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The Puzzle of Democratic Disenfranchisement

> We affirm the promise of our democracy. We recall that what binds this nation together is not the colors of our skin or the tenets of our faith or the origins of our names. What makes us exceptional – what makes us American – is our allegiance to an idea, articulated in a declaration made more than two centuries ago: "We hold these truths to be self-evident, that all men are created equal."
>
> – Barack Hussein Obama[1]

> Government requires make believe. Make believe that the king is divine, make believe that he can do no wrong or make believe that the voice of the people is the voice of God. Make believe that the people *have* a voice or make believe that the representatives of the people *are* the people. Make believe that governors are the servants of the people. Make believe that all men are equal or make believe that they are not. The political world of make-believe mingles with the real world in strange ways, for the make-believe world may often mold the real one.
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> – Edmund Morgan[2]

Like all peoples, Americans tell stories about who they are, about what unites them and sets them apart from others. In the canon of American self-narratives, few themes loom as large as that of progressive democracy, a story about how the "general triumph of democratic principles" is the defining feature of American history.[3] This story has been told most

[1] "Inaugural Address by President Barack Obama," January 21, 2013, https://obamawhitehouse.archives.gov/the-press-office/2013/01/21/inaugural-address-president-barack-obama.
[2] Edmund Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W. W. Norton, 1988), 13–14.
[3] Frederic Ogg and P. Orman Ray, *Introduction to American Government* (New York: Century Co., 1922), 199.

insistently in recent years by former President Barack Obama, who sought to rally Americans around his political program by narrating a story of "what makes us exceptional – what makes us American." In his telling, American identity is rooted in the country's shared allegiance to the principles of equality and liberty, and above all by its commitment to democracy, "the constant struggle to extend rights to more of our people, to give more people a voice." The faithful pursuit of this struggle was the cornerstone of American identity. "We, the people," he announced in his second inaugural address, "declare today that the most evident of truths – that all of us are created equal – is the star that guides us still."[4]

The story of progressive democracy is a powerful political myth, one that offers its listeners an interpretation of common purpose and shared identity. By staging American history as a sequence of democratizing struggles – from "the patriots of 1776" through to "Seneca Falls, and Selma, and Stonewall" – President Obama invited a diverse audience to identify with the past triumphs or future promises of a meaningful political community, one supposedly defined by its dedicated pursuit of egalitarian reform.[5] At its best, the story is a call to imagine bonds of solidarity that extend beyond the limits of citizenship and status, the prejudices and exclusions of a given place and time.

But by distilling a progressive direction to American history, the story implicitly treats as inessential those patterns that seem to contradict it. This is often reflected in a peculiar sort of amnesia. Examples abound of American history being characterized as "a gradual movement toward democracy with no reverses," of comforting declarations that "the arc of American history has always moved toward expanding the electorate" or that "including as many Americans as possible in our electoral process is the spirit of our country. It is why we have expanded rights to women and minorities but never legislated them away."[6]

Even a partial listing of American disenfranchisements, however, suggests that these were anything but exceptions. Freed Southern black men

[4] https://obamawhitehouse.archives.gov/the-press-office/2013/01/21/inaugural-address-president-barack-obama;.https://obamawhitehouse.archives.gov/the-press-office/2015/09/28/remarks-president-obama-united-nations-general-assembly.

[5] Ibid.

[6] Daron Acemoglu and James Robinson, *The Economic Origins of Democracy and Dictatorship* (Cambridge: Cambridge University Press, 2009), xi; "Attorney General Eric Holder Speaks at the NAACP Annual Convention," July 10, 2012, https://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-naacp-annual-convention; Charlie Crist, "The Voter ID Mess," *Washington Post*, July 20, 2012.

and their male children were ejected from the franchise in the decades following Reconstruction, after thirty years of exercising the right to vote.[7] Free black men in both Northern and Southern states had also been purged from the electorate during the Jacksonian "age of democracy."[8] Many noncitizen immigrants lost the right to vote in the early twentieth century.[9] Women lost the suffrage on only two occasions – in New Jersey in 1807 and Utah in 1887 – but their exclusion was successfully defended against an extensive social movement for almost seventy years.[10] Many of the country's indigenous peoples were effectively denied the vote for decades after the extension of citizenship in 1924, while formal and informal language tests denied access to the polls for many non-English speakers into the mid-1970s.[11]

Nor is disenfranchisement safely confined to the past. Restrictions on the franchise excluded working-class persons of all races and genders in the early twentieth century, but they threaten to do so again in the twenty-first, as restrictive voter identification laws impose onerous burdens on poor citizens' right to vote.[12] Even more severe are the laws that exclude convicted felons. More than fifty years after the Voting Rights Act, the intersection of intensive policing, aggressive prosecutorial practices, and felon disenfranchisement laws has

[7] J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restrictions and the Establishment of the One-Party South, 1880–1910* (New Haven, CT: Yale University Press, 1974); Richard Valelly, *The Two Reconstructions: The Struggle for Black Enfranchisement* (Chicago: University of Chicago Press, 2004).

[8] Christopher Malone, *Between Freedom and Bondage: Race, Party, and Voting Rights in the Antebellum North* (New York: Routledge, 2008); Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States*, rev. edn. (New York: Basic Books, 2009).

[9] Ron Hayduk, *Democracy for All: Restoring Immigrant Voting in the United States* (New York: Routledge, 2006).

[10] Corrine M. McConnaughy, *The Woman Suffrage Movement in America: A Reassessment* (Cambridge: Cambridge University Press, 2015); Dawn Langan Teele, *The Political Origins of the Female Franchise* (Princeton, NJ: Princeton University Press, 2018).

[11] Daniel McCool, Susan M. Olson, and Jennifer L. Robinson, *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote* (Cambridge: Cambridge University Press, 2007); Laughlin McDonald, *American Indians and the Fight for Equal Voting Rights* (Norman: University of Oklahoma Press, 2011); David H. Hunter, "The 1975 Voting Rights Act and Language Minorities," *Catholic University Law Review* 25, no. 2 (1976): 250–70; Juan Cartagena, "Latinos and Section 5 of the Voting Rights Act: Beyond Black and White," *National Black Law Journal* 18, no. 2 (2004–05): 201–23; John A. Garcia, "The Voting Rights Act and Hispanic Political Representation in the Southwest," *Publius: The Journal of Federalism* 16, no. 4 (1986): 49–66.

[12] Lorraine Minnite, *The Myth of Voter Fraud* (Ithaca, NY: Cornell University Press, 2010).

resulted in nearly 8 percent of adult black Americans being denied the right to vote, a number that stands at nearly 12 percent for the South and more than 20 percent in the states of Florida, Kentucky, and Virginia.[13]

In the story of progressive democracy, these are obstacles to be overcome and not constitutive of the country's character. As President Obama remarked in regard to contemporary voting restrictions, "That's not who we are. That shouldn't be who we are."[14]

For many, however, the recurring patterns of disenfranchisement reveal precisely what the country is and has always been about. As the many writers who have detailed America's disenfranchisements remind us, one of the more prominent features of the country's history has been the active and explicit rejection of democratic ideals. W. E. B. Du Bois's *Black Reconstruction*, for example, tells the story of how America offered a "vision of democratic self-government" only to turn violently against it.[15] Richard Valelly notes that the disenfranchisement of black Americans at the turn of the twentieth century was the largest such extrusion by an otherwise stable democracy in world history, and he shows that voting rights today rest not on any progressive tilt to history but on political organizations and institutions whose persistence is by no means guaranteed.[16] And in a powerful intervention into public discourse, Michelle Alexander has argued that American history is not a process of progressive democratization but of successively reconstituted racial control regimes: slavery, Jim Crow, and now mass incarceration.[17]

The contrast between the storylines of progressive democracy and persistent exclusion is stark; at times it is difficult to imagine how they could be referring to the same country. But they do, and the premise of this

[13] Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (New York: Oxford University Press, 2008); Elizabeth Hull, *The Disenfranchisement of Ex-Felons* (Philadelphia: Temple University Press, 2008); Katherine Irene Pettus, *Felony Disenfranchisement in America: Historical Origins, Institutional Racism, and Modern Consequences* (Albany: State University of New York Press, 2013); Christopher Uggen, Sarah Shannon, and Jeff Manza, "State-Level Estimates of Felon Disenfranchisement in the United States, 2010," *The Sentencing Project*, 2012, 17–18.

[14] "The President's News Conference, Jan. 18, 2017," http://www.presidency.ucsb.edu/ws/index.php?pid=50589.

[15] Du Bois, *Black Reconstruction in America*, 30.

[16] Valelly, *The Two Reconstructions*, 1.

[17] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010).

book is that we cannot understand either democratization or disenfranchisement in America without understanding the relationship between them.

The story I tell in *Disenfranchising Democracy* connects these supposed opposites, first in America and then as a more general pattern. The defining feature of democratization in nineteenth-century America, I argue, was the construction of an extensive and vibrant democracy that was being simultaneously circumscribed along racial lines, both through the country's heavy reliance on slavery and in the constriction of the status of enfranchised citizen to white men. I will show that debates over black citizenship and voting rights, and contestation over their relationship with democratization for white men, were of vital importance to American politics from the very beginning of the Republic, well before Reconstruction made their extension and protection the defining question of American political development.

Of particular importance is the pattern by which democracy and exclusion were joined. The constitutional conventions and state legislatures that extended the right to vote by abolishing property and taxpaying qualifications tended to simultaneously curtail the voting rights of black American citizens, with those who were most supportive of the first simultaneously the most supportive of the second. This pattern raises several important questions. Why was white democratization in America associated with black disenfranchisement? Was this co-occurrence mere coincidence, or does it reflect a deeper connection? If so, is this connection unique to America – a sui generis phenomenon explained by the many peculiar characteristics of the country's historical development – or might it reflect a more general pattern, with implications for how we study democratization elsewhere?[18]

Some of the most compelling work to grapple with these questions argues that democratization in America was premised upon disenfranchisement or that racial disenfranchisement was an inevitable consequence of democratization. The reasons include the claim that democracy requires a high level of racial and ethnic homogeneity;[19] that racial exclusion provided the conceptual foundation upon which white Americans

[18] Valelly highlights the most important of these, America's "unprecedented marriage of slavery and political democracy." Richard Valelly, "How Suffrage Politics Made – and Makes – America," *The Oxford Handbook of American Political Development*, ed. Richard Valelly, Suzanne Mettler, and Robert Lieberman (Oxford: Oxford University Press, 2016), 445–72.

[19] Rebecca Kook, *The Logic of Democratic Exclusion: African Americans in the United States and Palestinian Citizens in Israel* (Lanham, MD: Lexington Books, 2002).

could imagine equal citizenship among themselves;[20] or that working-class white Americans were so intensely committed to white supremacy that any expansion of their influence was sure to lead to intensified racial oppression.[21]

I offer a new account, rooted in politics, institutions, and the ideological narratives that political actors construct in the pursuit of power. I argue that the conjunction of democratization and disenfranchisement was neither inevitable nor unique to America. It was the result of deliberate choices made by elite political coalitions looking to gain and hold on to power but operating within institutional and ideological contexts that shaped their strategies and behavior. Different contexts and different choices could have produced different patterns in the United States, just as they did produce different patterns elsewhere.

However, this does not mean that their association was merely coincidental. There is a deeper connection between democratization and disenfranchisement, one that requires us to look at both from a new perspective. What links these seeming opposites is that they are two paths to the same goal: each is a manifestation of a particular type of political project, one that aims to reconstitute the set of groups and communities who are the principal beneficiaries of a regime's public policies and whose support is crucial for its survival. Such projects are pursued by political coalitions that are looking to gain power and secure their priorities over the long term, and that have decided that this would be best achieved by changing the composition and identity of "the people" whose votes will help arbitrate, however indirectly, who governs and in whose interests. Democratization, then, is never simply a process by which members of a preexisting political community are enfranchised: it is a political project through which the boundaries and character of the "people" are redefined, with inclusions and exclusions not only compatible but also potentially reinforcing means to achieve this.

The story of democratization in nineteenth-century America is that of the political construction and partial dismantling of the *white man's*

[20] Edmund Morgan, *American Freedom, American Slavery: The Ordeal of Colonial Virginia* (New York: W. W. Norton, 1975); Edmund Morgan, "Slavery and Freedom: The American Paradox," *The Journal of American History* 59, no. 1 (1972): 5–29; Aziz Rana, *The Two Faces of American Freedom* (Cambridge, MA: Harvard University Press, 2010).

[21] David Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class*, rev. edn. (London: Verso, 1999 [1991]); Joel Olson, *The Abolition of White Democracy* (Minneapolis: University of Minnesota Press, 2004).

republic, a discursive and institutional formulation that helped certain political actors define and maintain a political community of value to themselves, its architects, but also to many of their constituents, to whom it offered a space of democratic egalitarianism unprecedented in the modern world. The terms of the white man's republic were always contested, and during the revolutionary years of the Civil War and Reconstruction, it would be rejected by many as a coherent vision of national purpose. Under pressure from organized constituencies of black and white antislavery activists, supported by allied legislators, it was dislodged from many of the country's governing institutions, at the national level and, more unevenly and momentarily, in the states. It was deeply woven into the fabric of America's political institutions and national mythology and would not be easily displaced. But it was also the product of political coalition making and institution building and could be challenged and defeated.

The ideology of the white man's republic was intended to provide a compelling vision of political community that would appeal broadly, and as a story of the American "people" it endured well beyond the end of the Civil War, not always as the ethos of the governing national regime but as a resonant theme available for reinterpretation and synthesis. It has persisted in some localities and discursive communities as a defining feature of a regional culture, as an imagined ideal for the future, or as the endangered inheritance of the past.[22] And at times, ambitious office seekers, seeing in its tropes a potentially resonant frame for mobilizing true believers and for reframing the concerns of a broader public, have brazen-throated revived its tropes on the national stage, warning of threats to "*our* history and *our* heritage."[23]

The remainder of the chapter will provide more detail on this argument, on how it relates to the broader literatures on democratization and on disenfranchisement, and on the possible pathways by which these might be brought together or kept apart. For the moment, however, I want to highlight three points.

The first is that while projects that aim to reconstitute a political community – such as the white man's republic – can enjoy broad support and

[22] Ulrich B. Phillips, "The Central Theme of Southern History," *The American Historical Review* 34, no. 1 (1928): 30–43.

[23] Jaqueline Thomsen, "Trump: Media Is Trying to Take Away Our History and Our Heritage," *The Hill,* August 22, 2017, http://thehill.com/homenews/administration/347587-trump-media-is-trying-to-take-away-our-history-and-our-heritage.

elicit popular mobilizations, their terms will ultimately be defined through the collective efforts of a relatively small number of actors whose motivations cannot be assumed to be identical with the preferences or aspirations of the social classes or groups they might claim to represent. Their particular goals might include political liberation, the reconstruction of society, or the protection of capital; they might amount to nothing more than winning office or pecuniary gain. But whether and how democratization and disenfranchisement are brought together will depend largely on their collective choices. The regime they establish will bear the imprint of their goals and the commitments they have made to their allies or negotiated with their opponents; and it will reflect their efforts to appeal through policy and discourse to the constituencies upon which they hope to found a new regime.

The second point is that while an electoral calculus – enfranchising supporters and disenfranchising opponents in order to maximize the likelihood of winning – can be an important part of the story, it is not all of it. These projects aim to recompose not just the legal electorate but also the more nebulous concept of political community, a discursive construct that details how a particular group of persons is united by something more meaningful than an arbitrary association.[24] This is both because coalitions pursuing changes to the regime are pushed to articulate a rationale in terms of broader principles about how the state should relate to society, and who should and should not be included; and because framing their projects in terms of political community can help connect their particular goals with the aspirations and identities of a broader public. Changes to political rights, for instance, are generally defended not as a set of arbitrary qualifications, let alone as an instrument to power, but as attempts to better represent a particular vision of community in the institutions of the state. And aspiring leaders cultivate popular support not just by offering a litany of policies but by appealing to potential constituents as members of a distinct people, with obligations to each other and a collective purpose to realize. Like President Obama's story of progressive democracy, these appeals invite some listeners to connect their own interests and aspirations, their own experiences and identities, with those of a broad and meaningful community. And like the story of progressive democracy, these stories bear the imprint of a particular political project: whether

[24] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1991 [1984]), 6.

subtly or tendentiously, they contain prescriptions for a "common program to realize."[25]

Our accounts of democratization often abstract away from these narratives, in part because they seem to be merely rhetorical cover for material interests. A core contention of this book is that they matter. When considered from the perspective of "people-making," enfranchisement and disenfranchisement appear as two ways of marking out the boundaries of this "people," offering potential constituents a civic identity whose value might derive as much from its exclusions as from its inclusions. And by framing their projects in terms of a meaningful political community, political coalitions look to gain not just a momentary numerical superiority in an electorate, but a more durable source of public authority: at the extreme, they hope that their particular goals might become inscribed on the identities and civic statuses of constituents, whose support will hinge not on any particular policy but on the ability of aspiring leaders to connect their claim to govern with the ideals and boundaries of this community.

The final point relates to the book's comparative methodology: while the argument I present here will be developed most extensively with regard to the United States, its logic should apply wherever there is an effort to change a political regime. If democratization always involves a political project that aims to reallocate power and influence across social groups, then the possibility of disenfranchisement is always implicit in its occurrence. This does not mean it will always happen or that the form it takes will look the same everywhere. But it suggests that the histories of other democratizing moments should be reexamined with this possibility in mind.

In order to attend to this possibility, the book is divided into two parts. The focus of the first is on disenfranchising democratization in the United States, while the second extends the analysis to two other cases of nineteenth-century democratization, the United Kingdom and France. While the analysis is comparative, I encourage the reader to think about not just the similarities or differences between the cases but also the transnational connections between them. Nineteenth-century Americans regularly toasted the progress of revolutions abroad and denounced the monarchical machinations they blamed for their defeat. And tens of thousands of European democrats and reformers, including Thomas Paine, the

[25] Ernest Renan, *Qu'est ce qu'une nation? Conférence faite en Sorbonne, le 11 mars 1882* (Paris: Calman Lévy, 1882), 27.

Marquis de Lafayette, Mathew Carey, William Cobbett, John Binns, William Duane, Georges Clemenceau, Carl Schurz, Thomas Francis Meagher, John Mitchel, and others, arrived on America's shores as refugees or supporters of its cause, leaving an indelible mark on its politics.[26] Their visions of democracy were forged by connecting their local struggles with similar contests and aspirations elsewhere. They were never tidily solidaristic or chauvinistic, but the stories they told of their local communities bore the traces of these broader visions and engagements. To understand these stories, we must attempt to study them in the broader context in which they had meaning.

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The remainder of this chapter considers possible explanations for disenfranchising democratization and outlines my own account. The empirical case studies are divided between two parts. Part I details the gradual emergence of a pattern of disenfranchising democratization in the United States. Chapter 2 looks at the upsurge of democratic politics during the American Revolution and argues that at this juncture, these were *not* generally connected to disenfranchising reforms. Chapter 3 focuses on the forging of the Jeffersonian coalition in the early American Republic, the recurring divisions within this coalition over the question of black citizenship, and the ultimate solution in the discursive and institutional formulation of the white man's republic. Chapter 4 examines how this formulation structured democratization and disenfranchisement in the antebellum United States.

Part II extends the analysis to the United Kingdom and France, highlighting similar impulses toward exclusion amid democratization but tracing how different institutions and political coalitions resulted in distinctive patterns. Chapter 5 looks at the overthrow of a particular formulation of political community in the United Kingdom – the Protestant Constitution – and the conjoined enfranchisement of the middle classes and disenfranchisements of Irish farmers and portions of the working class. Chapter 6 examines the French critical juncture of the 1870s, a decade in which the disenfranchisement of the industrial working classes

[26] Seth Cotlar, *Tom Paine's America: The Rise and Fall of Transatlantic Radicalism in the Early Republic* (Charlottesville: University of Virginia Press, 2011); W. Caleb McDaniel, *The Problem of Democracy in the Age of Slavery: Garrisonian Abolitionists and Transatlantic Reform* (Baton Rouge: Louisiana State University Press, 2013).