



NO CIVILIZED SYSTEM OF JUSTICE

Sonja R. West

Reviewing

CHARLES LANE, *THE DAY FREEDOM DIED: THE COLFAX MASSACRE,
THE SUPREME COURT, AND THE BETRAYAL OF RECONSTRUCTION*
(Henry Holt 2008)

THE FACTS LEADING UP TO the Supreme Court's 2000 case of *United States v. Morrison*¹ are well known to most Court watchers. Christy Brzonkala was an 18-year-old college freshman at Virginia Tech when she claims she was gang raped by two members of the school's varsity football team. The attack left Brzonkala severely depressed and suicidal.

She turned to her state for recourse. After being assured by school officials that they believed her account, Brzonkala filed an administrative complaint against her attackers under Virginia Tech's sexual assault policy. But after forcing her to testify at two hearings – during which one of the players, Antonio Morrison, admitted to having sex with her after she twice told him “no” – the state school offered Brzonkala no remedy for her injuries. Both players were

Sonja West is an assistant professor of law at the University of Georgia School of Law.

¹ 529 U.S. 598 (2000).

allowed to return to school without punishment (one kept his full-ride scholarship).² Brzonkala, meanwhile, dropped out of school. She later reported the crime to state authorities but a grand jury investigation failed to produce any indictments.³ The state system, under anyone's definition, failed to protect Brzonkala's civil rights.

So Brzonkala next looked to her federal government for redress. She sued the two men under a section of the federal Violence Against Women Act of 1994 ("VAWA")⁴ that provides a private cause of action against any "person ... who commits a crime of violence motivated by gender."⁵ The case wound its way to the Supreme Court of the United States. In the majority opinion written by Chief Justice Rehnquist, the Court never disputed Brzonkala's allegations and recognized that, if true, she was clearly "the victim of a brutal assault."⁶ Nonetheless, the Court held that Congress lacked the power to pass the VAWA's private cause of action provision. Our system of federalism, Rehnquist stated, requires that any remedy to Brzonkala "must be provided by the Commonwealth of Virginia, and not by the United States."⁷

² Brief for Petitioner at 4-6, *Morrison*, 529 U.S. 598. Morrison was found guilty of sexual assault. The school, however, without notice or explanation to Brzonkala, later lowered the charges from "sexual assault" to "using abusive language." Later, again without notice to Brzonkala, the school set Morrison's punishment aside entirely. *Id.* After being indicted on charges of rape and attempted sodomy of another student, the other player, James Crawford, pleaded guilty to the lesser charge of attempted aggravated sexual assault. Although he was sentenced to twelve months in prison, the sentencing court later suspended the entire sentence and placed him on "unsupervised probation." *Id.* at 5, n.2.

³ See Catharine A. MacKinnon, *Disputing Male Sovereignty: On United States v. Morrison*, 114 Harv. L. Rev. 135, 140 (2000). Brzonkala did not initially pursue state criminal charges against the men because she believed the lack of physical evidence from the rape would doom her case. See *Brzonkala v. Va. Polytechnic Inst. & State Univ.*, 132 F.3d 949 (4th Cir. 1997).

⁴ Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified in scattered sections of 18 U.S.C. and 42 U.S.C.).

⁵ 42 § 13981(c).

⁶ *Morrison*, 529 U.S. at 627.

⁷ *Id.*

No Civilized System of Justice

In a striking moment, however, Rehnquist concluded by observing that the brutality of the attack on Brzonkala demanded a governmental response. “If the allegations here are true,” he declared, “no civilized system of justice could fail to provide her a remedy for the conduct of respondent Morrison.”⁸ It was a remarkable statement given that the state system in this case had done just that – left Brzonkala without a remedy. The federal government had attempted to step in and correct the state’s egregious failure, but the Court had put a stop to it. The Court’s decision thus left the job of protecting certain constitutional rights solely with the states. Unfortunately, this kind of hopeful reliance on the states to do the right thing has a proven history of being a poor path to a “civilized system of justice.”

SEE ALSO *UNITED STATES V. CRUIKSHANK*

United States v. Morrison is most frequently discussed as a case about Congress’s constantly changing Commerce Clause powers. But the Court in *Morrison* gave the VAWA’s private action a one-two punch: first concluding it was unconstitutional under the Commerce Clause and then also finding it failed under the Fourteenth Amendment. In the latter holding, the Court found that the Fourteenth Amendment prohibits only state action and provides no protection against private conduct “however discriminatory or wrongful.”⁹ In support of this finding, the Court in *Morrison* provided a long “see also” string citation. Last on the list of referenced cases stood a little known case from more than a century earlier – *United States v. Cruikshank*.¹⁰

The Court quoted *Cruikshank* for the proposition that

“[t]he fourteenth amendment prohibits a state from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against another. It simply furnishes an additional

⁸ *Id.*

⁹ *Id.* at 621 (quotations omitted).

¹⁰ 92 U.S. 542 (1876).

guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society.”¹¹

Nowhere in the Court’s discussion of *Cruikshank* did the Court acknowledge that it was relying favorably on a case in which it had set free the perpetrators of one of the bloodiest race-based massacres in American history – the Colfax Massacre of 1873. Indeed a thorough reading of *Cruikshank* itself fails to reveal that the case arose out of a murderous rampage committed by a mob of white supremacists who gunned down more than sixty unarmed black men as they fled a burning courthouse while waving flags of surrender. If little is known about the events leading up to the Supreme Court’s *Cruikshank* decision, perhaps even less is known about the legal ramifications of that case. Ramifications that – as the *Morrison* case illustrates – have followed us into the twenty-first century.

This is where Charles Lane comes in.

In his new book, *The Day Freedom Died*,¹² Lane, the *Washington Post*’s Supreme Court reporter from 2000 to 2006 (he is now an editorial writer for the paper), dives deep into the Colfax Massacre and the *Cruikshank* case that rose from its ashes. Through riveting narrative, he expertly pieces together what happened on Easter Sunday, 1873, in the small town of Colfax, Louisiana. Step by step he debunks the initial reports that a violent mob of armed black men had overthrown the local government and seized the town’s courthouse. According to those stories, relayed by white residents of Colfax, the white men were acting in self-defense when they formed a posse and, after attempts at a truce failed, smoked the black men out of the courthouse. It was this version of events that persisted well into the next century.¹³ Lane sets the record straight

¹¹ *Morrison*, 529 U.S. at 622 (quoting *Cruikshank*, 92 U.S. at 554).

¹² Charles Lane, *The Day Freedom Died* (Henry Holt 2008).

¹³ In 1950, for example, the state of Louisiana erected a seven-foot-tall historic marker at the site of the courthouse that claimed that the “Colfax Riot” was noteworthy because it allegedly “marked the end of carpetbag misrule in the South.” *Id.* at 260.

No Civilized System of Justice

by carefully weaving together the facts that led up to the bloody debacle. The truth, Lane's readers learn, is a story of hatred, violence and racial discrimination. It also is a story of our dual system of government – both its potential and its failures.

The story that Lane builds is of a particular town that, like the entire nation, had been torn apart by the Civil War. More than a decade had gone by since the Emancipation Proclamation, and the United States government was still struggling to honor its many promises of Reconstruction. Three new constitutional amendments provided a hopeful start: the Thirteenth abolished slavery, the Fourteenth made former slaves United States citizens and guaranteed them basic equality, and the Fifteenth secured the right to vote for black men. Relying on new powers granted by these Amendments, Congress began passing a series of civil rights laws, including the Enforcement Act of 1870, which made racial terrorism a federal offense.

To the black residents of Colfax, Louisiana, however, the promise of equality embodied in these laws must have seemed elusive and shadowy. As Lane tells it, the pro-Reconstruction Republicans of Colfax had every rightful claim to the local judgeship and sheriff's office, but virulent white supremacists insisted that their men had been elected to these positions and used fraudulent commissions to get sworn into office. Both groups knew that control of the town hinged on control of the local courthouse. A group of mostly black Republicans successfully entered the courthouse building in the middle of the night, claiming the contested offices and the political power that went with it as their own. What followed was a three-week standoff during which the white supremacists assembled a posse of former Confederate soldiers. After the Republican occupiers refused to yield, the posse fired on the black men holed up in the courthouse, even putting to use a small cannon. The occupiers held on until the posse turned to a new deadly tactic. They set fire to the courthouse and shot the black men as they ran for their lives – many waving white flags of surrender. Those who weren't killed on the spot were taken prisoner, only to be executed a short time later. In the end, Lane estimates that between sixty-two and eighty-

one black man were murdered. The three white men who died that day were likely the victims of friendly fire.

Lane next turns his focus to the quest for justice for the victims. State efforts to prosecute failed quickly. A Louisiana district attorney managed to obtain indictments but was then met by an armed white mob angry over the attempt to prosecute. Left without any protection to help him enforce state law, the district attorney fled and the state indictments withered.

The only hope now lay with the federal government and a young, idealistic prosecutor named James Beckwith who had the radical idea that murderers of black victims should receive the same punishment as murderers of whites. After learning of the events in Colfax, Beckwith initiated what would become a long and historic attempt to bring the perpetrators of the Colfax Massacre to justice. He began by indicting 97 men on 32 counts of violating the Enforcement Act. With frustratingly little support from Washington, he was able to bring only nine men to trial. The initial proceeding produced a mistrial, with jurors split down racial lines. In the follow-up trial, Beckwith presented a string of testimony from mostly black witnesses who testified to the events of that bloody Sunday and directly identified the defendants as murderers. In the end, the jury convicted three of the men on the lesser charge of conspiracy – a violation of section 6 of the Enforcement Act. To Beckwith and the black community of Colfax, this verdict was a watered-down but real vindication. To most of white Louisiana it was a shocking indignation.

It was now time for the Supreme Court to get involved.

“SORRY FOR THE ‘DRED’”

Justice Joseph Philo Bradley, who was riding the federal circuits of the Deep South, happened to be in New Orleans when the second *Cruikshank* trial began. Following the practice at the time, he sat in on some early motions including a defense challenge to the constitutionality of the Enforcement Act, the statutory basis for the convictions. Justice Bradley postponed ruling on the motion, ordered the trial to continue and then left town. But after hearing news of

No Civilized System of Justice

the verdicts against the three white men he made the long journey back to the Crescent City to rule on the defense's motion. Lawyers for the white defendants had argued that Congress did not have the power to pass the Enforcement Act under the Fourteenth Amendment, which declares only that "no state" can infringe rights of life, liberty and property. According to the defense, the Amendment did not speak at all about acts committed by individuals so that the duty to punish such "personal aggression" remained solely with the state and not the federal government. Justice Bradley agreed.

The Fourteenth Amendment, Bradley explained, does not give Congress the power to pass laws for the punishment "of murder, false imprisonment, robbery or any other crime committed by individual malefactors."¹⁴ Rather, he reasoned, it only allows Congress to protect individuals from "arbitrary and unjust" action by the state.¹⁵ Congress, therefore, could pass legislation to protect the black men of Colfax from official violation of their civil liberties, but it was powerless to protect them from a violent racist mob. Based on this reasoning, the section of the Enforcement Act under which the *Cruikshank* defendants had been convicted was unconstitutional.¹⁶ The guilty verdicts, Justice Bradley ruled, had to be overturned.

The case went to the Supreme Court for a ruling on the constitutional question. While the case lingered on the Court's docket, white supremacist violence erupted across the South as the Bradley opinion was seen as giving a green light for race-based attacks. After nearly a year of deliberation and drafting, a unanimous Court agreed with Justice Bradley's lower court decision.¹⁷ Chief Justice Waite delivered the opinion of the Court, which parroted much of Justice Bradley's reasoning. The *Cruikshank* defendants were ac-

¹⁴ *Id.* at 206.

¹⁵ *Id.*

¹⁶ Justice Bradley further held that even if the Act were constitutional, the indictment charging the men was flawed because it did not allege that the acts were committed for racially discriminatory reasons. *Id.* at 209-210.

¹⁷ *Cruikshank*, 92 U.S. 542.

cused, Waite contended, of “nothing else than alleging a conspiracy to falsely imprison or murder.”¹⁸ The Constitution did not give the federal government the power to punish crimes like these, because the Fourteenth Amendment “adds nothing to the rights of one citizen as against another.”¹⁹ The Court handed down its ruling without acknowledging that it was setting free three men who had been convicted of participating in a racially inspired mass murder.

More than a century later, Chief Justice Rehnquist would remark that “no civilized system of government” would deny Christy Brzonkala a remedy for her injuries even though Virginia had done just that. In *Cruikshank*, Chief Justice Waite made a similar – if also unintentional – critique of Louisiana when he stated that “[e]very republican government is in duty bound to protect all its citizens in the enjoyment of [their civil liberties], if within its power.”²⁰ But like Rehnquist in *Morrison*, Waite also seemed indifferent about whether the state had actually fulfilled that duty. Waite’s concern, rather, was whether the federal government had any power to act against private wrongdoers when the states failed. He concluded that it did not. “The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more.”²¹

Lane’s book illustrates superbly why the Court’s decision was so devastating to Reconstruction’s goals of equality. Across the South, white supremacists were engaging in a widespread campaign of personal terror aimed at denying black citizens their rights of equal treatment and due process. State governments, meanwhile, lacked either the will or the power to offer protection. The Court’s decision thus allowed private mobs to assail their African-American fellow citizens at will. These racist groups were sending their black neighbors a clear and chilling message that the penalty for political

¹⁸ *Id.* at 553.

¹⁹ *Id.* at 554.

²⁰ *Id.* at 555.

²¹ *Id.*

No Civilized System of Justice

participation – whether it was by seeking to vote, standing for election or assuming office once elected – was death.

Lane tells an anecdote where a friend of Chief Justice Waite's half-jokingly referred to the *Cruikshank* decision as comparable to the Court's infamous *Dred Scott* opinion. "Sorry for the 'Dred,'" Lane reports that Waite replied, "but to my mind there was no escape."²²

A SHIELD AGAINST ANARCHY AS WELL AS TYRANNY

The decision from which Chief Justice Waite could find no escape thus joined the ranks of the Court's Reconstruction Era cases, many of which are far better known than *Cruikshank*. The *Slaughter-House Cases*, for example, gutted the "privileges or immunities" clause of the Fourteenth Amendment, leaving Congress and future Supreme Courts to turn to other clauses, such as the Equal Protection Clause, to battle discriminatory laws.²³ In *United States v. Harris* the Court followed *Cruikshank* by holding that the Ku Klux Klan Act was unconstitutional because Congress could not punish the private acts of a lynch mob.²⁴ And in the *Civil Rights Cases* Justice Bradley declared that the Civil Rights Act of 1875 was unconstitutional insofar as it prohibited racial discrimination by private persons in the operation of public accommodations.²⁵ The Reconstruction Amendments, he reasoned, did not give Congress any power to legislate "what may be called the social rights of and races in the community."²⁶ He famously added that the time had come for former slaves to "take[] the rank of a mere citizen, and cease[] to be the special favorite of the laws."²⁷

²² Lane, *supra* note 12, at 247.

²³ 83 U.S. 36 (1873).

²⁴ 106 U.S. 629 (1883).

²⁵ 109 U.S. 3 (1883).

²⁶ *Id.* at 30.

²⁷ *Id.* at 25. This holding was in stark contrast to a dissenting opinion Justice Bradley wrote a decade earlier in which he observed that "[m]erely striking off the fetters

When the *Morrison* case arrived at the Supreme Court in the beginning of the year 2000, the case of a brutal rape of a college student might not have seemed to have much in common with the nineteenth century actions of a murderous racist mob. But the fights to obtain justice for Christy Brzonkala and the victims of the Colfax Massacre have many things in common. In both cases the states proved to be either unable or unwilling to provide a remedy even if they were “duty bound” to do so and if any “civilized system of justice” would demand it. And in both cases Congress had concluded that it was necessary for the federal government to fill the void and secure the constitutional rights that the states had allowed to be trampled. The Supreme Court, moreover, was the final arbiter in both cases, and in each of them declared that Congress was helpless to act even in the face of violent and still unremedied acts of class-based discrimination.

In *Cruikshank*, the Justices were faced with two competing and prominent views of Congress’s power under § 5 of the Fourteenth Amendment. They could have sided with the opinion of the *Cruikshank* trial judge – the Honorable William Burham Woods then of the Fifth Circuit but who later would himself be elevated to the Supreme Court by President Hayes. In a prior case, Judge Woods had concluded that the federal government could protect individuals not only from discriminatory state laws but also from “state inaction, or incompetency.”²⁸ In other words, if a state government failed to adequately protect the civil rights of its citizens, the Fourteenth Amendment gave Congress the power to step in and fill the void. As Lane explains, “[a]ccording to Woods, the Fourteenth Amendment was a shield against anarchy as well as tyranny.”²⁹ But the *Cruikshank* Court instead adopted the far more restrictive view of Justice Bradley.

of the slave, without removing the incidents and consequences of slavery, would hardly have been a boon to the colored race.” *Blyew v. United States*, 80 U.S. 581, 601 (1872) (Bradley, J., dissenting).

²⁸ *United States v. Hall*, 26 F. Cas. 79 (C.C.S.D. Ala. 1871).

²⁹ Lane, *supra* note 12, at 115.

No Civilized System of Justice

In *United States v. Morrison*, the Solicitor General advanced an argument that closely tracked the reasoning of Judge Woods. According to the Solicitor General, Congress had the power under the Fourteenth Amendment to pass the VAWA in order to address gender-motivated crime because the states were not doing so effectively. Congress had found that the states were “routinely treat[ing] violent crimes motivated by gender less seriously than other violent crimes,”³⁰ and that “the States’ own effort to eliminate such bias had not succeeded and required federal assistance.”³¹ This finding, even Chief Justice Rehnquist admitted, was “supported by a voluminous congressional record.”³² The four dissenters in *Morrison* agreed with the Solicitor General that the Fourteenth Amendment allowed Congress to provide a private remedy to make up for the states’ failure. “But why can Congress not provide a remedy against private actors?” Justice Breyer asked in dissent.³³ The statutory remedy “intrudes very little upon either States or private parties. It may lead state actors to improve their own remedial systems, primarily through example.”³⁴

In large numbers, the states themselves agreed with the result advocated by the dissenters. The attorneys general for thirty-six states plus the Commonwealth of Puerto Rico filed an amicus brief in *Morrison* urging the Court to uphold the VAWA. They told the Court that the VAWA’s civil remedy provision “complements state and local efforts to combat violence against women without in any way compromising those efforts, it does not undermine federalism.”³⁵ Only one state, Alabama, argued in favor of *Morrison*.

But Chief Justice Rehnquist, who was joined by four other justices, rejected the argument that Congress may act when the states “through discriminatory design or the discriminatory conduct of

³⁰ Brief for the United States at 37, *Morrison*, 529 U.S. 598.

³¹ *Id.* at 42.

³² *Morrison*, 529 U.S. at 620.

³³ *Morrison*, 529 U.S. at 665 (Breyer, J., dissenting).

³⁴ *Id.* (quotations omitted).

³⁵ Brief of the States of Arizona, et al. at 21, *Morrison*, 529 U.S. 598.

their officials”³⁶ fail to do so. According to Rehnquist, the “language and purpose” of the Fourteenth Amendment gives Congress no power to raise a “shield against merely private conduct, however discriminatory or wrongful.”³⁷ Thus thanks to the Supreme Court’s decision in *Morrison*, Justice Souter argued, “the States will be forced to enjoy the new federalism whether they want it or not.”³⁸

In support for the majority’s ruling, Rehnquist quoted the legislative record from the Civil Rights Acts of 1871 and 1875. In passing these laws, he argued, it was clear that Congress hoped to provide protection to former slaves in situations where the states were refusing to enforce nearly identical laws on their books. This was analogous to Congress’s goals with the VAWA. Thus, he argued, if the Supreme Court found the Civil Rights Acts unconstitutional it followed that the VAWA must be unconstitutional as well.

Chief Justice Rehnquist’s reliance on the legislative record of the Civil Rights Acts passed during Reconstruction is perplexing considering another argument he made in favor of upholding *Cruikshank*, *Harris* and the *Civil Rights Cases*. He contended that

[t]he force of the doctrine of *stare decisis* behind these decisions stems not only from the length of time they have been on the books, but also from the insight attributable to the Members of the Court at that time. Every Member had been appointed by President Lincoln, Grant, Hayes, Garfield, or Arthur – and each of their judicial appointees obviously had intimate knowledge and familiarity with the events surrounding the adoption of the Fourteenth Amendment.³⁹

In other words, the Court should defer to the Justices who decided the Reconstruction Era cases because they had more insight into the true purpose behind the Fourteenth Amendment. They were there,

³⁶ *Morrison*, 529 U.S. at 664 (Breyer, J., dissenting).

³⁷ *Id.* at 620, 621 (quoting *Shelley v. Kraemer*, 334 U.S. 1, 3 and n.12 (1948)).

³⁸ *Id.* at 654 (Souter, J., dissenting).

³⁹ *Id.* at 622.

No Civilized System of Justice

after all, and thus better able to discern the intentions of the framers of these Amendments.

It is perhaps this argument that Lane's book is most helpful in debunking in two ways. The first is through Lane's depiction of the Supreme Court Justices simply as human beings who were as affected by the tumultuous events surrounding them as anyone else. These were men who were products of their time, which Lane paints as a shockingly and overtly racist era. When *Cruikshank* came before the Court, much of the country was suffering what today's media likely would label "Reconstruction fatigue." The nation in 1873 was turning its attention toward economic issues and away from the plight of the former slaves. According to Lane, the members of the Supreme Court were as disillusioned with Reconstruction as many other white citizens. Two of the Justices were Democrats who likely had little sympathy for the former slaves or for Republican policies. But even among the pro-Lincoln Republicans on the bench, most were concerned more with the preservation of the union than with the equality of the races. And while several of the Justices, including Justice Bradley, had written eloquently about the importance of equality among the races, Lane shows how their actions, both on the bench and off, rarely lived up to their ringing words. It is difficult to read Lane's portrayal and conclude that the Court should defer blindly to the views of these Justices as to what the Fourteenth Amendment embodies simply because they were there.

Lane's book further exposes the flaws in Rehnquist's deference to the *Cruikshank* Justices' front-row view of the Fourteenth Amendment by offering insight into what the actual drafters of the Amendment likely believed. Rehnquist relied on the views of these Justices because they were alive during the drafting and ratification of the Reconstruction Amendments, but the more relevant testimony surely can be found in the words of those who actually had a hand in creating them. In *Cruikshank*, Attorney General George Williams argued before the Court in favor of Congress's power to pass the Enforcement Act. Unlike any of the Justices, Williams had been a sitting senator during the enactment of the post-Civil War

Amendments and participated actively in their passage. He pointed out to the Court that virtually the same legislators who had drafted and passed the Amendments had also drafted and passed the civil rights legislation that followed, including the Enforcement Act. The Court must remember, he told the Justices,

that these amendments and the legislation under them were practically made by the same hands. Is it to be supposed that those who drew the amendments did not know their scope? According to the arguments on the other side it must be assumed of the Senators and Representatives either that they violated their oath or that they did not know the meaning of the language which they used themselves.⁴⁰

Indeed, Chief Justice Rehnquist's opinion in *Morrison* offers support for the position staked out by George Williams. In particular, Rehnquist cites the statement of Representative Garfield in the House who argued that federal legislation to protect the former slaves was necessary because state laws suffered from "a systematic maladministration of them, or a neglect or refusal to enforce their provisions."⁴¹ In sum, historical evidence suggests that those who truly had "intimate knowledge and familiarity with the events surrounding the adoption of the Fourteenth Amendment" – members of the Congress that brought it into being – believed that the Amendment empowered Congress to right constitutional wrongs when the states, through overt action or blatant inaction, failed to do so.



Lane ends his book with a wistful epilogue of what might have been had the Supreme Court gone the other way in *Cruikshank*. With that decision, Lane contends, the United States lost its best chance at creating "the world's first interracial democracy."⁴² He points to the "unpunished slaughter" in Colfax and the "narrow-

⁴⁰ Lane, *supra* note 12, at 241.

⁴¹ *Morrison*, 529 U.S. at 625.

⁴² Lane, *supra* note 12, at 251.

No Civilized System of Justice

ing of federal law enforcement” in the *Cruikshank* decision as key constitutional milestones.⁴³ They were part of a regression of civil liberties that would continue to grow exponentially. It would take the Supreme Court a century to begin to undo the damage.

At the dawn of the twenty-first century, the Supreme Court had another opportunity to allow the Fourteenth Amendment to fulfill essential promises that were first made and broken during Reconstruction. Christy Brzonkala and the Colfax Massacre victims were all brutally targeted – one because of her gender and the others because of their race. The United States Constitution guarantees individuals protection from such violence, or at least affords Congress the power to provide a remedy for their injuries. Yet in both of these cases, their states failed to act for discriminatory reasons. The Constitution of 2000, like the Constitution of 1873, does not simply abandon its citizens when their civil rights are harmed in this manner. Rather, one of the beauties of our system of federalism is that it provides not one but two opportunities for a truly civilized system of justice.



⁴³ *Id.*