leave Act and the Americans with Disabilities Act encompass nonneurotypical conditions affecting the mind and not merely physically observable conditions within the statutory definition of “disability.” Federal anticyberstalking law criminalizes the use of online communications that, among other aims, seeks to harass or intimidate an individual or cause them substantial emotional distress.

Sir John Salmond in his eminent treatise on jurisprudence wrote,

So far as legal theory is concerned, a person is any being; whom the law regards as capable of rights or duties. . . . Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition.

---

46. See id. at 114–18; MÔSIEUR DE VATTÉL, THE LAW OF NATIONS; OR, PRINCIPLES OF THE LAW OF NATURE, APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS 466 (Joseph Chitty ed., 1883).


49. Cf. Respublica, 1 U.S. at 114–118 (explaining how Chevalier de Longchamps’ actions inflicted grave harm upon the person of Francis Barbe Marbois and thus require severe punishment).


54. JOHN W. SALMOND, JURISPRUDENCE OR THE THEORY OF THE LAW 275 (2d ed. 1907).
If Judge Salmond is correct, then it is the attachment of a right or duty that brings an aspect of a human being within the scope of personality cognizable by the law. Rights and duties attach to data about people and the corresponding “metadata.” The U.S. Federal Trade Commission, for example, applies its enforcement power to informational injuries that impact upon ephemeral aspects of consumers’ personality, irrespective of whether those injuries are market-based.

In The Digital Person, Professor Daniel Solove discusses the increasingly constant, pervasive, and deep data collection from and about individuals and the result: permanent digital dossiers on all. Almost twenty years ago he cautioned that “we are only beginning to realize the extent to which our lives can be encompassed within [the] architecture” of the information age. In the years since Professor Solove’s insight, the trend to incorporate aspects of people’s lives and digital persons into these architectures has continued to escalate as people increasingly carry out their lives online.

Arguments presented about the personhood theory underlying the law’s recognition of property rights relate closely to the theory of one’s data and data about one as extending one’s person. A foundational view from Georg Hegel’s personhood theory of property is that an object gives rise to a property claim upon one’s insertion of one’s will or personality into that object. Margaret Radin’s elaboration of personhood theory calls out the essential nature of personal property as part of one’s being, inseparably forming part of how people constitute themselves “as continuing personal entities in the world.” The closer the ties that one has to such irreplaceable indicia or components of one’s personhood, the greater the law protects or should protect one’s rights in them.

---

55. Metadata are “data about data.” For example, location coordinates embedded within a digital image file are data about the image data thereby depicted. See Williams v. Sprint/United Mgmt. Co., 230 F.R.D. 640, 646 (D. Kan. 2005) (“[Metadata are] information about a particular data set which describes how, when and by whom it was collected, created, accessed, or modified and how it is formatted.”).

56. See U.S. FED. TRADE COMM’N, FTC INFORMATIONAL INJURY WORKSHOP: BE AND BCP PERSPECTIVE 1 & n.1, 2–3 (2018), https://www.ftc.gov/reports/ftc-informational-injury-workshop-be-bcp-staff-perspective (visited Apr. 27, 2022) (providing examples from workshop participants’ commentary such as embarrassment at disclosure of private medical information, doxing, and disengagement resulting from erosion of trust in businesses and markets).


58. Id. at 26.

59. Id. (as predicted by Solove); see infra Section II.B.


61. Id.

62. See Radin, supra note 37, at 972 (“Personal property is important precisely because its holder could not be the particular person she is without it.”).

63. Id. at 959.

64. Id. at 959–61.
B. People as Inputs to AI Production

Under historical chattel slavery in the American colonies and early United States, Africans and people of African descent, and Indigenous people before them, were enslaved and forced to be inputs to massive-scale plantation farms vital to the development of British capitalism and the economic growth of the British Empire. The law of property was attached to those people to justify their abhorrent treatment and absolute subordination. Today, data are the essential input for all AI systems from system design and creation through use in production; similarly, property rights attach to those data. As argued in this Article’s previous Section, the scope of human personhood encompasses people-as-data to which property rights are asserted under the law. Thus, people constitute data production units—property to be bought, sold, licensed, and otherwise traded. People-as-data are ingested by AI systems as productive inputs for the Data Industrial Complex.

This truth is borne out in government contracts transferring the “ownership” of people’s data to AI system vendors, affirming outright that alleged ownership of people-as-data rests in those private companies. For example, the Broward County, Florida sheriff’s department acknowledged providing arrestee data to an AI risk-predictive system to determine arrestee risk scores and make detaining decisions. The department stated that they used the AI system through the vendor’s online portal and that they no longer have access to the data or the portal. Presumably, the data now are now possessed solely by a private company.

By merely existing in modern society, people produce enormous quantities of data about themselves, whether directly provided, captured as “data exhaust” from online social media activities, or mandatorily or surreptitiously collected. In his visionary 1973 film work, Television Delivers People, artist Richard Serra asserted, “It is the consumer who is consumed . . . . You are the end product. You are the end product delivered

65. See, e.g., RALPH BETTS FLANDERS, PLANTATION SLAVERY IN GEORGIA 19 (1933).
67. See supra Section II.A.
68. See Cook, supra note 12; see also Zuboff, supra note 39, at 68–70 & fig. 1 (“digital exhaust”).
71. Zuboff, supra note 39, at 68 (“data exhaust”).
In today’s digital capitalist society marked by pervasive Internet and social media use and complete, permanent alienation of people from their data, truer words were never spoken.

III. CONDITIONS OF AI SUBORDINATION ANALOGIZED

This Article illustrates its thesis by summarizing some conditions associated with enslavement akin to conditions of AI subordination.

Flowing from its now-rejected legal basis that people are property, a number of consequent conditions characterize all or most systems of involuntary servitude and other forms of enslavement. First, those profoundly subordinated people have little to no legal rights or protections. Among the rights denied them is the fundamental right to be paid for their labor and the right to appeal to the courts for redress of harms done to them. Because the enslaved have almost no access to justice, their “owners” may punish or kill them with impunity. Second, enslaved people are silenced before the law, prohibited from giving testimony against their abusers and often against any free persons at all. Even when their testimony is permitted, that testimony is greatly devalued before the law. Third, in keeping with their legal impunity, “owners” have unlimited sexual rights to the enslaved. Further, children born of sexual congress with an enslaved person are likewise enslaved, their status being heritable, usually from their mothers. Fourth, “owners” control the mobility and assembly of people who are enslaved, and governments reinforce this
Finally, governments reinforce and perpetuate enslavement in other systemically structural ways. For example, governments may establish special courts and punishments specific to the enslaved, laws to regulate the sale of the enslaved, and laws permitting the capture and return of fugitive enslaved to their “owners.”

This Article offers some illustrative instances in which conditions of AI subordination may be analogous to many conditions associated with involuntary servitude and other forms of enslavement. Just as enslaved persons have very limited or no legal rights or protections, those exposed and subordinated to ungoverned AI systems have very limited or no legal rights or protections. In the modern case of AI subordination, this condition accrues in part due to the absence of AI-informed law and in part from the failure of existing laws to be contextualized for application to AI systems and their uses. The problem is compounded by the near-complete inaction (and, almost assuredly, a profound, pervasive lack of knowledge about technology) of policymakers, the bench, and the bar to interpret and apply laws in AI contexts.

For example, illegal AI-mediated discrimination under a disparate impact theory may be provable. Proving intentional discrimination under a disparate treatment theory, however, as required by *McDonnell Douglas Corporation v. Green* and its progeny, may be impossible. The “impossibility of proof” bar to disparate treatment claims results from the effects of a lack of transparency and accountability cemented through AI vendors’ contract terms, procurement and contracting abuses by governments in cooperation with vendors, and stonewalling by AI vendors to discovery requests under false trade secret protections.

Further, the AI subordinated have very limited or no ability to appeal to formal legal institutions for redress of harms. In an almost completely

86. See, e.g., *Dred Scott*, 60 U.S. at 421 (enslaved party) (discussing the charter of the City of Washington in 1820).
87. See *Drescher & Finkelman*, supra note 78, at 890–91.
88. See id. at 891.
89. See id.
90. See id. at 890–91.
93. See, e.g., Stanley Greenstein, *Preserving the Rule of Law in the Era of Artificial Intelligence (AI)*, A.I. & L., June 24, 2021, at 1–2 (stating that certain AI systems are too complex for the law to a certain degree).
96. See *Loza de Siles*, supra note 69, at 3.
97. See id. at 3–4.
black-boxed\textsuperscript{98} example, the U.S. Social Security Administration uses an AI system to “read” draft administrative law judge (ALJ) decisions. The AI review results in potential revisions to claimant-favorable decisions and benefit denial decisions that are difficult to appeal.\textsuperscript{99} Due to AI, a number of people entitled to disability benefits, as preliminarily determined by skilled, human ALJs, never receive the favorable order granting benefits and thereby are not granted benefits.\textsuperscript{100} Instead, unbeknownst to the claimants that are disabled, who are unknowingly AI subordinated, the ALJs’ decisions are effectively appealed through reexamination by a higher AI authority.\textsuperscript{101} Benefits are denied, but only after this “\textit{machina ex parte}“ appeal is carried out.\textsuperscript{102} The claimant who is disabled, subordinated by the AI system, has no part in this appeals process.\textsuperscript{103}

As mentioned, enslaved status may be heritable, and an analogous condition exists in AI subordination. For example, the risk scores for a child subject of a child-welfare-risk AI system, or a juvenile subject of a violence-risk-predictive AI system, depend in significant part upon the data associated with the child or juvenile’s parents, household members, and friends.\textsuperscript{104} Therefore, if a parent, for example, has contact with police—even unwarranted contact or contact that does not result in arrest—then those data pass from pertaining to the parent to then pertaining to the juvenile.\textsuperscript{105} For a nonwhite juvenile, those data are already contaminated with the biases that result in overpolicing of neighborhoods with high concentrations of Black, Brown, immigrant, and poor persons.\textsuperscript{106} The juvenile subjects inherit their status in the AI system from their family members, schoolmates, associates, and neighbors.\textsuperscript{107} Consequently, this inherited status elevates the juvenile’s risk score and that, in turn, can

\textsuperscript{98}. Here, the term “black box” refers to a usage or “system whose workings are mysterious; we can observe its inputs and outputs, but we cannot tell how one becomes the other.” \textsc{Frank Pasquale}, \textit{The Black Box Society: The Secret Algorithms That Control Money and Information} 3 (2015).


\textsuperscript{101}. Kurt Glaze, Daniel E. Ho, Gerald K. Ray, & Christine Tsang, \textit{Artificial Intelligence for Adjudication: The Social Security Administration and AI Governance, in Handbook on AI Governance} (forthcoming) (manuscript at 3, 14–15) (stating the Social Security Administration (SSA) Disability Program uses AI to help its judges and attorneys make core adjudicative decisions).

\textsuperscript{102}. \textit{See} AI NOW INST., \textit{supra} note 100; AI Use Case, \textit{supra} note 99. \textit{Machina ex parte} meaning \textit{ex parte} proceedings carried via the machine, i.e. the AI, without the involvement of the applicant party.

\textsuperscript{103}. AI Use Case, \textit{supra} note 99.


\textsuperscript{106}. \textit{See} AI NOW INST., \textit{supra} note 100, at 13. Some overpolicing is itself the result of uses of predictive policing AI systems, because they are notoriously tainted by historical racial and other biases. See Glaberson, \textit{supra} note 104, at 344; Packin & Lev-Aretz, \textit{supra} note 16, at 109–11.

\textsuperscript{107}. \textit{See} supra notes 103–04 and accompanying text.
result in the forfeiture of liberty, education opportunities, and even the erasure of adolescence when that risk score results in placement in an adult detention or correctional facility.¹⁰⁸

Other analogies between the conditions of enslavement and those of AI subordination may be drawn. This Article offers this sample of analogies to argue that the law must address AI subordination and to reinterpret and reform the law to protect human persons against the dangers posed.

IV. AI LEGAL REFORMATION

To stop AI subordination, the existing law must be interpreted and applied to AI systems and uses and, where AI protective laws do not exist, new laws must be established.

The White House Office of Science and Technology Policy (OSTP) recently proclaimed a need for an AI bill of rights.¹⁰⁹ The OSTP is beginning to gather policy input as to what an AI bill of rights might protect.¹¹⁰ My recent recommendations to OSTP officials were that an AI bill of rights would be supported by the Constitution, but should go beyond the existing Bill of Rights in the First through Tenth Amendments.¹¹¹ To be fully grounded within the Constitution, an AI bill of rights should be brought within the reach of at least Amendments One, Four through Eight, Thirteen, and Fourteen.¹¹² Further, to provide the Courts with the ability to address, for example, the impossibility of proof problems in AI-mediated disparate treatment claims, a digital civil rights act is needed to amend the Civil Rights Act of 1964¹¹³ and its companion acts.¹¹⁴ Despite the departure of its director earlier this year,¹¹⁵ the OSTP is making good

¹⁰⁸. See AI NOW INST., supra note 100, at 13.
¹¹⁰. Id.
¹¹¹. See Emile Loza de Siles, Recommendations for AI Bill of Rights Legislative Agenda to White House Office of Science and Technology Policy (Dec. 1, 2021) (on file with author). A discussion of the rationale for proposing that an AI Bill of Rights address the Constitutional principles in these amendments is reserved by the author for future work.
¹¹². Id.; U.S. CONST. amends. I, IV–VIII, XIII–XIV. A discussion of the rationale of these specific amendments is beyond the scope of this article and is reserved by the author for future work.
progress toward the civil and human rights protections contemplated within its AI bill of rights initiative.116

Indeed, OSTP’s efforts are gaining the attention of the federal legislature. Representative Anthony Brown of Maryland very recently introduced the Digital Civil and Human Rights Act of 2022 to contextualize and render enforceable the protections of the 1964 Civil Rights Act in this Algorithmic Age.117 Efforts like the proposed federal Algorithmic Accountability Act of 2019, its newly reintroduced 2022 version, and, for example at the state legislative level, proposed California Assembly Bill Number Thirteen,118 look to bring AI designs, uses, and risks under the rule of civil rights and consumer protection law, although those are thus far inadequate to protect people against AI subordination.119 State laws to ensure meaningful government transparency and accountability in face of the Data Industrial Complex’s effectuation of AI subordination,120 however, seem beyond most legislatures’ current purview.121 Thus, the elimination of some of the most fundamental conditions of AI subordination seem untimely at best and unlikely at worst. Other works address the barriers to AI governance and suggest multipronged approaches for legislators and regulators to expedite the establishment of technologically informed, effective AI laws.122

CONCLUSION

Through this comparative framing of the conditions of enslavement and analogous conditions under ungoverned AI, this Article sounds an alarm about the dangers that are emerging through the AI subordination of people. These dangers, left unrecognized and unchecked, aim at the very heart of humanity, liberty, and equality under the law. Governments and private-sector actors, particularly when operating in concert, should not be


119. H.R. 2231; Cal. S. Res. 13; see discussion supra pp. 3–5.


121. The scope of the majority of state legislation is focused on studying the impact AI algorithms, not curtailing any specific area of use. Additionally, the majority of proposed legislation has not been enacted. See id.

allowed to continue to use and abuse ungoverned AI systems to operate upon people as subjects. The law must address AI subordination immediately to ensure social justice in the Algorithmic Age and to prevent an ir-remediable refrain of the harms of mass subordination by AI-mediated means.