RACE, LABOR, AND THE THIRTEENTH AMENDMENT
IN THE 1940s DEPARTMENT OF JUSTICE

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I. INTRODUCTION

A number of the articles for this symposium concern the labor pedigree of the Thirteenth Amendment. Several others discuss the Amendment’s relationship to race-based civil rights. That separate articles address these two issues is unsurprising. In contemporary legal culture, labor questions and race questions often occupy separate spheres. But the history I explore in this article predates that division; it shows how, at least at one critical moment in time, the Thirteenth Amendment defied the current dichotomy between labor issues and race-based civil rights.

That history concerns the role of the Thirteenth Amendment in a fledgling civil rights section of the Department of Justice (“DOJ”) in the 1940s. When Attorney General Frank Murphy created what was originally called the Civil Liberties Unit (“CLU”) in 1939, he largely thought the civil liberties it would protect were the rights of workers to organize into unions and bargain with their employers, as well as the First Amendment protections such workers would need to exercise those rights. Reporting on Murphy’s creation of the unit, the New York Times concluded that although “many cases affecting civil liberties will arise as a result of the conflict between labor and industry, officials said the field would not be confined to labor matters.” Viewed in the context of the 1930s—a decade saturated with discussion about and protection of workers’ rights and related rights to economic security—it seems fitting that at its creation the first federal governmental unit devoted specifically to protecting civil rights was deeply concerned with labor’s rights. The unit’s priorities and caseload in its early years reflected this commitment. Although the CLU lawyers pursued other kinds of cases, they prominently discussed and prosecuted cases involving workers’ rights.

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1. For a more in-depth history of civil rights in the 1940s, see RISA L. GOLUBOFF, THE LOST PROMISE OF CIVIL RIGHTS (2007).
2. “Civil Rights” Unit Set Up By Murphy, N.Y. TIMES, Feb. 4, 1939, at 2.
3. See, e.g., Henry A. Schweinhaut, The Civil Liberties Section of the Department of Justice, 1 BILL RTS. REV. 1 206, 210-11 (1941); Lewis Wood, Attacks Bar Group for Fight on Hague, N.Y.
With the outbreak of World War II, the focus of civil rights in national politics changed. The war’s domestic and international dimensions gave racial—and in particular African-American—civil rights greater salience both in mainstream political discourse and among legal professionals. As had occurred during World War I, a national economy mobilizing for war once again drew African Americans out of the South and into the North and West where they could vote. As black voters turned increasingly to the Democratic Party, their political support became critical to its success. Bolstering their protests with reference to the war, African Americans engaged in a “Double V” campaign for victory against fascism at home and abroad. In unions, the military, organizations like the NAACP, and outspoken black newspapers, African Americans protested segregation, discrimination, and inequality. Even those who lacked such organizational support protested on a more individual level—on streetcars in the South, in relationships with employers, and by calling on the federal government to vindicate their rights.

The new national attention to these black protests did not altogether eclipse the labor and economic rights that had been prominent in the 1930s. During and just after the war, labor rights and rights to economic security remained politically robust. The Roosevelt Administration continued to signal to lawyers in the renamed Civil Rights Section (“CRS”) the political salience as well as legal appeal of such rights. President Roosevelt pronounced “freedom from want” as part of his Four Freedoms in 1941. Three years later, his “Economic Bill of Rights” continued the trend of publicizing the importance of economic rights in general and the rights of labor in particular. Thus, both labor and economic


7. Franklin D. Roosevelt, Message to the Congress on the State of the Union (Wash., D.C., Jan. 11, 1944), in 13 FDR PUBLIC PAPERS, supra note 6, at 41, 42. For the continuing emphasis on economic rights, see, e.g., Charles E. Merriam, The National Resources Planning Board; A
rights and the rights of African Americans remained politically salient to American conceptions of individual rights. Indeed, the most prominent black civil rights issue during the war—the right to work without discrimination in war industries and labor unions—capitalized on the labor and economic rights that were also prominent. Where race and labor met, African Americans protested most vigorously and politicians responded most strenuously. 8

For lawyers practicing at such a time of ferment in civil rights, the ultimate role that race, labor, and economic rights would play in modern civil rights conceptions remained uncertain. Would additional political upheavals continue to highlight racial, labor, and economic rights? Would the national will to address race discrimination fade with the war and a reassertion of southern Democratic power? Or would the rights of African Americans come to define the legal meaning of civil rights? To civil rights lawyers at the time, the answers to these questions were unknown and unknowable.

In this context, the lawyers of the CRS did not eschew the labor rights that had spurred the creation of the section. Instead, they used the Thirteenth Amendment as a bridge between their historical commitment to the still-robust labor and economic rights of the 1930s and their commitment to the emerging racial rights of the 1940s. The Thirteenth Amendment acted as a bridge in two distinct ways. First, it provided a doctrinal foundation for claims from African-American workers that challenged both the economic and the racial aspects of Jim Crow. Second, it provided a conceptual link between the affirmative governmental obligations to provide economic security associated with the New Deal and the government's potential obligations to provide for what contemporaries called the "safety and security" of African Americans. Both of these roles suggest the difficulty of dividing the Thirteenth Amendment into separate labor and racial elements, as well as more generally the historical contingency of the current separation between labor and race-based civil rights.

II. THE THIRTEENTH AMENDMENT AS DOCTRINAL FOUNDATION

The complaints that gave the CRS lawyers an opportunity to use the Thirteenth Amendment in the 1940s came largely from African-American agricultural workers in the South. The complaints these workers lodged with the federal

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8. Of course, there was, and there remains today, a debate as to how effective the main federal response—that is, the Fair Employment Practice Committee—was. See, e.g., MERL E. REED, SEEDTIME FOR THE MODERN CIVIL RIGHTS MOVEMENT: THE PRESIDENT'S COMMITTEE ON FAIR EMPLOYMENT PRACTICE, 1941–1946 (1991); DANIEL KRYDER, DIVIDED ARSENAL: RACE AND THE AMERICAN STATE DURING WORLD WAR II 53-66 (2000).
government revealed that they understood Jim Crow somewhat differently from the way we commonly imagine it today. To them, Jim Crow—like slavery before it—was a system of both racial subordination and economic exploitation. The Thirteenth Amendment’s abolition of slavery following the Civil War had spawned two related problems for many southern whites: a race problem and a labor problem. How, they asked themselves, would they prevent the newly freed African Americans from contaminating the white race and debasing white politics? And how would they find a replacement for the cheap labor black slaves had previously provided and on which the southern economy was largely based? As one observer commented in 1936, “Slavery was too integral a part of the social life of the South and too vital to the interests of certain classes to be suddenly eliminated by a mere constitutional amendment.”

Rather, the Amendment made “necessary the finding of new ways of perpetuating the Negro’s enslavement.”

Toward that end, and despite the Thirteenth Amendment, southern whites had recaptured, sometimes swiftly and sometimes incrementally, political and economic power over those they had once enslaved. Whites established control over the legal system and political structures of late nineteenth-century South that allowed them to dominate government at all levels into the 1940s. Whites with economic power over black farmworkers controlled the local boards and committees that implemented and administered various New Deal programs in agriculture, as well as wartime draft, wage, and price boards. Most black southerners, especially rural southerners, could not vote, let alone hold public office. Despite favorable long-standing constitutional precedent, they could not sit on juries. African Americans did not serve as judges or police officers. In fact, those officials often perpetrated violence against African Americans rather


11. Id.

12. Southern legislatures deemed even reading about elections or voting inappropriate for African Americans, and they required textbooks for Jim Crow schools to omit references to such topics. Editorial, Textbooks in Mississippi, 18 OPPORTUNITY 99, 99-100 (1940). On African-American activism in this period despite these developments, see generally STEVEN HAHN, A NATION UNDER OUR FEET: BLACK POLITICAL STRUGGLES IN THE RURAL SOUTH FROM SLAVERY TO THE GREAT MIGRATION (2003); Greta de Jong, A Different Day (2002); Nan Elizabeth Woodruff, American Congo (2003).


than protected them from it. At the very least, white government officials, white police, and white juries acquiesced in racial violence committed by private white citizens. In 1947, the President’s Committee on Civil Rights observed that “[t]he almost complete immunity from punishment enjoyed by lynchers is merely a striking form of the broad and general immunity from punishment enjoyed by whites in many communities for less extreme offenses against Negroes.”  

Indeed, black southerners might not have directed their protests to lawyers outside the South if they had not been completely unrepresented in every level of government and politics within the region.

Such political powerlessness made possible, and was made possible by, an economic structure aimed at keeping black agricultural workers propertyless, dependent, and obedient. White planters desired cheap and docile labor while black farmworkers wanted financial and physical independence. The tenancy system that developed facilitated white economic exploitation of black farmworkers while simultaneously making black land ownership a distant possibility. As tenant farmers, and more frequently sharecroppers, many African Americans lived on the land of a (usually white) landowner. Cash tenant farmers paid the landlord with money made from the crop while other types of tenants and sharecroppers paid with a share of the crop. Those who could not even afford such arrangements or preferred mobility to potential advancement worked as wage laborers. They had no stake in the land they tilled and even less hope of eventually owning their own land.

Planters tried to ensure that tenant farmers, sharecroppers, and wage laborers lived within a closed economic universe. They wanted black farmworkers to spend what little money they had in plantation commissaries or in stores that took advantage of their lack of mobility, choice, and contact with the outside world. Planters made every effort to keep both tenants and wage laborers in debt. Most renters of any type rarely had the cash necessary to buy the seeds, fertilizer, storage space, or tools they would need for the coming season. They had to rely on their landlords or other local white landowners or merchants to “furnish” some or all of these things. The rates at which they repaid the loans after harvest were usually exorbitant and nonnegotiable. Sharecroppers were often so far into debt by harvest time that their share of the crop could not even cover the prior season’s debt, let alone provide enough capital to forego debt for the coming season. Debt prevented renters from gaining financial independence and land

ownership, and it undermined wage laborers' and tenants' physical independence and ability to choose their work. Although the Supreme Court had repeatedly outlawed such peonage—whereby employers forced workers to work out their debts—the practice persisted into the 1940s.

The complaints black farmworkers lodged with CRS lawyers reflected and challenged this racialized political economy. The black workers understood that their lack of political and economic power were together responsible for their plight. African-American farmworker Robert Hammond articulated it this way:

The negroes here most of them is afraid of the white people here and all of them is afraid to go to the court house to vote, now take thing's to a consideration, we live's in a free house such as it is, but you can't live in the free house with nothing to eat one half of the time and no shoes and cloth to wear in the winter.

Complaints like Hammond's offered the lawyers of the CRS opportunities to use the Thirteenth Amendment. As the original constitutional intervention into the racial and economic system of chattel slavery, that Amendment was an excellent resource for challenging the newer incarnations of servitude that southern blacks continued to endure. The Amendment did not require CRS lawyers to disaggregate the racial and economic aspects of the farmworkers' complaints; it did not sever the world of civil rights in two. Rather, it offered an integrated legal tool to address involuntary servitude as an integrated problem of labor exploitation and racial subordination.

As I will discuss in more detail below, the CRS accordingly used the Thirteenth Amendment to challenge peonage and involuntary servitude of various kinds. It took on servitude enforced by violence and threats of violence, by psychological coercion, and by the imposition of inhumane living and


working conditions. The CRS also used the Amendment to challenge southern laws that maintained control over African-American labor. Through prosecutions and other interventions into the southern racialized political economy, the CRS lawyers used the Thirteenth Amendment to undermine the combined racial and economic oppression of rural Jim Crow.

As the section’s lawyers directed civil rights cases across the country from their perch in Washington, D.C., these Thirteenth Amendment violations made up the conceptual core of the section’s civil rights practice. Unlike the section’s other practice areas—lynching, police brutality, and voting rights cases—its Thirteenth Amendment cases uniquely responded to the combined racial and economic harms about which African-American farmworkers complained. Moreover, these Thirteenth Amendment cases invoked both sets of rights—labor and economic rights and rights to racial equality—within the CRS lawyers’ wartime mandate.

Again and again, when CRS lawyers discussed their priorities, the right to be free from involuntary servitude played a prominent role. As CRS lawyer Victor Rotnem observed, “Probably no single constitutional provision is the basis of so many complaints to the Department.”22 One of his fellow section lawyers noted, “No small part of the work of the [CRS] is that concerned with the enforcement of the right secured by the Thirteenth Amendment, the right of persons to be free of involuntary servitude.”23 “[T]he importance of these relatively old laws, designed to eradicate every form of compulsory labor,” a section chief concluded in the early 1950s, “cannot be overemphasized.”24

III. THE THIRTEENTH AMENDMENT AS CONCEPTUAL BRIDGE

In addition to providing a doctrinal foundation for bringing claims challenging both the economic and racial aspects of Jim Crow, the Thirteenth Amendment acted as a conceptual bridge between labor and race rights in the 1940s. During the New Deal, the federal government took on greater responsibility for the economic welfare of Americans than ever before. “Economic security” was a watchword of the decade.25 Labor unions and working and poor Americans

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claimed rights to relief, unemployment insurance, and social security, as well as
erights to organize into protected unions and bargain collectively. These rights
were affirmative rather than negative: they required federal government action,
not judicially imposed restraints on governmental action.

When the CRS lawyers, often steeped both personally and professionally in the
New Deal, turned their attention to race, they brought with them and expanded
upon this new affirmative role of government in protecting civil rights. The
Thirteenth Amendment was central to this conceptual transformation. In 1947,
Robert Carr wrote Federal Protection of Civil Rights: Quest for a Sword.26 As
a political science professor at Dartmouth and the executive secretary of President
Truman’s 1946 Committee on Civil Rights, Carr intended the book to publicize
the work of the CRS. Carr organized Quest for a Sword around a metaphor
Supreme Court Justice Robert Jackson used in the 1944 peonage case of Pollock
v. Williams.27 Jackson described two ways to protect those caught in involuntary
servitude. “Congress,” Jackson declared, “raised both a shield and a sword
against forced labor because of debt.”28 When victims of peonage found
themselves imprisoned on charges of accepting advances under false pretenses or
breaking parole by leaving a particular job, they invoked the shield of federal
law. They defended themselves “by requesting a federal court to invalidate the
state action that [was] endangering [their] rights.”29 When, on the other hand, the
federal government brought prosecutions against individual perpetrators of
peonage, it raised a sword against them. It took “the initiative,” Carr described,
“in protecting helpless individuals by bringing criminal charges against persons
who [were] encroaching upon their rights.”30

Adopting Jackson’s metaphor, Carr concluded that in recent years the CRS had
taken up the sword not only in peonage cases but also in civil rights cases
generally. “Government has traditionally been regarded as the villain in the civil
rights drama,” he wrote.31 “The government threat remains, but threats from
other sources are extremely serious. They can and should be met by government
action.” Carr saw “the great achievement of the [CRS]” as making “[t]his new
role of government [seem] to be inescapable.”32

Carr’s choice to describe the CRS’s achievements—and civil rights more
generally—through the lens of its peonage and involuntary servitude
prosecutions is telling. The Thirteenth Amendment cases that the CRS lawyers
pursued during the 1940s provided the perfect opportunity to apply New Deal
ideas about economic rights and government responsibility to the rights of

JENNIFER KLEIN, FOR ALL THESE RIGHTS: BUSINESS, LABOR, AND THE SHAPING OF AMERICA’S
PUBLIC-PRIVATE WELFARE STATE 6-7 (2003); MEG JACOBS, POCKETBOOK POLITICS: ECONOMIC
CITIZENSHIP IN TWENTIETH-CENTURY AMERICA (2005).

27. 322 U.S. 4 (1944).
28. Id. at 8.
29. CARR, supra note 26, at 5.
30. Id. at 5.
31. Id. at 193.
32. Id. at 210.
African Americans. Following changing trends within the involuntary servitude complaints of African Americans themselves, the CRS lawyers went about expanding the protections of the Thirteenth Amendment in order to make the Constitution serviceable for African Americans in the post-New Deal era. In pursuing involuntary servitude cases, the CRS lawyers aspired to a civil rights framework that assumed the government was responsible for eliminating some of the worst and most fundamental aspects of Jim Crow. These cases built on New Deal protections for free labor and economic security and responded to wartime imperatives for racial justice.

The starting point for these cases was a series of narrow but important peonage precedents from the early twentieth century. Even though the Supreme Court had whittled away the Thirteenth Amendment’s power to protect workers generally in the Slaughter-House Cases, to protect African-American civil rights generally in the Civil Rights Cases, and even to protect the rights of black workers specifically in Hodges v. United States, it had always respected the Thirteenth Amendment’s protection against slavery and involuntary servitude. In a series of cases in the early twentieth-century, the Court upheld the power of the Thirteenth Amendment and the Anti-Peonage Act of 1867 to invalidate peonage practices. But those cases were narrow—they only invalidated involuntary servitude when created by contracted indebtedness.

In two related but distinct directions, the CRS lawyers expanded this longstanding federal interest in peonage in a way that broadened New Deal conceptions of affirmative rights and put them to use for African-American civil rights. First, the CRS lawyers reconceptualized Thirteenth Amendment violations from the narrow contractual understanding of peonage to a "federally-secured right to be free from bondage." Peonage was about contract and debt. The government’s role was to intervene into private contracts only when they went wrong. In the 1940s, that role shifted. The government lawyers began to project an ongoing relationship between individuals and the federal government with the government offering affirmative protection of rights. The New Deal had begun this trend with its promise of economic security. The CRS lawyers broadened it to include African Americans’ right to the “safety and security of the person”: the right to be free from bondage, lynching, and police brutality.

33. 83 U.S. 36 (1873).
34. 109 U.S. 3 (1883).
35. 203 U.S. 1 (1906).
38. The phrase drew on a venerable but long-submerged understanding of civil rights, with common law roots traceable to Blackstone’s 1765 Commentaries. There, Blackstone defined personal security as “a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation.” WILLIAM BLACKSTONE, 1 COMMENTARIES *125. The American roots of the concept went back to the 1866 Civil Rights Act and the Freedman’s Bureau Bill of the same year. Civil Rights Act of 1866, ch. 31, § 1, 14 Stat. 27; Freedman’s Bureau Bill, ch. 200, § 14, 14 Stat. 173, 176 (1866). The very first Reconstruction-era civil rights statute guaranteed all
This conceptual shift suggested that African Americans as well as whites deserved "security," that that security went beyond economics, and that affirmative federal power could and should be used to protect individuals. As President Truman said when creating his Civil Rights Commission in 1947, "The extension of civil rights today means, not protection of the people against the Government, but protection of the people by the Government."39

Second, the CRS used the Thirteenth Amendment to fill in gaps in New Deal legislation. In the lawyers' hands, the Thirteenth Amendment deepened what had been the New Deal's equivocal commitment to free labor within a unified national economy. The National Labor Relations Act ("NLRA") offered labor rights to industrial workers, for example, but it largely accommodated the desire of southern whites to exclude many African Americans from the Act's protections.40 The South was thus able to maintain a southern labor market relatively separate from that of the rest of the United States.41 For black agricultural workers especially, that market was characterized by legal and extralegal constraints on mobility, earnings, and property ownership. Emigrant-agent, enticement, vagrancy, and other laws restricted the mobility and market power of black farmworkers. In the 1940s, the CRS determined to attack not just particular instances of servitude, but these laws themselves. With these attacks, the CRS suggested that the Thirteenth Amendment should protect African Americans in the South from more than simply the chattel slavery the Amendment most centrally proscribed. The Thirteenth Amendment could

citizens the same "full and equal benefit of all laws and proceedings for the security of person and property" that white citizens enjoyed. Id. When African-American civil rights reemerged as a national political issue in the 1940s, the "security of the person" reemerged with them. It was a central component of the report of the President's Committee on Civil Rights in 1947. REPORT OF THE PRESIDENT'S COMMITTEE ON CIVIL RIGHTS, supra note 16, at 20. And it was the phrase used to describe the category of harms that included involuntary servitude and peonage, lynching, and police brutality in the only casebook on civil rights in existence in 1952. THOMAS I. EMERSON & DAVID HABER, POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES: A COLLECTION OF LEGAL AND RELATED MATERIALS 1 (1952). Language about the "security of the person" also occasionally resurfaced in some of the signal civil rights dissents of the late-nineteenth century, such as the Slaughter-House Cases, 83 U.S. 36, 115-19 (1873) (Bradley, J., dissenting), and Plessy v. Ferguson, 163 U.S. 537, 555-56, 560 (1896) (Harlan, J., dissenting).


guarantee free labor for those workers excluded from New Deal labor protections.42

Similarly, section lawyers used the Thirteenth Amendment to provide a modicum of economic security to black workers excluded from the Fair Labor Standards Act, the Social Security Act, and other economic security measures.43 Before the end of World War II, lawyers had to prove that employers kept workers in servitude through debt, violence, or legal coercion. After the war, they began to view servitude not only as a problem of force but as a problem of extreme economic coercion. When employers overworked their workers, did not pay them, did not educate them, or gave them substandard food and accommodations, it began to seem that employers enslaved their workers. No one with free will would choose such inhumane conditions of work and life. Thus, these workers must be under duress to remain in these employment relationships. The CRS accordingly prosecuted cases in which employers kept both agricultural workers and domestic workers in shockingly substandard conditions. Here, too, the CRS's use of the Thirteenth Amendment filled in the legislative gaps of the New Deal. In attacking the poor conditions in which African-American agricultural and domestic workers lived as problematic under the Thirteenth Amendment, the CRS lawyers indicated that such workers were entitled to a version of the economic rights to minimal living standards that the Fair Labor Standards Act and the Social Security Act offered industrial workers.44

Within these Thirteenth Amendment expansions, we can see immanent civil rights frameworks quite foreign to our own. Where the New Deal had emphasized labor and economic rights and assisted African Americans only partially and incidentally, these novel involuntary servitude prosecutions aimed to bring African Americans within the New Deal rights framework. They suggested affirmative governmental responsibility for the security of the person, as well as affirmative governmental responsibility for labor and economic rights for all, including the poorest African Americans. They pointed toward a new civil rights in which the protection of African Americans was an expansion of the New Deal itself, an expansion of the increased power the federal government had amassed to provide economic security during the Depression.

IV. CONCLUSION

Taken together, these two roles of the Thirteenth Amendment—providing a doctrinal foundation for challenging both the racial and the economic aspects of Jim Crow and providing a conceptual link between the affirmative economic rights of the New Deal and the affirmative racial rights of the 1940s—suggest

42. See Goluboff, supra note 1, at 152-59.
44. See Goluboff, supra note 1, at 159-68.
that "race" and "labor" have not always been as distinct as they are today. In these cases, as in Jim Crow itself and the complaints black agricultural workers lodged against Jim Crow, economic exploitation and racial oppression were intertwined. These cases also suggested that the government might offer affirmative protection against all of the harms—public and private, racial and economic—of the nation's caste system.

That understanding of Jim Crow, of civil rights, and of the Thirteenth Amendment has largely been lost to history. When Brown v. Board of Education\textsuperscript{45} captured the legal and popular imagination about civil rights, civil rights became something very different from what the CRS's Thirteenth Amendment cases had indicated. The Fourteenth Amendment, equal protection emphasis of Brown ultimately made racial classifications the main problem of Jim Crow. Brown and the doctrine it inaugurated left to one side the substantive economic inequalities the CRS's Thirteenth Amendment practice had targeted. Once legal scholars rewrote Brown's pedigree as starting with Carolene Products' footnote four\textsuperscript{46} and Korematsu's "most rigid scrutiny,"\textsuperscript{47} the division between economics and race became even more imbedded in legal doctrine. Now racial civil rights stood in opposition to, rather than as an extension of, the labor and economic rights of the New Deal. The government had power to regulate the economy—which included the protection of labor and economic rights—but it lacked the power to regulate on race or on substantive racial and economic equality. In the end, we constructed a proceduralist civil rights that restrains the government from classifying on the basis of race and that embraces negative rights against the government rather than affirmative rights to government protection. We lost the substantive economic components of the CRS's 1940s legal practice.

Moreover, we lost the unique heritage and meaning of the Thirteenth Amendment. When the Thirteenth Amendment returned to the doctrinal scene in Jones v. Alfred E. Mayer Co. in 1968,\textsuperscript{48} the Supreme Court treated it as a Fourteenth Amendment without a state action requirement. The Court denuded the Amendment of its labor and economic component and used it instead in service of the equal protection, classification-based conception of civil rights.

The history of the Thirteenth Amendment in the CRS of the 1940s reminds us of the Thirteenth Amendment's roots in both race and labor. It reminds us that it was once possible to practice civil rights that embraced both components of civil rights simultaneously in defense of the poorest African Americans. It reminds us of the possibility of generating affirmative rights. In doing so, this history can perhaps point us toward new civil rights possibilities beyond the current regime. It opens up the contingencies in civil rights and suggests that we might once again find ways to help the poorest African Americans redress the vestiges of Jim Crow that remain today.

\textsuperscript{45} 347 U.S. 483 (1954).
\textsuperscript{46} United States v. Carolene Products Co., 304 U.S. 144, 152 n.4 (1938).
\textsuperscript{47} Korematsu v. United States, 323 U.S. 214, 216 (1944).
\textsuperscript{48} 392 U.S. 409 (1968).