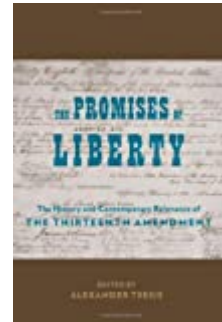




Alexander Tsesis, ed. *The Promises of Liberty: The History and Contemporary Relevance of the Thirteenth Amendment*. New York: Columbia University Press, 2010. 368 pp. \$60.00 (cloth), ISBN 978-0-231-14144-4; ISBN 978-0-231-52013-3.



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“The process of the law can be encouraged but not goaded.”

In 1987, at his U.S. Supreme Court nomination hearing, Robert Bork famously argued that the meaning of the Ninth Amendment could not be determined. He suggested that it was no clearer than text obscured by an inkblot. We might think that the same could *not* be said of the meaning of the Thirteenth Amendment. After all, it clearly says that “slavery shall no longer exist within the United States.” However, as the essays in *The Promises of Liberty* demonstrate, the complete meaning of this 1865 addition to the U.S. Constitution is anything but clear. The phrase “involuntary servitude”; the loophole “except as a punishment for crime whereof the party shall have been duly convicted”; and the vague and ambiguous enforcement mechanism—“Congress shall have power to enforce this article by appropriate legislation”—have worked together to ensure that the promises of which this collection’s title speaks remain largely unfulfilled.

The Promises of Liberty is edited by Alexander Tsesis (Loyola University Chicago, School of Law), who is the author of a monograph about the history of the Thir-

teenth Amendment. It is a collection of the papers presented at a 2009 conference on “Interdisciplinary Perspectives on the Thirteenth Amendment.”[1] These essays make interesting arguments about the role that the Thirteenth Amendment has played in American history, currently plays in American law, and should play in American society.

Many of the essays in part 1, “Historical Settings,” provide excellent and engaging treatments of the amendment’s history. For example, Michael Vorenberg’s discussion of the amendment’s relationship to the concept of citizenship makes an important observation about an aspect of the nation’s constitutional dialogue that far more frequently focuses on the Fourteenth Amendment. “Almost from the moment that the Fourteenth Amendment was ratified ... the Thirteenth Amendment ... was regarded as little more than a vestigial appendage ... a sort of younger, if better known, sibling” (p. 58). As Vorenberg astutely reminds us, we view the elder sibling from the perspective of a post-1868 (Fourteenth Amendment) world, a perspective that those who crafted the

Thirteenth Amendment did not possess. David M. Oshinsky's study of the effect of the criminal peonage loophole makes an important argument about a very depressing aspect of the amendment's history. As he somberly observes, the Black Codes exploitation of this loophole led to a situation whereby, "[a]s convictions mounted, Southern prisons turned black" (p. 102).

The essays in part 2, "Current Legal Landscapes," also offer innovative and informative arguments that follow on from, and build upon, the essays contained in part 1. Many of them rightly focus on section 2 of the amendment—"Congress shall have power to enforce this article by appropriate legislation"—in order to explicate the largely unrealized nature of this power. For example, Rebecca E. Zietlow and Aviam Soifer both consider whether section 2 might be used to revitalize congressional civil rights enforcement powers. This is a question of considerable importance in the wake of U.S. Supreme Court rulings limiting the nature and scope of section 2 of the Fourteenth Amendment. And William M. Carter Jr., Maria L. Ontiveros, and Andrew Koppelman all address specific potential—and again, as yet unrealized—uses for the Thirteenth Amendment. They provide interesting perspectives on its relationship to racial profiling, the rights of immigrant workers, and abortion regulations.

Despite the strengths of the essays in this volume, there remains a discernible disconnect between parts 1

and 2, and this flaw is inextricably intertwined with another, and arguably more important shortcoming. Indeed, it is not clear that the contributors shared and commented upon each others' essays in any substantive manner. Such a dialogue would surely have enriched the content of every chapter. At the end of the day, however, this is not a fatal flaw of the book.

In conclusion, this book is an informative treatment of a depressing subject. The true meaning of the Thirteenth Amendment remains unclear; and its history is an example of the truth in Sherlock Holmes's observation that "the process of the law can be encouraged but not goaded." [2] Ultimately, *The Promises of Liberty* is a book about promises as yet unfulfilled.

Notes

[1]. Alexander Tsesis, *The Thirteenth Amendment and American Freedom: A Legal History* (New York: New York University Press, 2004); "Slavery, Abolition, and Human Rights: Interdisciplinary Perspectives on the Thirteenth Amendment," University of Chicago Law School, April 17-18, 2009, http://www.luc.edu/law/activities/opportunities/13th_amendment_conf/index.html.

[2.] Television adaptation of Arthur Conan Doyle, "The Disappearance of Lady Frances Carfax," Granada Television, February 21, 1991.

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