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Urban Poor Have a Valid Claim to Relief, Redress

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Presidential hopeful Mitt Romney’s admission that he is “not concerned about the very poor” generated a swift flurry of critical comments. Some quickly pointed out that we should be concerned about the very poor because extreme poverty in the United States is an economic, social, political and moral problem.

In my view, extreme poverty in the United States is a constitutional problem as well. In fact, the U.S. Constitution, particularly the 13th Amendment to it, not only has something to say about poverty, but also may be the last reservoir of relief for an entire class of largely forgotten Americans: the urban poor.

The 13th Amendment, enacted in 1865, formally abolished slavery. Its prohibitions are not limited to this “peculiar institution.” It also applies to circumstances involving a restraint on physical liberty. Indeed, the amendment is said to prohibit contemporary harms ranging from child abuse and domestic violence to human trafficking and racial profiling.

In addition to banning certain conduct, the 13th Amendment also affirmatively entitles people within the United States to a basic threshold of liberty. As Yale law professor Akhil Amar notes, the amendment guarantees individuals a “minimum stake in society.”

Early interpretations of the amendment support this broad view of the amendment’s positive scope. James Garfield, for example, stated that if the amendment ensured only freedom from bondage, the amendment would be a “bitter mockery” and a “cruel delusion.”

Accordingly, the 13th Amendment is viable in modern America and is implicated when there is a denial of meaningful liberty and a restriction on physical movement. Sharing these two fundamental characteristics are the urban poor.

First, the urban poor are marked by significant poverty. The urban poor live in areas of concentrated poverty, often earn annual incomes well below the federal poverty line and are disconnected from well-paying jobs and related job networks. Second, the urban poor are spatially isolated in urban settings. Without robust economic opportunities or the tools necessary to participate in the mainstream economy, the urban poor do not have the wherewithal to escape their physical location. Though not legally restricted to any geographic space, the urban poor are functionally confined nonetheless to urban areas.

As a result of these limitations on social and physical mobility, the urban poor do not possess a minimal stake in society. Thus, the urban poor fall squarely within the protections contemplated by the 13th Amendment.
Other factors reinforce the urban poor’s entitlement to the 13th Amendment’s safeguards. Overt discrimination, in housing and education for example, is at least partially responsible for the economic and physical marginalization of the urban poor. Moreover, urban poverty is likely to be generational in nature, which suggests that urban poverty is a by-product of entrenched, structural failures.

As one report uncovered, “more than 70 percent of black children who are raised in the poorest quarter of American neighborhoods will continue to live in the poorest quarter of neighborhoods as adults.” The urban poor also do not possess political capital to encourage others to improve their lot.

All considered, the urban poor may have a valid claim to constitutional relief under the 13th Amendment, perhaps in the form of compensatory education or job training. Because the amendment protects, in the words of the Supreme Court, “every race and every individual,” the beneficiaries of such relief would extend to all members of the urban poor, including African-Americans, Hispanics and whites.

Though the very poor may not disturb the public or a particular politician’s consciousness, the urban poor trigger the Constitution’s solemn strictures nonetheless. And, it seems to me, liberty in areas of concentrated urban poverty has fallen below a constitutionally guaranteed minimum.