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Kylee M. Petritsch
Lebanon Valley College, kp006@lvc.edu

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A Thirteenth Amendment Approach to the Reauthorization of the Violence Against Women Act

Kylee Petritsch

Lebanon Valley College

Abstract

Violence against a woman turns her into a non-autonomous instrument. The use of violence as a threat against a woman leaves her vulnerable, often times forcing her to do something contrary against their will. Women who experience domestic violence continuously experience threatening situations that result in subordination to their domestic partner. The term "involuntary servitude" listed in the Thirteenth Amendment allows the Amendment to be one of the most powerful, yet underused, provisions of the Constitution of the United States. Although the Amendment was created to abolish slavery against African Americans in the early years of the Republic, scholars have described the Thirteenth Amendment as a view that may be used to reach doctrinal outcomes neither specifically intended by the Amendment's drafters nor obvious to the contemporary audiences. It has been proposed that the Thirteenth Amendment may be read to prohibit not just slavery and involuntary servitude, but also racial profiling, felony disenfranchisement, hate speech, child labor, child abuse, anti-abortion laws, domestic violence, prostitution, and sexual harassment. Arguably, Thirteenth Amendment Optimism is the most valuable means as a motivator to the political process to protect a woman's constitutional right against domestic violence.

Keywords: Domestic Violence, Thirteenth Amendment, Constitutional Law, Congress, State's Rights, Commerce Clause, Fourteenth Amendment

Introduction

Violence against a woman turns her into a non-autonomous instrument. The use of violence, or threat of violence against a woman who doesn't comply with the orders of a male, is to treat the woman as a coercible and exploitable servant – an involuntary servant – and hence is in clear violation of the Thirteenth Amendment. Violence or the threat of violence exploits, or robs, a woman who is feeling vulnerable, forcing her to perform actions and services contrary to her will. Women who experience domestic violence continuously experience threatening situations that result in subordination to their dominant partner.

In 2000, *United States v. Morrison* held that the parts of VAWA (Violence Against Women Act, 1994) were unconstitutional because they exceeded the powers granted to Congress under the Commerce Clause and the Fourteenth Amendment. However, one component of the Constitution which would allow Congress to stand firm on VAWA is the Thirteenth Amendment. The Thirteenth Amendment is one of the most powerful, but underused, provisions of the Constitution of the United States.

Similar to the Violence Against Women Act, the Trafficking Victims Protection Act, or TVPA, was passed by Congress in 2000, using the basis of the Thirteenth Amendment to protect women from “modern slavery,” or human trafficking. The TVPA was passed under the Thirteenth Amendment to equip the government with new tools and resources to mount a comprehensive and coordinated campaign to end forms of modern slavery.

At the time when the Thirteenth Amendment was under debate in Congress, the metaphor “women are slaves” had rhetorical currency and suggested that white women shared with African American men and women a similar legal and social status of non-identity (McConnell, 1991). The term “involuntary servitude” listed in the Thirteenth Amendment made Congressmen uneasy because it was at a time when people of color, as well as women, were still seen beneath the white man. This was included in the Amendment to prohibit slave-like conditions through private use of force (McConnell, 1991).

The Thirteenth Amendment was adopted in 1865 to the United States Constitution and thereby abolished slavery and involuntary servitude. The Amendment reads Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime of which 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 the power to enforce this article by appropriate legislation”. Section 2 gives Congress the power to protect the people of the United States from slavery or involuntary servitude (Constitution of the United States).

The Violence Against Women Act was first signed in 1994 by President William Clinton. The original Act provided over 1 billion dollars toward investigation and prosecution of violent crimes against women, imposed automatic and mandatory restitution on those convicted, and allowed civil redress in cases prosecutors chose to leave un-prosecuted. The Act also established the Office on Violence Against Women within the Department of Justice.

The debate among scholars concerning the background to VAWA and the Thirteenth Amendment is identified in the appended literature review. This scholarships include approaches to both and application thereof.

The Violence Against Women Act

Congress passed the Violence Against Women Act in 1994 (Legal Momentum). The bill marked the first comprehensive, federal legal package designed to end violence against women and was a triumph for women's groups that lobbied hard to Congress because states were failing in their efforts to address violence against women (Legal Momentum). The Violence Against Women Act included provisions on rape and battering that focused on prevention, funding for victim services, and evidentiary matters; it also included the first federal criminal law against battering, as well as a requirement that every state afford full faith and credit to orders of protection issued everywhere in the United States (Legal Momentum).

The Civil Rights Remedy and United States v. Morrison

The bill took over four years to draft and pass because of opposition to the Act's most controversial provision, which was the private civil rights remedy. This modeled nineteenth-century laws which were implemented to protect African Americans, and allowed victims of violence to sue their attackers (Legal Momentum). For several years, the civil rights remedy remained upheld as constitutional cases across the country; Congress had asserted its power to pass VAWA under the Commerce Clause and the Fourteenth Amendment of the Constitution (Legal Momentum).

Christy Brzonkala was a student who sued her alleged attackers in Court after being sexually assaulted. The case continued to appeal until it reached the Supreme Court. In a 5-4 decision, the Supreme Court ruled that Congress does not have the authority to enact the Violence Against Women Act of 1994 under either the Commerce Clause or the Fourteenth Amendment. Chief Justice Rehnquist delivered the opinion and held that Congress lacked the authority to enact a statute under the Commerce Clause or the Fourteenth Amendment since the statute did not regulate an activity that substantially affected interstate commerce, nor did it

redress the harm caused by the state (Oyez). Chief Justice Rehnquist wrote for the Court that “if the allegations here are true, no civilized system of justice could fail to provide [Brzonkala] a remedy for the conduct of... Morison. But under our federal system that remedy must be provided by the Commonwealth of Virginia, and not by the United States” (Oyez). In summary, Chief Justice Rehnquist was implying that this should be left to the state, rather than the federal government, to control and regulate.

The Court failed victims of violence by striking down provisions of VAWA; however, they also failed by not recognizing that VAWA could rely on the provisions in the Thirteenth Amendment. The justices of the Court rejected arguments by Brzonkala’s lawyers, as well as the Clinton Administration that the law (VAWA) was needed because states are not doing enough to protect rape victims. Unlike the Commerce Clause, the Supreme Court has never restricted the Thirteenth Amendment to economic matters (Tsesis, 2009).

Thirteenth Amendment Optimism

Estimates show that 40.3 million people live in modern slavery around the world (Anti-Slavery). Slavery simply did not end with abolition; instead, it changed forms and continues to hurt people in every country in the world, even today. These conditions include “women forced into prostitution, men forced to work in agriculture or construction, children in sweatshops or girls forced to marry older men, their lives are controlled by their exploiters, they no longer have a free choice. They Are in slavery” (Anti-Slavery). Of the roughly 20.9 million victims of human trafficking globally, 68% are in forced labor, 22% live sexually exploited, and 10% are in state-imposed forced labor (Office on Trafficking in Persons).

The Thirteenth Amendment established to ban on the federal level slavery and involuntary servitude. Initially, the framer's intended only to help former African American

slaves, as well as the generation of African Americans to come. As with anything, there are future results of the Amendment that can protect people that the authors of the Amendment may not have intended to protect. The term “Thirteenth Amendment Optimism,” as described by Jamal Greene, is the view that the Thirteenth Amendment may be used to reach doctrinal outcomes neither intended explicitly by the Amendment’s drafters nor evident to the contemporary audiences (2012). It has been proposed that the Thirteenth Amendment may be read to prohibit not just slavery and involuntary servitude, but also racial profiling, felony disenfranchisement, hate speech, child labor, child abuse, anti-abortion laws, domestic violence, prostitution, sexual harassment, the use of police informants, anti-discrimination laws, the denial of health care, the Confederate flag, the use of orcas at SeaWorld, and even to pass legislation permitting physician-assisted suicide (Greene, 2012). The Thirteenth Amendment applies to these examples because it demonstrates an example of institutions that create environments that are hard, or almost impossible, to escape. Arguably, Thirteenth Amendment optimism is the most valuable means as a motivator to the political process to protect affirmative constitutional rights (Greene, 2012). When the Supreme Court considered the Civil Rights Cases in 1881-1883, it held that the Thirteenth Amendment not only prohibited slavery, but also the “badges of slavery”. This made the term broader and suggests that even when de jure slavery had been stamped out, de facto oppression akin to slavery through discrimination or intimidatory practices by whites against African-Americans appeared to continue. This included slavery-like denials of equal citizenship to former slaves and their descendants.

A progressive interpretation of the Thirteenth Amendment should expand Congressional enforcement authority beyond race (Tsesis, 2012), which means, applying the Thirteenth Amendment to laws similar to TVPA, such as the Violence Against Women Act, to protect those

from involuntary servitude as the Thirteenth Amendment outlines. For example, the anti-subordination principles of the Thirteenth Amendment support not only racial discrimination but are relevant to policies for abolishing gender discrimination when dealing with race and gender (Tsesis, 2012). The Thirteenth Amendment is a source of a legislative authority that should be used to address private acts of discrimination. Thirteenth Amendment optimism is most valuable to the political process to protect affirmative constitutional rights.

The Trafficking Victims Protection Act

The Trafficking Victims Protection Act of 2000 (TVPA) was a federal statute passed according to Congress's Thirteenth Amendment enforcement powers (McAward, 2016). Congress passed the Act to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominately women and children, to ensure just and effective punishment of traffickers, and to protect their victims (McAward, 2016). The statute enhances criminal penalties for traffickers, provides protection and assistance programs for victims, and creates a variety of mechanisms to prevent trafficking. Congress alluded to its power to regulate interstate commerce as well as its ability to enforce the Thirteenth Amendment to support the bill (McAward, 2016). Invoking the Thirteenth Amendment abolishment of slavery and involuntary servitude, Congress declared that "current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded" (McAward, 2016). This quote translates to the fact that women who experience violence and are unable to escape their abusers, are, in retrospect, involuntary servitudes of their partner.

Concluding, the Trafficking Victims Protection Act was not only a milestone in protecting victims of modern slavery but set a precedent to use the Thirteenth Amendment to protect those who are vulnerable to violence in these forms.

Human Trafficking

Human trafficking involves the use of force, fraud, or coercion to obtain some type of labor or commercial sex act (Department of Homeland Security). Traffickers use force, fraud, and oppression to lure their victims and force them into work. In other words, trafficking is a process of enslaving people, coercing them into a situation with no way out, and exploiting them – precisely what the Thirteenth Amendment prohibits. People can be trafficking for many different forms, including prostitution, forced labor, forced begging, forced criminality, domestic servitude, forced marriage, and forced organ removal. 72% of people exploited in the sex industry are women (The United Nations Office for Drugs and Crime). Using the Thirteenth Amendment basis to prohibit and protect victims of trafficking will provide a constitutional safe ground.

Domestic Slavery

Domestic work is a sector that is vulnerable to exploitation and domestic slavery because of the unique circumstances of working inside a private household combined with a lack of legal protection (Anti-Slavery). These workers perform a range of tasks in private homes, including cooking, cleaning, laundry, taking care of children, and running errands. Some domestic workers also live in their employers' homes and are often considered "on-call" to undertake work for their employer 24 hours a day. The pay is usually low, with payments delayed. Some workers aren't paid at all or receive payment in kind, such as food. For most workers, the circumstances and conditions amount to slavery. This happens when employers stop the workers from leaving the house, don't pay wages, use violence or threats, withhold their identity documents, limit their contact with family, and force them to work (Anti-Slavery).

The International Labor Organization estimates that at least 67 million men and women work as domestic workers across the world, not including children (International Labor Organization). Women and girls make up the majority, around 80%, and the ILO estimates that more girls under the age of 16 work in domestic service than in any other category of child labor (International Labor Organization).

Forced Marriage

In the United States, only ten states have legislation that directly addresses forced marriage. The U.S. State Department recognizes forced marriage as a marriage without the consent of at least one party (State Department). In the U.S., adults and children are forced to marry through familial deception, cultural tradition, emotional blackmail, and threats of abuse or death (End Slavery Now). Exceptions allow children under the age of 18 to marry legally, and most states grant children between 16 to 17 a marriage license so long as their parents give consent. Other exceptions include a judicial approval that can allow those under 15 to marry. For instance, a study done by Unchained at Last found that between 1995 and 2012, judges allowed 178 children between the ages of 10 and 15 to marry in New Jersey.

The Tahirih Justice Center reported at least 3,000 suspected forced marriage cases in the United States between 2009 and 2011 (Forced Marriage in Immigrant Communities in the United States). The Tahirih Justice Center is one of the nation's foremost legal defense organizations protecting women and girls fleeing human rights abuses.

“Robert’s” Style Judicial Modesty

Unlike the Commerce Clause, the Supreme Court has never restricted the Thirteenth Amendment to economic matters. If the Supreme Court had used Thirteenth Amendment

authority to uphold the Act rather than the Commerce Clause or the Fourteenth Amendment, the parts of VAWA would remain Constitutional and under Congressional authority.

John Roberts trumpeted "judicial modesty", his principle that the Court should find constitutional grounds to save as much of a statute as possible. However, Roberts only became Chief Justice in 2005, five years after the Morrison decision.

For example, in the 2012 Obamacare case *NFIB v Sibelius*, it was Roberts who found a way around his fellow conservative justices' oppositions to the individual mandate under the Commerce Clause – instead, Roberts crafted a justification for the Affordable Care Act based on Congressional tax powers under Article 1 Section 8 clause 1.

Under a "Roberts" styled Court motivated by judicial modesty and the avoidance of unnecessary constitutional invalidation of statute, they could secure VAWA under the Thirteenth Amendment rather than the Commerce Clause and the Fourteenth Amendment.

Conclusion

The Supreme Court decided that Congress does not have the power to enforce the Violence Against Women Act based on the Commerce Clause or the Fourteenth Amendment. What the Court, as well as Congress, failed to realize was that the Thirteenth Amendment supports the Violence Against Women Act based on involuntary servitude that women in violent circumstances experience. The Thirteenth Amendment has been used in other circumstances to protect those vulnerable to involuntary servitude, which the law saw with the passing of the Trafficking Victim Protection Act (TVPA).

In conclusion, while Congress battles to reauthorize the Violence Against Women Act, instead of taking the defense for the Act through the Commerce Clause, they should instead use the Thirteenth Amendment based on the evidence that women in difficult domestic

circumstances are slaves to their partner. By using the Thirteenth Amendment, Congress will have a much stronger opinion to reauthorize the Act based on the Amendment and the empirical evidence and previous scholarly work.

“If we are to fight discrimination and injustice against women, we must start from the home, for if a woman cannot be safe in her own house, then she cannot be expected to feel safe anywhere.”

– Aysha Taryam.

Literature Review

The purpose of the literature review is to learn what previous scholars have contributed to the topic. It sets forth the historical contributes of the Amendment and standing. It also investigates the history of violence against women in the United States and the legislative history of VAWA.

The literature review is separated into two groups: The Violence Against Women Act and the Thirteenth Amendment. The first group looks at gender-motivated violence, examines domestic violence and violence committed against women, researches how government involvement can help victims of domestic violence. The Violence Against Women Act and the two main components of the Act: The Commerce Clause and the Fourteenth Amendment, reauthorizing the Violence Against Women Act, investigates arguments as to why the Act should be reauthorized, the effects of VAWA, and explains why some are not in favor of the Act. The second group looks at the unintended results of the Thirteenth Amendment, uses the history of the Amendment to discuss the framers of the amendments original views and how it has shaped over time, as well as violence against women as involuntary servitude, and explains how

perpetrators use violence and fear against women to keep them as their slaves. It also looks at things such as human trafficking and rape against women to keep them complicit.

Group One

Lisae C. Jordan argues in “Introduction: Special Issue on Domestic Violence” that increased legal services for victims of domestic violence, which include representation in divorce, custody, child support, and protective order proceedings, have been proven to help decrease the incidents of domestic violence. She argues that studies have found that increased availability of legal services in the county of residence has a significant effect on the overall incidence of domestic violence. The Federal Violence Against Women Act has played a role in providing funding for legal services that help these causes, the author says.

In “Divorce and Domestic Violence: When Family Law Meets Criminal Law,” Aimee Pingnot Key argues that although family law and criminal law are two very distinct areas of law, they often overlap. The author argues that a divorce is often a triggering event for domestic violence. The author also states that all 50 states and D.C. have statutes that require the courts to consider domestic violence committed by one parent against the other in resolving a custody or visitation dispute between parents. The author also defends the Full Faith and Credit Provision of VAWA, which requires that a valid protection order can be enforced in the jurisdiction where it is issued and in all other U.S. states and territories.

Corinne L. Mason argues in “Global Violence Against Women as a National Security Emergency” that in a post 9/11 era, women’s issues have become central in American foreign policy aid and policy objectives. This is to do increasing awareness of violence against women, as well as the rise of feminism in society. Also, American national security is casually connected to gender inequalities abroad, which includes the threat of terrorism. The author argues that an

International Violence Against Women Act will assess the impact of security and development within anti-violence strategies.

“How to Use the Violence Against Women Act” by Cathy Lu argues that for the first time, women have the federal law on their side when it comes to gender-motivated violence. The author writes that the Violence Against Women Act is one of the most important changes in law on domestic violence on the federal level. The author also argues that the burden of proof for VAWA is two-fold; first, attorneys must prove that a crime of violence, or a felony against a person or property, was committed. Second, the burden of proof could involve using evidence such as epithets, statements, and patterns of behavior, or providing the use of excessive force combined with names that indicate violence motivated by gender.

“Violence Against Women” by Susana T. Fried says that framing violence against women in human rights terms has boosted the movement’s credibility and fostered a universal language. The author argues that using human rights claims has helped effect stronger political will on the part of the government. The author also argues that violence against women is far more visible as a public issue today than it was in the past. However, despite these findings, violence against women remains at epidemic proportions. The author argues that advances in legislation and policy have not been followed by strong and sustainable implementation plans. The author finds that there is a significant gap in efforts to evaluate, measure, and monitor legislation, programs, and policies.

In “Violence Against Women” by Gunilla Krantz and Claudie Garcia-Moreno, they aim to understand better the magnitude and the nature of the different forms of violence against women. The authors argue that precise definitions are needed to be able to understand and compare information across studies and to generate a knowledge base that will allow identifying

the various and overlapping ways in which violence against women occurs and what actions may serve to prevent it and respond to it.

“Violence Against Women: Myths, Facts, Controversies” by Walter DeKeseredy. The author argues that most of the work in the field of violence against women focuses on the extensiveness of victimization, the consequences of victimization, and gendered issues of prevention and intervention. The author argues that both men and women will benefit from gender equality and that violence against women is ultimately a human rights issue.

“Human Rights and Domestic Violence” by Darren Hawkins and Melissa Humes argue that most states now have accepted some responsibility to help prevent violence in the home and to prosecute the offenders. This article investigates women’s movements and the study of state policy towards women.

Anna Aizer, in “The Gender Wage Gap and Domestic Violence,” writes that three-quarters of all violence against women is perpetrated by domestic partners, with poor women disproportionately affected. The author then says that the estimated costs of domestic violence in terms of medical care and declines in productivity exceed \$5.8 billion annually. The author examines the impact of the gender wage gap on levels of domestic violence in the United States.

Kerrie E. Maloney discusses the civil rights provision of the Violence Against Women Act after the Supreme Court’s decision in *United States v. Lopez*, in “Gender-Motivated Violence and the Commerce Clause: The Civil Rights Provision of the Violence Against Women Act After *Lopez*.” The author writes that for the civil rights remedy of VAWA, Congress relied on the Commerce Clause of the Constitution. In this article, the author documents the phenomenon of violence against women in the United States and focuses on evidence that gender-motivated violence is a national problem that demands a solution. The author proposes

analyzing the constitutionality of the civil rights provision under a different prong of congressional commerce authority.

The article titled “Crossing the State Line? Violence Against Women Act battered in test of congressional powers under commerce clause” by Mark Hansen questions if Congress has the power to do anything about violence against women. He compares this problem to shootings near schools, in which the United States Supreme Court struck down Congress’s power to regulate guns near school zones. The author then addresses *Brzonkala v. Virginia Polytechnic Institute*, which held that the civil rights remedy of the Violence Against Women Act is unconstitutional. The author wrote that this decision left undisturbed other provisions of the Act, including funding for battered women’s programs.

“In Defense of the Civil Rights Remedy of the Violence Against Women Act,” by Johanna R. Shargel, argues that violence currently poses the most significant threat to women’s rights as equal citizens. In this article, the author argues that the most controversial provision of the Violence Against Women Act is the “Civil Rights for Women” provision. This provision establishes a federal civil rights cause of action for victims of violent crimes, which are motivated by gender. This is based on two independent constitutional sources of legislative authority: The Commerce Clause and the Fourteenth Amendment’s enforcement provision, Section Five. The author of this writing supports and defends the constitutionality of the VAWA Civil Rights Remedy by examines the Commerce Clause ground of Remedy, focusing on *United States v. Lopez*, and also by analyzing the Section Five basis for the Remedy, arguing against claims that the statute fails to meet the Fourteenth Amendment’s state action requirement.

Caroline Schmidt argues in “What Killed the Violence Against Women Act’s Civil Rights Remedy Before the Supreme Court did?” that the civil rights remedy of the Violence

Against Women Act faced a host of structural problems from the beginning, which made success for the remedy unlikely. The author argues that the remedy was radical, and the legislation was based on the writings of the most extreme feminist legal thinkers. Also, the symbolic value of the legislation was emphasized over its practical purpose. The author argues that the Violence Against Women Act was used only to send a message, not to take a chance.

The author in “The Civil Rights Remedy of the 1994 Violence Against Women Act: Struck Down but Not Ruled Out”, Julie Goldscheid, argues that the most controversial part of the Violence Against Women Act was the civil rights remedy, which authorized the victim of gender-motivated violence to bring a civil cause of action against the perpetrator. Goldscheid argues that this offered a powerful remedy for victims of gender-based violence, and the goals of the VAWA civil rights remedy were manifold and complex. The author argues that the remedy was practical and also aspirational.

Carolina Joan S. Picart argues in “Rhetorically Reconfiguring Victimhood and Agency: The Violence Against Women Act’s Civil Rights Clause” that the current popular and legal interpretations of agencies and victimhood leave battered women in a bind, which they live in day to day. The author examines why dimensions of demisting lawmaking on rape and battering are controversial, and why the civil rights remedy resulted in ambiguous gains.

“A Thirteenth Amendment Defense of the Violence Against Women Act” by Marcellen Elizabeth Hearn examines what the author calls the most controversial part of the Violence Against Women Act, the civil rights cause of action for women who have been victims of gender-motivated violent crimes. The author argues that instead of invoking the Fourteenth Amendment and the commerce powers to enact the civil rights remedy, to use the Thirteenth Amendment. The research demonstrates that the Thirteenth Amendment should be viewed more

comprehensively and included slavery involved familial and private aspects, which Congress was well aware of when it passed the Amendment.

“Protecting (Which?) Women: A Content Analysis of the House Floor Debate on the 2012 Reauthorization of the Violence Against Women Act” by Nadie E. Brown and Sarah Gershon discusses the complexity of the 2012 reauthorization of the Violence Against Women Act and examines the controversy surrounding it during the reauthorization debates. The authors argue that the phrase “all women” is redundant, because there is a specific set of problems that are occurring in immigrant, Native, and LGBTQ communities that are not being addressed in the current legislation of the Violence Against Women Act – the phrase “all women” reduces the complexity in how groups of victims experience violence and seek protection.

In “Two for One: Congress moves to reauthorize laws targeting domestic violence, human trafficking” by Rhonda McMillion discusses the reauthorization of the Violence Against Women Act. The author says that reauthorization allows Congress to modify laws at regular intervals, and federal legislators took advantage of the opportunity to expand the reach of the Act. The author discusses the Legal Assistance for Victims program, which provides funding to support competent pro bono legal assistance to victims of domestic violence, dating violence, sexual assault, and stalking. The support from this program has helped the American Bar Association Commission on Domestic & Sexual Violence to mobilize the legal profession to provide legal assistance for victims in this area, primarily through training programs and technical support.

Nancy Meyer-Emerick employs three conceptual frameworks to evaluate the Violence Against Women Act of 1994: Foucault’s theories of sexuality, Habermas’ theories of the state, and MacKinnon’s theories of gender stratification and its relationship to sexual violence in “The

Violence Against Women Act of 1994: An Analysis of Intent and Perception”. The author's examination suggest that not only is the state limited in its capacity to intervene on behalf of women but that the state may also be complicit in perpetuating violence against women. The author argues the state may be complicit due to their lack of intervening in violence against women. The author argues for a renewed commitment to ending violence against women in the United States.

Group Two

“The Victims of Trafficking and Violence Protection Act of 2000: Will it Become the Thirteenth Amendment of the Twenty-First Century?” by Michael R. Candes investigates the Trafficking Act, which was signed into law on October 28th, 2000 by President Clinton. The purpose of this Act was to combat human trafficking and to help the victims of this form of slavery, who are primarily women and children.

Neal Kumar Katyal argues on behalf of those who are victims of forced prostitution in “Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution.” In this article, he argues that forced prostitution is a form of slavery for purposes of the Thirteenth Amendment’s prohibition against slavery and involuntary servitude, and government officials who fail to enforce laws against pimps are acting unconstitutionally.

Jane Kim presents in “Taking Rape Seriously: Rape as Slavery” that ultimately, rape state conviction rates are ultimately low, as well as on the federal level. In this article, the author identifies and challenges the incongruity between the purportedly accepted gravity of rape crimes and the pervasive continuance of rape impunity in the United States, and also argues that rape should be considered a form of slavery prohibited by the Thirteenth Amendment. The author

argues that this would allow for the creation of a federal criminal regime to prosecute and prioritize rape in conjunction with state regimes.

“Biases Behind Sexual Assault: A Thirteenth Amendment Solution to Under-Enforcement of the Rape of Black Women” by Reema Sood argues that years after abolition, the broad ranges and incidents of slavery persist, coloring the treatment of Black women. Sood argues that sexual assault crimes pose a threat to the safety and well-being of Black women. Sood connects the Thirteenth Amendment with the history of depriving Black women of the fundamental human right to bodily autonomy and argues that the Thirteenth Amendment is the best method for addressing oppression.

“Beyond Metaphor: Battered Women, Involuntary Servitude and the Thirteenth Amendment,” written by McConnel, explores the meaning of involuntary servitude as prohibited by the Thirteenth Amendment and its criminal enforcing statutes. The author also examines battering and its social context as a backdrop to the analysis of whether three battered women (whose lives are portrayed through the narrative) were held in involuntary servitude by their batterers. The article also challenges the legitimacy of the view that the involuntary servitude clause of the Thirteenth Amendment prohibits only the public sphere “marketplace” behavior and thereby does not reach private sphere cases of battering. The article also finds support for the inclusion of battering in the involuntary servitude prohibition of the Thirteenth Amendment in the mutability of the private/public dichotomy, in changes the legal status of women, and in the trend to treat crimes in the private and public sphere as equally worthy of the laws’ protection, as demonstrated by the movement to abrogate the marital rape exemption.

Andrew Koppleman dives into the originalist reading of the Constitution in “Originalism, Abortion, and the Thirteenth Amendment.” He argues that the Thirteenth Amendment’s purpose

is to end the specific institution of antebellum slavery, and a ban on abortion would do to women what slavery did to the women who were enslaved, which was contempt them to bear children against their will.

“Gender Discrimination and the Thirteenth Amendment” by Alexander Tsesis demonstrates how broad concepts of liberty, which abolitionists, feminists, and Congress developed before and after the ratification of the Thirteenth Amendment, lend themselves to the enforcement of gender equality norms. The author argues that the Thirteenth Amendment is a source of a legislative authority that can be used to address private acts of discrimination.

“Thirteenth Amendment Optimism” by Jamal Greene is the view that the Thirteenth Amendment may be used to reach outcomes that were not specifically intended by the Amendment’s drafters nor obvious to contemporary audiences. The author uses the Thirteenth Amendment to defend constitutional rights to abortion and health care and constitutional powers to prohibit hate speech and domestic violence. The author argues that Constitutional optimism is necessary to sustain democratic governance over time.

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