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Angie Perone*

I. INTRODUCTION

Violence against women is a pervasive societal problem whose importance has consistently been ignored or belittled by the courts. Courts have historically minimized the effect of violence against women and continue to do so. Attempts to protect women from gender-motivated violence have been held unconstitutional. Despite persuasive

* J.D., Candidate, University of California, Hastings College of the Law, 2006; B.A., 2003, University of Illinois, Urbana-Champaign. I would like to thank all the people who provided assistance with my article including Elizabeth Kristen, Ross Wantland, and Professor Vikram Amar, as well as the editorial board and staff of the Hastings Women's Law Journal. But, most of all, I would like to recognize the brave women in my life who have personally encountered domestic violence and unchained their hearts to freedom or are on their way to releasing their chains. I also want to remind other courageous survivors of domestic violence that you do not stand alone. If you or someone you know needs help, there are resources available that can be accessed by calling places like the National Domestic Violence Hotline at 1-800-799-SAFE (7233), the National Coalition Against Domestic Violence at 202-745-1211, the National Battered Women's Law Project at 212-741-9480, and the National Network to End Domestic Violence at 202-543-5566.

1. See e.g., Bradley v. State, 1 Miss. (1 Walker) 156 (1824), overruled by Harris v. State, 71 Miss. 462, 61-62 (1973) (stating that "if no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive.").

2. See e.g., State v. Compton, 153 Ohio App. 3d 512, 515, 2003-Ohio-4080, 794 N.E.2d 771, 773 (2003) (reversing an already meager trial court judgment that found the defendant guilty of merely disorderly conduct when during an argument with his wife he began driving toward her with his truck while yelling "[g]et out of the way, bitch, or I'll drive you down with the car." (the defendant's justification for backing his car toward her was to avoid striking her)). Id. See also State v. Cobb, 153 Ohio App. 3d 541, 544, 2003-Ohio-3821, 795 N.E.2d 73, 75 (2003) (reversing defendant's domestic violence conviction because the couple was not cohabiting and only engaged in "a sporadic provision of money and conjugal relations" even though they had lived together for the past nine months of their fifteen-month relationship).

congressional findings in support of the civil rights remedy, this provision of the Violence Against Women Act ("VAWA") was invalidated. Nevertheless, this blow has not silenced the voices of the many women who have been affected by domestic violence. With reauthorization of the VAWA quickly approaching, the time has arrived to reinvigorate the civil rights remedy of the Violence Against Women Act. This is not completely unwarranted, especially in light of recent changes in the treatment of domestic violence. For example, women have increasingly begun to sue their perpetrators of domestic violence in state courts for tort remedies. While such state victories are extremely important for victims of domestic violence, it is imperative that the federal system create a space for women to assert their right to be free from gender-based violence. The 13th Amendment provides Congress with a vehicle to accomplish that goal through the VAWA.

Invoking the 13th Amendment to reinvigorate the civil rights remedy is important because this remedy is but one part of a vital piece of legislation that aims to ameliorate conditions of gender-motivated violence. Congress passed the first version of the Violence Against Women Act in 1994. This Act moved issues of domestic violence and sexual assault from the private realm to the public sphere. The VAWA increased penalties for federal rape convictions. It provided state grants to assist law enforcement and educational efforts to reduce violence against women. This Act specifically provided money to educate judges who consider cases of domestic violence and sexual assault, and it encouraged circuit judicial councils to conduct gender bias studies. The VAWA guaranteed that each state would recognize protective orders of another state. The VAWA

5. Morrison, 529 U.S. at 612.
6. The Violence Against Women Act (VAWA) of 2005 passed the Senate by unanimous consent on Tuesday, Oct. 4, 2005. S, 1197, 109th Cong. (2005). While the House voted (415-4) on Sept. 28, 2005 to approve the VAWA as part of the Department of Justice Authorization Act, H.R. 3402, 109th Cong. (2005), the Senate version is different, and these differences must still be resolved by Congress before the ultimate version of the VAWA is adopted.
10. See generally Sally F. Goldfarb, Violence Against Women and the Persistence of Privacy, 61 OHIO ST. L.J. 1 (2000) (emphasizing that "the personal is political" and examining the importance of the VAWA's public recognition of traditionally private issues).
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also made reforms to immigration laws to protect battered immigrant women. It amended the Federal Rules of Evidence to restrict admissibility of a victim's sexual history in civil and criminal cases. Of course, the most controversial provision of the Violence Against Women Act was the inclusion of a civil rights remedy that allowed victims to sue perpetrators of gender-motivated violence.

Despite the fact that the United States Supreme Court struck down the civil rights remedy for lacking authority under the Commerce Clause and the 14th Amendment, committed attorneys and activists could revive the civil rights remedy through the 13th Amendment. Even though the 13th Amendment has traditionally been reserved for conventional notions of slavery, congressional power of the 13th Amendment can be extended to grant women a remedy from their own enslaved conditions of domestic violence.

Overall, this note will address the possibility of restoring the civil rights remedy in the Violence Against Women Act through Congress's power under the 13th Amendment. Part II will examine the creation of the Violence Against Women Act and specifically examine the addition and eventual elimination of the civil rights remedy after United States v. Morrison. Part III will address the development of the 13th Amendment. Specifically, I will focus on how the 13th Amendment can be used to abolish both slavery and the "badges and incidents" of slavery. I will also examine historically how Congress and the courts viewed extending the 13th Amendment beyond the labor realm and race. In Part IV, I argue that domestic violence as a form of gender-motivated violence falls under the purview of the 13th Amendment, thus providing for reinvigoration of the civil rights remedy of the Violence Against Women Act. I analogize the mechanisms used by abusers in modern manifestations of domestic violence to antebellum slavery. I also address arguments unique to black


14. While the 13th Amendment is still rarely invoked today, it has become increasingly more common since the Supreme Court began narrowly construing Congress's authority to enact legislation under the Commerce Clause and the 14th Amendment. Alexander Tsesis, Furthering American Freedom: Civil Rights and the Thirteenth Amendment, 45 B.C. L. REV. 307, 349 (2004); see also Kimel v. Fla. Board of Regents, 528 U.S. 62, 82-83 (2000) (holding that Congress does not have power to enact the Age Discrimination in Employment Act under § 5 of the 14th Amendment); and City of Boerne v. Flores, 521 U.S. 507, 532 (1997) (holding that Congress lacked authority to pass the Religious Freedom Restoration Act under § 5 of the 14th Amendment).

15. Still, one could analogize other forms of slavery to domestic violence, though this is outside the scope of this note. Several scholars have published articles and books on slavery in other contexts. See e.g. Maria L. Ontiveros, Immigrant Workers' Rights in a Post-
women in relation to the analogy of domestic violence to antebellum slavery.

By enacting the VAWA, Congress recognized that women's treatment in the legal system left much to be desired, especially in relation to gender-motivated violence. The VAWA specifically aimed to address gender-motivated violence. For this reason, this note will examine domestic violence as a legal argument from the lens of domestic violence as gender-motivated violence. By no means does this note intend to minimize the very real experiences of those individuals who experience domestic violence that may not be gender-motivated (i.e., violence by women against men and domestic violence between same-sex partners). However, because the VAWA does not overtly apply to such types of domestic violence, this note is focused on domestic violence perpetrated by men against women.


17. Id.


20. Although, arguments can be made that all forms of domestic violence have foundations in some form of gender stratification and stereotypes of gender roles. Nevertheless, this particular topic is an entire note within itself, so while I recognize that battering between lesbian partners, for example, may have roots in misplaced gender roles, my note focuses on developing a legal argument based on what Congress has already recognized as gender-motivated violence.
II. THE BIRTH OF THE VIOLENCE AGAINST WOMEN ACT

Congress exercised much of its power to pass the Violence Against Women Act, including its power to create a civil rights remedy, through the Commerce Clause and the 14th Amendment of the United States Constitution. 21 Under the Commerce Clause, Congress has power "[t]o regulate commerce with foreign nations, and among the several States, and with the Indian tribes." 22 Congress found a connection between violence against women and interstate commerce. Specifically, Congress found that violence has prevented women from contributing to the national economy on an equal footing with men because victims are less likely to leave their homes and are more likely to spend money on medical treatment, thus diminishing their ability to participate in interstate commerce. 23 This connection provided Congress with a justification for enacting the VAWA under the Commerce Clause. 24

Congress also exerted its power under the Equal Protection Clause of the 14th Amendment. 25 Under the Equal Protection Clause, "[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws." 26 Under §5 of the 14th Amendment, "Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." 27

In acknowledging the stark reality of gender-motivated violence, the VAWA noted that the criminal justice system has frequently denied female victims of violence their right to equal protection of the laws. 28 Biased implementation of state laws has failed to protect women and continually has deprived them of their full citizenship rights. 29 The failure of police to effectively respond to the calls of domestic violence victims is a form of sex discrimination that Congress aimed to address. 30 In fact, Congress recognized that "from the initial report to the police through prosecution,

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22. U.S. Const. art. I, § 8, cl. 3.
23. Shargel, supra note 11, at 1850.
26. Id. Plaintiffs who challenge the constitutionality of state conduct or legislation because of discrimination on the basis of gender must first establish a prima facie case of gender discrimination. See Thurman v. City of Torrington, 595 F. Supp. 1521, 1530 (1984) (holding that the plaintiff established a cause of action against the City of Torrington and Torrington police officers because the defendants had adopted a practice of not responding to domestic violence against women). Then, the burden shifts to the state to assert that its practices meet the test applied in gender cases: the activity must be substantially related to an important government interest. Craig v. Boren, 429 U.S. 190, 197 (1976).
27. U.S. Const. amend. XIV, § 5.
28. Shargel, supra note 11, at 1850.
29. Id.
trial, and sentencing, crimes against women are often treated differently and less seriously than other crimes.” 31 Several professors summarized Congress’s findings regarding violence against women as the following:

(a) Historically and currently, states have condoned violence against women;

(b) states have failed to provide women adequate protection against gender-motivated violence;

(c) the legacy and continuing pattern of state policy and practice remain a cause of the failure to prevent violence directed at women; and

(d) state law enforcement and courts continue to fail to ensure women’s right to equal protection of the laws against physical violence from either state or private actors. 32

Ultimately, the VAWA signified public recognition that victims of gender-motivated violence were being treated unequally under the law in violation of their 14th Amendment rights.

A. DAWN FOR THE CIVIL RIGHTS REMEDY

Through the VAWA, Congress created a federal civil rights remedy for victims of gender-motivated violence. 33 This provision was placed under a section titled "Civil Rights for Women." 34 Congress defined "violent crime" as any act that would constitute a federal or state felony despite whether the offense would have actually resulted in criminal charges, prosecution, or conviction. 35 Both public and private actors were liable to the victim for potential compensatory and punitive damages, as well as injunctive and declaratory relief. 36 The civil rights remedy connected gender-based violence to other types of hate crime but still distinguished this remedy from other torts. 37

34. Id.
35. Id.
36. Id.
37. Goldscheid, supra note 30, at 419.
The VAWA's civil rights remedy served an important societal function of addressing violence against women.\(^\text{38}\) Moreover, the civil rights remedy force her perpetrator to testify and be cross-examined on the witness stand whereas in criminal cases the perpetrator has the choice to invoke his Fifth Amendment right to prevent self-incrimination by avoiding testifying on the stand.\(^\text{39}\) The civil rights remedy also financially compensated a victim for her trauma in addition to offering incarceration to the convicted.\(^\text{40}\)

Additionally, the civil rights remedy provided an alternative remedy for a distinct harm not recognized by traditional state interests.\(^\text{41}\) This was particularly useful when the state refused to prosecute a victim's case.\(^\text{42}\) The VAWA's civil rights provision also provided a remedy in federal court when other federal legislation failed to provide victims of gender-motivated violence with a means of redress. For example, two federal statutes exist that prohibit bias crimes, but these statutes do not include crimes motivated by gender.\(^\text{43}\) Moreover, other federal civil rights laws proved insufficient to provide a remedy for victims of gender-motivated violence. Title VII of the Civil Rights Act only bans discrimination in employment.\(^\text{44}\) Title IX only bans gender discrimination in educational institutions.\(^\text{45}\) Congress thus passed the VAWA's civil rights remedy to address the gaping hole in legislation that failed to address the majority of domestic violence and rape cases, which do not take place at work or at school. Still, Congress used these previously passed civil rights statutes as a framework for the civil rights provision.\(^\text{46}\)

B. DUSK FOR THE CIVIL RIGHTS REMEDY

While the civil rights provision has several important benefits, it also possesses several problems. First, the assumption that a lawsuit is one of the best solutions for victims of domestic violence and sexual assault is

\(^\text{38}\) Jennifer R. Hagan, Can We Lose the Battle and Still Win the War?: The Fight Against Domestic Violence After the Death of Title III of the Violence Against Women Act, 50 DePaul L. Rev. 919, 955 (2001).
\(^\text{39}\) Id.
\(^\text{40}\) Id.
\(^\text{41}\) Goldfarb, supra note 12, at 81. Traditional areas in which states provide remedies include domestic relations, personal injury, and criminal proceedings under state law. Id.
\(^\text{42}\) Hagan, supra note 38, at 955.
riddled with class bias.\textsuperscript{47} This remedy is only useful against an individual perpetrator who has assets to recover.\textsuperscript{48} Perhaps, victims are less in need of civil rights remedies than they are in need of lawyers who can effectively negotiate criminal prosecutions that involve the victims; or money for child care; or assistance in securing divorce, child support, or child custody; or help in immigration proceedings.\textsuperscript{49} Still, despite its class bias the civil rights remedy provides options to many women. While low-income women might be unable to recover from indigent spouses, under the civil rights remedy indigent women could still recover from the government when a public actor perpetrated gender-motivated violence.\textsuperscript{50} While the civil rights remedy may not provide the best solution for low-income women against individual perpetrators, that drawback should not merit its downfall. Recognizing that low-income women need options in addition to the civil rights remedy is one step to ameliorating conditions of gender-motivated violence. Creating a court system that is more accommodating to low-income women will only strengthen the civil rights remedy for low-income women who are victims of gender-motivated violence.

Second, the civil rights remedy invoked fears that Congress had overreached its power and upset the balance of federalism between state and national government.\textsuperscript{51} However, the VAWA was designed to remedy ongoing violations that pertain to specific federal interests and thus require a federal civil rights remedy.\textsuperscript{52} For example, the VAWA aimed to ensure that judges and police officers in rural Tennessee had resources and training to respond just as quickly and appropriately to gender-motivated violence as do judges and officers in urban New York. Such federal interests necessitated a federal civil rights remedy.

Finally, the civil rights remedy encountered constitutional problems stemming from the Commerce Clause and the 14th Amendment. The
Morrison Court eventually held that the civil rights provision was unconstitutional under both of these sections of the Constitution. In essence, the Court invalidated two dominant sources of power that Congress could exercise. However, Congress still has other avenues of power to reinstate a private cause of action for violence against women. The 13th Amendment provides another source of power for Congress. Many scholars have shied away from exploring the possibility of this amendment as a way in which Congress could reinvigorate the civil rights remedy of the VAWA; yet this remains a viable alternative source of authority. The remaining portions of this note will examine the 13th Amendment as a possible source of Congressional power to reinstate another version of the civil rights remedy in the Violence Against Women Act.

III. THE BEGINNING OF THE END TO ANTEBELLUM SLAVERY

A. THE POWER OF THE 13TH AMENDMENT

Section one of the 13th Amendment abolishes slavery:

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 two of the 13th Amendment provides Congress with power to enforce this amendment; although, Congress only retains remedial power to enforce the 13th Amendment. Thus, section two of the 13th


56. U.S. CONST. amend. XIII, § 2 ("Congress shall have power to enforce this article by appropriate legislation.").

Amendment provides a source of Congressional authority to create a cause of action for private discrimination.\textsuperscript{58} This is particularly important after the United States Supreme Court invalidated congressional authority to enact the civil rights remedy of the VAWA under the Commerce Clause and the 14th Amendment.\textsuperscript{59} Additionally, the 13th Amendment does not require state action as does the 14th Amendment.\textsuperscript{60} It thus prohibits slavery by the government and individuals. For this reason, the 13th Amendment provides hope for reinvigoration of the VAWA’s civil rights remedy.

In addition to abolishing slavery, the 13th Amendment also gives Congress the authority to legislate against the "badges and incidents" of slavery.\textsuperscript{61} Nevertheless, in 1883 the \textit{Civil Rights Cases} quashed Congress’s power to enact a particular piece of civil rights legislation under the 13th Amendment.\textsuperscript{62} Specifically, the \textit{Civil Rights Cases} invalidated sections one and two of the Civil Rights Act of 1875,\textsuperscript{63} which provided for criminal and civil penalties for race-based discriminatory treatment at public transportation, accommodations, and places of amusement. The Court ultimately invalidated the legislation when it held that Congress had overstepped its authority to enact legislation to abolish all "badges and incidents" of slavery.\textsuperscript{64} The Court stated that "it would be running the slavery argument into the ground to make it apply to every act of [private] discrimination."\textsuperscript{65} In his dissent, Justice Harlan wrote that the majority's opinion was "narrow and artificial" and antithetical to the "substance and


\textsuperscript{59} Morrison, 529 U.S. at 619, 627.

\textsuperscript{60} The \textit{Civil Rights Cases}, 109 U.S. 3, 13, 20 (1883). The \textit{Civil Rights Cases} consisted of five consolidated cases. \textit{Id.} at 4-5. Four of the five cases involved criminal prosecutions where two of the defendants allegedly denied blacks access to an inn or hotel. One defendant was charged for barring an African American from the dress circle of a San Francisco theater. The fourth defendant was charged with prohibiting an African American access to an opera house in New York. \textit{Id.} The fifth case involved a civil case brought against a railroad company whose conductor banned a black woman from riding in the ladies’ car. \textit{Id.}

\textsuperscript{61} \textit{Id.} at 20 (stating that the 13th Amendment "clothes Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States."). The phrase "badges and incidents of slavery" derived from the Civil Rights Act of 1866, ch. 31, 14 Stat. 27 (reenacted by Enforcement Act of 1870, ch. 114, § 18, 16 Stat. 140, 144 (1870), codified as amended at 42 U.S.C. §§ 1981-1982 (2005)). Hearn, \textit{ supra} note 51, at 1142.


\textsuperscript{63} Civil Rights Act of 1875, ch. 114, 18 Stat. 335 (1875).

\textsuperscript{64} \textit{The Civil Rights Cases}, 109 U.S. at 20-21.

\textsuperscript{65} \textit{Id.} at 24.
spirit" of the 13th Amendment. Justice Harlan continued to state that the 13th Amendment's guarantee of "freedom necessarily involved immunity from, and protection against, all discrimination against them, because of their race, in respect of such civil rights as belong to freemen of other races." From 1883 to 1968, Congress's power to enact legislation under the 13th Amendment lay dormant. However, in 1968, in the landmark case of Jones v. Alfred H. Mayer Co., the United States Court effectively overruled parts of the draconian Civil Rights Cases and held that the 13th Amendment extends beyond uncompensated, forced labor. The Jones Court determined that the 13th Amendment grants Congress power to enact legislation that is rationally related to ending any remaining "badges and incidents" of servitude. Supreme Court cases that have followed Jones have upheld congressional authority to prohibit private racial discrimination pursuant to section two of the 13th Amendment. This more recent line of cases has weakened the once potent power of the Civil Rights Cases to dilute Congressional authority under the 13th Amendment. Jones has since reopened the possibility for Congress to invoke their authority to legislate against the "badges and incidents" of slavery and thus provide a civil rights remedy for gender-motivated violence.

66. Id. at 26 (Harlan, J., dissenting).
67. Id. (Harlan, J., dissenting).
68. Jones v. Alfred H. Mayer Co., 392 U.S. 409, 440-41 (1968). While Jones held that Congress's enactment of the Civil Rights Act of 1866 was an exercise of their "necessary and proper" means of authority, id. at 438-44, the majority opinion expressly avoided addressing whether the 13th Amendment provides congressional authority to prevent discrimination in places of public accommodation because the Civil Rights Act of 1964 had made this issue moot. Id. at 440-41, 441 n.78.
69. Id. at 440-41.
B. THE ABOLITION OF ANTEBELLUM SLAVERY BEYOND LABOR RELATIONS

Traditionally, the 13th Amendment has been conceptualized as applying to slavery pertaining to labor relations. However, research regarding legislative intent at the time Congress passed the 13th Amendment indicates that Congress did not intend to ban only involuntary labor relationships when it forbade slavery.\textsuperscript{71}

Congress recognized that slavery did not exist in an isolated labor domain. In fact, it frequently compared slavery to polygamy.\textsuperscript{72} Republican Senator Charles Sumner succinctly reiterated Congress's conceptualization of this analogy in his notorious speech before the Senate on the admission of Kansas to the Union:

By license of Polygamy, one man may have many wives, all bound to him by marriage-tie, and in other respects protected by law. By license of Slavery, a whole race is delivered over to prostitution and concubinage, without the protection of any law. Surely, Sir, is not Slavery barbarous?\textsuperscript{73}

Senator Sumner's comment illustrates Congress's acknowledgement that slavery as a peculiar institution\textsuperscript{74} embodied more than mere labor relations. By recognizing slavery as extending beyond the labor realm, Congress refused to ignore the blatant interconnection between the private and public spheres for slaves, in particular for slave women.

Slavery for women often centered around childbearing and producing more slaves for the slave owner's plantation.\textsuperscript{75} Also, slavery for women often involved sexualized beatings.\textsuperscript{76} Infertile female slaves frequently were subjected to harsher penalties and physical abuse because they failed to fulfill the slave owner's perceptions of their role as female slaves.\textsuperscript{77} Many female slaves were in fact infertile or suffered numerous miscarriages, which some scholars have attributed to the sparse and grossly inadequate diets and the intense labor that the slaves endured.\textsuperscript{78}

\begin{thebibliography}{9}
\bibitem{71} Amar & Widawsky, supra note 58, at 1366-68.
\bibitem{72} Id.
\bibitem{73} Id. at 1366 (quoting Senator Charles Sumner, \textit{The Barbarism of Slavery, Speech in the United States Senate on the Admission of Kansas as a Free State} (June 4, 1860), in 5 \textsc{The Works of Charles Sumner} 1, 21 (1872)).
\bibitem{74} Prior to the Civil War, both Northerners and Southerners often referred to slavery as a "peculiar institution." Paul Finkelman, \textit{Thomas R.R. Cobb and the Law of Negro Slavery}, 5 \textsc{Roger Williams U. L. Rev.} 75, 76 (1999).
\bibitem{75} Pamela D. Bridgewater, \textit{Reproductive Freedom as Civil Freedom: The Thirteenth Amendment's Role in the Struggle for Reproductive Rights}, 3 \textsc{J. Gender Race & Just.} 401, 410-11 (2000).
\bibitem{76} \textit{Id.} at 412-13; bell hooks, \textit{AIN'T I A WOMAN} 24-27 (South End Press 1981).
\bibitem{77} Bridgewater, supra note 75, at 413.
\bibitem{78} Herbert G. Gutman, \textit{The Black Family in Slavery and Freedom}, 1750-
Nevertheless, slave owners perceived infertility as an act of unwillingness and insubordination toward the slave owner's wishes, thus resulting in many slave owners violently punishing their infertile female slaves. Slave owners frequently resold infertile female slaves to unsuspecting buyers who in turn retaliated against the slave and punished her for her infertility.  

Congress recognized this "private" dimension of slavery by acknowledging that slave masters had sexual relations (which usually meant rape) with slave women. They fathered more slaves through these rapes. Slavery did not merely exist based on slave families reproducing more slaves for the plantation. The slave master also had control over the growth of his slave population by raping slave women and forcing them to bear children that would work in his fields or his home. When Congress eradicated slavery through the 13th Amendment, it not only abolished slavery through physical labor, it abolished sexual slavery that existed when the slave master forced himself on his female slaves. Thus, when Congress ended slavery through the 13th Amendment, it theoretically reconstructed the private sphere and recognized that slavery exists beyond labor relations.

C. EXTENDING THE 13TH AMENDMENT BEYOND RACE

No one would deny that Congress passed the 13th Amendment for the purposes of eradicating slavery of blacks in the United States. However, early interpretations of the 13th Amendment hinted at its power to reach beyond cases of race. The very broad language of the 13th Amendment lends credence to the interpretation that Congress intended to eliminate all forms of slavery in the United States.

So far, courts have expressly interpreted statutes enacted under the 13th Amendment to apply only to race. For example, in Bobo v. ITT, Continental Baking Co., the Fifth Circuit found that 42 U.S.C. § 1981 guarantees equal rights to make and enforce contracts. 42 U.S.C. § 1981 (2005).

80. See Amar & Widawsky, supra note 58, at 1366-67.
81. See Amar, Women and the Constitution, supra note 58, at 467.
82. See Amar & Widawsky, supra note 58, at 1368.
83. The Slaughter-House Cases, 83 U.S. 36, 72 (1872) (stating that "undoubtedly while negro slavery alone was in the mind of Congress which proposed the thirteenth article, it forbids any other kind of slavery, now or hereafter.").
84. U.S. CONST. amend. XIII, § 1 (stating that "[n]either 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."). This broad language suggests that Congress did not specifically limit this slavery to race.
only applied to racial discrimination. Congress was not ignorant of this possible interpretation. In fact, immediately after Congress passed the 13th Amendment, some Congressmen feared that legislation enacted under the 13th Amendment would be deemed unconstitutional because its broad language could include protection for individuals on a basis other than race. For example, the broad language of the Civil Rights Act of 1866\textsuperscript{88} incited fear among several Congressmen, including Senator Cowen that it would be ruled unconstitutional:

What is the fair construction of that amendment of the Constitution abolishing slavery? . . . What was the involuntary servitude mentioned there? . . . Was it the right the husband had to the services of his wife? Nobody can pretend that [was] within the purview of that amendment; nobody believes it. It was mentioned as a matter of ridicule in some places . . . that it did actually entitle the wife to be paid for her own services, that they should not go to the husband . . . . The true meaning and intent of that amendment was simply to abolish negro slavery.\textsuperscript{89}

Despite this narrow interpretation of the 13th Amendment, there is nothing specific in the language of the amendment to limit Congress's power to enact legislation only based on race.

In fact, court interpretations of some statutes enacted under the 13th Amendment provide support for recognizing that the 13th Amendment could apply to gender. One such statute is § 1985,\textsuperscript{90} which forbids conspiracies to interfere with civil rights.\textsuperscript{91} In United Brotherhood of Carpenters and Joiners, Local 610 v. Scott,\textsuperscript{92} four justices agreed that § 1985(3) covers gender discrimination. However, the case addressed

\textsuperscript{87.} The Seventh Circuit held that 42 U.S.C. § 1981 (2005) was a constitutional enactment under the 13th Amendment in Waters v. Wisconsin Steel Works of International Harvester Co., 427 F.2d 476, 482 (7th Cir. 1970), cert. denied, 400 U.S. 911 (1970).
\textsuperscript{89.} CONG. GLOBE, 39th Cong., 1st Sess. 1784-85 (1866) (statement of Sen. Cowan). Senator Cowan believed that African Americans who obtained "free" status before the Civil War were not protected under the 13th Amendment. Id. at 1782.
\textsuperscript{91.} In Griffin v. Breckenridge, 403 U.S. 88 (1971), the Court recognized that § 1985(3) created a private cause of action. It also recognized that one must show animus to prevail under this statute. In comparison the VAWA creates a substantive gender-based right to be free from sexual violence. However, § 1985(3) provides a private remedy for an already existing right. See Victoria F. Nourse, Where Violence, Relationship, and Equality Meet: The Violence Against Women Act's Civil Rights Remedy, 11 Wis. Women's L.J. 1, 8 (1996).
animus against nonunion members, so the majority was not required to
discuss whether § 1985(3) covers gender discrimination. In *Great
American Federal Savings and Loan Association v. Novotny*, the
appellate court found that women are a protected class under § 1985(3).
The Supreme Court reversed but on different grounds. It never reached
the issue of whether § 1985 applies to gender. Justice Powell's concurrence said that § 1985 does not apply to gender. However, Justice
White's dissent said that § 1985 applies to gender discrimination. In
1993, Justices Blackmun, O'Connor, and Souter emphasized that § 1985(3)
applies to gender-based discrimination. The majority in *Bray v. Alexandria Women's Health Clinic* held that "women seeking abortions" is
not a protected class and thus discrimination against this class is not
synonymous to discrimination against women. Nevertheless, the larger
issue of whether or not § 1985(3) generally applies to gender has not been
resolved. The Court's willingness to consider the 13th Amendment's
application to gender is thus very much alive.

IV. SLAVERY AS A MODERN LEGAL ARGUMENT
TO DOMESTIC VIOLENCE

Declaring domestic violence as a form of slavery is a controversial
position to take. The word slavery usually invokes images of an
antebellum South with whips, shackles, and other forms of torture. It is
often associated with one race or ethnic group subjugating another race or
ethnic group into forced labor. However, the word slavery itself embodies
a much broader notion of an institution of bondage.

*Merriam-Webster's Dictionary* defines slavery as

1. drudgery, toil;

2. submission to a dominating influence; and

3. (a) the state of a person who is a chattel of another (b) the
practice of slaveholding.

95. *Id.*
96. *Id.* at 381 (Powell, J., concurring).
97. *Id.* at 387, 389 n.6 (White, J., dissenting).
(Souter, J., dissenting).
99. *Id.* at 269.
Black's Law Dictionary\textsuperscript{101} defines slavery as

\begin{itemize}
\item[(e)] a situation in which one person has absolute power over the life, fortune, and liberty of another; and
\item[(2)] the practice of keeping individuals in such a state of bondage or servitude.
\end{itemize}

Examining the oral histories and narratives of former slaves depicts how slaves themselves viewed slavery as a broad institution of bondage. The narrative of Adeline Cunningham, a slave in Texas, illustrates the degree of power slave owners exerted over their slaves when slaves would be beaten if they even entertained the thought of freedom.

Times we sneaks in de woods and prays de Lawd to make us free and times one of de slaves got happy and made a noise dat dey heered at de big house and den de overseer come and whip us 'cause we prayed de Lawd to set us free.\textsuperscript{102}

Harriet A. Jacobs describes the type of dominating influence and power her slave master exerted over her: "[H]e was my master. I was compelled to live under the same roof with him . . . . He told me I was his property; that I must be subject to his will in all things."\textsuperscript{103}

Situations involving domestic violence could fall under one or several of these broad definitions of slavery. Domestic violence often involves one person in a relationship exerting dominance over another. Instead of using whips or chains, the batterer gains absolute power over his partner through a constant flow of verbal abuse often coupled with actual incidents of physical violence. Judy North describes how her batterer exerted dominance and power over her through an "invisible whip:" "My mother said, 'Judy, he has an invisible whip that he's just whipping you with all the time.' I thought, you know, he has whipped me enough. I am not going to allow him to whip me anymore."

Despite lacking an actual whip to abuse his partner, a batterer often employs similar methods of and justifications for physical violence against his partner as antebellum slave owners used for abusing slaves. William Moore described such abuse against another slave: "She say Marse Tom got mad at the cookin' and grabs her by the hair and drug her out the house and grabs the saw off the tool bench and whips her."\textsuperscript{104} Sara, a survivor of

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104. \textit{UNCHAINED MEMORIES, supra} note 102, at 90.
\end{flushright}
domestic violence depicts a similar experience:

One evening, my husband came home drunk and brought a friend home with him. He demanded that I make dinner for them. When I told him we did not have enough food, he hit me in the eye, grabbed me by the neck, sat me down and put a gun to my neck. He threatened to kill me if I did not cook for them. I cooked the little food we had for the children and fed it to them.105

Both slave owners and spouses have used perceived inadequacies in cooking to justify abuse.

Notwithstanding some similarities in mechanisms and justifications for violence, differences do exist in some of the actual tools of torture used by slave owners versus more modern tools of torture against intimate partners in domestic violence. Still, while some of the ways in which a batterer is able to exert control over his partner are different than how an antebellum slaveholder was able to control his slaves, the resulting relationship is the same. The slaveholder abused and intimidated his slaves into bondage. Likewise, a batterer abuses and intimidates his partner into bondage. He may not force her to work the land the same way as a slave in the antebellum South, but she is enslaved to stay with the batterer who often exercises absolute power over her life, fortune, and liberty.

A. DOMESTIC VIOLENCE AS A FORM OF SLAVERY

Domestic violence can involve a multitude of mechanisms to subordinate another person. As illustrated through the infamous Power and Control Wheel below ("the Wheel"),106 domestic violence can include the use of physical and sexual violence, coercion and threats, intimidation, emotional abuse, isolation, minimization, denial, blame, children, male privilege, and economic abuse.107

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107. The Power and Control Wheel reflects only some ways that batterers try to control the person they are abusing. For example, using language skills and immigration status, which are not represented on the Wheel, are other mechanisms that batterers employ. See Karin Wang, Comment, Battered Asian American Women: Community Responses from the Battered Women's Movement and the Asian American Community, 3 ASIAN L.J. 151, 162-67 (1996).
As demonstrated in the Wheel, perpetrators of domestic violence often use coercion by controlling virtually every aspect of the victim's life—from the food she eats, to the clothes she wears, to what she does in her free time. Rape is also a common method to exert domination over a victim of domestic violence. Moreover, the Wheel illustrates how children can become pawns in a game of intimidation for the abuser.

Antebellum slavery shared many of these forms of abuse. It often involved the use of intimidation, emotional abuse, blaming the slave for any problems on the plantation, separating children from slave parents, and

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110. See id. at 49-62 (detailing the numerous ploys relating to their children that one man used against his estranged wife after she left him).
using male privilege, economic abuse, and coercion and threats against the slave. The intersection of race and gender created a particular form of abuse for slave women that is especially analogous to gender-motivated violence, which the civil rights remedy emphasized. Slave owners used sexual violence to assert their power and control over their female slaves. Slave owners intentionally separated children from their mothers as a means of destroying familial relationships and the spirit of a female slave who just bore life into this world and had no control over seeing her child bloom into adulthood. While differences between slavery and domestic violence cannot be overlooked, domestic violence perpetrators employ similar intimidation tactics and violence as slave owners involved in the peculiar institution of antebellum slavery.

1. Coercion

Coercion can be manifested in a variety of forms. An abuser can use physical coercion and intimidation to force a victim to engage in activity desired by the abuser. For example, an abuser could use physical threats through the presence of a nearby weapon or through the presence of past physical violence in order to get the victim to comply with the abuser's wants. Psychological coercion is another common tool for abusers. However, the courts have never accepted psychological coercion as a component of slavery.

In United States v. Kozminski, two mentally handicapped men were forced to work on a dairy farm without pay for 17 hours per day, seven days a week, initially for $15 per week and then for no pay. The case defined "involuntary servitude" as "a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process." The Court held that psychological coercion fails to

113. See infra Part IV.B.2.
114. Mary Ann Dutton, Nat'l Inst. of Justice (U.S.) & Nat'l Inst. of Mental Health (U.S.), The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials, Validity of "Battered Woman Syndrome" in Criminal Cases Involving Battered Women 1-5 (Malcolm Gordon ed., U.S. Dept of Justice 1996). Abusers often use physical force, intimidation, and coercion to compel their victims to engage in illegal activities for the abuser, including drug-related activity, fraud, theft, or even violence against other people. Id.
116. Id. at 952.
meet the criteria for involuntary servitude. Justice Brennan disagreed with this proposition. He argued that psychological coercion can fall under the purview of involuntary servitude. Justice Stevens agreed with Justice Brennan. Notwithstanding the fact that the United States Supreme Court has refused to recognize psychological coercion as a form of involuntary servitude, domestic violence perpetrators commonly employ numerous other methods of coercion that would withstand 13th Amendment scrutiny.

Some critics argue that because domestic violence often involves some level of voluntariness in the relationship, it cannot be considered involuntary servitude and thus is not subject to the 13th Amendment. It is true that when one person engages in a relationship, the initial formation of that relationship is usually voluntary. However, based on the complex dynamics involved in domestic violence relationships, as illustrated in the Wheel above, the relationship becomes more of a prison than a voluntary commitment to another person.

A woman who has the physical capabilities can theoretically walk out the door and away from her abuser forever. But, there are serious impediments keeping her from leaving her abuser. First, she may lack the financial resources to provide for her children or herself. If children are involved, a victim of abuse may be less likely to leave. Furthermore, the most dangerous time for a victim of domestic violence is when she tries to leave the relationship. In fact, 75% of spouse-on-spouse assaults occur after separation or divorce. Women who are abused become very familiar with the cycle of violence and often are intuitively familiar with this reality. In antebellum slavery, a slave could theoretically walk off the plantation and away from her life of involuntary servitude forever. But, like slave owners, perpetrators of domestic violence employ numerous effective methods to compel women into one form of slavery and involuntary servitude.

117. Id. at 949.
118. Id. at 961 (Brennan, J., concurring).
119. Id.
120. Id. at 969 (Stevens, J., concurring).
122. Id.
123. Laurel Wheeler, Comment, Mandatory Family Mediation and Domestic Violence, 26 S. ILL. U. L.J. 559, 562 (2002); see also Victoria L. Lutz & Cara E. Gady, Domestic Violence and Parent Education: Necessary Measures and Logistics to Maximize the Safety of Victims of Domestic Violence Attending Parent Education Programs, 42 FAM. CT. REV. 363, 363 (2004) (stating that divorce can be the most dangerous time for the victim trying to separate from her husband).
125. See United States v. Bibbs, 564 F.2d 1165, 1168 (5th Cir. 1977) (stating that "a
2. More than Mere Money: Expanding Traditional Notions of Slavery in the Labor Context to Fit into a Modern Legal Framework

Antebellum slavery existed beyond the labor realm. It also pervaded the private sphere when slave owners raped female slaves to exert their domination over them and to produce a steady supply of more slaves.126 Congressmen recognized that slavery extended to the private realm when they passed the 13th Amendment.127

Likewise, domestic violence is a form of slavery that exists in the private sphere. It consists of the perpetrator exerting power and control over the victim. Perpetrators of domestic violence often use rape and other methods of sexual intimidation to force their victims into subordinated positions.128 These methods allow the abuser to exert his domination over his victim.129

Even if one refuses to accept the notion that slavery extends to the private sphere, a strong argument exists that domestic violence still constitutes slavery or involuntary servitude in the labor context.130 Domestic labor produces wealth for the household in a manner that cannot be calculated on income tax forms. Domestic labor is not a commodity to be sold on the open market. However, its value cannot be diminished merely because the person performing the work is not earning wages through her work or because she is "voluntarily" choosing to work in the home instead of outside the home.131 Despite not earning actual money, the person performing domestic labor prevents the household from incurring outside costs of childcare or other assistance.132

When a person is involved in a relationship laced with domestic violence, this unpaid labor may not be so "voluntary."133 Because the defendant is guilty of holding a person to involuntary servitude if the defendant has placed [the victim] in such fear of physical harm that the victim is afraid to leave, regardless of the victim's opportunities for escape.

126. See supra Part III.B.
127. Id.; See generally Amar & Widawsky, supra note 58.
128. Waits, supra note 109, at 40.
129. See id.
131. Id. at 25-27.
132. Id. at 11.
133. In Bernel v. United States, 241 F. 339, 341 (5th Cir. 1917), the court examined the involuntary nature of domestic labor when a domestic worker is coerced into the arrangement in order to pay off a debt. The Fifth Circuit ultimately held that a female domestic laborer forced to perform housework without pay in order to pay off a debt was considered unlawful peonage. Id. at 342. See also Pierce v. United States, 146 F.2d 84, 86 (5th Cir. 1944) (holding that rape is involuntary servitude). See also Doe v. Doe, 929 F. Supp. 608, 610 (D.Conn. 1996). In Doe, the plaintiff alleged that her husband forced her "to be a 'slave' and perform all manual labor, including maintaining and laying out clothes for his numerous dates with many girlfriends and mistresses." Id. at 610. Ultimately, the court
perpetrator is often very skilled at using intimidation and coercion, among
other elements from the Wheel, he can easily create a situation where his
partner feels compelled to engage in whatever activity he desires. In fact,
one of the elements of the Wheel is economic abuse, which includes
preventing the abused from obtaining or maintaining a job.\textsuperscript{134} If the abuser
wants the victim to stay at home and engage in unpaid labor there, she may
feel that she has no other choice and that her voice is silenced. Perpetrators
of domestic violence often become masters at producing powerful ploys of
persuasion that the only adequate action is what the perpetrator desires.
Thus, abusers' sly schemes of subordination create enslaved conditions for
many women of domestic violence. Just like an antebellum slave who
performed labor with no compensation, a woman confined by domestic
violence often performs domestic labor with no compensation.

B. DOMESTIC VIOLENCE AS A BADGE AND INCIDENT OF NINETEENTH
CENTURY SLAVERY/INVOLUNTARY SERVITUDE IN COMMON LAW
MARRIAGES

As discussed above,\textsuperscript{135} the United States Supreme Court has interpreted
the 13th Amendment to prohibit "badges and incidents" of slavery and
involuntary servitude in addition to the slavery itself.\textsuperscript{136} In addition to the
argument that domestic violence itself is a form of slavery or involuntary
servitude, modern-day domestic violence also exists as an incident of 19th
century slavery in common law marriage.

1. Women as Property: Remnants from the 19th Century

Historically, the common law considered women to be property of
men, specifically property of their fathers until they later married and
became property of their husbands.\textsuperscript{137} In fact, after a woman got married,
she and her husband were considered to be one person under the law. The wife's existence was consolidated into that of her husband's. Because the woman was considered to be her husband's property, he was entitled to engage in strict punishment if she disobeyed. Women did not gain recognition under the law as existing as separate beings from their husbands until the Married Women's Property Acts, which gave women the "right to sue, to be sued, to contract, and to own property." Despite the fact that these Acts were mostly passed before the 13th Amendment was enacted, perceptions of women as pieces of property did not dissipate with the Married Women's Property Acts.

During Congressional debates in passing the 13th Amendment, Representative White stated the following:

The parent has the right to service of his child; he has a property in the service of that child. A husband has a right of property in the service of his wife; he has the right to the management of his household affairs . . . . All of these rights rest upon the same basis of a man's right of property in the service of slaves.

Statements like this by Representative Chilton White illustrate that not everyone assented to re-conceptualizing women as separate beings from their husbands.

Before and during the time that Congress passed the 13th Amendment, many women who fought for the abolition of slavery also fought for general women's rights. Thus, when Congress passed the 13th Amendment, it was not oblivious to the argument that described 19th century treatment of women as a form of slavery. During the Seneca Falls Conference in 1848, participants in the Conference argued that husbands stripped women of civil rights during marriage. John Dick reported the following statements during the Convention:

139. Id.
140. Courts recognized that a husband could beat his wife with a rod or switch so long as its circumference was no greater than the girth of the base of the man's right thumb. Cheryl Ward Smith, "The Rule of Thumb," A Historical Perspective?, in DOMESTIC VIOLENCE LAW 34 (Nancy K.D. Lemon ed., 2001).
141. In 1839, Mississippi became the first common law state to allow married women to own a separate legal estate in property. Elizabeth Gaspar Brown, Comment, Husband and Wife: Memorandum on the Mississippi Women's Law of 1839, 42 MICH. L. REV. 1110, 1113-17 (1944). It is important to note that the impetus for pushing this Act did not stem from gender egalitarian principles but on protecting property within farming families once the daughters married, and the land was transferred outside the family. See Inara K. Scott, A Window for Change: Conflicting Ideologies and Legal Reforms in Late Nineteenth-Century Oregon, 37 WILLAMETTE L. REV. 433, 441-45 (2001).
He has made her, if married, in the eye of the law, civilly dead. He has taken from her all right in property, even to the wages she earns. . . . In the covenant of marriage, she is compelled to promise obedience to her husband, he becoming, to all intents and purposes, her master — the law giving him power to deprive her of her liberty, and to administer chastisement.\(^{143}\)

The statements of John Dick were not particular to him. At the Tenth National Women's Rights Convention in 1860, Elizabeth Cady Stanton advocated divorce as an end to "legalized prostitution of coerced marital intercourse and unwilling maternity."\(^{144}\)

By the end of the Civil War, judges even began to associate acts of domestic violence, some of which were allowed in 19th century common law marriages, with slavery. Justice Pelham, an Alabama judge, wrote the following in an 1871 domestic violence case:

The husband is therefore not justified or allowed by law to use such a weapon, or any other . . . . The wife is not to be considered as the husband's slave. And the privilege, ancient though it be, to beat her with a stick, to pull her hair, choke her, spit in her face or kick her about the floor . . . . is not now acknowledged by our law . . . . [I]n person, the wife is entitled to the same protection of the law that the husband can invoke for himself.\(^{145}\)

Justice Pelham's comments reflected similar ideas expressed at the Seneca Falls Convention.

In light of comments like that from the Alabama judge above and women and men who attended women's rights conventions, the 13th Amendment was passed amidst at least some public discussion that equated violence against women as a form of slavery. While Congressional comments, like that of Representative White,\(^{146}\) indicate a rejection of such an interpretation, Congress did not pass the 13th Amendment in a vacuum free of such ideas. The fact that Congress did recognize the 13th Amendment's power to reshape the public/private dimension for former

\(^{143}\) REPORT OF THE WOMAN'S RIGHTS CONVENTION, Held at Seneca Falls, N.Y. July 19th and 20th, 1848, at 6 (Rochester, John Dick 1848).


\(^{145}\) Siegel, supra note 58, at 2135 (quoting Fulgham v. State, 46 Ala. 143, 146-47 (1871)). However, Siegel warns that the judge who wrote this opinion was a former slaveholder. Both the Plaintiff and the Defendant in this case were recently freed slaves, so this case is probably less a representative of liberal views of gender relations than it is an assertion of race privilege that white men could beat black women but black men had no such entitlement. Siegel, supra note 58, at 2135-141.

\(^{146}\) See supra note 142 and accompanying text.
slaves, especially slave women, illustrates at least another interpretation of the 13th Amendment as moving beyond a traditional conceptualization of slavery.

More recently, the United States Supreme Court has drawn analogies between chattel slavery and common law marriage. For example, in *Frontiero v. Richardson*, Justice Brennan noted the similarities between chattel slavery and common law marriage:

> Throughout much of the nineteenth century, the position of women in our society was, in many respects, comparable to that of blacks under the pre-Civil War slave codes. Neither slaves nor women could hold office, serve on juries, or bring suit in their own names, and married women traditionally were denied the legal capacity to hold or convey property or to serve as legal guardians of their own children.

In fact, battered women frequently become entrenched in relationships that strip them of freedom of movement and mind. Today's modern system of domestic violence has its roots in public laws that treated women as property of their husbands, permitted husbands to use violence as a form of discipline, and prevented women from engaging in the democratic process. The treatment of women in 19th century common-law marriages exposes the roots of some gender-motivated violence and highlights how the past treatment of women creates the present state of involuntary servitude for women in relationships of domestic violence.

2. Specific Arguments on How 19th Century Common Law Marriage Creates an Incidence of Slavery for Black Women

While women from many racial and ethnic backgrounds were subjected to domestic violence in the nineteenth century, the violence perpetuated against slave women during this era creates a different reality for black women today. Slaves could not legally marry. Slave women were considered property of their slave masters instead of their husbands, or life partners. This helped create the modern social reality for many black women that combines historical oppression based on race and sex.

While black women do not have the same "incidents" from 19th century common law marriage as other women, black women still suffer

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148. *Id.* at 685.
150. *Id.* at 41.
152. *See id.*
the "incidents" of nineteenth century slavery in other ways. Even though female slaves were not considered property of husbands, they were still considered to be someone else's property — that of their slave masters. Moreover, accusations of sexual abuse by black men against white women during and after slavery has created even more chains of slavery for black women in relationships of domestic violence with black male partners. Historical and contemporary memories of excessive punishment against black men leads many black women to fear leaving their relationships of abuse and prosecuting their abuser under the law.

While the incidents of 19th century common-law marriage may be different for Black women, the imprint of involuntary servitude exists nonetheless. And this imprint makes a civil rights remedy all the more important for a black woman whose knowledge of the criminal justice system may prevent her from exercising her legal right to be free from violence.

V. CONCLUSION

Domestic violence is undoubtedly a serious societal problem that cannot be ignored. While state courts provide civil rights remedies for victims of domestic violence, women also need validation of their wrongs in the federal system. The Violence Against Women Act demonstrated Congress's attempt to put domestic violence in the federal spotlight and address specific federal concerns relating to domestic violence. However, this victory was short-lived and less than 10 years later, the Court swiftly, and arguably unjustifiably, invalidated the VAWA's civil rights remedy under the Commerce Clause and the 14th Amendment in United States v. Morrison. Nevertheless, the power of the civil rights remedy to help victims of gender-motivated violence survives through the 13th Amendment. Congress does have the power to legislate on behalf of domestic violence because it exists as a form of slavery as well as a badge and incident of involuntary servitude. It is time for Congress to unchain the hearts of many women who survive enslavement and involuntary servitude through their own experiences of domestic violence. The 13th Amendment provides a valuable tool for Congress to accomplish this goal.