

Curious Lawyer Thirteenth Amendment

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Curious Lawyer Series

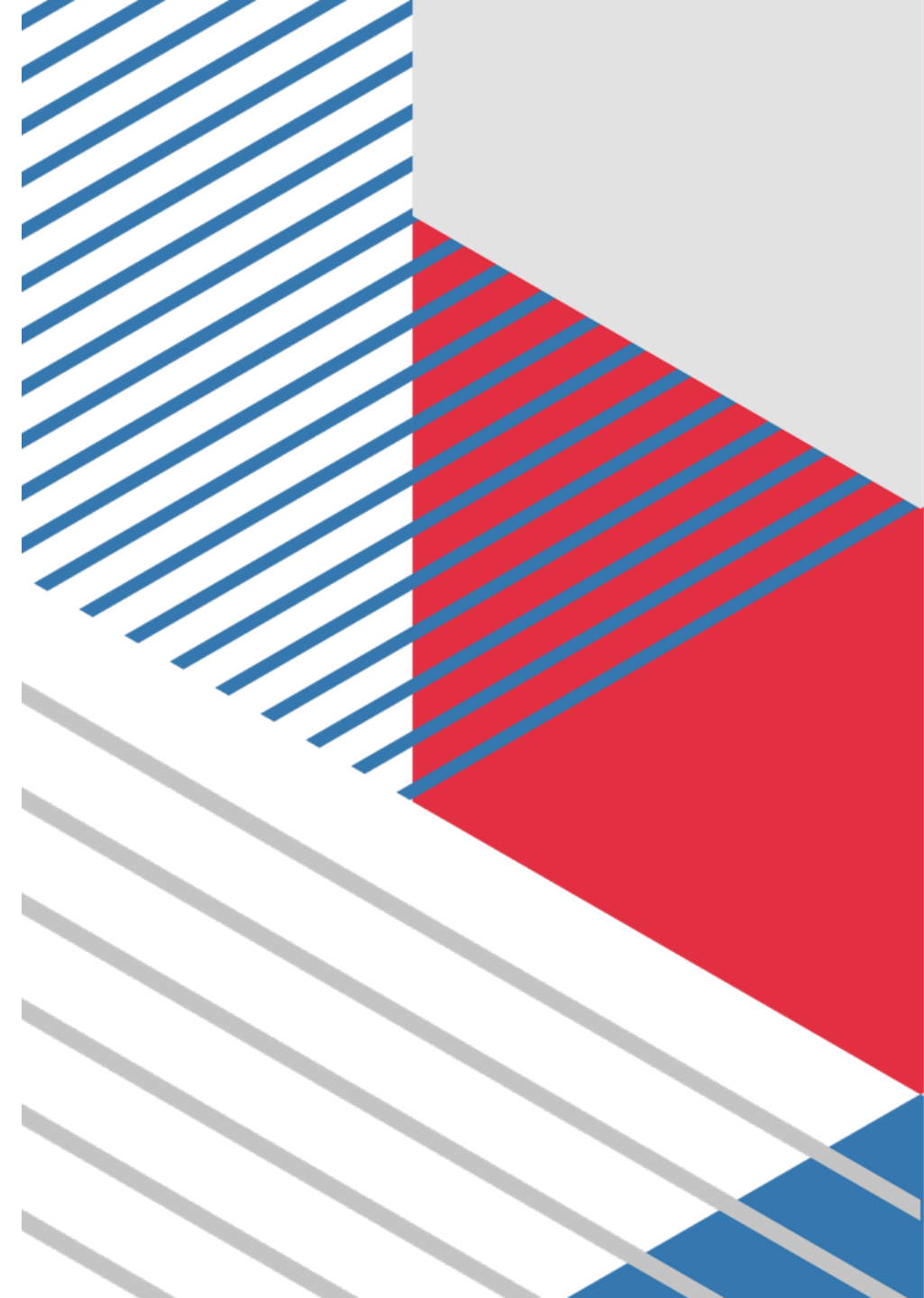
Bill of Rights Series

Dog Law

CIA Law

U2 and Copyright

Perfect Murder Zone in Yellowstone...?



Overview

- What is “slavery”?
- What is “involuntary servitude”? Line between forced labor, physical coercion and civic duties that sometimes require free labor.
- What are “badges of slavery”?
- Section 2 power of Congress: Civil Rights Act.
- Can I sue a private person under 13th Amendment if they enslave me?
- SCOTUS landmark 13th Amendment decisions.
- Modern twists on 13th Amendment in litigation
 - Taxation as involuntary servitude?
 - School-based mandatory community service?
 - Nevada legal prostitution system as facilitator of 13th amendment violations?



Thirteenth Amendment

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.



Civil War Aftermath

After passing in Congress, the 13th Amendment is sent for ratification to the states on Feb. 1, 1865. The amendment is ratified on Dec. 18, 1865, when Georgia becomes the 27th of 36 states to vote in favor of the amendment.

Congress then starts passing laws:

1. Civil Rights Act of 1866 (now 42 USC § 1981): “to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens.”
2. Peonage Act: no forced work against will even if in debt, but not applicable to convicted prisoners.
3. Civil Rights Act of 1875: illegal to discriminate on basis of former slave status and public accommodations cannot refuse service due to race.

Civil Rights Act of 1875

“That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres, and other places of public amusement, subject only to the conditions and limitations established by law and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.”

\$500 penalty for violations.



Civil Rights Cases, 109 U.S. 3 (1883)

Facts: Conductor of a railroad refused to allow one Mrs. Robinson to ride in the ladies' car because she was a person of African descent. She was with a young man the conductor thought was white and thought that there was an improper connection between them. Plaintiff sued under Civil Rights Act of 1875. Jury finds for defendant. Case goes to SCOTUS.

Holding: Majority took up case on issue of whether the new laws were constitutional. *Statute*: "Its effect is to declare that, in all inns, public conveyances, and places of amusement, colored citizens, whether formerly slaves or not, and citizens of other races, shall have the same accommodations and privileges in all inns, public conveyances, and places of amusement as are enjoyed by white citizens, and vice versa."

Held that the 14th and 15th amendment did not give Congress such power. Instead: "Some obnoxious State law passed, or that might be passed, is necessary to be assumed in order to lay the foundation of any federal remedy in the case, and for the very sufficient reason that the constitutional prohibition is against *State laws* impairing the obligation of contracts."

Thus: 13th amendment did not empower Congress to pass laws punishing private racist acts.



Civil Rights Cases, 109 U.S. 3 (1883)

Dissent (Harlan): “The Thirteenth Amendment, it is conceded, did something more than to prohibit slavery as an *institution* resting upon distinctions of race and upheld by positive law. My brethren admit that it established and decreed universal *civil freedom* throughout the United States. But did the freedom thus established involve nothing more than exemption from actual slavery? Was nothing more intended than to forbid one man from owning another as property? Was it the purpose of the nation simply to destroy the institution, and then remit the race, theretofore held in bondage, to the several States for such protection, in their civil rights, necessarily growing out of freedom, as those States, in their discretion, might choose to provide? Were the States against whose protest the institution was destroyed to be left free, so far as national interference was concerned, to make or allow discriminations against that race, as such, in the enjoyment of those fundamental rights which, by universal concession, inhere in a state of freedom?”



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Involuntary Servitude

***Robertson v. Baldwin*, 165 U.S. 275 (1897).**

Facts: Sailors on ship *Argo* in California deserted. They had signed employment contracts to work the ship. US Marshals then arrested them under federal law that required seamen to carry out their contracts and allowed their arrest, detention and forced return to ship. Then, returned them to the ship to force them to work under threat of further detention. Sailors sued saying the forced labor violated 13th amendment and that the federal law was unconstitutional.

Issue: "Does the epithet "involuntary" attach to the word "servitude" continuously, and make illegal any service which becomes involuntary at any time during its existence, or does it attach only at the inception of the servitude, and characterize it as unlawful because unlawfully entered into? If the former be the true construction, then no one, not even a soldier, sailor, or apprentice, can surrender his liberty, even for a day, and the soldier may desert his regiment upon the eve of battle, or the sailor abandon his ship at any intermediate port or landing, or even in a storm at sea, provided only he can find means of escaping to another vessel. If the latter, then an individual may, for a valuable consideration, contract for the surrender of his personal liberty for a definite time and for a recognized purpose, and subordinate his going and coming to the will of another during the continuance of the contract; not that all such contracts would be lawful, but that a servitude which was knowingly and willingly entered into could not be termed "involuntary." (280-81)

Involuntary Servitude

***Robertson v. Baldwin*, 165 U.S. 275 (1897).**

Held: "The prohibition of slavery in the Thirteenth Amendment is well known to have been adopted with reference to a state of affairs which had existed in certain states of the Union since the foundation of the government, while the addition of the words "involuntary servitude" were said...to have been intended to cover the system of Mexican peonage and the Chinese coolie trade, the practical operation of which might have been a revival of the institution of slavery under a different and less offensive name. It is clear, however, that the amendment was not intended to introduce any novel doctrine with respect to certain descriptions of service which have always been treated as exceptional, such as military and naval enlistments, or to disturb the right of parents and guardians to the custody of their minor children or wards."

Contracts of sailors were unique, since Ancient Rome, and sailors occupy a unique place of losing freedoms. AWOL laws not ended by 13th Amendment.

Dissent (Harlan): "A contract by which one person agrees to become the slave of another would not be respected in any court, nor could it become the foundation of any claim or right, even if it were entered into without constraint's being used upon the person who assumed to surrender his liberty and to become the property of another. But involuntary servitude, no matter when it arises, if it be not the result of punishment for crime of which the party has been duly convicted, is as much forbidden by the Constitution as is slavery."

Private Acts of Discrimination

Hodges v. United States, 203 U.S. 1 (1906)

Facts: defendants charged under criminal law enacted under 13th Amendment: "the defendants, by violent means, compelled those laborers, simply because they were colored men and citizens of African descent, to quit their work and abandon the place at which they were performing labor in execution of their contract; and That, in consequence of those acts of the defendant conspirators, the laborers referred to were hindered and prevented, solely because of their race and color, from enjoying the right by contract to dispose of their labor upon such terms and to such persons as to them seemed best."

Held: Criminal statute invalid as 13th amendment supposed to stop actual slavery. "But that it was not the intent of the Amendment to denounce every act done to an individual which was wrong if done to a free man, and yet justified in a condition of slavery, and to give authority to Congress to enforce such denunciation...and by the Thirteenth, it forbade slavery or involuntary servitude anywhere within the limits of the land. Whether this was or was not the wiser way to deal with the great problem is not a matter for the courts to consider. It is for us to accept the decision, which declined to constitute them wards of the nation or leave them in a condition of alienage where they would be subject to the jurisdiction of Congress, but gave them citizenship, doubtless believing that thereby, in the long run, their best interests would be subserved, they taking their chances with other citizens in the states where they should make their homes."

Result: contracts entered that required labor not subject to 13th Amendment regulation.



Private Acts of Discrimination

Hodges v. United States, 203 U.S. 1 (1906)

Dissent (Harlan): “As the nation has destroyed both slavery and involuntary servitude everywhere within the jurisdiction of the United States, and invested Congress with power, by appropriate legislation, to protect the freedom thus established against all the badges and incidents of slavery as it once existed, as the disability to make valid contracts for one's services was, as this Court has said, an inseparable incident of the institution of slavery which the Thirteenth Amendment destroyed, and as a combination or conspiracy to prevent citizens of African descent, solely because of their race, from making and performing such contracts, is thus in hostility to the rights and privileges that inhere in the freedom established by that Amendment, I am of opinion that the case is within section 5508, and that the judgment should be affirmed.”



Involuntary Servitude - Forced Labor

Bailey v. Alabama, 219 U.S. 219 (1911)

Facts: Bailey contracted to work on a farm for a year at \$12 a month. He worked for a month and then quit and did not return a \$15 advance. Under Alabama law, Bailey's act was prima facie evidence of a crime of intending to defraud employer. And Alabama law also did not allow one to testify as to their uncommunicated motives or intentions as to taking the money and quitting. He was convicted and sentenced to 136 days of hard labor under the Alabama peonage law. Challenged under the federal anti-peonage laws.

Issue: "It is urged that the time and circumstances of the departure from service may be such as to raise not only an inference, but a strong inference, of fraudulent intent. There was no need to create a statutory presumption, and it was not created for such a case... Plainly the object of the statute was to hit cases which were destitute of such inferences, and to provide that the mere breach of the contract and the mere failure to pay the debt might do duty in their absence...*For this he is sentenced to a fine of thirty dollars and to imprisonment at hard labor, in default of the payment of the fine and costs, for 136 days. Was not the case the same in effect as if the statute had made it a criminal act to leave the service without just cause and without liquidating the debt?"*

Held: "The plain intention was to abolish slavery of whatever name and form and all its badges and incidents; to render impossible any state of bondage; to make labor free, by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude. While the Amendment was self-executing so far as its terms were applicable to any existing condition, Congress was authorized to secure its complete enforcement by appropriate legislation."

Involuntary Servitude - Forced Labor

Bailey v. Alabama, 219 U.S. 219 (1911)

Dissent (Holmes): "Breach of a legal contract without excuse is wrong conduct, even if the contract is for labor, and if a state adds to civil liability a criminal liability to fine, it simply intensifies the legal motive for doing right; it does not make the laborer a slave...Nor does it matter if labor is added to the imprisonment. Imprisonment with hard labor is not stricken from the statute books. On the contrary, involuntary servitude as a punishment for crime is excepted from the prohibition of the Thirteenth Amendment in so many words...If work in a jail is not condemned in itself, without regard to what the conduct is it punishes, it may be made a consequence of any conduct that the state has power to punish at all."





Involun. Servitude-Peonage Laws

United States v. Reynolds, 235 U.S. 133 (1914)

“Peonage is a condition of compulsory service based upon the indebtedness of the peon to the master. The basal fact is indebtedness.” Congress enacted a law under 13th amendment to abolish and punish peonage.

Facts: On May 4, 1910, Rivers, the convict, entered into a written contract with Reynolds to work for him as a farmhand for the term of nine months and twenty-four days at the rate of six dollars per month to pay the amount of fine and costs. The indictment charges that he entered into the service of Reynolds, and under threats of arrest and imprisonment if he ceased to perform such work and labor, he worked until the sixth day of June, when he refused to labor.

Issue: “Applying this definition to the facts here shown, we must determine whether the convict was in reality working for a debt which he owed the surety, and whether the labor was performed under such coercion as to become a compulsory service for the discharge of a debt. If so, it amounts to peonage within the prohibition of the federal statutes.”

Held: “Under this statute, the surety may cause the arrest of the convict for violation of his labor contract. He may be sentenced and punished for this new offense, and undertake to liquidate the penalty by a new contract of a similar nature, and, if again broken, may be again prosecuted, and the convict is thus kept chained to an ever-turning wheel of servitude to discharge the obligation which he has incurred to his surety, who has entered into an undertaking with the state, or paid money in his behalf.” (147). Law valid.

Involuntary Servitude - Draft

***Arver v. United States*, 245 U.S. 366 (1918)**

1917 law to allow a draft for WW1. People refused and were prosecuted. Challenged as unconstitutional under 13th and 1st amendment.

"It may not be doubted that the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need, and the right to compel it... (378)

Held:

- 13th: "Finally, as we are unable to conceive upon what theory the exaction by government from the citizen of the performance of his supreme and noble duty of contributing to the defense of the rights and honor of the nation, as the result of a war declared by the great representative body of the people, can be said to be the imposition of involuntary servitude in violation of the prohibitions of the Thirteenth Amendment, we are constrained to the conclusion that the contention to that effect is refuted by its mere statement." (390).

- 1st: "And we pass without anything but statement the proposition that an establishment of a religion or an interference with the free exercise thereof repugnant to the First Amendment resulted from the exemption clauses of the act to which we at the outset referred, because we think its unsoundness is too apparent to require us to do more." (389-90).



Involuntary Servitude – Strike Breaking

UAW v. Wisconsin Employment Relations Bd., 336 U.S. 245 (1949)

Facts: collective bargaining negotiations became deadlocked. In order to bring pressure on the employer, the union adopted a plan whereby union meetings were called at irregular times during working hours, without advance notice to the employer or any notice as to whether or when the employees would return. Employment Relations Board issued an order forbidding the individual defendants and members of the union from engaging in concerted effort to interfere with production by those methods. Challenged as violating Thirteenth Amendment by imposing forced servitude.

Held: “However, nothing in the statute or the order makes it a crime to abandon work individually...or collectively. Nor does either undertake to prohibit or restrict any employee from leaving the service of the employer, either for reason or without reason, either with or without notice. The facts afford no foundation for the contention that any action of the State has the purpose or effect of imposing any form of involuntary servitude.”

Result: strike method could be enjoined.

Involuntary Servitude - Forced Labor

United States v. Kozminski, 487 U.S. 931 (1988)

Facts: Two mentally retarded men were found laboring on Kozminski's farm in poor health, in squalid conditions, and in relative isolation from the rest of society, respondents were charged with violating 18 U.S.C. § 241 by conspiring to prevent the men from exercising their Thirteenth Amendment right to be free from involuntary servitude. Section 241 criminalizes conduct where "two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States." Kozminski and co-defendant found guilty. Challenged on basis that they did not use physical coercion and the law to be valid under 13th requires some level of physical coercion.

Held: Rejected the Government's broad construction of "involuntary servitude" -- which would prohibit the compulsion of services by any type of speech or intentional conduct that, from the victim's point of view, either leaves the victim with no tolerable alternative but to serve the defendant or deprives the victim of the power of choice – because it could not have been intended by Congress. Jury instructions that allowed this kind wrong were wrong. "That interpretation would appear to criminalize a broad range of day-to-day activity; would delegate to prosecutors and juries the inherently legislative task of determining what type of coercive activities are so morally reprehensible that they should be punished as crimes." But no acquittal because evidence could have supported a proper verdict with. Physical coercion so remanded for new trial.



Involuntary Servitude - Forced Labor Meets Immigration

Unites States v. Veerapol, 312 F.3d 1128 (9th Cir. 2002)

Facts: Deft “common law” married to Thai Ambassador and got Thai nationals visas to come to US and work in her restaurant. Made them work excessive hours, denied them ability to leave or speak to customers or even to use phone. Convicted of holding in involuntary servitude under § 1584, 13th Amendment statute. Instructed per *Kozminski* to assess whether the physical coercion/threats could plausibly have compelled victims to serve. Deft argued that the 13th Amendment would require the jury be instructed on a minimal level of threats beyond plausible compulsion.

Held: “threatening . . . an immigrant with deportation could constitute the threat of legal coercion that induces involuntary servitude, even though such a threat made to an adult citizen of normal intelligence would be too implausible to produce involuntary servitude.” Thus, jury doe s not have to be instructed on a specific quantum of coercion/force.



Involuntary Servitude – Mandatory School Community Service

Steirer v. Bethlehem Area Sch. Dist., 987 F.2d 989 (3d Cir. 1993)

Facts: High school students sued school officials, asserting that the mandatory service program as a graduation requirement violated their 13th Amendment rights against involuntary servitude.

Rule: Involuntary servitude bar is based on physical or legal punishments if service not done. But civic duties such as jury duty and military service may be imposed subject to a legal punishment. Thus, involuntary servitude is not all “forced labor.” It must be a situation truly “akin to African slavery.”

Held: “An educational requirement does not become involuntary servitude merely because one of the stated objectives of the Program is that the students will work “without receiving pay.” Accordingly, we hold that the mandatory community service program instituted in the Bethlehem Area School District as a high school graduation requirement does not constitute involuntary servitude prohibited by the Thirteenth Amendment.”



Involuntary Servitude – Income Tax?

Not so!!

Kasey v. Commissioner, 457 F.2d 369 (9th Cir. 1972) (rejected as meritless the argument that the requirements to keep records and to prepare and file tax returns violate taxpayers' Fifth Amendment privilege against self-incrimination and amount to involuntary servitude prohibited by the Thirteenth Amendment); *Ginter v. Southern*, 611 F.2d 1226 (8th Cir. 1979) (same); *Porth v. Brodrick*, 214 F.2d 925, 926 (10th Cir. 1954) (frivolous)



Involuntary Servitude – Prison Labor Exception in 21st Century?

- *Watson v. Graves*, 909 F.2d 1549, 1552 (5th Cir. 1990). Held: prisoners may have some 13th amendment rights.
- *Ali v. Johnson*, 259 F.3d 317, 317 (5th Cir. 2001) (reiterating “that inmates sentenced to incarceration cannot state a viable Thirteenth Amendment claim if the prison system requires them to work” and *Watson* is an anomaly and lacks authority).
- *Ray v. Mabry*, 556 F.2d 881, 882 (8th Cir. 1977) (holding that the amendment authorizes a facility to force its prisoners to work 120 hours a week).
- *Loving v. Johnson*, 455 F.3d 562, 562 (5th Cir. 2006) (no constitutional right to be paid for labor while in prison).
- *Cumbey v. State*, 699 P.2d 1094, 1096–97 (Okla. 1985) (upholding the condition that inmates must pay part of their wages to an “inmate trust savings account”).
- *Sigler v. Lowrie*, 404 F.2d 659, 660 (8th Cir. 1968) (state can take prisoner pay to reimburse state expenses).
- *Commonwealth Dep’t of Corr. v. Tate*, 133 A.3d 350, 358 (Pa. Commw. Ct. 2016) (prisoner pay is not even considered wages, instead a “gratuitous payment ...rehabilitative tool rather than wages.”).



Is there a private right of action against private parties under 13th amendment?

-No court has ever directly upheld a direct right of action against private party under 13th Amendment. Many have assumed it, but denied on merits anyway.

-*Del Elmer v. Metzger*, 967 F. Supp. 398, 402 (S.D. Cal. 1997) ("Plaintiff has pointed to no authority, and the court knows of none, allowing a plaintiff to proceed directly under the Thirteenth Amendment against private parties such as the defendants here...This case only involves alleged private wrongdoing. State law has traditionally addressed such torts as false imprisonment, intentional infliction of emotional distress, assault and battery; these traditional state causes of action appear to redress the plaintiff's alleged injuries adequately in this case.").

- *Turner v. Unification Church*, 473 F. Supp. 367, 373-74 (D.R.I. 1978) (private claims sounding in the 13th Amendment have remedies under state laws so no private right of action).



Private Acts of Discrimination

Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964)

Facts: Civil Rights Act of 1964 enacted pursuant to commerce and 13th Amendment powers and prohibited race discrimination in public places. Defendant hotel refused to rent. Hotel rooms to black Americans. Hotel owner sued for declaration that Act was invalid exercise of commerce power and that by requiring it to rent rooms was subjecting it to involuntary servitude under 13th amendment.

Issue: Legitimate commerce clause exercise of power? Did it violate the hotel owner's 13th Amendment rights?

Held (9-0): Hotels are part of commerce. "It is said that the operation of the motel here is of a purely local character. But, assuming this to be true, "[i]f it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze." ... That Congress was legislating against moral wrongs in many of these areas rendered its enactments no less valid... Thus, the power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce."

"We find no merit in the remainder of appellant's contentions, including that of "involuntary servitude" As we have seen, 32 States prohibit racial discrimination in public accommodations. These laws but codify the common law innkeeper rule, which long predated the Thirteenth Amendment. It is difficult to believe that the Amendment was intended to abrogate this principle."



Private Acts of Discrimination - *Hodges* Revisited

Jones v. Alfred Mayer, 392 U.S. 409 (1968)

Facts: Real estate company refused to sell home to black man. Company sued for violating Civil Rights Act that provided "shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." Suit dismissed on basis that the 13th Amendment law is only for state action, not private acts.

Held (7-2): "Because the Thirteenth Amendment "is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States,... the power vested in Congress to enforce the article by appropriate legislation," includes the power to enact laws "operating upon the acts of individuals, whether sanctioned by State legislation or not." *Hodges* overruled.

Dissent: Only intent was for prohibition against state action that denied rights, not an affirmative grant to Congress to regulate private behavior. "It seems to me that most of these men would have regarded it as a great intrusion on individual liberty for the Government to take from a man the power to refuse for personal reasons to enter into a purely private transaction involving the disposition of property, albeit those personal reasons might reflect racial bias."



Private Acts – Sex Trafficking in 21st Century?

Williams v. Sisolak, 2022 US Dist LEXIS 126571 (D. Nev. July 18, 2022).

Facts: Pltfs sued under 13th Amendment and Nevada sex trafficking laws, alleging trafficked into brothels. Clark County sued for its legal regime that induced and facilitated trafficking violations.

Held as to County: “The plaintiffs do not plausibly allege that the injuries they suffered are fairly traceable to Nevada's system of legal prostitution or to the State or City Defendants. The plaintiffs allege that legal prostitution in Nevada ‘correlates with exponential increases in the illegal trade,’ in part due to Nevada's failure to “enforce its limited regulation.’ But Nevada's legal system of prostitution is, at best, an attenuated cause of the plaintiffs' alleged injuries.”

Held as to Brothels: 13th Amendment has no private right of action and must rest upon an Act of Congress: “the plaintiffs have not sufficiently alleged a nexus between the governmental and private defendants such that the challenged conduct of sex trafficking can be fairly attributed to the state. While state entities license and regulate prostitution in Nevada, this conduct does not amount to pervasive entwinement to the point of largely overlapping identity.”

But private statutory trafficking claims survived.



Conclusions

- Banning slavery and involuntary servitude.
- Section 2 power related to badges and incidents of slavery dormant for many years as it relates to regulating private discrimination but revived in 1960s.
- Involuntary servitude scenarios: state legal systems that create peonage jail of forced work invalid, cannot force striking workers to work.
- Prison labor, limited or no wages, drafts, income tax, and mandatory community service all fine given exception clause of 13th Amendment.
- Reach to private conduct broad since 1960s via implementing federal laws, but no self-executing right to sue a private actor under 13th Amendment and instead go to relevant state tort law to address the conduct or applicable federal law, i.e., false imprisonment, IIED, etc.

