

1-7-2013

The Meaning and Viability of the Thirteenth Amendment

Dawinder S. Sidhu

University of New Mexico - School of Law

Follow this and additional works at: https://digitalrepository.unm.edu/law_facultyscholarship



Part of the [Law and Race Commons](#)

Recommended Citation

Dawinder S. Sidhu, *The Meaning and Viability of the Thirteenth Amendment*, The Hill (2013).
Available at: https://digitalrepository.unm.edu/law_facultyscholarship/291

This Blog Post is brought to you for free and open access by the UNM School of Law at UNM Digital Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu, lsloane@salud.unm.edu, sarahrk@unm.edu.

<http://thehill.com/blogs/congress-blog/civil-rights/275887-the-meaning-and-viability-of-the-thirteenth-amendment>

The meaning and viability of the Thirteenth Amendment

By Dawinder Sidhu

The Hill

January 07, 2013, 06:00 pm

While African slaves were the primary intended beneficiaries of the Amendment, “it reaches every race and every individual,” as the Supreme Court has stated. Indeed, the Amendment prohibits race-based slavery as well as slavery premised on any other ground. The Amendment’s protections are not only universal, but absolute. Whereas other constitutional rights are not without limits and may be overridden under certain circumstances, the Thirteenth Amendment’s safeguards are unassailable and beyond any balancing of competing interests. Further, though other constitutional rights shield the individual only from governmental action, the Thirteenth Amendment governs both public and private conduct.

The Thirteenth Amendment not only prohibits certain conduct, but empowers Congress “to enforce” the substantive command of the Amendment “by appropriate legislation.” The Supreme Court has clarified that the Thirteenth Amendment abolishes slavery and the “badges and incidents of slavery.” The Court explained that Congress, under its enforcement power, possesses the authority “rationally to determine what are the badges and the incidents of slavery.” In short, the scope of the Thirteenth Amendment is quite expansive and Congress has broad powers to effectuate its purpose.

The Thirteenth Amendment is not a relic of our painful past, but remains a viable form of redress against modern wrongs. Indeed, law professors have argued that the Thirteenth Amendment prohibits harms ranging from racial profiling and domestic violence to human trafficking and child abuse. In my own scholarship, I have suggested that concentrated urban poverty implicates the Thirteenth Amendment.

The ongoing relevance of the Thirteenth Amendment is more than an area of academic interest. In 2009, Congress passed and President [Barack Obama](#) signed into law, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. One particular provision of the Act, passed by Congress pursuant to its Thirteenth Amendment enforcement power, makes it a crime to “willfully cause[] bodily injury to any person or,” through the use of certain instruments, “attempt[] to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person[.]”

The first indictments under the Act soon followed. In 2010, the three individuals, one of whom an avowed white supremacist, harassed and assaulted a mentally disabled

Native-American man for five hours in an apartment in Farmington, New Mexico. For example, they branded a swastika onto his right arm, shaved a swastika into his hair, and wrote “White Power” and “KKK” on him. Instead of drawing images of native pride, as they said they were, the three drew an ejaculating penis among other similar things on the victim’s back.

In federal court, the defendants challenged their indictments on the grounds that Congress lacked the authority under the Thirteenth Amendment to pass the Act. The trial court judge disagreed, and one of the defendants has taken the case to a federal appeals court based in Denver, Colorado. (Full disclosure: I co-authored and signed an amicus brief, submitted by several Thirteenth Amendment scholars, to the appeals court. The brief argues that the aforementioned provision “falls well within Congress’ Thirteenth Amendment enforcement power,” and that the indictments were an appropriate exercise of the Act because the victim was selected due to his race and that “branding is a quintessential badge and incident of slavery.”)

Accordingly, the Thirteenth Amendment continues to be an active guardian of liberty in our society. Slavery and thirteenth Amendment are an important part of our history, as Django Unchained and Lincoln powerfully illustrate, but it must not be lost on us that the Amendment’s protections continue to be necessary so long as the nation is not free of certain subjugating actions and practices.

Sidhu, a law professor at the University of New Mexico School of Law, teaches and writes in the areas of constitutional law and the Thirteenth Amendment.

Copyright © 2016 Capitol Hill Publishing Corp., a subsidiary of News Communications, Inc.