

The Politics of Race and the Right to Vote: The Elections of 1876 and 2000

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Abstract

The elections of 1876 and 2000 were two of the most controversial elections in American history. In both cases the politics of race and the right to vote were at the centre of the controversies that erupted around the election of a candidate who had lost the popular vote. Although there are important differences that separated the two elections the 2000 election revealed that the right of Blacks merely to register and vote was still not guaranteed by the federal government much as it was not guaranteed in the nineteenth century. In both elections the issue of Black voting rights were at the centre of the controversies surrounding the election of a minority President.

French Abstract

Les elections de 1876 et 2000 ont été deux des plus controversiel elections dans l'histoire Americain. Dans les deux elections "le politique de race" et le droit de vote était aux centre des controverses qui ont passé autour de l'election d'un candidat qui n'avait pas gagné le vote populaire. C'est evident qu'il y a des differences importantes qui se separe ces deux elections, mais l'election de 2000 a montré que le droit des Noirs seulement a s'enregistrer et a voter n'était pas encore garantie pareil, come dans le dix-neuvième siècle. Dans les deux cas, le droit de vote pour les Noirs était au centre des deux controverses.

Introduction

The elections of 1876 and 2000 stand out as the most controversial presidential elections in United States (US) history. In 1876 the popular vote winner, Democrat Samuel Tilden, was defeated by the Republican, Rutherford B. Hayes, because of a dispute over electoral votes that led to the establishment of an Electoral Commission which awarded the presidency to Hayes. During the 2000 election Republican candidate George W. Bush was awarded the presidency in an equally contentious Supreme Court case, *Bush v. Gore*. In both cases the politics of race and the right to vote were at the centre of the controversies that erupted around the election of a candidate who had lost the popular vote. The struggle to establish the right to vote for Blacks began during Reconstruction. The election of 1876 has been often been referred to as the end of Reconstruction but the period has no definite end or even beginning. It remained predominant in certain states more than others at different times and thus labelling the election of 1876 as the definite end of Reconstruction is far too simplistic. From the 1940s-1970s a second struggle for the right to vote succeeded where Reconstruction had failed. While desegregation and the right to register and vote became established respectively after the Supreme Court's decision in *Brown v. Board of Education* and the passage of the 1965 Voting Rights Act (VRA), there still existed obstacles to the full potential of Black political rights and this became apparent after the end of the Civil Rights Movement in the 1970s. While achieving this full potential was an important task, the 2000

election would reveal that the right to vote and to have that vote counted was still not guaranteed.

Reconstruction was doomed to failure from its inception. Although Radical Republicans implemented an enormous plan to completely transform the social and political structure in 1866 there was little help from the presidency and absolutely no aid from the judiciary. In fact Supreme Court decisions which found by the start of the twentieth century the Fourteenth and Fifteenth Amendments and all of the civil rights bills unconstitutional were a major reason for the failure of Reconstruction. While the 1876 election did not represent the precise moment of the end of Reconstruction, the election is nonetheless useful as a case-study to explore the unique social and economic factors that produced the different degrees of racism that existed in the North and the South; the different ways in which southern whites restricted the Black vote; and perhaps most importantly, the need for the federal government to actively enforce civil rights bills. If anything, the election of 1876 provides a window into the history of disenfranchisement in America. The institutionalization of this racism can account for why after the first granting of civil and political rights in the nineteenth century, it took nearly a hundred years for those rights to be actively and permanently protected.

After the election of 1876 Black Congressmen and state officials still served in the South but by the end of the nineteenth century they were rare.¹ Early twentieth century race relations between Blacks and whites were dominated by the institution of legalized racial segregation known as Jim Crow.² During the 1940s and 1950s important advances were made that provided the foundation for the Civil Rights Movement's gains in the 1960s

¹ Eric Foner, *Freedom's Lawmakers: A Directory of Black officeholders during Reconstruction* (New York : Oxford University Press, 1993).

² C. Vann Woodward, *The Strange Career of Jim Crow* (Oxford: Oxford University Press, 1966), 64-109.

through the same institution that had prevented the completion of Reconstruction, the judiciary. While Reconstruction seemed to finish just as it had gotten started, the Civil Rights Movement was far more gradual and in 1965 the passage of the Voting Rights Act (VRA) represented a landmark achievement for the protection of Black voting rights. The federal government would no longer stand by in the face of blatant violence and discrimination. The impact of the act was immediate as Black voting participation increased throughout the South although it still was not at the level of white voters.³ Once the vote was won and violent segregationists were ostracized by the mainstream, former southern Democrats gradually turned Republican and implemented a far more nuanced segregation as well as deceptive methods to limit the power of the Black voter. The “white flight” to the suburbs to escape Black homeowners, the opposition to the busing movement implemented to integrate public schools, at-large elections, direct appointments and other vote diluting methods represented obstacles which the Civil Rights Movement failed to combat as strongly as it did for the right to vote. During the 2000 election though this simple right to vote and register came under attack.

The 1876 and 2000 elections were both similar and different in important ways. The Civil War had fundamentally changed the social, political and economic structure of American society and the turbulent era of Reconstruction was a product of that upheaval. American society underwent important social and political transformations during the Civil Rights Movement but the impact of the change was not nearly as profound as the Civil War. The use of violence to attain political power also greatly differed between the two eras. During the late nineteenth century white Democrats could use violence with impunity while

³ Ronald W. Walters, *Freedom is not Enough: Black Voters, Black Candidates, and American Presidential Politics* (Toronto: Rowman & Littlefield Publishers, Inc., 2005), 8.

the Civil Rights Movement witnessed a severe curbing of uninhibited violence. By the 2000 election violence had fallen into complete disuse as a means to discriminate against Black voters. Nonetheless there are also important continuities between the elections with regards to the politics of race and voting rights issues. In both elections the issue of Black voting rights was at the centre of the controversies surrounding the election of a minority President.

Chapter 1: From the end of the Civil War to the Election of 1876

The presidential election of 1876 was very controversial because it was one of the few instances in which the popular vote winner lost, but more importantly it has been regularly evoked by historians as the symbolic end of Reconstruction. While it cannot be denied that the alleged 'deal' that was struck between Northern Republicans and Southern Democrats served to do little in aiding the cause of Radical Reconstruction it is not far-fetched to state that by 1876 Radical Reconstruction had received numerous political blows. Blacks were ultimately denied political and social rights because of the lingering power of institutional racism and the legacy of slavery not solely because of a back-room deal between political elites. This lingering racism is embodied in examples of virulent racism during the 1876 election but even more importantly in the liberal and patronizing racism of Republicans. In the face of violence that was terrorizing whole sections of the South, the only solution to maintaining the political and social rights of Blacks was physical enforcement by the federal government. This proved to be far too costly for the Republican Party if they expected to remain in power. Before addressing the election of 1876, the limits of Reconstruction will first be explored to show how Reconstruction had ended nearly as quickly as it had begun.

The achievements of Reconstruction were constantly motivated by the desire for the gradual granting of political and social rights by racist elites against the realities of

immediate abolition. Northern opinion of Blacks did not differ enormously from the South as Blacks suffered from deplorable economic and social conditions and private acts of discrimination that would provide a blue-print for the post-war institution of segregation in the South.⁴ The creation of all-Black regiments in the military in 1863 and eventually their equal status before military law was one of the first instances in the US that Blacks and whites were legally equal. This historic first occurred only as a necessity not to due to any progressive beliefs. Lincoln himself was quite cautious regarding Reconstruction. During Lincoln's "last speech" at the White House he stated that he would "prefer that [the vote] were now conferred on the very intelligent, and on those who served our cause as soldiers," and not the general Black suffrage that many abolitionists and Radicals had pushed for.⁵ Northern journalist Sidney Andrews commented on the mind-state of the freed slave while traveling through the South in September 1865 after the end of the war, "He is very often, and perhaps generally, idle, vicious, improvident, negligent, and unfit to care well for his interests."⁶ These positions reflected the opinions of many in the North, including almost all Republican moderates and conservatives.

In the immediate aftermath of the Civil War the next question was what was to be done with all the former slaves? One example of a non-governmental body which attempted to aid freed slaves was the American Missionary Association (AMA). A number of radical missionaries traveled to the South after the war to help educate former slaves. Many had harbored racist feelings before they had left for the South but found that once they began living amongst former slaves that they began to accept freed Blacks as their social equals.

⁴ Raoul Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment* (Cambridge: Harvard University Press, 1977), 10.

⁵ Eric Foner, *A Short History of Reconstruction* (New York: Harper & Row Publishers, 1990), 33.

⁶ Sidney Andrews, *The South Since the War*, Abridged by Heather Cox Richardson (Baton Rouge, La.: Louisiana State University Press, 2004, orig. 1865), 10.

The missionaries made clear in their diaries that social contact was the most successful way to breakdown the racial barriers that separated Blacks and whites in the South. While the missionaries themselves were glad to participate as active members of societies made up of former slaves, many whites in the South opposed the work of these radical missionaries and violent attacks were made against individual missionaries as well as the AMA as a whole. One missionary in Virginia, Mary Jane Foster, had “forged close relationships with several African-American men, and they regularly escorted her home in the evenings.” These images of white Christian women willingly accompanying former slaves certainly challenged the accepted social structure of the South that would have existed at the time. According to southern stereotypes, at the heart of the relationship between these white women and Black men was the image of the Black man as the sexually insatiable beast and the white woman as the innocent victim of what could only have been presumed to be rape. Foster even had to convince local whites that she was part Black so that she could continue teaching and socializing with Black men and women. “I hope they believe it,” wrote Foster, “for then surely they could not complain of my teaching the people of my own race.”⁷ Clearly, even as racist northerners were attempting to attack their own racial prejudice, the traditional stereotypes of race in the South were nonetheless being used to maintain the *status quo*. As missionaries moved to the South to help educate former slaves following the war—initially encouraged by the federal government—economic efforts were also being made to smooth the transition from bondage to freedom.

The belief that the national government bared responsibility for providing freedmen with the prerequisites such as land and valuable skills was initially accepted. General Ulysses

⁷ Edward J. Blum, *Reforging the White Republic: Race, Religion, and American Nationalism, 1865-1898* (Baton Rouge, La.: Louisiana State University Press, 2005), 70.

S. Grant's creation of a “negro paradise” at Davis Bend, on land that had belonged to Confederate President Jefferson Davis, was the first instance of the redistribution of land and by 1865 the community had earned \$160,000 in profit for their work. Sherman's Field Order No. 15, which led to the initial distribution of 400,000 acres of land to 40,000 freedmen, set a precedent for the redistribution of land as one of the possible ways to provide freemen with the means to begin their new lives.⁸ The plan was very controversial and diverted markedly from the traditional American ethos of hard work and independence where money was not simply handed out. Many moderate Republicans and prosperous freedmen even opposed the confiscation and redistribution of land.⁹ The attitudes of these Republicans and more successful freedmen showed that the plan for the redistribution of land was not merely a racial or political issue, but a class one.

The issue of redistribution was meant to coincide with what Eric Foner terms “The ambiguities of free labor.” It was agreed that for Blacks to truly elevate their social status they had to first acquire economic status and thus race and class were sharply intertwined during Radical Reconstruction. Economic leverage was the subject of one of the most important meetings directly after the end of the war between General William T. Sherman, Secretary of War Edwin Stanton and Garrison Frazier, a Baptist Minister, as well as various other influential Georgian ministers. Sherman and Stanton were seeking clarification on what the general mood of the Black populace was with regards to how to best construct a post-war order. Frazier and the other ministers stressed above all that now that freedom had been achieved that the redistribution of land was necessary.¹⁰ It was also originally argued that by

⁸ Foner, 27, 32.

⁹ Heather Cox Richardson, *The Death of Reconstruction-Race, Labor, and Politics in the Post-Civil War North, 1865-1901* (Cambridge: Harvard University Press, 2001), 52-57.

¹⁰ Eric Foner, *Forever Free* (New York: Alfred A. Knopf, 2005), 3-6.

providing freedmen with their own land, they could grow their own produce, not only for self-sufficiency, but to sell on markets and to gradually increase their own economic worth in the most conservative sense of the word. Yet this was opposed by the old planter class as well as poorer whites who perceived Blacks as competitors on the labor market, which they rightly were. Southern whites argued, in the same pseudo-scientific racist vein as the antebellum period, that Blacks were born and bred to be servants and laborers and nothing more. In addition, within the Republican ideal of free labor, there was little space for productive government assistance such as the redistribution of land. Freed slaves would not receive special treatment—they were now merely another group of workers in America’s free labor society.¹¹

By early 1866 it was apparent that President Andrew Johnson did not plan to continue the redistribution of land and he vetoed the actions of the Freedman's Bureau that had initially taken Sherman's cue and tried to continue the redistribution. Johnson's change from an opponent of the “slaveocracy” to a staunch supporter of the former planter class only increased the desire of Radical Republicans to establish a new egalitarian society. The former Confederates that Johnson was now pardoning and welcoming back into the Union began to re-institute laws that harked back to the antebellum state of race relations in the South. These “Black Codes” attempted to control where freed slaves could work, did not give them the right to testify in Court, gave more severe punishment for crimes committed by Blacks, and sought to generally maintain a separation of whites and Blacks.¹² Johnson wanted to re-admit the Confederate states as quickly as possible but by doing this he was ignoring the fact that a great war had occurred and that Reconstruction, not only physically but socially was needed.

¹¹ Heather Cox Richardson, 14.

¹² Joe M. Richardson, “Florida Black Codes,” *Florida Historical Quarterly* 47:4 (Spring, 1969), 367-376.

Radical Republicans such as Thaddeus Stevens, Lymon Turnbull and Charles Sumner called for military occupation of the southern states, the imposition of male suffrage and, perhaps most importantly, the disenfranchisement of “disloyal” Confederates. These Republicans did not represent the men who had supported Lincoln’s election—they were the anti-slavery advocates in the antebellum north that had paved the way for the Fourteenth and Fifteenth Amendments.¹³ In April 1866 led by these men Congress adopted the Fourteenth Amendment. It nullified the *Dred Scott* decision which held that Black Americans could not be considered citizens of the United States, threatened southern states that denied free slaves of the vote, and dramatically challenged President Johnson. The ballot represented the collective unity that had developed, and loyal Americans, whether white or Black, were provided with political rights and those who had opposed the Union, former Confederates, were disenfranchised.

President Johnson's presidential Reconstruction was far less constructive and his support of the “Black Codes” and former Confederates only pushed moderate and conservative Republicans to radicalism. His impeachment was narrowly averted because Johnson did not actually break any laws on any of the eleven counts he was charged. Rather than any abuse of constitutional power, Johnson’s impeachment was sought as a result of his ultra-conservative political views, which had severely impeded the progress of Radical Reconstruction.¹⁴ As Eric Foner notes, the reason for the failure of Reconstruction lay not at the feet of freed slaves but the intransigence of white America, embodied most indelibly by Johnson. “[Freedmen] demonstrated political shrewdness and independence in using the ballot to affect the conditions of their freedom. However inadequate as a response to the

¹³ Paul Finkelman “Prelude to the Fourteenth Amendment: Black Legal Rights in the Antebellum North,” *Rutgers Law Journal*, 17: 3&4 (Spring & Summer, 1986), 481.

¹⁴ Michael Les Benedict, *The Impeachment and Trial of Andrew Johnson* (New York: Norton, 1973).

legacy of slavery, it remains a tragedy that the lofty goals of civil and political equality were not permanently achieved. And the end of Reconstruction came not because propertyless Blacks succumbed to economic coercion, but because a tenacious Black community, abandoned by the nation, fell victim to violence and fraud.”¹⁵

In the newly reconstructed South of 1867-1869 Republicans ruled in the form of carpetbaggers, southern Unionists and newly enfranchised Blacks, but Blacks were still under-represented. Northerners though were united in their praise of the free Black labourer who had proven that he was not the idle and lazy worker that Southerners had charged.¹⁶ Carpetbaggers formed about one sixth of delegates and were to develop as the main problem in the South during Reconstruction because they so clearly represented the artificial nature of rule by the North and were largely stereotyped as the most uneducated Northerners merely in the South for financial gain. The caricatures of carpetbaggers as poorly educated and penniless were actually false as the majority of northern carpetbaggers were college educated and middle class. Certainly by the time they reached office they were often in need of the financial aid that office would provide. Most carpetbaggers had not actually arrived during Radical Reconstruction but during the war and many had lost their fortunes trying to invest in the cotton trade.¹⁷ While carpetbaggers did not descend on the South purely to exploit the South—their goals were more attuned to survival rather than personal fortune—they still sought some financial gain and thus they were not there strictly to help the South recover. The reaction from the South was most tangible in the violence it produced in the form of the Ku Klux Klan (KKK) and other white supremacist groups whose sole purpose was to

¹⁵ Foner, *A Short History of Reconstruction*, 123.

¹⁶ Heather Cox Richardson, 32-40.

¹⁷ Lawrence N. Powell, “The Politics of Livelihood: Carpetbaggers in the Deep South,” *Region, Race, and Reconstruction*, eds. J. Morgan Kousser & James M. McPherson (Oxford: Oxford University Press, 1982), 317-318.

intimidate Black voters and their white supporters such as carpetbaggers. By Grant's election in 1868 the real strength of Radicalism was dying, literally in the form of Thaddeus Stevens, but also within the Republican Party itself as the younger breed of the party looked to economic concerns rather than social ones such as Reconstruction.¹⁸

The state of Southern governments from the election of Grant to the mid-term elections of 1870 was a radical departure from what had stood before the Civil War. While the Fourteenth Amendment made all persons born or naturalized in the United States, including freed slaves, citizens, the Fifteenth Amendment was drawn up by Congress in 1869 to protect Black suffrage in the South. The amendment prohibited the denial of suffrage on the basis of race, color or previous condition of servitude and for the brief time that it was truly enforced Republicans still controlled most of the former Confederate states.¹⁹ South Carolina proved most extreme as the wealthiest planters of the antebellum period were now represented by some of their former slaves. Yet at the same time, by 1871 Arkansas was the only state that still disenfranchised former rebels. Thus while Blacks were represented for the first time at new levels, both legislative and even judicial, white Democrats were also re-enfranchised and slowly allowed back into the political system. Additionally the southern Republican Party was plagued by strife. How a party such as the post-war southern Republican Party could not maintain unity in the face of violence, harassment and intimidation is difficult to understand.²⁰ The rollback on political Reconstruction was mirrored by the problems associated with the economic construction of a viable system for Blacks. The end of slavery created a huge migration to urban centres but there were few

¹⁸ Foner, *A Short History of Reconstruction*, 149-155.

¹⁹ Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 93-104.

²⁰ William C. Harris, "Republican Factionalism and Mismanagement," in *Reconstruction and Redemption in the South*, ed. Otto H. Olsen (Baton Rouge: Louisiana State University Press, 1980), 78-112.

Blacks as a part of the bourgeoisie and thus they were faced with huge obstacles in the cities. Northern industry had suffused plantation agriculture with funding and former slaves soon found themselves working as plantation labourers. While sharecropping could be seen as returning Blacks to a form of slavery it did give freed slaves a form of independence over their day-to-day lives that would have been unimaginable under slavery.²¹ Despite the limits placed on the economic freedom of freed slaves who were forced to participate in the post-war institution of sharecropping, both the cotton and rice planters (former masters) complained over their new labor problem since these former slaves could now theoretically offer their labor to the highest bidder.

In 1871 the KKK was brought under control and military authority was, for one instance at least, truly used in the South. The challenge faced by the federal government, of enforcing Southern compliance with Black voting was enormous. The physical violence perpetrated by the KKK and other such groups was not the only challenge to enforcement but the very racist mindset of white Southerners in general. The KKK trials were an experiment in federal control that would not be repeated again until the Civil Rights Movement. With constitutional authority the federal government was seeking clearly political objectives, the survival of the Republican Party in the South, but the morality of the issue was nonetheless just. For the KKK the trials must have been unbearable as Black witnesses and Black jurors “dramatized this wrenching break from past.” At least for a short time, the federal government seemed willing to protect the rights of freed slaves, but the problem resurfaced soon thereafter. In 1873 President Ulysses S. Grant began to pardon the convicted.²²

²¹ David Herbert Donald, Jean H. Baker, and Michael F. Holt, *The Civil War and Reconstruction* (New York: W.W. Norton & Company, 2001), 507.

²² Kermit Hall, “Political Power and Constitutional Legitimacy: The South Carolina Ku Klux Klan Trials, 1871-1872,” *Emory Law Journal* 33 (1984), 921-951, 950.

In the north there underwent just as large of a reconstruction as in the South. Railroad magnates and industrialists began to form the most powerful segment of Northern society and the move to more economic concerns that had begun after the death of Thaddeus Stevens only accelerated. The accusations of corruption under carpetbag and “negro” rule levied by Southerners were mirrored in the North. The various urban machine administrations such as Tammany Hall created some of the most corrupt governments in the history of the US. Nonetheless this was also largely true in Washington DC as well as Presidents and their cabinets acted as little more than patrons to their various loyalties and constituencies. The balance between “reform” and “Radicalism” was one that was never developed as many former Radicals eschewed their roles as the conscious of the nation by 1872.²³ By not properly remembering the reasons for fighting, the Civil War’s many mistakes were made again as torture and fear began to re-enter Black memory.

In the election of 1872 there was a split among Republicans as reconciliation was ushered into the mainstream national discourse. The 1873 Depression in turn pushed the labor question to the focus of the nation and in the 1874 mid-terms Democrats made large gains because of the economic state of affairs as the general populace tired of the “war and the negro”.²⁴ While Democratic victories were due more because of the Depression than because of the Republican's Southern Policy of alleged 'Black rule' and 'carpetbagging', the Democratic domination of Congress certainly affected the progress of Reconstruction. On March 1, 1875 the Civil Rights Bill became law after passing through both the House and the Senate with relative ease. The Bill sought to eliminate segregation in public and private places, ensure the right to Blacks to serve as jurors, and to convict those denying any citizens

²³ Foner, *A Short History of Reconstruction*, 199-216.

²⁴ David Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge: Belknap Press of Harvard University Press, 2001), 122-138.

their civil rights. The enforcement of the Civil Rights Bill was placed directly in the hands of the federal courts and their officers but from the beginning the federal government seemed like it did not want to have anything to do with the bill.

As he signed the bill into law President Grant did not comment on its enforcement. Representative Benjamin Butler, one of the bill's most tireless advocates, even sought to delete the provision which called for the desegregation of schools. From 1875-1880 a number of African-Americans around the country attempted to take to court those who sought to refuse of their civil rights—for example those who had refused Blacks' service in accommodation or on a bus. But there was little guidance from the federal government to individual states with regards to the enforcement of the Bill. Finally in October 1883 the Supreme Court held in *U.S. v. Stanley* that Congress did not have the right to pass laws regulating the actions of individuals only those dealing with "foreign or interstate commerce, commerce with Indian tribes, the post office" and other such whole subjects. The Court claimed that if any redress was to be sought for wrongs committed according to the 1875 Bill, then they must be sought from the state, not the federal government.²⁵ Yet it was those very states that were committing the wrongs and thus the Bill fell into complete disuse.

The reckless power of southern states that refused to submit to national laws such as the Fourteenth and Fifteenth Amendments and Civil Rights Bills culminated in what Foner claims was the real reasoning for the roll-back of Reconstruction and a far more reasonable explanation for the End of Reconstruction than the Compromise of 1877, "The Crisis of 1875." In early 1875 Grant used federal troops to prop up a corrupt and unstable Republican administration in Louisiana but by late 1875 he had refused to do the same in Mississippi

²⁵ John Hope Franklin, "The Enforcement of the Civil Rights Act of 1875," *Prologue* 6:4 (Winter, 1974), 226-234.

where the same terrorist tactics used by the KKK, but now without masks, eliminated the Black vote. Governor Ames of Mississippi requested that Grant deploy troops but Grant refused, claiming that northern Republicans had tired of the issue of Black voting rights in the South. While Grant defended the corrupt regime in Louisiana he ignored the fiscally and politically sound Black-dominated state government in Mississippi providing more ammunition for the opponents of the federal protection of Black voting rights.²⁶ The Supreme Court provided further judicial support to Grant's actions in the 1875 case of *United States v. Cruikshank*. The case had arisen over the prosecution of over a hundred people who were charged with intimidating and killing Blacks during state elections in Louisiana. The Court held that Congress had "no power to protect constitutionally secured rights from private violence or interference" during state elections, essentially leaving white Democrats to engage in further acts of violence and physical intimidation.²⁷ Grant's inaction in Mississippi set a precedent that would restrict the future use of federal power to intervene on behalf of Black voters and its impact would be felt as early as the election of 1876.

After initial returns in 1876 the Democratic candidate, Samuel J. Tilden, had garnered 52 percent of the popular vote and had won the popular vote in the swing states of Florida and Louisiana. In Florida Tilden won by a narrow margin of approximately 100 votes out of over 48,000 cast while in Louisiana he won by a large majority of 6,500 votes. Excluding the two disputed states, the initial vote in the Electoral College stood at 184 electoral votes for Tilden and 173 votes for the Republican candidate Rutherford B. Hayes.²⁸ Florida and Louisiana possessed twelve electoral votes between them, and Tilden needed the votes of

²⁶ Foner, *A Short History of Reconstruction*, 233-237.

²⁷ Benno C. Schmidt, Jr., "Principle and Prejudice: The Supreme Court and Race in the Progressive Era. Part 3: Black Disfranchisement from the KKK to the Grandfather Clause," *Columbia Law Review*, Vol. 82, No. 5 (June, 1982), 835-905, 840.

²⁸ Peter Camejo, *Racism, Revolution, Reaction, 1861-1877* (New York: Pathfinder Press, 1976), 176.

only one of the two states to win the election; Hayes needed both. Despite the fact that Tilden had won the popular vote in both states and the national popular vote by over 250,000 votes, the Returning Boards of both states were controlled by Republicans. The head of Louisiana's returning board, J.M. Wells, sent Colonel John T. Pickett to bribe both parties. Abram Hewitt, national chairman of the Democratic Party, allegedly was offered the presidency for his party in exchange for \$1,000,000, but Hewitt declined. The Republicans sent James A. Garfield to Louisiana, and he was apparently open to the bribe. To Florida, whose Returning Board set a price of \$200,000 on its electoral votes, the Republicans sent William E. Chandler.²⁹ When the two houses of Congress met on 1 February 1877 to count the electoral vote two sets of electoral results had arrived from Louisiana and Florida as well as from a third state, South Carolina.

Each party contested the other's electoral votes and claimed victory. Each party was also guilty of committing election fraud: Republican Returning Boards had discarded legitimate Democratic ballots, and Democrats in local communities had illegally prevented freedmen from voting. One political commentator's analysis of the Electoral College in the late nineteenth century ridiculed the methods used to elect a president in 1877 claiming that "the figures are omitted [from his analysis] because, owing to the manner in which the election of that year was decided, they can be of no value here."³⁰ But if one party was guiltier than the other, it certainly was the Republicans. A special electoral commission was finally convened with seven Republicans, seven Democrats, and, in the original plan, one Independent, Supreme Court Justice David Davis. Davis was widely expected to vote with

²⁹ Ari Hoogenboom, *The Presidency of Rutherford B. Hayes* (Lawrence: University of Kansas Press, 1987), 25-29.

³⁰ John Handiboe, "Presidential Elections by Direct Popular Vote" *The North American Review*, August 1900, 287.

the Democrats because of the enormous amount of fraud which was charged against the Republicans. Democrats thus welcomed the Electoral Commission and had widely supported its creation until Davis declined the seat. He had been elected to the Senate in Illinois, however, and was replaced by Republican Supreme Court Justice Joseph P. Bradley. The electoral commission then voted 8-7 in favour of giving all the disputed electoral votes to Hayes.

Congress now had to certify the electoral vote but the result met opposition in the Democratic-controlled House. A new deal was struck in which Republicans and Southern Democrats agreed that if (Republican) Hayes won the election and (Republican) Garfield was appointed Speaker of the House then federal troops would be removed from the South, effectively ending Reconstruction and restoring full Democratic control of the region. In addition a Southerner would be appointed to one of the best patronage positions, Postmaster General, and the South would also receive federal patronage and money for infrastructure and railroads. The Texas and Pacific Railroad, headed by Thomas C. Scott, had plans to build a railroad that would connect the South with the Pacific. The interpretation that economic interests and the creation of this new railroad had everything to do with the so-called Compromise of 1877 is emphasized in the seminal work of C. Vann Woodward, *Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction*.³¹ Woodward's analysis suggests that an agreement to the final result of the election was reached at Wormley's Hotel in Washington in a series of conferences between influential Republicans, railroad moguls and Southern Democrats who essentially betrayed Tilden. In Woodward's account Hayes was duly elected President and promptly removed federal troops from the South. Southern

³¹ C. Vann Woodward, *Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction* (Boston: Little, Brown and Company, 1951).

Democrats then laid the seeds for a policy of legalized racial discrimination, Jim Crow, which, much like slavery, was accepted and recognized by all three branches of the government.

The role of the Compromise is questionable in light of evidence that even shortly after the 1876 election some Democratic newspapers still advocated seeking the Black vote. This shows how the chance for true reconciliation was still possible even after the Compromise, especially if it was Southern Democrats who sought to achieve true racial harmony. In July 1877 the *Memphis Appeal* advised that “in future elections, if Southern Democrats are wise, they will consider the strength of the negro vote in nominating candidates.” Claiming that Democrats would struggle to win elections without the Black vote, the *Appeal* cautioned that there “can be no perfect lasting concord between the Blacks and whites so long as Blacks are excluded from office. If the negro vote is worth soliciting, it is worth conciliating.”³²

A major flaw in Woodward’s analysis is his emphasis on the alleged deal being made between Ohio Republicans and southern Democrats, southerners actually had little power regarding the outcome. The Republicans controlled the Presidency, the army, and the Senate. These same allegedly powerful southerners watched Returning Board after Returning Board throughout the South reverse previously Democratic victories. In fact, northeastern Democrats had far more influence in placing Hayes in the White House.³³ Southern and even western Democrats had urged their northern counterparts to rebel against the blatant fraud that was taking place after the election. The *Charlestown News and Courier* urged northern Democrats to not give in to the intimidation of Republicans: “Men of the North, rise up and

³² “Notes and Opinions,” *Galveston Daily News*, July 5 1877, p. 3, col .4.

³³ Michael Les Benedict, “Southern Democrats in the Crisis of 1876-1877: A Reconsideration of Reunion and Reaction,” *The Journal of Southern History*, Vol. 46, No. 3 (Nov., 1980), 497.

rescue the once fair name of this land from disgrace. To you belongs the task, and to you it should be a pleasing duty.”³⁴ But northern Democrats made little effort to challenge the Republicans with rebellion fearing that overt agitation could spark another war.

Some historians have also argued that the Compromise of 1877 was no compromise at all and that it was clear by 1876 that Republicans had largely given up on policing the South and on protecting the voting rights of newly freed slaves. Historian Allan Peskin believes that the Compromise of 1877 was over-exaggerated by previous historians. “A deal whose major terms are never carried out,” he argues, “appears suspiciously like no deal at all.”³⁵ Certain terms were carried out as Hayes was elected, money was provided for a southern transcontinental railroad, and a southerner was appointed Postmaster General, the best patronage position.³⁶ Other terms of the Compromise such as James Garfield being appointed as Speaker of the House and, most importantly, southern respect for African-American voting rights, were ignored. According to Peskin as well as Keith Polakoff, the real Compromise of 1877 was the creation of the Electoral Commission, which presented an opportune moment to undertake what Republicans had been planning to do the whole time—abandon Black voters in the South.³⁷ One of the major terms, the removal of federal troops deserves more detailed scrutiny.

Despite the fact that the removal of the troops—and thus Hayes’ alleged subsequent betrayal of Blacks in the South—is highlighted as the most important aspect of the Compromise of 1877, federal troops were already going to be ordered to leave the South. The

³⁴ [Charleston, South Carolina] *Daily News and Courier*, December 6, 1876, p. 2.

³⁵ Allan Peskin, “Was There a Compromise of 1877,” *The Journal of American History*, Vo.60, No.1 (Jun., 1973), 65.

³⁶ Camejo, 184.

³⁷ Keith Polakoff, *The Politics of Inertia, The Election of 1876 and the End of Reconstruction* (Baton Rouge: Louisiana State University Press, 1973), 96.

trend towards a reduction in US troop levels in the South was in the making long before the election. President Grant had clearly already begun a policy of non-intervention in the South—that much was clear from his actions in Mississippi during the state election in 1875. Troop levels had also been reduced every year from 1868 to 1877 except for a brief spike in 1874.³⁸ Furthermore, the United States Army was not nearly well-equipped or funded to undertake the massive effort that the protection of Black civil and political rights would have entailed. In 1876-77 the entire US Army was about 25,000 men and most were actually fighting Native Americans on the Plains or protecting the Mexican frontier. Excluding Texas there were only 3,230 officers and men on duty in the South during the 1876 presidential election and most were aiding revenue officers or guarding seaside fortifications.³⁹ The Army was thus clearly in no shape to make a concerted effort at protecting civil and political rights.

The issue of the removal troops has been nearly unanimously agreed upon by historians but it is rendered all the more complicated because of Hayes' vacillating positions. Originally Hayes had been a supporter of Radical Reconstruction and he ran on such as platform during his first Ohio gubernatorial campaign in 1867. By the mid-1870s, much as the rest of the Republican Party, Hayes doubted whether the policy of military support for Republican governments in the South could continue. Then, during the campaign for the 1876 election, Hayes essentially waved the "bloody shirt" and warned against a Democratic victory resulting in the rule of the "late rebels." The day after the election when it was believed that the Democrats had won Hayes claimed that he did not even care that he had lost

³⁸ Richard M. Valelly, *The Two Reconstructions: The Struggle for Black Enfranchisement* (Chicago: University of Chicago Press, 2004), 95.

³⁹ Vincent P. DeSantis, "Rutherford B. Hayes and the Removal of the Troops and the End of Reconstruction," *Region, Race, and Reconstruction*, eds. J. Morgan Kousser & James M. McPherson (Oxford: Oxford University Press, 1982), 417-450, 417-418.

the election, but was more concerned with “the poor colored man in the South.”⁴⁰ Hayes’ belief that it was his duty to ensure that “the poor colored man in the South” was to remain safe in the face of southern intransigence was to change back to his pre-election position of the mid-1870s during the months between the election and the resolution to the controversy in February 1877. Grant had already reduced troops but it ultimately rested in Hayes’ hands to order the troops back to their barracks. Hayes claimed that he had no army and that public opinion was against the use of force in the south to enforce Republican rule anyway. Despite these vacillating positions Hayes ultimately continued the removal that had begun under Grant.

This desertion of Blacks after the Civil War is the subject of David W. Blight’s impressive history of the memory of the Civil War, *Race and Reunion*. Blight analyzes how one historical paradigm, that of a reconciliation between Yankees and Confederates, dominated American historical discourses for most of the late nineteenth century and the first half of the twentieth century. This glorification of reconciliation was embodied in Decoration Day speech speeches such as that of ex-Confederate General Roger A. Pryor in 1877 who stressed the participation of both Union and Confederate soldiers in Decoration Day celebrations. It was evident in the conciliatory tone of Pryor’s speech that the manliness of fighting war was taking precedent over the causes of the war. In contrast, Frederick Douglass’ 1878 speech at a Decoration Day celebration claimed that the South had been let off far too easily and that sectional reconciliation was not worth the effort. Frederick Douglass elucidated an important point—what was the point in remembering the soldier if

⁴⁰ DeSantis, 436.

you did not remember what he had fought for?⁴¹ In this context of increasing reconciliation the Compromise of 1876 can be viewed as a fulfillment of plans set in motion long before.

Woodward's belief that the Compromise was at the heart of the end of Reconstruction has come under further criticism, most recently by Edward J. Blum. Rather than settling for the infamous deal that was struck between Ohio Republicans and Democrats at Wormley's Hotel in Washington D.C., Blum traces the end of Reconstruction to the power of Protestantism in finally reuniting the North and South and "reforging the white republic". According to Blum, the influence of the Yellow Fever Epidemic in 1878 was enormous in bringing about the reunion of the former Union and Confederacy. Northern doctors who had gone South, as well as the enormous amount of donations raised in the North, contributed to promoting true and lasting reconciliation. Nonetheless this reunion was mitigated by the fact that it promoted reconciliation on Southern terms and thus acknowledged the suppression of African-American civil and political rights. African-Americans in the South that were affected by the Yellow Fever just as their white neighbours, were completely ignored in the South by white relief organizations. While certainly not as well funded as the white relief organizations, Black relief organizations also raised money to fill in the gaps that the white organizations left.⁴²

The Yellow Fever Epidemic peaked in 1878 but its effects were still apparent in and around the 1876 election. Although Blum downplays the 1876 election in his interpretation of the gradual end of Reconstruction, it is apparent that the election and the Yellow Fever epidemic may have worked hand in hand in denigrating African-Americans. One letter from a Charleston, South Carolina woman to the *Helena* [Montana] *Independent* described the

⁴¹ Blight, 89-93.

⁴² Blum, 146-173.

chaos that was ensuing in Charleston as a result of the Yellow Fever. If quarantine and a general sense of uneasiness were not enough, Radical Republicans “intended to have a torchlight procession...one representing a white woman at the feet of a negro, suppliant [sic] and debased, the other a white woman nursing a negro baby.” The “lady from Charleston” also believed that the Yellow Fever was aiding the white authorities in South Carolina, “Our city is a camp, and it is the knowledge that it is so which keeps the negroes in check.” She concluded in relief, “Just think of being shut up with yellow fever and insurrectionary negroes.”⁴³ These racial attitudes reflected the disdain that was felt for Blacks by some of the white community. This more overt racism was most prevalent in the Deep South.

The Register of Mobile, Alabama spoke plainly about disenfranchisement in his state.

The grave question to be settled at much cost is, What is to be done to get rid of the negro as a voter? Sooner or later, with more or less dispatch, he will be disfranchised and thrust out of politics. White men of all parties and of every grade of religions or moral convictions may as well come quickly to the consideration how to get the negro out of politics with the least confusion and cost. He must go, and there is no profit in standing long upon the order of his going. The question of suffrage belongs to the States respectively.⁴⁴

This intransigence against any possibility of allowing Blacks into the political and social order reflected the frankness and obtuseness of white Democrats who could not allow themselves to participate in society on equal terms with former slaves. These types of comments also reflect the complete objectification of Blacks by white Democrats such as the Register from Mobile. To the Register there were no individual Blacks, merely “the negro”. For Frantz Fanon the conception of Black people’s inferiority was literally embedded into their Black skin and thus any American who was Black was tainted by this allegedly innate

⁴³ “YELLOW FEVER HORROR. A Letter From a Charleston Lady.” *The Helena [Montana] Independent*, 19 October, 1876, p. 1. col. 7.

⁴⁴ G.G., “Letters from Alabama – Political Matters.” [Amherst, New Hampshire] *Farmers’ Cabinet*, 24 October, 1876, p. 1, col. 3.

inferiority. This served to erase any sense of agency, subjectivity and identification. Fanon's response at first is one of recalcitrant acceptance of his 'objectness', "I took myself off from my own presence, far indeed, and made myself an object. What else could it be for me but an amputation, an excision, a hemorrhage that spattered my whole body with Black blood?"⁴⁵ Fanon's reaction to the racism of Europe could have been applied just as much to racism exhibited by figures such as the Register of Mobile.

The justifications for the racial inequality between whites and Blacks was provided as simple and plain, Blacks just were not civilized enough to deserve social equality. This Social Darwinist justification for the inferiority of Blacks was alluded to months before the election in *The [Atlanta] Constitution*. "It will take generations to eradicate the poison, engendered by his sudden rise from bondage to the widest personal and political freedom." Indeed even Blacks' cognition of their new social state was according to white southern opinion beyond the scope of Blacks' mental capabilities. "Had he been able to understand and take advantage of the new condition there might have been hope for him, but he was not..." The same columnist that wrote about the "abject poverty" and destitution of freed Blacks also plainly noted that "there are many Negroes in these states who are doing well, making money and possessing themselves of property." Yet there were also "hundreds of other [*sic*] are going on from day to day grasping from the merest chances a scant substance." What the columnist at *The Constitution* failed to mention was that this was very much the same state of affairs for most whites in the South and the North. Capital was concentrated in the hands of the few and thus while some people will be "making money and possessing themselves of property" this was certainly not the case for all. Property-less whites in the

⁴⁵ Frantz Fanon, *Black Skin, White Masks*, trans. Charles Lam Markmann (New York: Grove, 1967), 109, 112.

South had little chance for economic advancement just as property-less Blacks in the South and thus the poverty and destitution portrayed by *The Constitution* was in glaring contradiction to the reality.⁴⁶ The blatant racism of *The Constitution* left little room for a logical analysis of the challenges of Reconstruction and thus its conclusion, that “the freedom given to the negro was intended as a blessing to him and will doubtless, in the *distant* future, prove such to him,” is not surprising.⁴⁷

Militant Democratic supporters from other areas of Alabama, such as Eufaula County, reflected how real the threat of Civil War was if the Democrats won the presidential election. Of the series of paranoid and aggressive quotations from the *Eufaula Times* stands one long winded example:

Whether the sudden, violent dissolution of the quiet relation that for 200 years had subsisted between the two races in the South shall turn out to be a declaration of war between the Caucasian and Ethiopian, depends, in our judgment, entirely upon whether the indolent, thick-skulled, and unaspiring woolly-heads, after the too generous and conceding white man shall manifest his resolution to retreat no further, will dare advance against his rights; rights which belong to his superior race; rights which God bestowed; which, through the uncontradicted antecedents of all time, his long lineage has maintained, and which, at this late day, he will not be ready to surrender until he has ridden up to his bridle-bits in blood.⁴⁸

The importance of violence to the Democratic movement in the South has received an extraordinary amount of attention from scholars.⁴⁹ This violence was important not only

⁴⁶ W.E.B. DuBois, *Black Reconstruction in America* (New York: Atheneum, 1970), 26-27.

⁴⁷ “**Wretched Wards.** The Elephantiasis of Crime Among the Ethiops. The Negro Problem,” *The [Atlanta] Constitution*, August 22, 1876, p. 1, col. 3.

⁴⁸ “Excerpt from Eufaula Times (?)”, *The Cedar Rapids Times* [Cedar Rapids, Iowa], September 28, 1876, p. 1, col. 3.

⁴⁹ George C. Rable, *But There Was No Peace: The Role of Violence in the Politics of Reconstruction* (Athens: University of Georgia Press, 1984); W. Scott Poole, “Confederate Apocalypse: Theology and Violence in the White Reconstruction South,” in *Vale of Tears: New Essays on Religion and Reconstruction*, eds. W. Scott Poole and Edward J. Blum (Macon, Ga.: Mercer University Press, 2005), 36-52;

because it physically eliminated any Republican leadership in the South but it also served to terrorize the population so that it would not vote Republican in the future. For example, in between the gubernatorial election in April and the presidential election in November 1868 it was estimated that Louisiana Democrats were responsible for the murder of 1,081, mostly Black, people. In 1871 25-30 Blacks were killed in Sheridian, Mississippi and 35 in Vicksburg in 1874; 105 Blacks were killed in Colfax, Louisiana on Easter Sunday in 1873.⁵⁰ The thoughts and attitudes of militant Democrats reflected their actions in previous years and showed clearly to the editors of the *Cedar Rapids [Iowa] Times* who had published the tirades of the *Eufaula Times* that the threat of civil war, as a result of a Democratic victory, was possible. Thus the editors of the *Cedar Rapids [Iowa] Times* ran with the headline, “SHALL WE HAVE ANOTHER WAR”. The consequences of a Democratic victory, namely “the disfranchisement of and partial re-enslavement of the negro race, the payment of the rebel war-claims, and the subjugation of the North,” were clearly apparent to Republicans at the lowest levels. Surely the national leadership of the Republicans had by the time of the 1876 election recognized that all of the rhetoric emerging from the South was the same and it was based on eliminating Blacks from the political process.

This was as present as ever in the reports of violence and physical intimidation in the *New York Times (NYT)* during Election Day in Escambia County, Alabama. Rather than the masked KKK or white militias that were expected to severely disrupt Election Day, Escambia County witnessed its county judge and the county register leading the way in restricting Blacks and Republican sympathizers from voting. “Citizens were murderously assailed by them, and those not in direct sympathy with ‘the powers that be,’ were told by the

⁵⁰ J. Morgan Kousser, *Colorblind Injustice* (Chapel Hill, N.C.: University of North Carolina Press, 1999), 23.

judge that they would have to leave the county, and he would see to it that they left.” Not only were scores of people restricted from voting but even the normal business of the day was restricted as “stores had to be closed to avoid these miscreants.” While the entire nation had largely tired of federal enforcement of Black voting rights the *NYT* claimed that the state of affairs in the South had to be dealt with immediately. The *NYT* rhetorically demanded, “What can people do, of whom can they look to for protection, when the very officers of the law are their assailants and would-be murderers...I speak the sentiment of thousands now at the mercy of these cut-throats and tyrants, when I say the government has utterly failed to protect its loyal and peace loving citizens.”⁵¹ It seemed like the *NYT* was supporting federal protection for Black voters but only a year before, during the debates leading to the passage of the 1875 Civil Rights Bill, the *NYT* had unequivocally argued against the Bill claiming that federal enforcement was not possible.⁵² Perhaps aided by the *NYT*’s own previous indifference to Black civil and political rights, the dire situation was not only restricted to the Deep South of Alabama and Georgia but also the periphery of the South.

The docility and obedience of slaves was one of the main ways in which the Southern “Lost Cause” was re-affirmed by novelists and other writers, both before and after the end of Reconstruction.⁵³ During the month of the 1876 presidential elections the war-time diary of Captain Robert E. Park, from the Twelfth Alabama Regiment, was published by the Southern Historical Society. One noticeable entry only provided more evidence for “Lost Cause” supporters. “Negro slaves bring [nicely cooked meals] to us, and are very attentive and respectful, sincerely sympathizing with us in our sufferings, and openly declaring their

⁵¹ “How the Democrats Carried Alabama.” *The Janesville [Wisconsin] Gazette*, November 28 1876, p. 1, col. 1.

⁵² John Hope Franklin, 226.

⁵³ Blight, 288-291.

purpose to remain with their mistresses, and not regard the seductive promises made by the Yankees to induce them to abandon their life-long friends and homes.”⁵⁴ How accurate was this depiction of race relations during the end of the Civil War? Could it really be expected that slaves would oppose the idea of their own immediate freedom? While there were certainly cases of slaves who did not abandon their masters, and especially the women and children in the family, the depiction of the loyal slave above was certainly made to advance the notion that slaves were obedient and incapable of appreciating and understanding their freedom.

The rhetoric of southern and other Democratic papers, although virulently racist, always claimed to have African-Americans’ best interests at heart. This reflected the belief in the docility of former slaves and justified depicting them as mentally inferior and child-like. “For the sake of Negro as well as for the sake of a healthful equilibrium between the faculties and functions of the State and general government, it is to be hoped that the negro as a race will be permitted to sink completely out of political consideration and controversy. Special measures addressed ostensibly to his political nurture and development have wrought for him nothing but disaster and misery. This is historical.” Not only is discrimination and subservience in the best interest of Blacks but it was proven by the most revered arbiter of the ages, history. The *Galveston Daily News*’ statements are somehow made authentic and its title, “The Negro in Politics Hereafter,” stakes a claim that to some would seem to lend credence to the work of Woodward in *Reunion and Reaction*. The most important part of Woodward’s interpretation of 1876 was the centrality of the Compromise in the end of Reconstruction. Curiously enough, nowhere in the article is there any mention of the recent

⁵⁴ Robert E. Park, “No. 2. Diary Of Captain Robert E. Park, Twelfth Alabama Regiment,” *Southern Historical Society Papers*, Vol. III, February, 1877, 9.

election but nonetheless the authors contend that “we think the country will be satisfied with this disposition of the negro problem.”⁵⁵ That was certainly one point in which the authors were correct, the country was quickly satisfied dealing with the “negro problem” in the way former Confederates desired. This was evident in the lack of protection for Black voters physically but also a lack of protection against economic threats.

The consequences of voting Republican in the South varied from place to place. Although the threat of violence was surely enough to scare voters, Black or white, there were other tactics that were equally effective in restricting Republican voting. Only days after voting took place for the election *The Constitutionalist*, an Augusta, Georgia based Democratic newspaper, made clear the consequences that would result from a vote for the Republicans. “A number of colored men who have for years held good paying positions in the stores of our merchants, voted the radical ticket...More than half a dozen of these ingrates were discharged last evening, and others will be today.” The institutional power of the Democratic Party machine was so strong that a vote for the Republicans took on illegal proportions. “The delivery porter at the store of J.G. Baille & Bro., received his dismissal as soon as he returned from the polls, and now a good porter is wanted by them, but he must bring satisfactory evidence that he voted the democratic ticket.” In a very frank manner the paper was able to display its immense power in controlling the lives of certain voters in the community while also advertising for the newly vacant position, “Such a one can get a good situation by applying early this morning.” The listing of essentially Blacklisted members of the community continued, “A prominent colored barber on Broad street, who has made his living off his white friends for years, is reported to have voted the radical ticket. The fact will be ascertained to-day, and, if found correct, his name will be given to the public, that they

⁵⁵ “The Negro in Politics Hereafter,” *The Galveston [Texas] Daily News*, May 2, 1877, p. 1, col. 1.

may know who to patronize in the future. We are getting a list of all the colored people who have been making their living off the [sic] white friends and who voted the radical ticket.”⁵⁶ The power that was wielded by groups such as the publishers of *The Constitutional*, who listed the names of Blacks who voted the Republican ticket, is representative of a Foucauldian sense of the power to “discipline and punish” those who did not act in a certain acceptable way. While the public display of punishment that existed during the period of slavery was no longer accepted, the type of economic punishment depicted above fit in with the new moral and political justification of the right to punish Blacks that would not accept their inferior position within society.⁵⁷ If politics was the main vehicle through which Blacks sought to achieve social equality (as was proven during the period of Radical Reconstruction) then actions such as the blacklisting of Black Republican voters described above was a unique way in which Black voters were disciplined and punished by the white majority in the South.

If the Black Republican voters of Atlanta represented the economic victims of the roll-back on Reconstruction, Eliza Pinkston was the symbol of Blacks victimized by violence during the election of 1876. Eliza’s case is important for understanding both the northern and southern state of mind regarding the political and social status of African-Americans. Pinkston testified in front of the Louisiana Returning Board on November 29th. In her testimony she detailed how her husband, Henry Pinkston, and baby were killed and how she was raped by their murderers. Pinkston claimed that the reason for the murder was purely political. She quoted one of her husband’s attackers, Captain Craig, as having claimed that “He [Henry Pinkston] votes no Radical ticket here. He may vote it in hell. He has voted thus

⁵⁶ *The Coshocton [Ohio] Age*, November 16, 1876, p.3, col. 2.

⁵⁷ Michel Foucault, “Selected Readings from Discipline and Punish and the History of Sexuality,” in *The Body*, ed. Donn Welton (Oxford: Blackwell Publishers, 1999), 255.

far and he may vote it no further.”⁵⁸ Her testimony depicts a cold-hearted murder and her claims were further supported by her display for the court of her physical injuries, the scars from her recent beating and raping. Yet the cross-examination wasted no time in trying to discredit Pinkston’s story: “I would like to ask this question of the witness: If she did not, on the morning after the occurrence, state...that a colored man had killed her husband.” The editors of the paper that had published Pinkston’s testimony clearly agreed with the cross-examiner since they introduced Pinkston’s testimony with the words: “The woman is totally unreliable.” As the *Elyria* [New York] *Constitution* put it after the election, “It appears now...that the story of Eliza Pinkston is to be taken with a barrel of Syracuse salt.”⁵⁹ Despite the doubts of these northern and southern skeptics, Pinkston defended her testimony emphatically, “Oh, no, sir, they were white men. They all came back and tried to kill me...” Her story, rather than an example of the blatant violation of Black voting rights, and more importantly human rights, was used as a symbol of the deception and unreliability of Blacks. Yet Pinkston’s testimony revealed more than just who had murdered her husband and child but also how she and her husband Henry lived in the context of the violent End of Reconstruction in Louisiana, and the relations she and her husband had with the white family on whose rented land they lived.

Eliza Pinkston had been born a slave in Canton, Mississippi but had been brought over to Alabama sometime before the Civil War. She had been purchased by a Colonel Morrison when she was still very young and had essentially been raised by Charles Tidwell, a white farmer who rented land from Morrison. Charles Tidwell’s son, Sonny, and Eliza had

⁵⁸ “Louisiana. [Special Telegram to the Galveston News.],” *The Galveston* [Texas] *Daily News*, November 30 1876, p. 2, col. 5-8.

⁵⁹ N.Y. World, “The North American Republican.” *Elyria* [New York] *Constitution*, 19 February 1877, p. 4, col. 4.

had intimate relationships throughout their younger years but Charles did not approve and had Sonny sent off to a boarding school. In 1870 the Tidwells and Eliza moved to Ouachita Parish, Louisiana, and by 1873 Sonny and Eliza's romance had blossomed once more. Yet Sonny refused to marry Eliza and she subsequently felt that she was scorned by other people of "her color" because of her status as essentially Sonny's mistress. In the same year she met Henry, a labourer from Ouachita Parish, and decided to get married, much to the opposition of Sonny. By late 1876 Eliza and Henry still rented land on the Tidwell's property and their status as an independent married couple still did not sit well with either Charles or Sonny Tidwell. Eliza claimed that in the days and weeks before the election Charles had pressured both Eliza and Henry to attend Democratic rallies in the area but Henry refused because he had regretted voting Democratic in the 1874 mid-terms and was now a staunch supporter of the Republicans. Charles tried to first bribe Henry with a day's pay, two dollars, but Henry refused. Enraged at the fact that a former slave could refuse his orders Charles shouted at Henry that he would no longer give any economic help to Henry or Eliza. Henry emphatically responded: "Mr. Tidwell...I works for all I gets. I pays you for every pound of meats, every spoonful of meats I gets..." This exchange, while revealing the political leanings of Henry because of Henry's refusal to attend the Democratic meeting, also showed that "Henry was aware that wage labor was not *simply* an extension of slavery—while legally a dependent, Henry could successfully thwart Tidwell's exercise of authority to the degree that he could exercise economic control over his own resources."⁶⁰ It is never quite revealed whether or not the murder could have been organized by anti-Republican militias and merely aided by the Tidwells. Certainly no one was charged with the murders or the rape. The case

⁶⁰ Mark Steedman, "Gender and the Politics of the Household in Reconstruction Louisiana, 1865-1878," in *Gender and Slave Emancipation in the Atlantic World*, ed. Pamela Scully & Diana Paton (Durham, N.C.: Duke University Press, 2005), 310-317.

of Eliza Pinkston affirms the staggering effect that violence, as well as northern acceptance of the violence, had on the Black community in the South during the mid-1870s.

Physical violence and economic coercion left an immediate and enormous scar on the Black community but the legacy of northern acquiescence to its own racist paradigms left a far stronger and harmful legacy for Black voting rights. What all of this makes clear is that the so-called “Compromise of 1877” was no real compromise at all but only one step along the process to the near total elimination of the Black voter from Southern politics. The gravest consequence of the failure of Reconstruction was that it provided a precedent for the north to follow, an attitude that may not have maintained segregation as it was in the South but one that nonetheless followed the same beliefs.

The editors of the Republican *Cedar Rapids* [Iowa] *Times* admitted that a “negro problem” existed in the North. For instance, “[Northerners] do not choose to enter into terms of social equality with colored people.” Nonetheless northerners “regard with no sense of ill feeling the presence of the colored children in school—it is their right to receive an education. We are not shocked at seeing colored people in church—they have souls; nor on the cars—they must travel; nor in the jury or on the witness stand—they can tell the truth; nor at the polls—they are interested in the public will; nor making and holding property—they must live.”⁶¹ This firm belief in racial equality, if not the social equality that the paper admitted still existed, is one that lends credence to the belief that there always remained a measure of support from northern whites for the African-American community. This support though was hardly munificent.

Just like the Iowan editors of the *Cedar Rapids Times* the Wisconsin editors of the *Janesville Gazette* supported African-American civil and political rights, but it was

⁶¹ “Race Problem in the South.” *Cedar Rapids* [Iowa] *Times*, October 12 1876, p. 2, col. 2-3.

consistently tinged in the Orientalist thought that dominated the Anglo-Saxon world at the time. This creation of ‘otherness’ is the subject of Edward Said’s seminal work, *Orientalism*. Although *Orientalism* was based on source material culled from largely British and French experiences in the Middle East in the nineteenth and early twentieth century, the same racism and stereotypes that Said explores had also enveloped American conceptions of Blacks.⁶² Whites that recognized the racial and social equality between the races were rare. To the editors of the *Janesville Gazette*, “the negro must hereafter receive better treatment; something more akin to justice than has yet been granted to him,” even though “his notions of liberty may be crude and absurd.”⁶³ This echoed the “social equality” that the *Cedar Rapids Times* editors claimed still eluded the most intelligent and successful Blacks. The view that Blacks of all classes were inherently more childlike, “crude” in the words of the *Janesville Gazette*, was maintained by Republicans nearly as much as Democrats. Behind the prejudice that northerners claimed restricted the South from undertaking true social reform, northerners also languished. There is no doubt that Blacks, both free and slave, suffered from years of discrimination, and this provided a significant obstacle to entering civil society. But the fact that Blacks now had a chance to compete on a level playing field was unacceptable in all areas of the nation, even Republican strongholds, because the engrained Anglo-Saxon Orientalist prejudice dominated whites’ rationale in providing voting rights. Southerners and northerners shared the same views over the social standing of whites and thus southerners struggled to understand how northerners could possibly justify providing these “crude” human beings with equal rights as if they were white. If northerners had begun from the outset to attack the racial stereotypes that had developed over years of slavery, and accepted

⁶² Edward Said, *Orientalism* (New York: Pantheon Books, 1978).

⁶³ “The Negro as a Factor in Our Problem.” *The Janesville [Wisconsin] Gazette*, December 21 1876, p. 1, col. 1.

the early Radical Republican rhetoric from figures such as Thaddeus Stevens, then perhaps Reconstruction would have had a chance. The appointment of John Mercer Langston as Minister to Haiti in 1877 was one example of how the Republicans could still claim to be promoting Black civil and political rights.

Langston was born free in 1829 in Louisa County, Virginia to Ralph Charles, a wealthy white planter and slaveholder, and Lucy Langston, an emancipated slave of Native American and African-American ancestry. Having been denied the right to earn his Master's in Law in Virginia, Langston moved to Ohio where he became the first Black lawyer in the state, passing the bar in 1854. He was radicalized at an early age, advocating armed resistance and conspiring with John Brown, but at the last moment he declined to participate in Brown's raid on Harper's Ferry in 1859. During the Civil War he organized Black volunteers for the Union cause and assembled the nation's first Black regiment, the Massachusetts 54th. After the war he campaigned heavily for the Republicans and in 1877 was rewarded with an appointment as minister to Haiti.⁶⁴ His efforts as an arduous campaigner for Hayes were recognized by other African-American elites, and soon after the election they appointed Langston as their spokesman to the President. These elites sought to ensure that the promises of the President during the election campaign, which included protection and patronage for African-Americans, were going to be carried out. Langston assured his anxious fellow African-Americans that Hayes had made it plainly clear that he was going to respect his promises. Langston pointed to "the appointment of M. W. Gibbs, of Arkansas to an important office in his State [and] that he was then engaged in preparing a circular in which he directs various office holders of the general government, among other

⁶⁴ William F. Cheek, "A Negro Runs for Congress: John Mercer Langston and the Virginia Campaign of 1888," *The Journal of Negro History*, Vol. 52, No. 1 (January, 1967), 14-34, 24.

things, to observe in dealing with persons of our complexion making an application for positions under them the Fourteenth and Fifteenth amendments in spirit as well as letter, and had directed every postmaster and postmistress whom he appointed in the South to see to it that the claims of colored applicants be duly respected...”⁶⁵ Most African-American elites were far more apprehensive than Langston after the election and the fact that they sought these assurances was surely proof of this. What these elites should have recognized is that Hayes had already stated that troops would be leaving the South in his acceptance speech for the presidency as well as in his comments during the mid-1870s. What Hayes had foreshadowed the day after the election when he had presumed that Tilden had won—that Blacks in the South were now going to be subjected to increasing oppression—was to hold true.

It seemed that the only way to combat the racism in the South and in the North was physical protection by the federal government. This was to be proved in the years to come, for Black voters but also candidates. Langston experienced enormous frustration in 1888 campaigning for a Congressional seat precisely because of the Republican refusal to protect Black political rights. The evidence of the benefits of federal protection for Black voters was clear. In the area around Ellenton, South Carolina, Thomas J. Lloyd, the Captain of the 18th Infantry, reported on how a massacre of Blacks was prevented by the federal government’s military presence. During his patrol of the area Lloyd found numerous incidents of wounded Blacks and one house where the family had still not buried two dead bodies because their white attackers had warned them not to. While Blacks had organized their own hundred-

⁶⁵ “The President and the Colored People,” [Portland] *Morning Oregonian*, June 9 1877, p. 1, col. 3.

strong militia, it was predictably described as inferior by Lloyd in contrast to the “well-drilled and organized” white militia, “Butler’s Cavalry”.⁶⁶

A former Confederate and Democrat, Mr. C. Irving Ditty, was one of President Grant’s commissioner sent to Louisiana after the election to publish a report on any voting discrepancies and he made clear that protection was necessary. Irving was a life long Democrat that had changed parties in 1875 as a result of corruption and fraud in the Maryland Democratic Party. Ditty thus represented an insider’s view of race relations in the South and he railed against the Democratic notion that the “White League” had courted Black votes and would “guarantee them [Black voters’] protection.” “The colored voters of Louisiana, and I might say of the South, have not been converted, but on the contrary, except in very rare instances, remain as firmly Republican as ever under the powerful influence of gratitude and fear, for the majority fully believe that the return to power of the Democrats means their re-enslavement.”⁶⁷ Ditty was echoed by northern publications such as the *Cedar Rapids [Iowa] Times* who still showed a belief in maintaining Black civil and political rights by the only way possible in the face of extreme prejudice, force. “The strong arm of the law may be used to restrain the hostility of the Southern hot-bloods...To expect this lifelong hostility to die out in a day is madness...A small army at each possible Hamburg [polling place] is the best campaign document we know of.”⁶⁸ Despite the clear call for the physical protection of the Black community the task of federal enforcement of Black voting rights was enormous and the federal government was no longer willing to use all the tools at its

⁶⁶ *Athens [Georgia] Messenger*, November 2 1876, p. 3, col. 2.

⁶⁷ “The Vote of Louisiana. Views of an Ex-Confederate and Ex-Democrat.” *The New York Times*, 16 January 1877, p. 1, col. 4.

⁶⁸ “Race Problem in the South.” *Cedar Rapids [Iowa] Times*, October 12 1876, p. 2, col. 2-3.

disposal. This was the case despite the fact that there was clearly evidence that protection for Black voters was needed.

On February 12, 1877 Attorney General Alphonso Taft presented a report to the Senate regarding the appointment and actions of special deputy marshals during the presidential election of 1876. Federal marshals from state after state claimed that the reason for the necessity of the marshals was the potential for fraud and violence. In the southern district of Alabama the report of the marshal stated that the causes for the employment of the deputies were “the almost total disregard of the rights of republican voters by the class in possession of the ballot-boxes.” The report continued, “Bribery and cajolery is first attempted to control the vote of the colored people. This failing, violence and intimidation is practiced.” In the eastern district of Arkansas “the marshal ascribes the necessity of the presence of deputies at certain voting-places to the condition of society resulting from the intolerance of political opinion on the part of the former slaveholding class toward the colored people.” In Savannah, Georgia the marshals were used because “without the protection of the United States laws and the officers appointed under them, the colored voters complain, and I believe justly, that they are unable to cast their ballots freely and fully for the parties they desire to vote.”⁶⁹

South of Georgia in Florida the situation was not much different. Here it was claimed that a “large number of deputies was deemed necessary...on account of the disturbed condition arising out of the excitement of a political contest in which the prominent men of one party was endeavoring to stir up the worst passions of the masses of the people and were openly avowing their intention to carry the State for their candidate at all hazards and by any

⁶⁹ “Report of Attorney-General on deputy marshals employed at the election of November 7, 1876,” *Congressional Serial Set*, Senate Executive Document 6, (44th Session, 22nd Congress), volume 1718, 11.

means.” While the report on Florida justified its use of deputy marshals it did so in a very cloaked manner, referring to “the prominent men of one party” without directly referring to them as Democrats. This ambiguity was part and parcel of the reason that white Democrats believed they could get away with whatever they desired. The report continued discussing its efforts in Florida by claiming that “the most satisfactory results” were achieved in nearly every district, except for Jackson County. There the supervisor lamented that his attempt at securing a fair election was entirely a failure. The reason for the failure of his efforts in Jackson County fit into the very same discourse of racial inferiority that white Democrats preached throughout the South. “I sent...one of my deputies to take charge of matters in that county, but he failed to secure efficient assistance from the other deputies there, who were all colored men...”⁷⁰

The situation in northern Mississippi was especially distressing since the marshals recognized that there would be trouble because of the violence and fraud perpetrated during state elections in 1875. “[A] class of citizens heretofore held as slaves, but who are now guaranteed the right of suffrage, at an election held in this State in November, 1875, to a very great extent, were denied the right to vote for the candidate of their choice...[those denied the vote] were whipped, scourged, and murdered to such an extent that parallels can be found nowhere except in savage nations.” The situation was mirrored in Maryland during their 1875 state elections. “The outrages and frauds committed at the polls in Baltimore City at the election for governor and other State officers in November, 1875, when voters were shot at and driven from the polls, produced such a state of terror that very many people, both white and colored declared that they would be afraid to go to the polls on the 7th of November,

⁷⁰ “Report of Attorney-General on deputy marshals employed at the election of November 7, 1876,” 12.

1876...” Regardless of the fact that the marshal in Mississippi was expecting Democratic intransigence, he was afforded no material help for the federal government and thus:

[T]he leading men of that party [the Democrats], advised resistance to the enforcement of the law, and directed the arrest and imprisonment of such officers as attempted to execute their sworn duties. I am justified in saying that to have carried out the laws at any voting-precinct in my district would have cost the life of the officer executing it...I have, therefore, to report I was powerless to check the lawlessness which swept of this State at and prior to the 7th day of November, 1876 –a lawlessness so organized and controlled and guided by madness that it paralyzed justice, and made human rights a mockery.⁷¹

Maryland, expecting a storm of obstinacy, was provided with an ample number of deputies, 1,222, while in Mississippi only 239 deputies served despite the fact there populations were nearly the same. (Find exact demographic figures) It was thus not surprising that in the case of Maryland there were no reports of any incidents at all. Clearly, if the federal government provided enough man-power it could protect voters from harassment and potential disenfranchisement.

These cases of resistance to federal authority in the South such as that in Mississippi and Maryland could have certainly been expected. The need for special deputy marshals issued by the federal government in a northern state such as Delaware comes as far more of a surprise. The “Report on Deputy Marshals” issued by Attorney-General Taft made special mention of the case of Delaware and stated that 135 special deputies had been appointed because Democratic leaders openly stated that the “Enforcement Acts” issued by the federal government were null and void. The mayor of Wilmington, Delaware even organized a special police force of 117 for the specific purpose of obstructing the work of special deputy marshals appointed by the federal government. During the canvassing of votes a deputy marshal arrested a man who he claimed “voted illegally” (curiously the report makes no

⁷¹ “Report of Attorney-General on deputy marshals employed at the election of November 7, 1876,” 10.

mention of what the voter had done to constitute an action of illegal voting) and immediately the special police force and a crowd of supporters rescued the man. Upon hearing of this the supervisor of the deputy marshals ordered twenty more marshals on the scene to re-arrest the newly freed “illegal voter”. The mayor then proceeded to arrest a number of the deputy marshals involved and one was even badly beaten. In the face of this intransigence to federal power, the supervisor of the deputy marshals did little to enforce order. In the end, “there was in several of the wards a constant conflict of authority, the police arresting and interfering with the deputy marshals and rescuing prisoners wherever and whenever they could muster sufficient force.”⁷² The fact that the deputy marshals were unable to maintain order in a northern state perhaps explains why they had little success in southern states where the sentiment amongst Democratic leaders and voters was far more hostile.

The period around the election of 1876 embodied far more than just a rollback on Reconstruction but a racial, class and gender war against African Americans. The race war was embodied in the Social Darwinist racism and the savagery associated with African-Americans. This was propagated from the highest levels of both the Republicans and the Democrats. The attack on African-Americans’ livelihoods because of political views such as the actions of the Democratic citizens of Augusta, Georgia represented a clear effort in economical marginalization. The case of Eliza Pinkston embodied more than just stereotypes of Black women as promiscuous and unfaithful but also the savagery of Black men that would later be institutionalized in racist films such as D. W. Griffith’s *Birth of a Nation*. An attack was made on the very “manliness” of Black males which reflected the depictions of Blacks as child-like and “crude”. This de-masculinization of Black males was to be further

⁷² “Report of Attorney-General on deputy marshals employed at the election of November 7, 1876,” 11.

institutionalized throughout the Gilded Age and the Progressive Era.⁷³ These attacks on the Black community represented the complete effort that was made to terrorize Blacks into becoming the obedient and docile race that white supremacists believed Blacks to be.

While the cases of violence and intimidation are nearly endless there also existed at times a measure of normalcy. In February 1877, just as the controversies surrounding the election began to be resolved, the *Galveston* [Texas] *Daily News* reported that “in Abbeville, South Carolina, one hundred and fifty colored men promptly came forward and paid their taxes to the Hampton government.”⁷⁴ Who were these 150 Black men “coming forward” and paying their taxes, like members of a civilized society? On page one, but at the bottom of column five, with no title, poking out, just to be seen. Did they own property? What occupations did they have? How significant is it that there was no mention of colored women paying their taxes? Examples such as the tax-paying Black men find little room in the tragic history of the failure of Reconstruction but they are important to remind historians that while there was much chaos and fear that swept the Black community in the late nineteenth century there were also clearly for some the ability to live like any other member of society, earning their dues and paying their taxes.

It could be stated that the normalcy in Abbeville, South Carolina was an exception as Blacks fought against the stereotypes of their day and sought to identify themselves as individuals who deserved to be treated the same as any other member of society. The path to true freedom encompassing both racial and social equality was to be a long one winding through the accommodation of Booker T. Washington to the intransigence of W.E.B. Dubois

⁷³ Gail Bederman, *Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1880-1917* (Chicago: University of Chicago Press, 1995), 3-10.

⁷⁴ *The Galveston* [Texas] *Daily News*, February 25, 1877, p. 1, col. 5.

and the National Association for the Advancement of Colored People (NAACP).⁷⁵ The NAACP would prove to be an exceptionally important group in the struggle for Black political and civil rights. In the first half of the twentieth century many of its lawyers, white and Black, would lead the way in dismantling the legal framework of racism until finally in 1954 *Brown v. Board of Education* recognized that separate schools for Blacks and whites were not equal.⁷⁶ The decision coincided with a movement of non-violent resistance led by Martin Luther King Jr. as well as militant resistance represented by the Black Panther Party and figures such as Malcolm X.⁷⁷ Reconstruction after the Civil War had failed but the Civil Rights Movement of the 1950s and 1960s, had succeeded, at least for a time, in enforcing the federal laws that Republican governments had failed to enforce in the 1870s.

For the rest of the 1950s and throughout the 1960s and 1970s liberal Supreme Courts maintained that Black voters required the protection of federal government. By the 1980s and 1990s this mandate had eroded and increasingly conservative Supreme Courts began to undermine previous Supreme Courts' decisions that fought against discrimination. The various conservative detractors of federal protection claimed that racism was dead, a relic of the past, and that the only purpose that federal protection served was further discrimination, now against the majority. In the presidential election of 2000 the Supreme Court's decision in *Bush v. Gore* confirmed that the trend towards a reduction in federal protection of minorities was not losing ground but was rather increasing speed. While the election of 1876 served as the symbolic end of Reconstruction, the election of 2000 and *Bush v. Gore* would

⁷⁵ Wilson Jeremiah Moses, *Creative Conflict in African-American Thought: Frederick Douglass, Alexander Crummell, Booker T. Washington, W.E.B DuBois, and Marcus Garvey* (Cambridge: Cambridge University Press, 2004), 141-230.

⁷⁶ Michelle Moody Adams, "The Legacy of Plessy vs. Ferguson," in *A Companion to African-American Philosophy*, ed. Tommy L. Lott and John P. Pittman (Oxford: Blackwell Publishing, 2003), 306-312.

⁷⁷ Peter J. Paris, *Black Leaders in Conflict: Martin Luther King Jr., Malcolm X, Joseph H. Jackson, Adam Clayton Powell Jr.* (New York: Pilgrim Press, 1978), 83-90, 158-168; Mumia Abu-Jamal, *We Want Freedom: A Life in the Black Panther Party* (Cambridge: South End Press, 2004), 1-50.

symbolize a retreat in the gains made by the Civil Rights Movement as the right of Blacks to vote and register came under a renewed, and historically familiar, attack. Rather than show that that federal protection was no longer necessary, the discrimination against Blacks that was perpetrated during the election should have pushed the federal government to increase its mandate to fight discrimination. Just as in the case of the election of 1876, in the face of increasing discrimination, the federal government shrunk away rather than rose to the task.

Chapter 2:

The 2000 Election and the Modern Controversies over Voting Rights

By the dawn of the twenty-first century most political commentators and the general public would have presumed that the disenfranchisement of Black voters was a subject that was confined to the dustbins of history, but the Republican Party, backed by a conservative Supreme Court, would show that the reality was quite different. The politics of race and the right to vote were still strongly intertwined during the 2000 election as voting irregularities, predominantly amongst Blacks, were reported across the state of Florida. This attack on the right to vote reflected the modern controversies over voting rights that emerged during the Civil Rights Movement. After the Civil Rights Movement made its most important gains, a sustained opposition continued on Black voting rights. This challenge to Black voting rights from the early 1980s to late 1990s is important to understand in light of the evidence of discrimination during the 2000 election, especially in Florida. The abandonment of Black voters by Democrats after the Supreme Court's ruling in *Bush v. Gore* represented a continuation of a pattern of corruption that was heavily influenced by the politics of race.

Until early November the 2000 election seemed as if it were turning into an uncontroversial affair. No divisive issue split the two parties, and the election featured two uninspiring candidates for the presidency, Texas Governor George W. Bush and Vice-President Al Gore. These two candidates fit the script that had been written for the 2000

election; both ran similar campaigns of moderate speeches, kissing of babies and pledges to keep America strong. As Lewis Lapham lamented in *Harpers' Weekly* before the election,

What was wanted [by American political elites] was a POTUS [President of the United States] conveniently impotent, and the requirement favored the qualities of Governor George W. Bush and Vice President Al Gore—two ornamental sons of the American plutocracy bearing well-known national brand names and with as little difference between them as Pepsi and Coke, both capable of cameo appearances on Oprah and well enough schooled in the art of foraging for money to know where to stand and when to crawl.⁷⁸

Then Election Day came and the state of Florida threw the election into turmoil. Rumours regarding the disenfranchisement of African-American voters began to circulate, and it seemed that white American political elites were still struggling to deal with the ramifications of an ugly racial history.

Although the election was marked by a month long process of important state and Supreme Court decisions with media coverage both nationally and internationally, the most significant event of the 2000 election occurred months before the election. The Florida Department of State under the leadership of Republican Secretary of State Katherine Harris had deleted thousands of Democratic voters, more than 50% African American, from Florida voting rolls. Harris had awarded a \$4.3 million contract to the firm Choicepoint, and specifically to its subsidiary Database Technologies Inc. (DBT), for the task of finding improperly registered voters. Journalist Greg Palast obtained the secret contract and confronted Harris' Director of Elections in Florida, Clayton Roberts, in a *BBC Newsnight* program. Palast alleged that DBT, rather than using its own extensive database to check credit cards, bank information, addresses and phone numbers, relied upon the internet to do

⁷⁸ Lewis Lapham, "The Dimpled Chad," *Harpers Weekly*, January 2001, 8.

their checks. Roberts immediately cancelled the interview. DBT had matched names for race and gender, but to be flagged names only had to be similar to a certain degree. An Illinois felon named John Michaels could knock off Florida voter John, Johnny, Jonathan or Jon R. Michaels or even J.R. Michaelson. The fact that they were careful with matches for race meant a black felon named Mr. Green would only knock off a black Mr. Green not a white one. The *St. Petersburg Times* later pointed out that DBT's list included as felons 8,000 former Texas residents who had been convicted of misdemeanors and were still eligible to vote.⁷⁹ At a Congressional hearing headed by Atlanta Democrat Cynthia McKinney, Choicepoint Vice-President James Lee admitted to purging the rolls for specifically Black voters but said that DBT had only been following the Florida State Department's orders.⁸⁰ The effects of Harris' use of the DBT reports, the disenfranchisement of Blacks, bared a startling similarity to the actions undertaken by southern Democrats in the South from before the election of 1876 and well into the middle of the twentieth century.

Many voting irregularities stemmed from Harris' corrupted voting lists but other unrelated voting abnormalities also take place. Disproportionate numbers of ballots in Black communities were considered invalid because they contained either an under-vote or an over-vote. In Hillsborough County an election official gave a list of 1,500 voters that cited irregularities since it contained registered voters who had filed absentee voter applications that were rejected by voting officials. Black students also suffered from discrimination at both Bethune-Cookman College and Florida A&M University. The students from Florida A&M were prevented from voting because their voting machines did not operate on Election Day while the students from Bethune-Cookman College were rejected from every polling

⁷⁹ Adam C. Smith, "No telling if voter rolls are ready for 2004," *St. Petersburg Times*, 21 December 2003, 1A.

⁸⁰ Greg Palast, *The Best Democracy Money Can Buy* (London: Plume Books, 2003), 47-59.

station they entered. Police has also stopped people on their way to the polls in Daytona Beach as well as the district of Woodville outside of Tallahassee.⁸¹ These irregularities, while they were not as blatant as the actions taken by white supremacists in the past, were nonetheless significant. While the violence of the Reconstruction-era did not repeat itself in the late twentieth century, the attack on the right to vote did not occur in a vacuum but was preceded by a history of disenfranchisement and corruption.

From World War II to the early 1970s the Civil Rights Movement made important gains that helped Blacks gain the right to vote. *Brown v. Board of Education* (1954) established the Supreme Court's opposition to segregation. The Voting Rights Act (VRA) of 1965 was crafted by the Johnson administration in contrast to the civil rights bills created by Radical Republicans in Congress during Reconstruction. Nonetheless, it still received enormous support from Congress.⁸² Section 2 of the Act was extremely similar to the Fifteenth Amendment, prohibiting any "voting qualification or prerequisite to voting, or standard, practice or procedure" that denied the right to vote on the basis of race or color. Section 4 eliminated any "test device" for voting in jurisdictions that had extremely low political participation, all in the Deep South. Section 5 of the Act was one of the most significantly different aspects from previous Civil Rights bills as well as the Fifteenth Amendment. It required that any governmental bodies subject to Section 4 would have to present any changes in voting mechanisms to the U.S. Department of Justice. If any jurisdictions wanted to bring action against a state or local body it could do so in the federal court in the District of Columbia rather than the more racist southern federal courts. Perhaps

⁸¹ Ronald W. Walters, *Freedom is not Enough: Black Voters, Black Candidates, and American Presidential Politics* (Toronto: Rowman & Littlefield Publishers, Inc., 2005), 98-99.

⁸² Richard M. Valelly, *The Voting Rights Act: Securing the Ballot*, ed. Richard M. Valelly (Washington D.C.: CQ Press, 2006), 258-267.

because of the executive and legislative consensus, as well as judicial backing from the Warren Court, the impact of the VRA was immediate. In Mississippi Black voter registration soared from 7 to 60 percent.⁸³

Nonetheless white southerners concocted ingenious ways to still restrict Black voters by using the racial gerrymandering of counties as well as a change to at large elections. In *Allen v. Board of Education* (1969) Chief Supreme Court Justice Earl Warren held that even actions which did not directly relate to registration and casting a ballot could still constitute racial discrimination. The argument that the change to at large elections represented a case of vote dilution certainly had a very valid point but Supreme Court Justice Harlan's dissent merits attention. "[I]t is not clear to me how a court would go about deciding whether an at-large system is preferred over a district system. Under one system, Negroes have *some* influence in the election of *all* officers; under the other, minority groups have *more* influence in the selection of fewer officers."⁸⁴ Although Justice Harlan made a valid point regarding the various degrees of influence that would confront Black voters in either system, clearly the majority of the Court believed that having the best chance for as many Black officeholders as possible was the most desired outcome. The Court majority that ruled in favour of the Black plaintiffs in *Allen* applied the same rationale to the 1973 case of *White v. Regester*. The case would further affirm the precedents of Supreme Court throughout the 1950s and 1960s as the Court held that at-large elections violated the equal protection clause of the Fourteenth

⁸³ Frank Parker, *Black Votes Count: Political Empowerment in Mississippi after 1965* (Chapel Hill: University of North Carolina Press, 1990), 15-77.

⁸⁴ Richard L. Hasen, *The Supreme Court and Election Law: Judging Equality from Baker v. Carr to Bush v. Gore* (New York: New York University Press, 2003), 32.

Amendment because in these elections voters may not have had the equal opportunity to elect a candidate of their choice rather than just the only candidates available.⁸⁵

After the failure of at-large elections and the racial gerrymandering of congressional districts in favour of whites, the difficulty of implementing Black civil rights—for example, the integration of schools—was still evident. In Charlotte, North Carolina the 1970s witnessed controversy after controversy over busing lower-income Black students into schools with middle to higher income white students and vice-versa. Those who refused to send their children across town very much associated themselves with the new “Silent Majority” of which Nixon boasted in his 1968 and 1972 presidential campaigns. The term “Silent Majority” was a clear reaction to the radicalism of the 1960s and it sought to unify the conservative opposition to the alleged politics of the street that had gripped American society. Even by the early 1970s activists had recognized that metropolitan areas such as Charlotte were splintering along an urbanized Black and suburbanized white divide. Although segregation in public and private spheres of life had been thoroughly attacked, neighbourhoods remained largely racially segregated and thus the busing was presented as the most viable way to truly integrate American society. Against the opposition of groups of conservative parents, by the mid 1970s cross-town busing was implemented in Charlotte but the product of these monumental integrating efforts did little to change the demographic landscape. By 2000 over 90% of lower class Black citizens in Charlotte still lived in the more urban north-western sections of the city while the south and south-eastern suburbs remained entirely white and middle to upper class. As the cities erupted in flames, white middle class citizens literally packed up their belongings and fled to the suburbs. While “white flight” was an innovative way of to escape the de-segregation that was occurring in America, the busing

⁸⁵ Kousser, *Colorblind Injustice*, 54.

measures enacted to ensure that schools would be racially diverse sought to counteract its effects.⁸⁶

Although it was the violent resistance of southern whites that received the most attention in the battle for maintaining segregation, it was the actions of moderates such as the white citizens of Atlanta who fled the city to escape the encroaching rise of Black homeownership that embodied the first symbols of the rise of modern conservatism. In contrast to the futility of Old Southern conservatives' violent actions, the emigration of whites out of Atlanta represented a more successful resistance to desegregation. The "white flight" out of Atlanta could thus be seen as a more discrete but nonetheless continuous thread in the actions of segregationists. While "white flight" represented a clear continuity in conservatism, it also reflected the flexibility of segregationists who recognized that their traditional methods of relying on law and politics to achieve their ends was no longer possible.⁸⁷ If Blacks could move into their neighbourhoods and share their schools and buses, then white southerners made it clear that they would simply pack up and move.

In addition to the opposition of busing and the prevalence of white flight, a series of Court decisions from the 1980s to the 1990s challenged the increasing level of Black political participation. The case of *City of Mobile v. Bolden* was one example of the continuing struggle to achieve more than the right to vote, the right to Black representation. In 1975 African-American plaintiffs had sued the city of Mobile, Alabama for electing their three city commissioners in voting that was tabulated at large. Mobile was nearly a third Black but since 1911, when the system was first set up, there had never been a Black city commissioner

⁸⁶ Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton: Princeton University Press, 2006), 202-206, 216.

⁸⁷ Kevin Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton: Princeton University Press, 2005), 6-11.

elected. The purpose of the at large system was to eliminate the possibility of a Black city commissioner being elected and the system had served its purpose for years after 1911. As a result, concerned citizens of Mobile sought to create Black-majority districts in the city so that the weight of the Black vote in Mobile could actually impact the election of a city commissioner. Originally the federal district court ruled in favour of the plaintiffs but a plurality opinion in the Supreme Court held a different reading of the case. The Court argued that the Fifteenth Amendment applied only to registration and voting and that essentially discrimination created by at large voting was not covered by the Fifteenth Amendment nor the Voting Rights Act. The Court held that there was no clear intent to discriminate despite the fact that the effect was discrimination.⁸⁸ The fact that the at large electoral system had been established in 1911, in the middle of the Jim Crow Era, and that its effect was the same as any poll tax or literacy test, should have presumably been enough to prove to the Court that discrimination was actually intended, even if it was not explicitly stated

In reaction to the *Mobile* case voting rights activists and lawyers sought to assess the damage done to the VRA and specifically the extension of Sections 2 and 5 of the Act. Congress extended the Act and Sections 2 and 5 for twenty-five years, the longest in the history of the Act, against the objections of many, including President Ronald Reagan.⁸⁹ Indeed it was Ronald Reagan's presidency that was the most important in cementing Republicans in the South. Reagan completely realigned southern conservatism and espoused the doctrine of "states' rights" that was for so long the hallmark of the Democratic Party in the South. In the election of 1980 Reagan even got support from the South over a southerner,

⁸⁸ Valelly, 216.

⁸⁹ Howard Zinn, *A People's History of the United States* (New York: Perennial Classics, 2004), 610.

President Jimmy Carter.⁹⁰ A clear example of the “states’ rights” doctrine that he espoused was his objection to the renewal of the VRA. The conservative decision in *City of Mobile v. Bolden* that mirrored the election of the far-right Reagan in 1980 did not disappear in the face of the new amendments. The conservatism of Reagan’s presidency would be felt in Congress and in the Supreme Court. The notorious and racially-charged “Wille Horton” political ads that aired during the presidential campaign of Reagan’s successor, George H. W. Bush, served to further politicize racial issues.

During the 1990 North Carolina Congressional elections, a senatorial contest between former conservative Democrat turned Republican Jesse Helms, and African-American Democrat and self-proclaimed liberal Harvey Gantt, would further highlight the use of race-based politics. Throughout his political career Jesse Helms consistently maintained the most conservative views on racial, economic, and social issues ranging from welfare to civil rights legislation to the right to abortions. In 1971 Helms changed to the Republican Party and won his first Senate seat in 1972. Helms had denounced the civil rights legislation of the 1960s and voted against the Voting Rights Act every year that it passed through Congress for renewal, even during 1982. His campaigns combined the fiery preaching of southern nineteenth century politics with the most emotionally charged and divisive television and radio ads. Having kept his Senate seat for three terms, in 1990 he received his most serious challenge from former Charlotte mayor Harvey Gantt. Gantt openly proclaimed that he was a liberal and that he was proud of it and campaigned energetically to show that North Carolina was ready for a new leadership.⁹¹

⁹⁰ Earl Black and Merle Black, *The Rise of Southern Republicans* (Cambridge: Belknap Press of Harvard University Press, 2002), 207-232.

⁹¹ Black and Black, 105-110.

Helms characteristically kept to his traditional conservative campaign policies going from event to event reminiscing over his previous victories to white working class supporters. Throughout the campaign Helms attacked Gantt's support of liberal social groups but it was not until the end of a very tight campaign race that Helms turned to the racial politics that had dominated the South for so long. *Washington Post* correspondent Thomas B. Edsall described the final days of the Helms' campaign as having "bluntly and directly injected the subject of race into the bitter Senate contest." Using a television ad the Helms campaign played on the racial fears of a rapidly de-industrializing populace. "The Helms job quotas commercial shows a white man's hands crumpling what is clearly a job rejection letter. 'You needed that and you were the best qualified,' the announcer says. 'But they had to give it to a minority because of a racial quota. Is that really fair? Harvey Gantt says it is. Gantt supports Ted Kennedy's racial quota law that makes the color of your skin more important than your qualifications.'"⁹² The television ad served a clear purpose—it was meant to elicit a powerful reaction, and it did so providing the trailing Helms with a victory over Gantt. In no way did it serve to explore the background as to why affirmative action was needed. The historical circumstances of slavery and the failure of emancipation that followed as well as the contemporary socio-economic conditions that exist amongst minorities such as Blacks clearly provides a convincing rationale for the need for affirmative action but Helms had no reason to provide this rationale and nor perhaps did he believe that affirmative action would be beneficial for his constituency. His campaign highlighted the continued use of racial politics and while Helms could no longer resort to the same violence and intimidation that marked his late nineteenth and twentieth century Democratic predecessors, much like the

⁹² Thomas B. Edsall, "Helms Makes Race an Issue; Carolina GOP Also Pushes 'Ballot Security,'" *Washington Post*, November 1, 1990, A1.

use of white flight and vote dilution, his campaign served to underscore the gains made by African-Americans politically.

The 1982 amendments to the Voting Rights Act specified that racially discriminatory effect in addition to racial discriminatory intent would be used as proof to determine whether discrimination occurred. The recommendation of the authors of the 1982 amendment was for an increase in the participation of Black political organizations in serving as deputy registrars, to reduce voter intimidation. The positive atmosphere of the early 1980s was to change ten years later as the Supreme Court interpreted the 1982 amendments to the Voting Rights Act much differently and the promotion of Black participation in the political system suffered.

The 1992 re-districting undertaken by Congress has been recognized as the most advantageous to minorities. Fourteen new majority-Black districts were re-drawn in the old Confederate states during the re-districting. The reaction from whites did not manifest itself in the “white flight” that occurred in the 1950s-1970s, but in the courts. In the first case involving the allegedly incorrect re-districting of 1992, *Shaw v. Reno* (1993), Supreme Court Justice Sandra Day O’Connor opposed the use of racial gerrymandering to create majority-Black districts. She claimed that “by perpetuating stereotypical notions about members of the same racial group—that they think alike, share the same political interests, and prefer the same candidates—a racial gerrymander may exacerbate the very pattern of racial bloc voting that majority-minority districting is sometimes said to counteract.” While O’Connor’s rationale is certainly reasonable in theory—members of the same ethnic group do not all think or vote alike—in practice her comments are in contradiction to the facts. From 1972 until 2000 the Black vote was between eighty and ninety percent Democratic during

presidential elections. Furthermore, the Congressional Black Caucus (CBC) as a group have one of the highest ratings for unity votes, voting on average eighty-four percent of the time together.⁹³ The evidence thus contradicts O'Connor's main reasoning in *Shaw v. Reno*. A more detailed analysis of the history of the gerrymandering of districts is necessary to understand the importance and effect that gerrymandering can have on improving the power of the often suppressed minority vote.

Long before racial gerrymandering was used to improve political representation, it was used by Democrats in the Solid South to not only discriminate against all Blacks but also against poorer whites. This gerrymandering was but another proof that minorities needed and still do need active protection from the government. The success of racial gerrymandering after the first initial achievements of the Civil Rights Movement served to prove that while ideas and individual behaviour can have some effect on US politics, ultimately institutions and institutional rules are far more important and their effects far more widespread. According to historian Morgan Kousser Reconstruction failed because it was far too democratic while the Civil Rights Movement succeeded for as long as it did because it has not been nearly as democratic. Rather than liberalizing racial attitudes, Kousser claims that congressional partisanship and judicial help are the main reasons for the initial success of the Civil Rights Movement. The product of that congressional partisanship and judicial help has been the racial gerrymandering of districts, which has in turn led to an improvement in Black voting. The power of redistricting in creating political equality was a major reason for the initial success of Reconstruction. In both South Carolina and Mississippi redistricting led to a drastic improvement in Black voting rights and this extended to representation in Congress.⁹⁴

⁹³ Walters, 81-84.

⁹⁴ Kousser, *Colorblind Injustice*, 27-31.

During Reconstruction the Radical faction of the Republican Party held power for a very brief time and there was next to no help from the judicial branch. The racial gerrymandering of districts in favour of Black voters did not last long after the Radicals lost power. Former Confederates were allowed back into Congress far too quickly for there to be any chance for lasting Reconstruction. Indeed congressional partisanship on the basis of the elimination rather than the promotion of Black voting rights after Reconstruction was a large reason for the maintenance of Jim Crow throughout the late nineteenth century and the first half of the twentieth century. Thus historically progressive racial gerrymandering has proven to be effective in improving representation for Blacks. Justice O'Connor though made few of these observations. *Shaw v. Reno* has subsequently stood as the main precedent in cases of racial gerrymandering in the Supreme Court.

Eleven Congressmen and women served in the House of Representatives in Georgia but before the 1992 re-districting only one of the representatives was chosen from a majority-Black district. African-Americans made up 27% of the population of Georgia and thus their voting strength was strongly diluted. The ACLU, the NAACP and other Black interest groups in Georgia sought to create two new majority-Black districts in addition to the one already existing to increase the Black voting potential. Any re-districting had to be pre-cleared with the Attorney-General according to Section 5 of the VRA, and the new ACLU and NAACP-backed plan for a total of three majority-Black districts received the support it needed. Not surprisingly, after *Shaw v. Reno*, white citizens of Georgia challenged the new majority-Black districts that had been created during the 1992 re-districting. The defenders of the 1992 re-districting claimed that the creation of two new majority-Black districts was merely following the provisions contained in the VRA. In the tradition of *Shaw* the Supreme

Court disagreed and held in *Miller v. Johnson* (1995) that new majority-Black districts were unconstitutional because they had re-drawn the districts solely on the basis of race. The Court criticized the land bridges that were used to connect Black districts but it made little mention of the irregularly shaped districts of the past used by whites to maintain majority-white districts. The Court also made absolutely no comment on the history of race relations in Georgia and the reason why majority-Black districts were needed.⁹⁵ Justice Ginsburg's dissent addressed the issue of racial history and the need to increase the Black voting potential, but her opinion was outweighed by the majority of five led by Justice O'Connor. The decisions in *Shaw* and *Miller* mirrored the Supreme Court decisions in the late nineteenth century that slowly watered down Civil Rights legislation such as the Civil Rights Act of 1875 as well as the power of the Fourteenth and Fifteenth amendments.

While the Civil Rights Movement had drastically changed the civil and political lives of Blacks for the better, it seemed that the same white conservatives still controlled the South. As Earl and Merle Black commented in *The Rise of Southern Republicans*, "Nowhere else in the United States are political conflicts regularly patterned by the simultaneous presence of a large racial minority and a large conservative religious minority."⁹⁶ By 1994 Republicans had neutralized southern Democratic dominance but according to scholars such as Black and Black race still trumped class. There was now nearly unanimous support from the Black community for Democrats and the new Republicans of the South, dominated by the religious right, were unanimously supported by white conservatives. It was into this context that the controversial election of 2000 erupted and put the politics of race and the right to vote at the forefront of American presidential politics.

⁹⁵ Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia* (Cambridge: Cambridge University Press, 2003), 217-221.

⁹⁶ Black and Black, 242.

Election night 2000 featured some of the most unreliable reporting from the major television networks (NBC, ABC, CBS, CNN and FOX) in American presidential history. With 271 votes required to win, Gore's lead in the Electoral College without the state of Florida was 267 votes to Bush's 246. Thus whichever man won Florida's twenty-five electoral votes would win the election. NBC was the first network to project Gore the winner in Florida at 7:48 pm, followed by CNN and CBS two minutes later at 7:50 pm. The first network to call the state of Florida and subsequently the election for Bush was FOX News. The entire election hinged on the swing state of Florida, and the man in charge at FOX, specifically Bush's first cousin John Ellis, knew this quite well.⁹⁷ In response to FOX's bold call that Bush had won the election, the other major networks followed suit, only to later rescind their claim. In a brief moment of clarity Judy Woodruff of CNN proclaimed "we don't entirely trust all the data we have," while Dan Rather of CBS apologetically declared "if you're disgusted with us, frankly, I don't blame you."⁹⁸

Initially, after FOX and other networks' late night call that Bush had won the election, Gore conceded the election to Bush, but he too rescinded his statement. Voting irregularities were being reported out of Florida, and it became clear that a recount would likely be needed. The first and most striking incidence of voting abnormality was the case of many usually Democratic Jewish voters in Palm Beach County, who had accidentally voted for ultra right-wing candidate Pat Buchanan, one of the most anti-Semitic figures in American politics. This was due to the fact that Palm Beach County used the confusing "butterfly" ballot which listed candidates side by side with arrows pointing to each

⁹⁷ Bill Carter, "Counting the Vote: The Fox Executive; Calling the Presidential Race, and Cousin George W.," *The New York Times*, 14 November 2000, Section A, p. 21.

⁹⁸ Douglas Kellner, *Grand Theft 2000: Media Spectacle and Stolen Election* (Lanham, Maryland: Rowman and Littlefield Publishers, 2001), 21.

candidate's name.

Stories

also began to circulate both in the mainstream media and in alternative sources on the internet that African-Americans had been harassed at voting sites in Florida and were prevented from voting. Civil Rights activist the Reverend Jesse L. Jackson immediately headed to Florida. Just two days after the election he addressed a rally: "We find, around the state, various irregularities that undercut the credibility of a great election, a great campaign by two worthy opponents. In democracy, everybody counts, every vote must count. And to this point, we do not know who won the election, because all the votes have not been counted."⁹⁹ In *Newsweek* Democratic Congressman John Lewis of Georgia reminded those gripped by the tight presidential race that "many have missed an important point: the story of the 2000 election is about more than George W. Bush or Al Gore. It's about the right to vote."¹⁰⁰ Soon thereafter the NAACP sent a group of lawyers to the Florida State Department and undertook a lawsuit suing Florida for violating voters' civil rights. On November 11 the NAACP held public hearings where voters testified regarding voting irregularities.

Many thought a recount would favor the Democrats. Conservative commentator William F. Buckley Jr. conceded that Gore might be the winner. "It's true, we have the good old Electoral College system. But even under its auspices, there is a pretty good likelihood that Gore is the winner. Look at it this way: We are talking about a margin of only a few hundred voters in a state in which 6 million voted. It isn't a point we want to discuss publicly, but the ambiguous votes are preponderantly Democratic."¹⁰¹ For this reason Gore's lawyer, David Boies, and his campaign chairman, William Daley, pushed heavily in favour of a

⁹⁹ Jesse L. Jackson, *Jesse L. Jackson on the Recount*, 9 November 2000, <<http://www.presidency.ucsb.edu/showflorida2000.php?fileid=jackson11-09>> (6 April 2007), Politics.

¹⁰⁰ John Lewis, "We Marched to Be Counted," *Newsweek*, 11 December 2000, 38.

¹⁰¹ William F. Buckley Jr., "Commentary," *National Review*, 18 December 2000, Vol. 52, Iss. 24, 59.

recount of all of Florida's votes and took their case to the Florida Supreme Court. While parties chose their own slate of electors for which voters then voted for, partisan state legislatures still had to certify and appoint these electors. Florida Secretary of State Katherine Harris had attempted to use her power as the head of the state electoral board to certify Republican electors before the disputed votes from Palm Beach County could be counted.¹⁰² Despite the obstruction of Harris, Florida Secretary of State and Bush's Florida co-campaign manager, the Florida Supreme Court ruled that the votes should be recounted by hand. The Republican attitude, much like during the election of 1876, was to stall the counting of votes. In 1876 the Republicans sent their most shrewd negotiator, James Garfield, to Louisiana. Garfield's 2000 equivalent was former Treasury Secretary and Secretary of State, James Baker, III. Once in Florida Baker took on the role of Republican strongman and opposed the manual recounts. "The votes have been counted once, twice, and in some cases three and four times," he asserted. "The manual recounts are arbitrary, subjective, and allow mischief."¹⁰³ Republican elites such as Baker were at the forefront of the legal effort to stop the counts, but rank and file Republicans played a more pragmatic role by turning out in the hundreds in Florida to stop the recount at individual polling stations. After the Florida Supreme Court ordered a recount, Baker and the Republicans took their case to the United States Supreme Court, where the Republicans held an edge of five to four.

As the Court cases were underway in late November many in the media also took note of the similarities between the 1876 and 2000 elections. Historian Arthur Schlesinger, Jr., writing in *Time*, claimed that in the election of 1876, after initial protests by the Democrats, "The nation, North and South, accepted the result with a surprising lack of

¹⁰² Kellner, 59.

¹⁰³ Kellner, 31.

indignation.”¹⁰⁴ Perhaps the indignation was slight among the people Schlesinger would notice, but millions of African-Americans believed differently. Having just been freed, they were left to face, in the words of Frederick Douglass, the wrath of their masters after 1877. *Boston Globe* columnist Thomas Oliphant described the election of 1876 as a more controversial affair than Schlesinger, “Hayes was not only a minority vote-getter against Sam Tilden; he lacked clean wins in three states (Florida was one) that covered his Electoral College majority. The fact his case was fixed here is less important than the fact that his ‘victory’ was double-tainted—and for all time.” While the Democrats did not cut any type of deal like that alleged to have occurred in 1876 Oliphant asked his readers to “imagine a situation where there is a minority president nationally and hard evidence has emerged on the public record that he got a minority of the votes counted, as opposed to certified by his state campaign cochair, who doubles as the elections boss, in Florida as well.”¹⁰⁵ The intensely partisan actions of Katherine Harris were only matched by the nepotistic manoeuvrings of Florida Governor Jeb Bush in favour of his brother George. The Florida Governor had stayed out of sight during the controversy but it was reported by *The New York Times* that Jeb had planned to convene a special meeting of the Florida legislature to push through Florida’s 25 electoral votes as his brother’s.¹⁰⁶

Republican supporter and constitutional scholar Kevin Phillips also noted the difference between the controversy that was erupting in 2000 and the controversies of the past in which presidents with popular pluralities were defeated. “Back in the 19th century,

¹⁰⁴ Arthur Schlesinger Jr., “It’s a Mess, But We’ve Been Through It Before,” *Time*, 20 November 2000, 64–65.

¹⁰⁵ Thomas Oliphant, “It Could Get Worse; Consider These Scenarios,” *Boston Globe*, 19 November 2000, C8.

¹⁰⁶ Francis X. Clines, “The Elections: Unsensational Education; The Ripe Smell of Political Maneuvering,” *The New York Times*, November 12 2000, Section 4, p. 4.

when Rutherford Hayes and Benjamin Harrison each won the electoral vote and the White House, despite having lost the popular vote, few voters got excited. States were more important than now, and Presidents were less important.”¹⁰⁷ While states had more power in the nineteenth century it was also a fact that voters were not a group composed of all people, compromising instead mainly white males. Moreover, it is not true that voters did not get excited. The Democratic Party protested the results in 1876 and 1888, although to varying degrees.¹⁰⁸ Phillips was perhaps correct when he claimed that “Presidents and democratic principles count for more today.” In the twenty-first century the president is a more powerful global figure, but in the nineteenth century he controlled a lot jobs, even with the beginnings of civil service reform. Once elected president, Hayes’ early schedules would have consisted mostly of appointing party members and other people to positions around the country.¹⁰⁹ In addition, those who could vote strongly identified with their parties. The heavily biased newspapers and high voter turnouts in the nineteenth century were clear evidence of voters who wore their politics like a badge and took elections very seriously.¹¹⁰ Nonetheless there are also existed also significant differences that Phillips neglects to mention such as the enormous magnitude of changed that encompassed the post-war period as well as the level of violence. Despite these concrete differences, just as in 1876 the political deadlock in 2000 would lead to a decision of the Supreme Court. Although in 1876 not all of the members of the Electoral Commission were Supreme Court Justices, many were, and thus the help of the judicial branch in resolving the political deadlock was certainly repeated in 2000.

¹⁰⁷ Kevin Phillips, “And Its Musty Old Quirks,” *Time*, 20 November 2000, 67.

¹⁰⁸ There were numerous protests in 1888 as well, although not at the national level as in 1876.

¹⁰⁹ Robert W. Cherny, *American Politics in the Gilded Age: 1868-1900* (Wheeling: Harlan Davidson, 1997), 14-16, 72-74, 76-77.

¹¹⁰ Charles C. Calhoun, “The Political Culture: Public Life and the Conduct of Politics” in *Major Problems in the Gilded Age and Progressive Era*, 2nd ed., Leon Fink, ed. (New York: Houghton Mifflin Company, 2001), 172.

The conservatives on the court, led by Chief Justice William H. Rehnquist and Justice Antonin Scalia, gained the support of three other justices for a majority. In a highly partisan decision, strikingly similar to the decision of the Electoral Commission in 1876, the Republican incumbent was awarded the presidency. Most decisively, the Court declared that the Florida legislature had mandated that all votes be counted by 12 December, the day of the Supreme Court's ruling.¹¹¹ The court, they argued, had no power to order the state to continue counting beyond the deadline. In his written opinion Rehnquist cited the 1892 case of *McPherson vs. Blacker* which held that state legislatures had the sole power to appoint electors.¹¹² Despite the fact that the founders had initially argued against the election of presidents via the national legislature the Constitution guaranteed this power for the states. James Madison admitted as much in the *Federalist Papers*.¹¹³ In addition, the majority on the Court claimed that there was no state-wide standard on how to recount the votes. Bush's legal team argued that the equal protection clause prevented there from being a recount because of the lack of uniformity. The problem with this rationale is that there are never state-wide standards for the initial counts, so should the original tally also be considered too flawed? Different counties use different ballots (such as the infamous butterfly ballot in Palm Beach) so there never is a uniform state-wide standard. More importantly, the equal protection clause was crafted for the important task of protecting voters from discrimination in the act of registering and voting.¹¹⁴ For example if the clause would have been cited in the case of *Bush v. Gore* to refer to the inadequate voting facilities available to poorer and

¹¹¹ Kellner, 103

¹¹² William H. Rehnquist, *Concurrence, Bush v. Gore*, 12 December 2000, <<http://straylight.law.cornell.edu/supct/html/00-949.ZD.html>>, (8 June 2007), 2000 Election.

¹¹³ Alexander Hamilton, James Madison and John Jay, *The Federalist Papers* (New York: The New American Library, 1961), 291.

¹¹⁴ Akhil Reed Ahmir, "Should We Trust Judges?" *The Los Angeles Times*, December 17 2000.

Blacker districts than the newest technology that was used in whiter and wealthier districts the use of the clause would have made a lot more sense. The Bush team's use of the equal protection clause and the Supreme Court's validation of their arguments harked back to the use of the Fourteenth Amendment in the late nineteenth century. Rather than being used to protect the civil rights of (mainly Black) citizens the Fourteenth Amendment was used by corporate lawyers to protect the rights of corporations as citizens.¹¹⁵

The opaqueness of decisions such as *Bush v. Gore* lends one to believe that the Supreme Court need not be consulted on all election law cases. Nonetheless, if the Court is going to intervene then it should not hide behind the veil of ambiguous decisions but should rather make clear and lucid precedents. Many, if not most, questions such as *Bush v. Gore* should be left to legislative bodies such as Congress or at most state courts. Other scholars have argued for abandoning the sterile balancing that the Court had done in the middle of the twentieth century. Instead they argue that the judiciary should act pragmatically solving political deadlocks when needed. Richard A. Posner is one scholar who has fiercely defended the ruling of the Supreme Court in *Bush v. Gore* because he claims that the Court broke a political impasse that was developing into a national crisis. Instead of the relatively orderly counting of electoral votes which happened on January 6, 2001, Posner hypothesizes that the two different slate of electors ordered by the Florida Supreme Court (Democratic) and those presented by the Republican governor of Florida, Jeb Bush, would lead to another impasse.¹¹⁶ Writing years after the election Rehnquist also invoked the spectre of prolonged national crisis in the partisan decision of the Court. Rehnquist defended his position by

¹¹⁵ Richard Stiller, *Broken Promises: The Strange Career of the Fourteenth Amendment* (New York: Random Library, 1972).

¹¹⁶ Richard A. Posner, "*Bush v. Gore* as Pragmatic Adjudication," in *A Badly Flawed Election*, ed. Ronald Dworkin (New York: The New Press, 2002), 192-195.

pointing to the election of 1876 and applauding the members of the Supreme Court who served on the Electoral Commission that spared the nation in 1876 its own national crisis.¹¹⁷ While Posner and other defenders can easily point to potential disorder as the main reason for the decision of the Supreme Court, the main problem lies in the potential for judicial hubris where Supreme Court Justices could begin to think that their decisions will *always* represent the best decisions for the entire nation. Indeed, Supreme Court Justices have often made “normative judgments on...often contested empirical assumptions.”¹¹⁸ Ultimately politics should be left in the hands of politicians, those who are actually accountable to the people. The Court, rather than maintaining the structure of the electoral process, should, as it did in the middle of the twentieth century, focus on equality because there has never been nor will there ever be any cases where one size fits all.

The four dissenting Supreme Court Justices did not hesitate to voice their displeasure at the result. Justice John Paul Stevens wrote that the ruling “can only lend credence to the most cynical appraisal of the work of judges throughout the land.”¹¹⁹ In his dissent, Justice Stephen G. Breyer evoked the election of 1876 and claimed that its compromise “simply embroiled Members of the Court in partisan conflict, thereby undermining respect for the judicial process” much like the highly partisan Supreme Court in 2000 was doing. Breyer continued: “I fear that in order to bring this agonizingly long election process to a definitive conclusion, we have not adequately attended to that necessary check upon our own exercise of power...Justice Brandeis once said of the Court, ‘The most important thing we do is not doing’...What it does today, the Court should have left undone. I would repair the damage

¹¹⁷ William H. Rehnquist, *The Centennial Crisis: The Disputed Election of 1876* (New York: Alfred A. Knopf, 2004), 3-6.

¹¹⁸ Hasen, 162-163.

¹¹⁹ John Paul Stevens, *Stevens, J.P., dissenting Bush v. Gore*, 12 December 2000, <<http://straylight.law.cornell.edu/supct/html/00-949.ZD.html>>, (10 June 2007), 2000 Election.

done as best we now can, by permitting the Florida recount to continue under uniform standards.”¹²⁰ Justice David H. Souter’s dissent was perhaps the most pragmatic in that he argued completely against the involvement of the United States Supreme Court in a matter that should have been left to the Florida Supreme Court. Throughout American history “states’ rights” had been used to defend gross injustices—slavery and Jim Crow. For once in history the case was reversed. Justice Souter struggled to understand how there could be a “justification for denying the state the opportunity to try to count all disputed ballots now.”¹²¹

The only African-American on the Court, Justice Clarence Thomas, joined the majority in its decision. Thomas is known as one of the most avid opponents of the Voting Rights Act. His case is especially significant as he himself benefited from the many benefits of affirmative action and the VRA throughout his life but yet had turned into a vehement opponent of the very policies that had allowed him to gain a place on the Supreme Court. He is to many African Americans the contemporary embodiment of what would have been referred to in the early twentieth century as an “Uncle Tom.”¹²² He was touted very much as Thurgood Marshall’s heir on the Supreme Court because President George H. W. Bush, his endorser, felt that Marshall’s replacement on the Court had to be a minority. His Black skin though was the only resemblance which Thomas had to Marshall, especially with regards to his opinion on civil rights legislation.¹²³

Gore finally conceded the election on the evening of 13 December in a televised address to the nation. In his concession, he spoke of the source of America’s democratic

¹²⁰ Stephen G. Breyer, *Breyer, J., dissenting Bush v. Gore*, 12 December 2000, <<http://straylight.law.cornell.edu/supct/html/00-949.ZD3.html>>, (10 June 2007), 2000 Election.

¹²¹ Kellner 102 quotes Souter’s dissent.

¹²² Todd Boyd, *The New H.N.I.C., (Head Niggas in Charge): The Death of Civil Rights and the Reign of Hip Hop* (New York: New York University Press, 2002), 63.

¹²³ Jane Meyer and Jill Abramson, *Strange Justice: The Selling of Clarence Thomas* (Boston: Houghton Mifflin, 1994), 169-191.

liberties—their adherence to the *law*. “Let there be no doubt, while I strongly disagree with the court’s decision, I accept it.”¹²⁴ It was precisely this adherence to law that damaged America’s democracy in the end. Only days after Gore’s concession, Yale Professor Akhil Reed Amir wrote a column in the *Los Angeles Times* denouncing the Court’s decision. Amir too claimed that he would tell his students that they must all accept the Court’s decision but that “we need not, and should not, respect it.”¹²⁵

All that remained after the decision of the Supreme Court was the counting of the electoral votes in the Senate. This occurred on 6 January and was presided over by Al Gore who was fulfilling his final duty as Vice-President of the United States and President of the Senate. Procedure required that any objections to the Electoral vote counts must have the support of at least one member of each House of Congress. While Black Senators have served they have been few and far between. During this election there were no African-Americans serving in the Senate. The first Congressman to raise an objection, Alcee Hastings [D-FL], openly appealed to the defeated candidate’s sentiments only to be met with a cold indifference: “Mr. President, and I take great pride in calling you that, I must object because of the overwhelming evidence of official misconduct, deliberate fraud in an attempt to suppress...” At this moment the first sound of the judicial gavel and Gore’s remorseless voice were heard. “The Chair [Gore] must remind members that under Section 18 of Title 3 no debate is allowed in the joint session. Is the objection in writing and signed by a member of the House and a Senator?” To which Hastings replied, “Thank you, Mr. President. To answer your question Mr. President, the objection is in writing, signed by a number of

¹²⁴ Al Gore, *Al Gore’s Concession Speech*, 15 May 2001 <http://www.presidency.ucsb.edu/showtransition2001.php?fileid=gore_concession12-13> (10 June 2007), Politics.

¹²⁵ Akhil Reed Amir, “Should We Trust Judges?” *The Los Angeles Times*, December 17 2000.

members of the House of Representatives but not by a member of the Senate.”¹²⁶ Twelve other Congressmen and women similarly tried to object, some respectfully, some angrily, and each was rebuffed because they lacked support from a member of the Senate.¹²⁷

A Republican dominated Supreme Court blocked a recount in Florida, but Democratic senators ignored the objections of their party’s Congressmen. One Republican Congressman, Henry Hyde [R-Ill], claimed that “the United States Supreme Court very unusually had an important role in bringing this to its stated finality. But it did, among several things, one very important thing, and that is re-assert the primacy of the legislative branch, the elected legislature, rather than the appointed judicial branch.”¹²⁸ This statement bears closer scrutiny. In the first sentence it plainly states the manner in which the United States Supreme Court decided the election while in the second sentence it seeks to nullify this reality by claiming the primacy of the legislative branch over the judicial. A response to this contradiction was provided by one of the thirteen dissenting Democratic members of the House, Congresswoman Barbara Lee [D-Calif.]. “Mr. President it [the objection] is in writing and signed by myself on behalf of many of the diverse constituents in our country especially those of the 9th Congressional District and all American voters who recognize that the Supreme Court and not the people of the United States decided this election.”¹²⁹ Her colleague, Congresswoman Sheila Jackson Lee [D-Texas] reiterated her claims. “Let the world know that we failed in upholding our democratic principles, and that it was the

¹²⁶ Alcee Hastings, “1330,” *Congressional Record - House*, January 6, 2001, H34.

¹²⁷ The thirteen dissenting Congressmen and women were Rep. Corrine Brown, Florida; Rep. Eva Clayton, North Carolina; Rep. Elijah Cummings, Maryland; Rep. Eddie Bernice Johnson, Texas; Rep. Bob Filner, California; Rep. Alcee Hastings, Florida ; Rep. Jesse Jackson Jr., Illinois; Rep. Sheila Jackson Lee, Texas; Rep. Barbara Lee, California ; Rep. Cynthia McKinney, Georgia; Rep. Kendrick Meek, Florida; Rep. Patsy Mink, Hawaii and Rep. Maxine Waters, California. Only Mink and Filner were not African-Americans.

¹²⁸ Henry Hyde, “Joyous Realization in Reaching an End to a Tortuous Political Campaign,” *Congressional Record - House*, January 6, 2001, H30.

¹²⁹ Barbara Lee, “1330,” *Congressional Record – House*, 6 January 2001, H35.

Reagan-Bush Supreme Court, not the people of the United States, who decided the outcome of this election.”¹³⁰

Congresswoman Cynthia McKinney [D-Georgia] implored Congress to recognize the gross violation of voting laws that took place in Florida: “For Black voters, these egregious insults must be addressed. It is not the act of voting that is democracy, but the counting of those votes; and that is what measures a true democracy.”¹³¹ Representative Maxine Waters [D-Calif.] continued the denunciations: “Mr. Speaker, I believe these electoral votes to be illegitimate and unrepresentative of the true popular vote in Florida. Vice-President Gore is leading in popular votes in excess of 500,000 votes in this country, and all of Florida’s vote recounts are not yet tabulated. The recounts will document that Gore won Florida, despite voter fraud, despite voter intimidation, despite the butterfly ballots...History will record what really took place in this election.”¹³² When Gore asked Congresswoman Waters the question which he had posed to all objectors she responded bitterly, “The objection is in writing and I don’t care that it is...it is not signed by a member of the Senate.”¹³³ A burst of applause convulsed the joint session only to be terminated by Gore’s gavel. His patronizing response, “The Chair will advise that the rules do care,” and the demeaning laughter and applause which followed, primarily from the Republican side, served only to affirm the indifference of nearly all of America’s political elites to Black voting rights.

The final objection, by Congressman Jesse Jackson Jr. [D-Ill.] showed the complete futility of the protest. “It’s a sad day in America Mr. President when we can’t find a Senator

¹³⁰ Sheila Jackson Lee, “Betrayal of Democracy,” *Congressional Record – House*, 6 January 2001, H31.

¹³¹ Cynthia McKinney, “Gross Violations of Voting Rights Act,” *Congressional Record – House*, 6 January 2001, H31.

¹³² Maxine Waters, “Objecting to the Electoral Vote Count for the State of Florida,” *Congressional Record – House*, 6 January 2001, H30.

¹³³ Maxine Waters, “1330,” *Congressional Record – House*, 6 January 2001, H36.

to sign the objections...” To which Gore’s mallet responded, with a thud. “The gentleman...the gentleman...will suspend...” “Numerous senators won’t sign the objections Mr. President,” Jackson again tried. “The gentleman will suspend.” “I object. I object.”¹³⁴ The Democrats in their party platform of 2000 claimed that civil rights were a priority, but the conduct of the party, specifically its senators and Al Gore, in the midst of clear violations of voting laws, laid bare the reality that neither party would risk their political capital to stand up for African-American voting rights.¹³⁵ Just as the national Republican Party had turned a cold shoulder to Southern Blacks in 1877, so too did national Democrats in 2000.

While Gore and his legal team had put up a vigorous fight until the Supreme Court decision on 12 December, during the electoral count he ignored the protests of the Congressional Black Caucus and other Democratic congressmen and women. Senate Minority Leader Tom Daschle [D-S.Dak.] had implored all Democratic senators to ignore the protests. Without a single signature from a senator the complaints of the congressmen and women were left as mere signs of protest for history rather than as a conduit for continuing debate over the election. This is not to say that the Democrats’ indifference to the protests from the Congressional Black Caucus could approach the planned disenfranchisement undertaken by the Republicans before the election. Nonetheless the dramatic objections in Congress revealed the racial divisions that still marred American politics. In an article for the *Boston Globe* written after the counting of the electoral votes, James Carroll commented on the racial divide that separated Democrats. “What does it say that even the most left-wing of white congressmen and senators have apparently adjusted themselves to the problematic Bush decision, while the congressional Black caucus has not? Those who sit atop the social

¹³⁴ Jesse Jackson Jr., “1330,” *Congressional Record – House*, 6 January 2001, H36.

¹³⁵ Democratic Party, *Democratic Party Platform of 2000*, June 2001, <http://www.presidency.ucsb.edu/showplatforms.php?platindex=D2000>, (10 June 2007), Politics.

and economic pyramid always speak of love, while those at the bottom always speak of justice.”¹³⁶

The climate of the 2000 election had a disturbing similarity to that of 1876, specifically on the question of Black voting rights. Speaking before Gore’s concession speech Congressman John Lewis [D-Georgia] claimed, “Today there is some talk in Black leadership circles that we shouldn’t make too much of an issue of the disproportionately high number of controversial or partially marked ballots by African-American precincts. According to this line of argument, we should be embarrassed that our folks didn’t know enough to punch a ballot correctly. I reject this line of thinking.”¹³⁷ The views which Lewis condemned are of enormous importance to understand the changing historical context of the elections of 1876 and 2000. Much like the accommodationist Booker T. Washington, some “in Black leadership circles” in 2000 echoed the claims that Blacks should keep their voices down and not speak until they were capable of properly joining civic society.

Not until late July and August 2001 did the American media finally take notice of the proven disenfranchisement of African-Americans when the U.S. Commission of Civil Rights published its report, “Voting irregularities in Florida During the 2000 Presidential Election.” The report found that the

disenfranchisement of Florida voters fell most harshly on the shoulders of African Americans... For example, in Gadsden County, the only county in the state with an African American majority, approximately one in eight voters was disenfranchised. In Leon County, on the other hand, which is home to the prosperous state capital and two state universities, fewer than two votes in 1,000 were not counted. In Florida, of

¹³⁶ James Carroll, *Boston Globe*, 9 January 2001, A19.

¹³⁷ John Lewis, “We Marched to Be Counted,” *Newsweek*, 11 December 2000, 38.

the 100 precincts with the highest numbers of disqualified ballots, 83 of them are majority-Black precincts.¹³⁸

. A non-partisan group, the Commission detailed clear evidence of the gross misconduct and deliberate fraud which the objecting Congressmen and women had charged during the counting of the electoral votes. It recommended, among other things, that

The U.S. Department of Justice should immediately initiate the litigation process against the governor, secretary of state, director of the Division of Elections, specific supervisors of elections, and other state and local officials responsible for the execution of election laws, practices, and procedures, regarding their contributions, if any, to the extraordinary racial disparity in the rate that votes were rejected, through their actions or failure to act before and during the 2000 presidential election, in violation of the Voting Rights Act of 1965.¹³⁹

For once the evidence seemed to be clear. The actions of Katherine Harris and her associates in the state of Florida showed that there existed both an intent to discriminate against Blacks (because they voted Democrat) and that the effect what resulted was discrimination on the basis of race. Their actions fit into both the original VRA that only sought to determine whether there was an intent to discriminate on a racial basis as well as the 1982 Amendments which included effect into its criteria.

By the time the report appeared in July 2001 none of this mattered. President Bush was comfortably serving his term in the White House, and his appointed Attorney General, John Ashcroft, was going to be in no hurry to “initiate the litigation process” against either the President’s brother, Florida Governor Jeb Bush, or the co-chairwoman of the President’s Florida campaign, Florida Secretary of State Katherine Harris. Conservative commentators

¹³⁸ U.S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election*, June 2001, <http://www.usccr.gov/pubs/vote2000/report/ch9.htm>, (10 June 2007), 2000 Election.

¹³⁹ U.S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election*, June 2001, <http://www.usccr.gov/pubs/vote2000/report/ch9.htm>, (10 June 2007), 2000 Election.

even dismissed the non-partisan U.S. Civil Rights Commission's conclusions. Writing in the *U.S. News & World Report* John Leo claimed "the report's net effect is to keep alive the legend of the suppressed Black vote in Florida. This story is becoming an unshakeable myth. It may have the staying power to poison race relations for a long time to come."¹⁴⁰ While Leo made some very harsh criticisms of the report, he makes little mention of the history of white supremacy that poisoned race relations long before the 2000 election. Leo also made little mention of the history of disenfranchisement that has plagued the history of the US since Independence. As Alexander Kayssar pointed out months after the election, "the very unpretty election of last November emerged from deep currents in American political life. Although we don't like to acknowledge it, there have always been strong antidemocratic forces in the United States. Large numbers of Americans, throughout our history, have not believed in universal suffrage and have acted accordingly."¹⁴¹ The previous chapter's case-study of the election of 1876, the entire failure of the Reconstruction period, and the Supreme Court's late twentieth century attack on the Civil Rights are vivid proof of the "antidemocratic forces" that are present in American history.

According to historian Richard M. Valelly the gains of the Civil Rights Movement has been stabilized, but as I have argued, that is not the case. While Valelly adequately analyzes the reasons for the failure of Reconstruction, little help from the judiciary as well as a lack of institutionalization of Radical Reconstruction's goals, his claims that Black voting rights have largely stabilized is questionable. Valelly discusses the case of *Mobile*, the subsequent 1982 amendments to the VRA, and the new conservative majority led by Sandra Day O'Connor that ruled in the case of *Shaw v. Reno* but he makes little mention of how much of

¹⁴⁰ John Leo, *U.S. News & World Report*, 18 June, 2001, 12.

¹⁴¹ Alexander Kayssar, "Reform and an Evolving Electorate," *New York Times*, 5 August, 2001, Section 4, 13.

an attack they are on the supposedly stable political rights of Blacks.¹⁴² Writing in 2004 Valelly also completely ignores the 2000 election and the Court's decision in *Bush v. Gore*. Certainly the election and the widespread reports of disenfranchisement of Blacks in Florida would have merited attention in book that alleges to be about "The Struggle for Black Enfranchisement." The erosion of the VRA, and even its progressive and powerful 1982 amendments, has been able to do little in the face of conservative judicial activism in addition to the help of the new southern Republican Party that has essentially taken on the same beliefs and constituency as the Democratic Party in the late nineteenth and early twentieth century. The same Court conservatism that buried the Reconstruction is now threatening to permanently bury the gains of the Civil Rights Movement.

Just as Reconstruction, the Civil Rights Movement is gradually being challenged and in much different terms. In the late nineteenth century virulent racism based on archaic Social Darwinist beliefs was accepted and violence, although reported in the press, did not arouse as much indignation as it does in the present. With violence and legal disenfranchisement no longer possible, the same political elite have devised new methods to disenfranchise Black voters. At-large elections, direct appointments, and a Supreme Court attack on apportioning districts to increase Black representation in Congress, have all contributed to dilute the Black vote in the supposedly "stabilized" Civil Rights Movement. The attack on the basic right to register and vote during the 2000 election served as another example of the deeper political and social problems which plague the United States.

¹⁴² Valelly, 47-120, 235-236.

Conclusion

The elections of 1876 and 2000 were two of the most controversial presidential elections and both tell us a great deal about the politics of race and the right to vote in American history. While the two elections highlighted the importance of the politics of race in American elections they also tie into the history of political corruption in American history as a whole. This corruption has played a large part in the fragile state of Black voting rights. In 1876 the national Republican Party was willing to abandon the protection of Black voting rights for the sake of presidential power. In 2000 the Democrats ignored Black voters after the Supreme Court's decision in *Bush v. Gore* for the sake of national stability. This is not to say that there are not important differences between the two elections.

The idea of equal citizenship had undergone a profound transformation as a result of the Civil Rights Movement. By 2000 there was a strong foundation for voting rights advocates to stand on that had not existed in 1876. The violence and anarchy of the late nineteenth century is certainly one distinguishing factor from the relative peace of the late twentieth century. Despite these differences the 2000 election revealed that the right of Blacks merely to register and vote was still not guaranteed by the federal government much as it was not guaranteed in the nineteenth century. In this context strengthening the power of the VRA is imperative.

In 2007 the VRA will expire but a new VRA is set to replace it. Just as in 1982 white southern opponents argue that the preclearance clause unnecessarily burdens states because racism no longer exists. During the formation of a Committee to investigate the VRA's renewal prominent Republicans were involved and it was thought that there may have been

enough opposition to prevent its passage. Republicans though eagerly advocated its renewal and Senate Majority Leader Bill Frist even recommended making it permanent. President George W. Bush and Attorney General Alberto Gonzales also supported its renewal. Some Democrats and the NAACP were caught off guard by the eagerness of Republicans to support the renewal of the VRA. The NAACP advised caution with making the VRA permanent because its provisions would then be subject to the scrutiny of a conservative Supreme Court. In the end the new Fannie Lou Hammer Coretta Scott King Voting Rights Act 2006 eventually garnered bi-partisan support except for a handful of southern Republicans after extensive hearings during 2005-2006. Most significantly Section 5 of the Act will also be renewed.

The strength of the VRA though is questionable in light of the evidence of discrimination against Blacks in 2000 in Florida. The actions of Katherine Harris, the Secretary of State in Florida who ordered that DBT Technologies purge the voter rolls, and Clayton Roberts, the Director of Elections who distributed those purged voter rolls during election day, were never investigated by the Attorney General's office. Renewing the VRA was certainly a step in the right direction, but if the old VRA was unable to stop the disenfranchisement of Blacks in 2000 it is highly unlikely the new VRA will do much different. Rather than just settling for new legislation more concrete steps need to be taken to tackle much bigger problems such as the partisanship in the courts as well as amongst election officials. With a largely un-enforced VRA, and what looks to be for many years a conservative Supreme Court, this crisis in Black political participation necessitates that Black leaders remain as vocal as ever in their demand for true political rights. Only then will it be

certain that the gains of the Civil Rights Movement will not suffer the same fate that befell Reconstruction.

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