

## Introduction

The Thirteenth Amendment to the Constitution was ratified on December 6, 1865. The first section of the Amendment declares: “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.” The Amendment is unique within the structure of the United States Constitution. It does not merely prohibit governmental action. Rather, the Amendment prohibits purely private, interpersonal conduct. It bars every person from holding slaves or from engaging in any other form of involuntary servitude (except as punishment for a crime).

The immediate impact of the Thirteenth Amendment was to end slavery in the southern United States and to bar a wider range of labor arrangements that constituted involuntary servitude. In addition, the second section of the Thirteenth Amendment grants to Congress the “power to enforce” the Amendment’s prohibitions by passing “appropriate legislation.” The Supreme Court has long held that this second section allows Congress to pass laws to eradicate not just slavery and involuntary servitude, but also the lingering “badges and incidents” of slavery. Congress and the Supreme Court, however, have never fully recognized that the ongoing lack of educational opportunities afforded to African Americans is attributable to those badges and incidents.

To the contrary, this book will show how American law has legitimated and perpetuated dramatic disparities in educational opportunities based upon race, sex, gender identity, sexual orientation, socio-economic status, native language, and disability. Those disparities have been sustained and justified not only by legal and political structures, but also by long-disproved theories of human development and educational psychology.

This book will challenge the history of educational disparities in America and analyze the civil right to an education from an interdisciplinary perspective. The book brings together the persuasive authority of judicial precedent and legal analysis; the wisdom, coherence, and depth of political and educational philosophy; the foresight of the Founders of the American regime; the observations, experiences,

and profound understandings of educators; the prudence of policy-makers; the data sets and statistical regression analyses of economists; and the experiments and empirical evidence of cognitive psychologists and neuroscientists.

Throughout each of its chapters, the book raises and resolves the following question: What would the legal structures governing American education look like if they were based upon a proper understanding of the ways in which human beings actually learn?

The book will show that the American educational system sustains its inequities in part by projecting a misleading view of human learning and development. I will trace the evolution of the American educational system to the principles of behaviorist educational psychology which presume that human beings learn through operant conditioning. This presumption then leads to an educational system based on individual and systemic rewards and punishments, which ultimately serves to justify an inequitably funded and segregated regime. The book demonstrates how the checkered history of the right to education in America has been legitimated by this flawed presumption.

As this book will show, pathbreaking new research from the disciplines of neuroscience and educational psychology have belied the flawed behaviorist foundations that have long undergirded the legal structures supporting the American educational regime. The book will demonstrate that human beings actually learn by constructing knowledge together through meaningful relationships. I will carefully analyze that research, which reveals that all learning is constructed socially through meaningful relationships.

This book will also show that if the American educational system were founded on the correct understanding that all knowledge is socially constructed through meaningful relationships, it would recognize a civil right to adequate and equitable educational resources; it would fulfill the Founders' vision of a regime in which knowledge is diffused through important associations; it would develop diverse, inclusive, and equitable pedagogies and practices; it would extirpate the badges and incidents of discrimination; and it would teach all students the habits of mind that prepare them to be innovative leaders in a participatory democracy.