The Thirteenth Amendment and the Comparative Constitutional Evolution of Workers’ Rights

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Abstract

Labor and employment law is one area in which American exceptionalism holds. Most notably, we stand apart from our European peers in embracing the norm of at-will employment. And, relative to most advanced democracies, U.S. labor and employment law offers workers few legal protections with regard to working time, working conditions, leave entitlements and job security. This paper illuminates the role of the Thirteenth Amendment in sustaining the distinctive American approach to the employment relationship. By abolishing certain forms of labor relations – namely slavery and involuntary servitude – the Thirteenth Amendment constitutionalized the rights of workers. But it did so in a way that defined the rights of workers narrowly, and ultimately quite differently from the “right to work” now enshrined in twentieth century European constitutions and international human rights treaties. How did the “right to work” that evolved from the abolition of American slavery differ from the “right to work” that evolved from the abolition of feudal relations in Europe? These differences can be illuminated by a close look at the U.S. Supreme Court’s very first occasion to interpret the Thirteenth Amendment: the Slaughterhouse cases. Although the Slaughterhouse cases have been the subject of much commentary by U.S. scholars, the Supreme Court’s encounter in that case with foreign law, particularly French legal and political writings on servitude, has largely been ignored. This paper focuses on this dimension of the Slaughterhouse cases to shed light the distinctive historical trajectory of American workers’ rights.