eliminate, the original Constitution's protections of slavery. This changed in 1865. The Thirteenth Amendment abolished slavery and thus radically altered the Constitution, as part of what some legal scholars call the “Second Constitution.” Ironically, ratification of the Thirteenth Amendment marked the first time that the word “slavery” appeared in the Constitution, even though the Constitution explicitly protected slavery.

Abolition of slavery is not freedom from all oppression. Slavery's roots are deep in American history and are not yet fully extirpated. Racism is a ghost of the slaver's psyche, and legislation alone cannot transform human behavior. Yet the Thirteenth Amendment empowered the government to strike down any legislation that abridges liberties on the basis of race. But this was not always so. Originally known as the Abolition Amendment, its intent was to give practical effect to the Declaration of Independence's self-evident truths “that all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these, are life, liberty, and the pursuit of happiness.” Of course, such unalienable rights did not extend to aliens (non-citizens), which is why the Fourteenth Amendment (1868) had to precede the Fifteenth, by granting citizenship to anyone born or naturalized in the United States. Grounded in liberty and equality principles, the Thirteenth Amendment bans involuntary labor except as punishment for a crime, and it authorizes Congress to pass laws rationally tailored to extinguish all traces of slavery.

Under Section 2, which legal scholars call the Enforcement Clause, the Thirteenth Amendment was also supposed to eradicate any vestiges of forced labor. Thus, to enforce the Thirteenth Amendment, Congress quickly passed the Civil Rights Act of 1866 (over President Andrew Johnson’s veto), the Slave Kidnapping Act of 1866, the Peonage Act of 1867, and the Judiciary Act of 1867. But a series of Supreme Court decisions during Reconstruction effectively emasculated the amendment, through crabbed interpretation and curtailed application. With the splendid exception of peonage cases, the Thirteenth Amendment remained a dead letter under such segregationist Supreme Court rulings as Plessy v. Ferguson, which used color as a badge for discrimination while professing an “equal but separate” doctrine. One reason for this is that the Thirteenth Amendment was deficient in that it lacked any formal recognition of equality under the law. This defect would later be cured by
enactment of the Equal Protection Clause under the Fourteenth Amendment.

The Thirteenth Amendment is far more than an emancipation law. Through its enforcement power, it is also a civil rights instrument, although rarely used. The social transformation that the framers of the Thirteenth Amendment had envisioned could be achieved only where the federal government could enforce freedom. Sadly, it took over a century for the Supreme Court to discover in the Thirteenth Amendment a fresh constitutional source of power for enforcing certain civil rights. The landmark decision of Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968), restored the civil rights value of the amendment and transformed it into a potentially potent civil rights instrument. Jones established Congress's power to enact legislation against private racial discrimination. It did so by empowering Congress to pass laws that prevent any intrusions on liberty that are “rationally related” to slavery, thus providing a new and powerful basis for federal legislation barring race discrimination.

There are lessons to be learned from the role of the Thirteenth Amendment in African American history. Alexander Tsesis, who may be today’s leading authority on the Thirteenth Amendment, observes that each new generation must reexamine the nation’s past, its core documents, and its moral progress as a constitutional democracy. Tsesis argues that the Thirteenth Amendment offers a more forthright warranty of freedom than other constitutional provisions on which the Supreme Court has relied. And beyond the amendment’s role in barring racist labor practices, Tsesis advocates a progressive legal theory that legislatively and judicially expands the power of the Thirteenth Amendment to curb all coercive practices and repressive conduct rationally related to abridgments of freedom. Congress has virtual plenary power to protect individual rights under the Thirteenth Amendment. Yet this legislative power remains largely untapped. The Supreme Court, moreover, has yet to fully consider what freedoms Congress may protect pursuant to the Thirteenth Amendment. Judicial analysis under the Thirteenth Amendment asks the question, Is the act or law an incident or badge of servitude? An answer of “yes” to this constitutional test should trigger the Thirteenth Amendment’s enforcement power. The Thirteenth Amendment has transformed the Declaration’s national aspiration for freedom and equality by abolishing the Constitution’s protections of slavery—thereby establishing federal power to enforce civil rights against all recrudescent vestiges of slavery that (as stated previously) reincarnate as racial discrimination.

See also: Abolition, Slavery; Lincoln, Abraham; Radical Republicans

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Bibliography


Three-Fifths Compromise

The three-fifths compromise is a term that refers to the taxation and apportionment accommodation reached between Northern and Southern states at the Philadelphia Convention of 1787. Under it, each slave counted as three-fifths of a person for purposes of direct taxation and apportionment of the House of Representatives.

The Philadelphia Convention met under the rubric of an effort to devise amendments to the Articles of Confederation. Proposed in 1777 as a charter for the Revolutionary union of the states, the Articles seemed inadequate to Federalists from the beginning. Even before their ratification, leading figures such as George Washington, James Madison, Robert Morris, and John Jay favored a stronger union. Thus, when the Convention assembled, Madison was prepared. Through its spokesman, Governor Edmund Randolph, the Virginia delegation presented the Virginia Plan, a proposal