Introduction

Universal suffrage is one of the cherished conceits of modern American democracy. But the historical reality was far different. When the nation was founded, almost the only people who could vote were free white male property owners over the age of twenty-one.[1]

Black men didn't get the right to vote as a matter of federal law until passage of the Fifteenth Amendment in 1870.[2] Women didn't get the comparable right to vote until 1920 with enactment of the Nineteenth Amendment. American Indians didn't get the general right to vote until passage of the Indian Citizenship Act of 1924.[3] Racially discriminatory grandfather clauses for voting endured until 1939.[4] Blacks were excluded from voting in Democratic Party primaries in the South until 1944.[5] Payment of a poll, or head, tax as a condition for voting was not abolished for federal elections until ratification of the Twenty-fourth Amendment in 1964. It took another two years for the Supreme Court to invalidate the use of the poll tax in state elections.[6] Eighteen- to twenty-year-olds didn't get the right to vote in state and local elections until ratification of the Twenty-sixth Amendment in 1971. Onerous durational residency requirements for voting were not struck down by the Supreme Court until 1972.[7] It was not until 1975 that

[1] See, e.g., Constitution of Georgia of 1777, Art. IX; 2 S.C. Stat. 249, No. 227 (1704), 3 S.C. Stat. 2, 3, No. 373 (1716). For a general discussion of the evolution of the franchise, see Chilton Williamson, *American Suffrage: From Property to Democracy, 1760–1860* (Princeton, N.J.: Princeton University Press, 1960).

[2] Throughout this book I have used "black," "person of color," "Negro," and "African American" more or less interchangeably, with some regard for the period of time in which the terms were current. I have also allowed people to speak in their own words, even when they used the pejorative "nigger."

[3] 8 U.S.C. §1401(a)(2).

[4] *Lane v. Wilson*, 307 U.S. 268 (1939).

[5] *Smith v. Allwright*, 321 U.S. 649 (1944).

[6] *Harper v. Virginia State Board of Elections*, 383 U.S. 145 (1966).

[7] *Dunn v. Blumstein*, 405 U.S. 330 (1972).

the Court finally ruled that ownership of property could not be required for voting in local elections.[8] The ban on literacy and other tests for voting was not made nationwide and permanent by Congress until amendments to the Voting Rights Act were passed in 1975.[9] Those convicted of felonies are still denied the right to vote in a majority of the states. For much of our national life, we have been an aristocracy, not a democracy, of voters.

Of all the clogs on the franchise, those which have distorted the American political process most have been those based upon race. That distortion is a reflection of the fundamental, irreconcilable contradiction upon which the nation was founded, that all people were equal but that enslavement of Africans was tolerable. The nation's belief in equality was contained in the Declaration of Independence of 1776, which said that one of the self-evident truths was that "all men are created equal." But its tolerance of slavery was embodied in the Constitution of 1787, which counted a slave as only three-fifths of a person for purposes of apportionment of the House of Representatives, prohibited Congress from abolishing the slave trade prior to the year 1808, and provided for the return of fugitive slaves to their owners.[10] The history of the United States as it relates to voting has been in large measure the story of its attempts to reconcile its stated belief in equality with its actual racial practices.

This book tells the story of racial discrimination in voting in Georgia, from the days of slavery to the present time. Georgia, of course, is not unique as far as discrimination in voting is concerned. Each of the southern states that seceded from the union in the middle of the nineteenth century has a similar history of slavery and of denying the franchise to blacks after the Civil War.[11] Despite having ratified the Fourteenth and Fifteenth Amendments guaranteeing equal rights of citizenship and voting to former slaves and other persons of color, the former Confederate states, in the words of the Supreme Court of Mississippi, "[w]ithin the field of permissible action under the limitations imposed by the federal constitution . . . swept the circle of expedients to obstruct the exercise of the franchise by the negro race."[12]

While Georgia was not an anomaly, no state was more systematic and thorough in its efforts to deny or limit voting and officeholding by African-Americans after the Civil War. It adopted virtually every one of the

[8] *Hill v. Stone*, 421 U.S. 289 (1975).
[9] 42 U.S.C. §1973aa.
[10] Constitution of the United States, Art. I, Sec. 2 and Sec. 9; Art. IV, Sec. 2.
[11] Those states, in order of their secession, were: South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Virginia, Arkansas, North Carolina, and Tennessee. White schoolchildren in South Carolina were still being taught 100 years later proudly to remember this progression of demi-sovereignties and the leading role their state had played in it, using the mnemonic that South Carolina – first in nullification and first in secession – had been followed out of the Union by "two gentlemen named M. F. Ag and L. T. Vant."
[12] *Ratliff v. Beale*, 74 Miss. 247, 20 So. 865, 868 (1896).

traditional "expedients" to obstruct the exercise of the franchise by blacks, including literacy and understanding tests, the poll tax, felony disfranchisement laws, onerous residency requirements, cumbersome registration procedures, voter challenges and purges, the abolition of elective offices, the use of discriminatory redistricting and apportionment schemes, the expulsion of elected blacks from office, and the adoption of primary elections in which only whites were allowed to vote. And where these technically legal measures failed to work or were thought insufficient, the state was more than willing to resort to fraud and violence in order to smother black political participation and safeguard white supremacy.

The southern states continued their opposition to equal voting rights into the twentieth century and after passage of the Voting Rights Act of 1965. When Congress strengthened and extended the act in 1982, it recited a litany of ongoing voting rights abuses in the South, including the maintenance of discriminatory election procedures, the adoption of new and more sophisticated devices that diluted minority voting strength, intimidation and harassment, discouragement of registration and voting, and widespread noncompliance with the special preclearance provision of the act requiring states with histories of discrimination in voting to get federal approval of any changes in their voting procedures. Congress concluded that "the schemes reported here are clearly the latest in a direct line of repeated efforts to perpetuate the results of past voting discrimination and to undermine the gains won under . . . the Voting Rights Act."[13]

Georgia, once again, was in the forefront of the efforts to block the expansion of the franchise to blacks. It fought passage of the Civil Rights Acts of 1957, 1960, and 1964. Members of its congressional delegation and the staff of the state attorney general argued before Congress that the proposed Voting Rights Act of 1965 was unconstitutional. A former president of its state bar association denounced the act as a violation of states' rights. Its governor wrote directly to President Lyndon Johnson urging defeat of the voting rights bill.

When the Voting Rights Act was passed, Georgia immediately joined a lawsuit brought by South Carolina and asked the Supreme Court to declare it unconstitutional. And when the act was upheld, the state's flouting of the act's preclearance requirement, and its adoption of new measures blunting the increases in black voter registration, were the equal of any such efforts in the South.

The white leadership of Georgia also railed against and attempted to circumvent federal court decisions striking down the state's white primary, its discriminatory county unit system for nominating candidates for statewide office, and its malapportioned legislature. When it was finally forced to

[13] S. Rep. No. 417, 97th Cong., 2d Sess. 12 (1982), reprinted in 1982 U.S. Code Cong. & Adm. News 189.

reapportion in conformity with the principle of one person, one vote, the state's legislative and congressional plans were all rejected by the Department of Justice on the ground that they discriminated against black voters. In refusing to approve the state's 1982 congressional plan, a federal court in the District of Columbia held that the plan was the product of intentional discrimination and made the extraordinary finding that the plan's chief architect was "a racist."[14]

Georgia was also the battleground for some of the most important voting rights decisions of the last half of the twentieth century. The Supreme Court coined the phrase "one person, one vote" in 1963 in *Gray v. Sanders*,[15] which abolished the state's county unit system. The following year, in *Wesberry v. Sanders*, the Court invalidated Georgia's congressional apportionment under Article I, Section 2 of the Constitution and established the principle that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."[16] The one person, one vote principle established in these two decisions transformed the nation's electoral politics at every level of government.

In *Fortson v. Dorsey*, a challenge to Georgia's senate redistricting plan decided in 1965, the Supreme Court articulated for the first time the proposition that a legislative plan, even if it complied with one person, one vote, could still be unconstitutional if it "designedly or otherwise . . . operate[d] to minimize or cancel out the voting strength of racial or political elements of the voting population."[17] The concept of minimizing minority voting strength, or minority vote dilution, was subsequently used to strike down discriminatory at-large elections and other voting practices in Georgia, and in virtually every other state in the union, and was directly incorporated by Congress into the amendments to the Voting Rights Act passed in 1982. Other significant decisions of the Supreme Court involving Georgia were *City of Rome v. United States*,[18] which rejected a challenge to the 1975 extension of the critical preclearance requirement of the Voting Rights Act, and *Rogers v. Lodge*, the first decision of the Court invalidating the at-large method of electing a county-level government on the grounds that it diluted black voting strength.[19] Georgia ultimately acknowledged and accepted the

[14] *Busbee v. Smith*, 549 F. Supp. 494, 500 (D. D. C. 1982).
[15] 372 U.S. 368, 381 (1963).
[16] 376 U.S. 1, 7–8 (1964).
[17] 379 U.S. 433, 438–39 (1965).
[18] 446 U.S. 156 (1980).
[19] 458 U.S. 613, 618 (1982). The Supreme Court had previously affirmed a decision of a court of appeals finding that at-large elections for a parish school board in Louisiana diluted minority voting strength, but the affirmance had been for another, nonracial reason. See *East Carroll Parish School Board v. Marshall*, 424 U.S. 640, 638–39 (1976) ("[w]e . . . now affirm the judgment below, but without approval of the constitutional views expressed by the Court of Appeals").

principle of the equal right to vote, but only because it was forced to do so by court decisions, congressional acts, and a massive enforcement campaign by the minority and civil rights communities.

The Georgia experience underscores in an obvious and dramatic way the centrality of equal voting rights. Although the Supreme Court approved the disfranchisement of black voters during the Jim Crow years, in modern times it has acknowledged the transcendent place that the right to vote occupies in our constitutional scheme. The right to vote is "fundamental," the Court has said, because it is "preservative" of all rights.[20] Even the most basic civil rights "are illusory if the right to vote is undermined."[21] Georgia and the rest of the South, with their history of slavery and segregation, have surely taught us the truth of these pronouncements. The disfranchised are not simply denied the benefits of government, they inevitably become its victims.

One of the most striking, and perhaps one of the most reassuring, things about the black odyssey in pursuit of equal voting rights is that it demonstrates that racial attitudes are not immutable but are in a profound sense self-serving economic, political, legal, and social conventions. White Georgians had insisted throughout their history that they were incapable of racial change, in voting or in any other area of life, that the complete subordination of blacks was a "great physical, philosophical, and moral truth,"[22] that "people's inner feelings" and "customs cannot be successfully legislated upon,"[23] that any challenge to the racial status quo would "endanger . . . the very life of the nation,"[24] that attempts at integration would precipitate "violence,"[25] that segregation of the races "has been engrained forever in the hearts and minds of all Georgians,"[26] that political equality would cause the "adulteration" of the white race,[27] and that Georgians were prepared to shed their blood and lay down their lives to "preserve our Southern Way of Life."[28] Yet, within the lifetimes of some of these speakers, and even though racial prejudice had not been abrogated and attempts to restrict black political power had not entirely subsided, the Southern Way of Life had been

[20] *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).
[21] *Wesberry v. Sanders*, 376 U.S. at 17.
[22] Statement of Alexander H. Stephens (1861), quoted in Kenneth Stampp, *The Causes of the Civil War* (New York: Touchstone, 1991), 153.
[23] Hearings before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, Eighty-fifth Congress, First Session on Miscellaneous Bills Regarding the Civil Rights of Persons within the Jurisdiction of the United States, February 4, 5, 6, 7, 13, 14, 25 and 26, 1975, p. 113 (Rep. J. L. Pilcher).
[24] Charles J. Bloch, *States' Rights – The Law of the Land* (Atlanta: Harrison, 1958), 2.
[25] Hearings before Subcommittee No. 5, p. 817 (Atty. Gen. Eugene Cook).
[26] Ga. Laws 1960, p. 1137.
[27] Newell Edenfield, Address of the President, Report of the 77th Annual Session of the Georgia Bar Association (1960), 204.
[28] *Stewart-Webster Journal*, "To the Voters of the Southwestern Judicial Circuit," Sept. 8, 1960.

irrevocably changed. And it was changed in large measure because the racial barriers to political participation, which were the essential condition for maintaining the legal structure of segregation, had been thrown down.

While the white leadership of the state no longer calls for repeal of the Fourteenth Amendment or demands nullification of Supreme Court decisions applying the protections of the Constitution to blacks, equal voting rights are not entirely free of controversy. That was apparent from *Miller v. Johnson*,[29] in which a group of white voters, unhappy at being placed in Georgia's majority black eleventh congressional district, filed suit in 1994 charging that the district was unlawfully "segregated."[30] In concluding that the legislature had impermissibly subordinated traditional redistricting principles to race in drawing the district, the five-member majority of the U.S. Supreme Court took no notice whatsoever of the state's history of discrimination or of the continuing presence of racial bloc voting. Instead, it indulged the fiction of a color-blind political process which, in its view, the majority-black eleventh district offended. In *Miller v. Johnson* and other modern redistricting cases, the Court has also created special rules allowing white voters to challenge majority-minority districts and has applied dual standards in determining a district's constitutionality depending on whether the district was majority-white or majority-black or Hispanic. These decisions are not about – and indeed the plaintiffs have not alleged – individual harm or concrete injury to any group of voters, but can best be understood as an effort to restore the traditional white privilege of choosing elected officials.

A good deal has been written about discrimination in voting in the South during and after Reconstruction. Among the standard works discussing this history are *Southern Politics in State and Nation* by V. O. Key, Jr., *Origins of the New South* by C. Vann Woodward, *The Shaping of Southern Politics* by J. Morgan Kousser, and *Race, Class and Party* by Paul Lewinson. A number of books have also been written about the modern era of voting rights and the impact of the Voting Rights Act of 1965, including *Quiet Revolution in the South*, edited by Chandler Davidson and Bernard Grofman, *Black Votes Count* by Frank R. Parker, *The Transformation of Southern Politics* by Jack Bass and Walter De Vries, and Kousser's *Colorblind Injustice*. But no book has focused on Georgia, or any other single southern state, and told the story of the prodigious struggle for equal voting rights from beginning to end, from slavery to the present day. That is the task I set for myself in this volume.

Concentrating on one state, such as Georgia, rather than attempting a general synopsis of the southern region, offers distinct advantages. It allows one to see in a complete and detailed way how race has dominated and

[29] 515 U.S. 900 (1995).
[30] *Johnson v. Miller*, Civ. No. 194–008 (S. D. Ga.), Complaint for Declaratory and Injunctive Relief.

distorted the political process over time and at every moment of decision making. It also allows for a more focused, and hopefully a more dramatic, narrative. And given the limitations of space imposed by a single volume, it provides a better opportunity for the participants in the events to speak in their own voices.

The struggle for equal voting rights in Georgia was not waged simply by a small group of high-profile civil rights leaders in the glare of a national spotlight, but by hundreds of relatively obscure, courageous, and determined men and women in remote places such as Webster County and Keysville, and by the lawyers who represented them in numerous court battles. They have finally put to rest the Reconstruction-era myths that blacks could not be trusted with the ballot, that they had no concern for the general welfare, and that they were incapable of governing.

1

The Voting Rights Act of 1965: A Great Divide

On March 15, 1965, President Lyndon Johnson addressed the Congress and a prime time nationwide audience of 70 million people and demanded passage of a new voting rights act that would guarantee all Americans the equal right to vote.[1] In a voice that was passionate and full of resolve, he said:

> There is no constitutional issue here. The command of the Constitution is plain. There is no moral issue. It is wrong – deadly wrong – to deny any of your fellow Americans the right to vote in this country. There is no issue of state's rights or national rights. There is only the struggle for human rights. . . . This time, on this issue, there must be no delay, no hesitation, and no compromise with our purpose.[2]

Johnson had announced his intention earlier that year to sponsor comprehensive voting rights legislation. However, the violent confrontation between civil rights demonstrators and state troopers on the Edmund Pettus Bridge in Selma, Alabama, on March 7, which came to be known as Bloody Sunday, was the catalyst for his nationwide address and his insistence that Congress act without further delay.[3]

At the Pettus Bridge, state troopers and sheriff's deputies had attacked some 525 people demonstrating for stronger federal voting laws. White spectators, waving Confederate flags, roared their approval as the troopers teargassed the marchers and beat them to the ground with clubs and whips. John Lewis, one of the leaders of the march, recalled more than thirty years later

[1] David J. Garrow, *Bearing the Cross: Martin Luther King, Jr. and the Southern Christian Leadership Conference* (New York: Vintage, 1988), 408–9.

[2] Lyndon B. Johnson, *The Vantage Point: Perspectives of the Presidency 1963–1969* (New York: Holt, Rinehart and Winston, 1971), 164.

[3] Garrow, *Bearing the Cross*, 396–97, 399; David J. Garrow, *Protest at Selma: Martin Luther King, Jr., and the Voting Rights Act of 1965* (New Haven, Conn.: Yale University Press, 1978), 31–77.

with disturbing clarity the shouts of a woman from the crowd. "Get 'em! *Get* the niggers!" she screamed.[4]

Two days later, a gang of whites attacked three Unitarian ministers as they left a black restaurant in Selma. One of the ministers, Rev. James Reeb of Boston, was knocked unconscious with a club and later died.[5]

Lyndon Johnson fully grasped the historic significance of these unfolding events. "At times history and fate meet at a single time in a single place to shape a turning point in man's unending search for freedom," he said. "So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week in Selma, Alabama."[6]

When the House and Senate began hearings on the president's proposed voting rights bill a few days later, the white leadership of Georgia closed ranks to oppose it. Howard H. Callaway, a Republican from the third congressional district, while giving lip service to the concept of equal voting rights, told a House subcommittee that the provision authorizing the appointment of federal examiners and registrars by the attorney general would inevitably lead to partisan abuse. Democratic administrations would manipulate the law to register Democrats, and Republican administrations would do the same thing to register Republicans, he said.[7]

The "greatest injustice" in the proposed bill, Callaway asserted, was its abolition of literacy and other tests for voting, which had been adopted by the southern states in the aftermath of Reconstruction in order to disfranchise black voters.[8] To underscore his point, Callaway tendered to the subcommittee a letter from the chief registrar of majority-black Terrell County, J. W. Whitaker. Many voters, Whitaker wrote, lacked the intelligence and sophistication needed to cast a responsible ballot. "It seems absurd to us," he said, "that the literacy test be done away with as there are such things as constitutional amendments, bond issues and things of that nature, besides the election of public officials, to be voted on."[9] The literacy test was essential, he argued, in ensuring that only the well-educated could vote.

Callaway failed to tell the subcommittee that in 1960 a federal court had ruled that Terrell County registration officials "engaged in acts and practices which deprived Negro citizens" of the right to vote, and that there "are

[4] John Lewis, *Walking with the Wind: A Memoir of the Movement* (New York: Simon and Schuster, 1998), 326–27.

[5] *New York Times*, March 10, 1965; March 12, 1965.

[6] Johnson *The Vantage Point*, 165.

[7] Hearings before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, Eighty-ninth Congress, First Session on H.R. 6400 and Other Proposals to Enforce the 15th Amendment to the Constitution of the United States, March 18, 19, 23, 24, 25, 29, 30, 31, and April 1, 1965, Serial No. 2, p. 542.

[8] Ibid., p. 543. The literacy test and other disfranchising measures adopted by Georgia are discussed in Chapter 2.

[9] Ibid., p. 548.

reasonable grounds to believe that the defendants will continue to engage in such acts and practices."[10] He also failed to tell the subcommittee that in 1962 the sheriff of Terrell County had arrested two civil rights workers engaged in voter registration on spurious charges of "vagrancy,"[11] and that only 2 percent of blacks in the county were actually registered to vote.[12] The white voting-age population, by contrast, and whether illiterate or not, was registered at the rate of 97 percent. Instead, Callaway told the subcommittee that the proposed voting rights bill was not only unconstitutional, but entirely unecessary.

Terrell County was not an exception in Georgia. In thirty-four counties, fewer than 10 percent of blacks were registered.[13] In the state's twenty-one counties with black voting-age majorities, an average of only 15 percent of blacks were registered, compared to 91 percent of whites.[14]

And while blacks were more than a quarter of the population,[15] there was only a tiny handful of black elected officials in the entire state. The first black elected to public office since shortly after the turn of the century was Dr. Rufus E. Clement, president of Atlanta University, to the Atlanta Board of Education in 1953.[16] The next blacks to be elected were Q. V. Williamson to the Atlanta City Council and Leroy Johnson to the state senate from Fulton County in 1962. In the elections of 1964, Horace T. Ward was also elected to the senate from Fulton County and B. L. Dent to the Augusta City Council.[17] On the eve of passage of the Voting Rights Act, this was the state's entire complement of black officeholders.

Paul Rodgers, Jr., an assistant attorney general, pleaded the state's case before the Senate Committee on the Judiciary on March 31, 1965. Testifying in the imposing New Senate Office Building, he said that the proposed bill "is

[10] *United States v. Raines*, 189 F. Supp. 121, 135 (M. D. Ga. 1960).

[11] Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944–1969* (New York: Columbia University Press, 1976), 270–72; "Federal Judge Refuses to Intervene in Terrell Case," *Dawson News*, August 16, 1962.

[12] U.S. Commission on Civil Rights, *Political Participation* (Washington, D.C.: Government Printing Office, 1968), 232–39.

[13] Ibid. The counties were Baker, Bleckley, Burke, Calhoun, Chattahoochee, Dawson, Early, Echols, Fayette, Forsyth, Glascock, Harris, Houston, Jeff Davis, Jefferson, Lee, Lincoln, McDuffie, Madison, Marion, Miller, Mitchell, Quitman, Seminole, Stewart, Sumter, Talbot, Terrell, Towns, Treutlen, Union, Warren, Webster, and Worth.

[14] Ibid. The counties were Baker, Burke, Calhoun, Clay, Crawford, Hancock, Lee, McIntosh, Macon, Marion, Peach, Quitman, Randolph, Stewart, Talbot, Taliaferro, Terrell, Twiggs, Warren, Washington, and Webster.

[15] Bureau of the Census, *1970 Census of Population, General Population Characteristics*, PC(1)-B12, Table 18 (showing blacks as 28.5 percent of the state's population).

[16] Clarence A. Bacote, "The Negro in Atlanta Politics," 16 Phylon 333, 349 (1955); Mary Louise Frick, "Influences on Negro Political Participation in Atlanta, Georgia" (M.A. thesis, Georgia State College, 1967), 21.

[17] U.S. Commission on Civil Rights, *Political Participation*, 216–17.