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**Civics 101**

**Ep 101: Thirteenth Amendment**

**Virginia Prescott:** [00:00:23] I’m Virginia Prescott and this is Civics 101 a podcast refresher course on the basics of how our democracy works. On today's show and for the next two we're going to be digging into a series of questions asked by a fellow podcaster.

**Jack Hitt:** [00:00:37] This is Jack it from the podcast just down the road, Uncivil. On our show we ransacked the history of the Civil War and the stories that grew up on. We've been listening to your show so we've got a request. Right after the Civil War there was that whole bundle of constitutional amendments that Congress passed. We all know that were meant to fix the situation but did they actually do anything at the time. What about now? Are they working at all today? Thanks Civics 101. Keep up the good work.

**Virginia Prescott:** [00:01:07] The bundle that Jack is talking about are known as the Reconstruction Amendments: the 13th, 14th and 15th. And we begin our series today with Maria Ontiveros a law professor at the University of San Francisco and 13th Amendment scholar. And Maria welcome to civics 101.

**Maria Ontiveros:** [00:01:24] Thank you so much for having me. I'm looking forward to our discussion today.

**Virginia Prescott:** [00:01:27] Well tell us what the 13th amendment actually says

**Maria Ontiveros:** [00:01:30] The 13th Amendment was passed in 1865. It was the first of those three Reconstruction amendments that you mentioned. It says that neither slavery nor involuntary servitude except as punishment for a crime shall exist in the United States. And I think one of the significant things about it is that it was passed first and separately from the other two amendments. The 14th Amendment did not come into play until late 1868 and the 15th Amendment was not ratified until 1870. So it is something that has independent weight and that had to be dealt with on its own for a number of years before the rest of the Reconstruction amendments were passed.

**Virginia Prescott:** [00:02:17] This is not the same thing as President Lincoln's emancipation proclamation made a couple of years earlier Correct?

**Maria Ontiveros:** [00:02:24] Correct. The Emancipation Proclamation was passed in 1863. And all that did was to free the slaves in the ten states that were still in rebellion during the Civil War. Slaves in the Border States and in many other places throughout the United States were still in bondage. So it wasn't until 1865 that slavery and involuntary servitude was outlawed throughout the United States. Interestingly in 1787 there had been an abolition of slavery and prohibition of slavery through something called the Northwest Ordinance and that dealt with the territories that were going to become the states around Ohio and Pennsylvania and the rest of the states around the Great Lakes.

**Virginia Prescott:** [00:03:16] Now I'd love to look at that a little bit more but I'd also like to look at how the origins of the 13th Amendment. I mean we've done an episode on constitutional amendments a lot of work you have to get a lot of people on board. And states one by one. How did the 13th Amendment get passed through Congress and ultimately ratified?

**Maria Ontiveros:** [00:03:37] Well there were a lot of interests involved in having the 13th amendment ratified and it came at a time where the civil war had waned. You had reconstruction congresses in the freed states. You had many people who were interested in ending slavery from a moral perspective who were very concerned about the abuse of human rights and civil rights. You also on the other hand had a group of people who were concerned about the impact of slavery on the economic rights and economic welfare of working class white citizens. You can imagine that if people have to work for free then that's very difficult to compete with. So you had people arguing to abolish slavery both from a moral perspective and also for a way to protect the economic rights of freed workers because if they have to compete against people who can't quit and who have to work for free then it is very difficult for them to be able to exercise their rights and be treated decently within their jobs.

**Virginia Prescott:** [00:04:56] You mentioned the Reconstruction Congress. Can you tell us what it is in the south following the Civil War?

**Maria Ontiveros:** [00:05:03] There were congresses within each state that took power but it was not entirely clear how legitimate they were and so many of those Congresses would go ahead and pass laws or ratify amendments. But it was unclear whether or not they were duly elected and had the authority to do so.

**Virginia Prescott:** [00:05:28] Outside of the realm of this reconstruction Congress the economy of the Southern states was in tatters. The cost of the war had been huge and there was the loss of all that free labor. So what kind of concessions were made to southern states and passing this amendment.

**Maria Ontiveros:** [00:05:46] Well some of the concessions were really unclear about how enforceable they would be. Many of the states when they ratified had state wide declarations that said that the federal government still could not come in and legislate about what would happen with regard to the freed slaves. So passage was secured in those states with the idea that well we know that things are going to have to change but we should still be able to have control over them. And the other implied concession that was made was that even if slaves were freed. That doesn't mean that that group of people had to be treated equally. Some of the early versions of the 13th Amendment focused much more on equality and the idea that all people had to be treated equally. But Southern states even in the in the writing and the passage of the amendment before the ratification phase were not willing to vote for that type of an amendment. And that's why the 13th Amendment narrowed to focus on getting rid of slavery and involuntary servitude instead of really being a pledge of equality between these groups.

**Virginia Prescott:** [00:07:13] What then was the reaction by the Southern states suddenly four million freed people who have been formerly property?

**Maria Ontiveros:** [00:07:20] Their reaction was shock dismay and as you might imagine attempts to reconfigure a lot of the same advantages that the Southern states had before through a system of slavery without calling it slavery. So in the southern states not going to be any real socially equality between freed slaves and whites blacks were still very much restricted in terms of private interactions with whites in terms of where they could go and what they could do. What many states did was to pass codes that for instance created curfews prohibited loitering and restricted other rights that blacks had the impact of that was that when blacks violated these black codes or even allegedly violated these black codes they ended up in the criminal justice system then through a system known as debt bondage or debt peonage and through the use of chain gangs. You ended up with a lot of the freed slaves doing the same agricultural work and doing a lot of other manual labor that they had done before as slaves. They were now doing as part of the criminal justice system.

**Virginia Prescott:** [00:09:02] This is a charge that more than 150 years later is being made by I'm thinking of Ava DuVernay the Oscar nominated documentary 13. Michelle Alexander's book is called The New Jim Crow charging that mass incarceration of American African-American men really does violate the 13th amendment. What's behind that case?

**Maria Ontiveros:** [00:09:25] Exactly. The justice we talked about before and we will hopefully talk about in a few moments about how human trafficking and different labor cases are currently being brought as part of the involuntary servitude prong of the 13th amendment. There is currently a lot of investigation into the use of prisons and mass incarceration as a way to get a lot of free labor from African-Americans and other people of color especially men however. Also a lot of African-American and Latino and other women of color are also caught up in this mass incarceration process where they are in prison doing labor that profits. Other people especially the owners of private prisons which we have an extensive system of within the United States. And also when these people are released from prison it is very difficult for them to get new jobs because of their records and they often fall back into the prison system and this cycle of going in and out of prison is very much like the cycle of going in and out of debt bondage. That was very prevalent in the 1880s to 1920s in the United States.

**Virginia Prescott:** [00:11:03] That is an ongoing discussion. Mass incarceration continuing and effect to be a system of slavery. But there's another argument that surfaces in the present that people say you know slavery happened in the past. Why are we treating it or reviving it like a contemporary issue. What would your counterargument be to that?

**Maria Ontiveros:** [00:11:25] There's actually a good counterargument to that that comes from the U.S. Supreme Court in the 1960s as there was a growth of the civil rights movement. That was really focusing more on the civil rights aspect of slavery and the citizenship rights aspects of slavery as opposed to the labor rights aspects. There were a variety of cases that were brought that said that a lot of the prohibitions on private matters or a lot of the race discrimination in private matters had to be abolished because this was reminiscent of slavery and the 14th amendment at that time did not reach discrimination in private matters. It only prohibited discrimination that was undertaken by the government. So in 1960 you had cases brought including one called Jones versus Mayer. And in that case there was an African-American couple that was not allowed to rent or purchase real estate. And the Supreme Court in that case said that the prohibition on the ability to own property is quote unquote a badge an incident of slavery and that the 13th Amendment was meant not just to get rid of slavery and involuntary servitude but also meant to get at the Badges and incidence of slavery. And by that what they meant were the repercussions and the ripples of slavery that continue to exist today. And certainly something like refusing to rent to someone because they're African-American they said was part and parcel of that. More recently advocates have said things like racial profiling, police practice abuses are also badges and incidents of slavery because they are a way of replicating the system that was there before.

**Virginia Prescott:** [00:13:37] I want to pick up on that and Jack's question about whether these amendments which were supposed to fix things in the reconstruction era are working today. And this is your area of scholarship organized labor and immigration and the 13th Amendment. So what would be the takeaway of how the 13th Amendment is relevant to these contemporary issues?

**Maria Ontiveros:** [00:14:03] The important thing to take away from how that's related today is that we have almost 20 million undocumented people in the United States whose labor rights human rights civil rights and citizenship rights are being prescribed in the same way that slavery victims were in the 1850s and 60s and that we have a group of people who are seeing very similar treatment and lacking the same type of power that slaves did before. So the 13th Amendment is a way to think about the treatment of undocumented workers as a human rights issue a labor rights issue a civil rights issue not just a citizenship rights issue.

**Virginia Prescott:** [00:14:53] Maria Ontiveros thank you so much for speaking with us.

**Maria Ontiveros:** [00:14:57] Thanks for having me.

**Virginia Prescott:** [00:15:02] Maria Ontiveros is a professor of law at the University of San Francisco. She focuses on employment law and an emphasis on immigrant workers rights.