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ELIMINATION DANCE

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"An elimination dance begins with a crowded dance floor. At a signal, the band stops playing and the announcer reads an elimination. Any dancer answering this description must sit down, and his partner is also disqualified. The process continues until a single couple remains."[1]

In the 18th century, the western world had only recently emerged from the feudal era, in which royalty, landed aristocracy and the business-wealthy wielded near total control over the people.[2] In this context, The American republic was born.[3] The dance of democracy between the white, property holding elite, the working classes and racial minorities had just begun.[4]

Democracy is contingent upon a citizenry empowered with the right to vote.[5] And yet, by the language of our founding documents, we were all created equal, until it was time to vote.[6] Throughout American history, ruling castes have

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[1]Michael Ondaatje, Elimination Dance/La Danse Eliminatoir (1991).

[2]*See* MANSEL G. BLACKFORD KATHEL AUSTIN KERR, BUSINESS ENTERPRISE IN AMERICAN HISTORY 14 (1994); R.H. TAWNEY, RELIGION AND THE RISE OF CAPITALISM, 89-210 (1998) (discussing the transition from feudalism to capitalism).

[3]KAREN ORREN, BELATED FEUDALISM: LABOR, THE LAW, AND LIBERAL DEVELOPMENT IN THE UNITED STATES 56-65, 118 (1991) (arguing that America's constitutional democracy relied heavily on remnants of the feudal system, particularly with regard to labor relations).

[4]For a comprehensive history of voting rights in the United States *see* ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES (REV.ED.2009).

[5]"[Voting] is regarded as a fundamental political right . . . it is preservative of all rights." Yick Wo v. Hopkins, 188 U.S. 356, 370 (1886); The "right to vote freely for the candidate of one's choice is the essence of a democratic society." Reynolds v. Sims, 377 U.S. 533, 555 (1964); "[N]o right is more precious in a free country than that of having a choice in the election of those who make the laws under which...we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Saunders, 376 U.S. 1, 17 (1964).

[6]"The convention's debates about suffrage . . . were brief, and the final document made little mention of the breadth of the franchise. Only article 2 of section 1 addressed the issue directly. " KEYSSAR, *supra* note 4, at 30. Before it was modified by the Fourteenth Amendment, Article I, Section 2 included the provision that, "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and

manipulated the franchise to maintain racial hegemony under the guise of democracy. The franchise in America is an elimination dance. The ranks of the eliminated rise and fall with the ever-shifting balance between race and rights on the state and federal levels. *Shelby County v. Holder* is yet another example of the legal engines of disenfranchisement working to reduce democracy by setting the terms under which vulnerable populations must operate. It is part of a larger trend in American society to ratchet up social control over people of color that is both an extension of past systems of subordination and a reaction to perceived recent gains in power by subordinate groups.[7]

Act. I: Birth of a Nation

1. Any person who is not a person.[8]
2. Anyone who is 3/5 of a person.[9]
3. Anyone who is not a male of full age.[10]
4. Anyone who is not have a *y* chromosome.
5. "Any opposer of the good and wholsome laws of this colonie."[11]
6. Those judged to be "grosly scandalouse as lyers drunkards [and] swearers."[12]

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excluding Indians not taxed, three fifths of all other Persons." (*emphasis added*). U. S. CONST. art 1, §2 cl. 3.

[7]*See, e.g.,* Ryan D. King, Darren Wheelock, *Group Threat and Social Control: Race, Perceptions of Minorities and the Desire to Punish*, 85 SOCIAL FORCES 1255, 1257 (No. 3, March 2007); MICHELLE ALEXANDER, THE NEW JIM CROW, 12, 20-57 (2010).

[8]U.S. Const. art. IV, §2, cl. 3. (fugitive slave clause); U.S. Const. art 1, §2 cl. 3. *See also* RICHARD B. MORRIS, THE FORGING OF THE UNION: 1781-1789,163-93 (1987) (arguing that the Declaration of Independence set up a policy of racial exclusion).

[9]U. S. CONST. art 1, §2 cl. 3. "Slaves were counted as three-fifths of a person for purposes of determining the voting power of whites." Raymond T. Diamond, *No Call to Glory: Thurgood Marshall's Thesis on the Intent of A Pro-Slavery Constitution*, 42 VAND. L. REV. 93, 96 (1989).

[10]"[P]recisely where the age-based restriction on the vote was set (i.e. the minimum voting age) varied over historical epochs in the United States, and also across different individual U.S. States." Sonja C. Grover, Young Peoples' Human Rights and The Politics of Voting Age (2010). For an in depth history of youth suffrage, *see* WENDELL W. CULTICE, YOUTH'S BATTLE FOR THE BALLOT: A HISTORY OF VOTING AGE IN AMERICA, (1992). The age set forth in the Fourteenth Amendment, finds historical support in the English tradition setting the age of knighthood, and the benefit of enfranchisement that came with it. *Id.* at 72

[11]CORTLANDT F. BISHOP, HISTORY OF ELECTIONS IN THE AMERICAN COLONIES, 3 Studies in History Economics and Public Law 1, 54 (1893) (describing disenfranchisement laws in the Plymouth colony).

[12]BRADLEY CHAPIN, CRIMINAL JUSTICE IN COLONIAL AMERICA 1606-1660 54 (1983)

7. Anyone convicted of "fornication or any 'shamefull and vitious crime.'"[13]

8. Those convicted of possessing a fraudulent deed.[14]

9. Anyone with three convictions for drunkenness.[15]

10. Men who have no property, and thus no "judgment of their own."[16]

11. Every man who "has not a Farthing."[17]

12. Any owner of a jackass worth fifty dollars, whose jackass has, sadly, met an untimely death.[18]

13. "[D]escendants of Africans who were imported into this country and sold as slaves."[19]

14. Women who are dependent on men.[20]

15. "Members of dissenting religious sects."[21]

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[13] BISHOP , *supra* note 11 at 55-56 (1893)(discussing voting rights in the Massachusetts Bay Colony).
[14]*See* ALBERT EDWARD MCKINLEY, THE SUFFRAGE FRANCHISE IN THE THIRTEEN ENGLISH COLONIES IN AMERICA 461 (1905).
[15] CHAPIN *supra* note 12, at 161 (describing criminal disenfranchisement in the Maryland Colony).
[16]Letter from John Adams to James Sullivan (May 26, 1776), in 4 Papers of John Adams 208, 210 (Robert J. Taylor ed., 1979). Property ownership was prerequisite to voting in most colonies. *See* WILLI PAUL ADAMS, THE FIRST AMERICAN CONSTITUTIONS: REPUBLICAN IDEOLOGY AND THE MAKING OF THE STATE CONSTITUTIONS IN THE REVOLUTIONARY ERA 293-307 (1980). For a discussion of the property theory of government *see* Jacob Katz Cogan, *The Look Within: Property, Capacity, and Suffrage in Nineteenth-Century America*, 107 YALE L.J. 473, 481 (1997). *See also* CHRISTOPHER COLLIER, *The American People as Christian White Men of Property: Suffrage and Elections in Colonial and Early National America*, VOTING AND THE SPIRIT OF AMERICAN DEMOCRACY: ESSAYS ON THE HISTORY OF VOTING AND VOTING RIGHTS IN AMERICA 19, 20 (DONALD W. ROGERS ED., 1990). "In all colonies, men had to own property in order to qualify for the suffrage.... [The exact property qualification varied among the colonies] but [the] most widely used was the forty pound freehold.... [P]otential voters had to own property--usually real estate--that was worth forty pounds, or that returned forty shillings a year ... in rent or interest." *Id.*
[17]Letter from John Adams to James Sullivan (May 26, 1776), *supra* note 16 (expressing concern or notions of expanding the suffrage franchise beyond propertied "freemen").
[18]*See* BENJAMIN FRANKLIN, THE CASKET, OR, FLOWERS OF LITERATURE, WIT & SENTIMENT (mocking the property requirements for voter qualification).
[19]Scott v. Sandford, 60 U.S. 393, 403 (1856).
[20]In most colonies, women were denied suffrage "because they were thought to be dependent on adult men." [KEYSSAR *supra* note 4, at 6; JACQUELINE JONES, AMERICAN WORK: FOUR CENTURIES OF BLACK AND WHITE LABOR 143 (1998)] ("80 percent of all Americans ... remained legal dependents at the end of the Colonial period ... includ[ing] all women, children, servants, and slaves, as well as landless white men.")
[21]C. ANTIEAU, A. DOWNEY & E. ROBERTS, FREEDOM FROM FEDERAL ESTABLISHMENT: FORMATION AND EARLY HISTORY OF THE FIRST AMENDMENT RELIGION CLAUSES 10 (1964). *See also* L. LEVY, THE ESTABLISHMENT

16. Those who do "not have standing in law equal to that of freemen."[22]

17. "The lowest and most ignorant of mankind."[23]

Act II: Strange Fruit, Jim Crow

18. Those who, by happenstance of birth or otherwise, are not citizens of the United States of America.[24]

19. Free black men who do not want to be lynched.[25]

20. Free black men who do not want to be massacred.[26]

21. Free black men who do not want to be intimidated, beaten and bruised.[27]

CLAUSE: RELIGION AND THE FIRST AMENDMENT 1 (1986) (in colonial America, Jews, Roman Catholics, and "dissenting protestants" were often disenfranchised); Pyle & James D. Davidson, *The Origins of Religious Stratification in Colonial America,* 42 J. FOR SCI. STUDY OF RELIGION 65, 120 (2003) ("Catholics were denied toleration or otherwise prevented from voting in twelve of the thirteen colonies.... Jews were denied the franchise in nine.")

[22]FORREST MCDONALD, NOVUS ORDO SECLORUM: THE INTELLECTUAL ORIGINS OF THE CONSTITUTION 54-55 (1985).

[23]GORDON S. WOOD, THE CREATION OF THE AMERICAN REPUBLIC 1776-1787, 168 (1998).

[24]*See, e.g.,* Dred Scott v. Stanford, 60. U.S. at 404-405 (We think [blacks, both slave and free] . . . are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them."). *See* Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1400 (1993). Prior to World War I, non-citizen alien suffrage was not uncommon. *See* Gabriela Evia, *Consent by All the Governed: Reenfranchising Noncitizens As Partners in America's Democracy*, 77 S. CAL. L. REV. 151, 155 (2003) ("Congress openly encouraged noncitizen voting in the early years of the Republic").

[25]*See e.g.,* Mary L. Dudziak, *Desegregation As A Cold War Imperative*, 41 STAN. L. REV. 61, 81 (1988) (Quoting a December 1946 newspaper article that recounts the retaliatory lynching of four blacks in Georgia; "This outrage . . . followed Supreme Court action invalidating Georgia voting restrictions.").

[26]In 1873, a white mob massacred 60 blacks who had gathered to defend Republican elected official against an attack in Colfax, Louisiana. Eight white men were charged under the Civil Rights Act of 1870. The Supreme Court held that federal protections did not apply because the defendants were interfering with a state right, not a federal right. U.S. v. Cruikshank, 92 U.S. 542 (1875) (Reasoning that "the right of suffrage is not a necessary attribute of national citizenship").

[27] *See* "The Klu Klux Cases", 110 U.S. 651 (1884) (denying a writ of Habeas Corpus for nine Klu Klux Klan members who "conspired to intimidate Berry Saunders, a citizen of African descent, in the exercise of his

22. Free black men who do not want to wake up to a cross burning on their front lawn in the middle of the night.[28]

23. Those who wish to be free from terror.[29]

24. Anyone whose vote will not be counted because, quite frankly, we did not like the way you voted.[30]

25. Anyone convicted for a crime of moral turpitude.

26. Anyone who cannot pay $2.00 in cash at the poll on voting day.[31]

27. Those who have systematically been denied access to education and thus, cannot read.[32]

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right to vote for a member of the congress of the United States, and in the execution of that conspiracy they beat, bruised, wounded, and otherwise maltreated him; and in the second count that they did this on account of his race, color, and previous condition of servitude, by going in disguise and assaulting him on the public highway and on his own premises.") Despite the formal rights granted by the Fourteenth and Fifteenth Amendments, discriminatory administration of the election law was a common tool of disenfranchisement. Warren M. Christopher, *The Constitutionality of the Voting Rights Act of 1965*, 18 STAN. L. REV. 1, 3 (1965) ("Negro complainants [whose rights had been violated] did not want to risk the intimidation likely to occur if they individually initiated proceedings against local election officials).

[28]"Not content with legal measures of obstruction, hostile segregationists preached violent resistance." HARVARD SITKOFF, THE STRUGGLE FOR BLACK EQUALITY: 1954-1992, 28 (1993). Between 1957 and 1963, Birmingham, Alabama alone saw more than fifty cross-burnings aimed at intimidating those advocating for the rights of blacks. *Id.* at 120-121, 139.

[29]In an open letter petitioning the United States Congress, blacks in Kentucky implored: "[w]e believe you are not familiar with the number of Klansmen riding nightly over the country, spreading terror wherever they go by robbing, whipping, ravishing and killing our people without provocation. . . .We would state that we are law-abiding citizens, pay our tax, and in many parts of the state our people have been driven from the polls, refused the right to vote. Many have been slaughtered while attempting to vote; we ask how long is this state of things to last? We appeal to you as law abiding citizens to enact some laws that will protect us." WYN CRAIG WADE, THE FIERY CROSS: THE KU KLUX KLAN IN AMERICA 89 (1987). *See also* ALLEN W. TRELEASE, WHITE TERROR: THE KU KLUX KLAN CONSPIRACY AND SOUTHERN RECONSTRUCTION 419 (1971) (describing how the Klan used violence secure Democratic victories in Alabama, Georgia and North Carolina in the election of 1870).

[30]U.S. v. Reese, 92 U.S. 214 (1875).

[31]*See* Breedlove v. Suttles, 302 U.S. 277, 283 (1937) (holding that requiring payment of poll taxes does not violate the Fourteenth Amendment).

[32] In most of the South, the education of slaves was illegal, leaving slaves "universally illiterate." ROGER L. RANSOM & RICHARD SUTCH, ONE KIND OF FREEDOM: THE ECONOMIC CONSEQUENCES OF EMANCIPATION 15 (2001). Thus, not surprisingly, "[l]iteracy tests had a tremendous impact in restricting Negro voting in the seven southern states that adopted them: over 70 per cent of the adult Negroes were illiterate as compared to a figure of less than 20 per cent for the adult whites." Christopher, *supra* note 27, at 2; *see also* Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45, 53 (1959) (stating that "a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot").

28. Those who cannot spell backwards, forwards.[33]

29. Those who are not only literacy challenged but who are also without voting grandfathers.[34]

30. Anyone without a fighting grandfather who cannot prove a fifth grade education.[35]

31. Those without an understanding of republicanism.[36]

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[33]This is the command of question number 20 on the Louisiana state literacy test circa 1964. Black test takers would not pass the test if they spelled the words correctly but did not include the comma, or if they if the spelled the words correctly and did include the comma. *See Civil Rights Movement Veterans, The Louisiana Literacy Test and How It Worked to Deny Black Voting Rights* (2010) available at http://www.crmvet.org/nars/schwartz.htm#corelittest. Moreover, this test, which is representative of Southern literacy tests in use at the time, was intentionally confusing. It was more of a trap than a test. For example, another question states: "Write every other word in this first line and print every third word in same line (original type smaller and first line ended at comma) but capitalize the fifth word that you write." Question 27 reads: "Write right from the left to the right as you see it spelled here." Civil Rights Movement Veterans, Louisiana Voter Literacy Test ~ circa 1964, http://www.crmvet.org/info/la-littest-orig.pdf . The white voter registrars could settle on any reason to fail a Black voter. "If a Black person were to print the answer, he/she would be failed because it says "write" so cursive writing was required. Not so for white people. If a Black person were to write "right" he/she would be failed. Why? Because, the registrar would say, you're supposed to write "right from the left to the right". If a Black person were to write "right from the left to the right", he/she would be failed. Why? Because, the registrar would say, you're supposed to write "right from the left to the right as you see it here." [For] White applicants, any answer would be accepted." *Civil Rights Movement Veterans, The Louisiana Literacy Test and How It Worked to Deny Black Voting Rights* (2010), http://www.crmvet.org/nars/schwartz.htm#corelittest

[34] Many southern states enacted grandfather clauses" to prevent the disenfranchisement of illiterate whites. *See e.g.,* OKLA. CONST. art. III, § 4a (1910)("[N]o person who was, on January 1st, 1866 [before the fifteenth amendment was ratified], or any time prior thereto, entitled to vote ..., and no lineal descendent of such person, shall be denied the right to register and vote because of his inability to read and write ...."). (cf Guinn v. U.S., 238 U.S. 347 (1915)(striking down Oklahoma's grandfather clause as a violation of the 15th Amendment).

[35]"Like the voting grandfather clause, the fighting grandfather clause provided exemptions for the descendants of persons who, as for example under § 19 of the Virginia constitution, served in time of war in the army or navy of the United States, of the Confederate States, or of any state of the United States or Confederate States." Christopher, *supra* note 27, at 2 (citing the Alabama, Georgia, and Virginia constitutions of 1901, 1908 and 1902, respectively) *See also* Giles v. Harris, 189 U.S. 475, 483 (1903) (upholding strict restrictions on voter registration in Alabama's 1903 constitution). The voting restrictions included literacy tests, property ownership of 40 acres or more, and a requirement that the voter have regular employment or be physically unable to work. There was an exception for "[a]ll who had served honorably in the . . . wars of the United States, including those on either side in the 'war between the states. . .' [and] [a]ll lawful descendants of persons who served honorably in the enumerated wars or in the war of the Revolution." Functional literacy is often defined as reading at or above a 5th grade level. *See generally* THOMAS G. STICHT, READING FOR WORKING: A FUNCTIONAL LITERACY ANTHOLOGY, (Human Resources Research Organization 1975). The 1964 Louisiana literacy tests states that it is to be administered to those who "cannot prove a 5th grade education." Civil Rights Movement Veterans, Louisiana Voter Literacy Test ~ circa 1964, http://www.crmvet.org/info/la-littest-orig.pdf.

32. "Idiots, insane persons, and those convicted of certain crimes."[37]

33. All those who put their ballot in the wrong box.[38]

34. Any male citizen under the age of 21.[39]

35. Women. [40]

III. Everybody Says Freedom

36. Anyone with ancestral ties to the North American continent who refuses to renounce tribal citizenship and assimilate into the dominant culture of the United States of America.[41]

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[36]Some of the state literacy tests also "tested" civic knowledge with complex questions about the state and federal constitutions or the structure of the state or federal government. Mississippi's 1955 test required voters to interpret portions of the Mississippi constitution selected by the voter registrar and to write out a "statement setting forth your understanding of the duties and obligations of citizenship under a constitutional corm of government:" Civil Rights Movement Veterans, Mississippi Voter Application and Literacy Test circa 1955, available at http://www.crmvet.org/info/ms-littest55.pdf.

[37]Giles v. Harris, 189 U.S. 475, 483 (1903) (describing provisions of the Alabama constitution setting forth voter qualifications).

[38]Southern election officials developed creative tactics at the ballot box to manipulate the vote. Georgia and other states adopted an "eight box" system that required voters to vote for candidates on separate ballots and place each ballot in a different box. Officials frequently rearranged the order of the boxes to further confuse voters. LOU FALKNER WILLIAMS, THE GREAT SOUTH CAROLINA KU KLUX KLAN TRIALS, 1871-1872145 (2004); JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS 282-283 (8th ed. 2000)("The practice of stuffing ballot boxes was widespread. Criminal manipulation of the counting gave point to the assertion of an enthusiastic Democrat that "the white and black Republicans may out vote us, but we can out count them."")

[39]U.S. Const. Amend. XIV §2.

[40]"The Fourteenth Amendment, which includes the word "male" not once but three times, was ratified in July 1868. The Fifteenth Amendment, which followed less than two years later, also failed to provide the suffragists with any cause for optimism. It decreed that no citizen could be denied the right to vote because of "race, color or previous condition of servitude," but made no mention of gender. Taken together, the Fourteenth and Fifteenth Amendments caused women to wonder if they were indeed fully citizens of the United States." Sandra Day O'Connor, *The History of the Women's Suffrage Movement*, 49 VAND. L. REV. 657,661 (1996). The Nineteenth Amendment, which was ratified in 1920, prohibits discrimination based on sex regarding voter qualifications. U.S. Const. Amend. XIX.

[41]Native Americans were not considered citizens and thus were generally ineligible to register or vote in the United States. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, § 14.01[3], n. 42-44 (2012 Ed.). The Indian Citizenship Act, passed by congress in 1924 (four years after women obtained suffrage), granted Native Americans citizenship. 8 U.S.C. § 1401(b)). *See also* Porter v. Hall, 271 P. 411, 419 (Ariz. 1928) (holding that Native Americans living on reservations in Arizona were "'persons under guardianship,' and not entitled to vote."). *Porter* was not overturned until 1948 in *Harrison v. Laveen*, 196 P.2d 456 (Ariz. 1948).

37. Boys and girls who are under the age of 18, and therefor lack the requisite life experience and knowledge of the issues.[42]

38. Those whose popular will, as expressed through their vote, has been totally frustrated "on an overwhelming number of critical issues" through a cleverly engineered voting district shaped like a salamander.[43]

39. Any unregistered, would-be voter raising a family on three minimum wage jobs who, in the last week of a political campaign, discovers a candidate she would like to vote for, only to realize that the registration deadline has passed.[44]

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[42]In 1968, Congress amended the Civil Rights Act of 1965 to address voting age, lowering it to 18. 42 U.S.C. § 1973aa (1971). Two years later, in *Oregon v. Mitchell*, the Supreme Court held that Congress had the power by statute to set the minimum age requirement for federal elections, but it had no such authority in state and local elections. 400 U.S. 112 (1970). Congress later approved the 26th Amendment for ratification, which constitutionalized this change. The amendment provides: "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." U.S. Const. Amend. XXVI, § 1. Youth advocates continue to promote lowering the voting age further, although such efforts have been dubbed "a terminally dumb idea" by Curtis Gans, Director of the Center for the Study of the American Electorate at American University. According to Gans, "The voting age was set at 18 because that's the age at which people could be drafted and die for their country. They don't have enough life experience or history and don't know the issues in enough detail [to be qualified to vote.]" *Baltimore Teens Get Chance to Register Quick in Primary Allows 16-, 17-Year-Ods to Vote*, 2003 WLNR 3480835.

[43]Vieth v. Jubelirer, 541 U.S. 267, 346 (2004) (Souter, J., dissenting). *See also* Richard H. Pildes, *Principled Limitations on Racial and Partisan Redistricting*, 106 YALE L.J. 2505, 2553-54 (1997) ("Recent cases now document in microscopic detail the astonishing precision with which redistricters can carve up individual precincts and distribute them between districts with confidence concerning the . . . partisan consequences."). *See also* Andrew P. Miller and, *The Constitutionality of Political Gerrymandering: Davis v. Bandemer and Beyond*, 4 J.L. & POL. 697 (1988)(explaining that the term "gerrymander" originated in Massachusetts in response to an 1812 redistricting plan proposed by Governor Eldbridge Gerry that resembled a salamander).

[44]*See* Deborah S. James, *Voter Registration: A Restriction on the Fundamental Right to Vote*, 96 YALE L.J. 1615, 1629 (1987)(arguing that laws requiring registration prior to election day are per se restriction on the right to vote); JIM SHULTZ, THE DEMOCRACY OWNERS' MANUAL: A PRACTICAL GUIDE TO CHANGING THE WORLD 24 (2003)("Less restrictive voter registration rules would make it more possible and more likely that a larger and more representative electorate would go to the polls . . .Some voter participation advocates favor eliminating registration altogether . . .") *See also* Steven Carbo & Brenda Wright, *The Promise and Practice of Election Day Registration in Votes!: A Guide to Modern Election Law and Voting Rights,*66-67 (American Bar Association 2008) (describing how the rise of restrictive pre-election voter registration schemes in the late 19th and early 20th century contributed to a significant decline in voter turnout and participation). Today voter registration requirements continue to depress voter participation by making access to the franchise more difficult. According to a 2006 survey, 22% of the American public is not registered to vote. Of these unregistered voters, 66% make less than $20,000 per year. They report that registration is a barrier because of structural factors: they are too busy or too transient to register or they do not register because getting to the polls on voting day is very difficult. Racial demographics are also important: 40% of Hispanics are unregistered, compared to 17% of blacks and 20% of whites. *See* Pew

40. Anyone without the time, mobility, or resources to get to the nearest Department of Motor Vehicles office on the one weekday a month that it is open.[45]

41. All those who have Hispanic surnames, and therefore must be either illegal aliens or documented non-citizens.[46]

Research Center, Regular Voters, Intermittent Voters, and Those Who Don't: Who Votes, Who Doesn't and Why, (2006) http://www.people-press.org/files/legacy-pdf/292.pdf

[45] GARY MAY, BENDING TOWARD JUSTICE: THE VOTING RIGHTS ACT AND THE TRANSFORMATION OF AMERICAN DEMOCRACY,166 (2013)(describing specific ways in which Wisconsin's 2011 voter ID law burdened students, racial minorities, the poor, the elderly, and the disabled in the 2012 election); Andrew Cohen, *How Voter ID Laws Are Being Used to Disenfranchise Minorities and the Poor*, THE ATLANTIC (March 16, 2012), http://www.theatlantic.com/politics/archive/2012/03/how-voter-id-laws-are-being-used-to-disenfranchise-minorities-and-the-poor/254572/. A study by the Brennan Center for Justice at New York University's law school found that 11 percent of Americans lack a government-issued photo ID such as a passport, driver's license, state ID card or military ID. Nine percent of whites don't have such ID, compared with 25 percent of blacks and 16 percent of Hispanics. "These new restrictions fall most heavily on young, minority, and low-income voters, as well as on voters with disabilities. . . .At least 22 states have introduced legislation either requiring voters to show photo ID at the polls or making existing photo ID laws more restrictive.(Alaska, Arkansas, Connecticut, Illinois, Indiana, Iowa, Maryland, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Tennessee, Virginia, Washington, West Virginia, Wyoming). The Brennan Center for Justice, Voting Laws Roundup (2013), http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup. For example, North Carolina passed a law in 2013 requiring voters to present a state issued ID in order to vote. Voter Information Verification Act Act, amending general statute Article 14A, §163-166.13 (2013). Although enacted under the guise of voter fraud, actual instances of documented voter fraud are rare. However, such laws are extremely effective at disenfranchising the poor, racial minorities, the homeless, college students and recently returning veterans. *See e.g.,* Warren Richey, *Voter ID: North Carolina Law Targets Minority Rights, Eric Holder Says* CHRISTIAN SCIENCE MONITOR (September 30, 2013), http://www.csmonitor.com/USA/Justice/2013/0930/Voter-ID-North-Carolina-law-targets-minority-rights-Eric-Holder-says; Alisa Chang, In *Rural N.C., New Voter ID Law Awakens Some Old Fears* (August 16 2013) http://www.npr.org/2013/08/16/212664895/in-rural-n-c-new-voter-id-law-awakens-some-old-fears; RICHARD H PILDES, VOTING RIGHTS, THE NEXT GENERATION IN RACE, REFORM, AND REGULATION OF THE ELECTORAL PROCESS: RECURRING PUZZLES IN AMERICAN DEMOCRACY, 30 (2011).

[46]At least eight states (Massachusetts, Missouri, Nevada, Oklahoma, Oregon, South Carolina, Texas, Virginia) have introduced legislation requiring proof of citizenship, such as a birth certificate, to register and/or vote. Brennan Center for Justice, Voting Laws Roundup 2013 (August 15, 2013) http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup. *See also* Sugarman v. Dougall, 413 U.S. 634, 648-49 (1973) ("With regards to whether noncitizens have a constitutionally protected right to vote, the Supreme Court has remarked: "This Court has never held that aliens have a constitutional right to vote ... under the Equal Protection Clause. Indeed, implicit in many of this Court's voting rights decisions is the notion that citizenship is a permissible criterion for limiting such rights"); United States v. Long County, Ga., Case No. CV206-040 (S.D. Ga. Feb. 10, 2006) (Stating that county election officials denied the franchise to 45 Hispanic residents on the grounds that they were not United States citizens without any credible evidence the support the claim. All of the targeted voters, who were required to prove their citizenship in order to vote, had Hispanic or Spanish-surnames. No similarly situated non-Hispanic voters were targeted in this fashion).

42. Felony disenfranchisement.

43. Anyone who, while walking through a rainstorm, has had their umbrella snatched away by a bunch of men in robes who think you have no need for it since you are not getting wet.[47]

Epilogue

44. The poor.[48]

45. The disposessed.[49]

46. Anyone who is other.[50]

47. Everybody who says freedom.[51]

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[47] Shelby Cnty.,v. Holder, 133 S. Ct. 2612 (2013) (holding section four of the Voting Rights Act unconstitutional). In her dissenting opinion in Shelby County v. Holder, Justice Ginsberg observed: "Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet. *Id.*, at 2650.

[48] *See* Bertrall L. Ross II & Terry Smith, *Minimum Responsiveness and the Political Exclusion of the Poor,* LAW & CONTEMP. PROBS., 197, 203 (2009) 197, 203 ("[T]he poor are in a state of political exclusion not unlike the position of southern Blacks before the 1970s: their interests and needs are rarely considered in the political process.). *See also* EDWARD L. AYERS, THE PROMISE OF THE NEW SOUTH: LIFE AFTER RECONSTRUCTION,249-282 (1992) (chronicling the rise and fall of the populist People's Party, which briefly unified poor whites and former slaves in the late 19th century South before being dismantled by racial polarization among the poor supported by both the Democrat and Republican parties).

[49] RICHARD JAY, *Democratic Dilemmas*, SOCIAL EXCLUSION, SOCIAL INCLUSION (Robin Wilson and Paul Teague (eds.), Democratic Dialogue, Report No. 2 (1995). ("[D]emocratic structures which merely appear to circulate political leaders without addressing substantial social concerns will not only fail to incorporate the dispossessed into the political community, but encourage others to drop out and pursue methods inimical to the democratic spirit.); Paul Craig Roberts, *The Dispossessed Majority*, ("The US is ruled by a private oligarchy. The government is merely their front. . . . The oligarchs have succeeded in making Americans a dispossessed majority in their own country"), http://paulcraigroberts.org/2012/08/08/the-dispossessed-majority/.

[50]"The black image in the white mind is not representative of white representational desires. . . . Enter the Other: a dark, two-dimensional figure which seems, paradoxically, to possess an infinite depth. . . In the imagination of the white Overmind the body politic is held together in a form known as Leviathan. . .The central drama of Leviathan is, in the imagination of the white Overmind, the vote. To exclude blacks from the body politic, from becoming Leviathan, it is necessary to prevent blacks from exercising a meaningful vote." Anthony Paul Farley, *Lacan & Voting Rights*, 13 YALE J.LAW & THE HUM. 283 (2001) (2001), http://digitalcommons.law.yale.edu/yjlh/vol13/iss1/10. *See also* U.S. Const. Art. I §2, cl 3 (referring to the enslaved as "other persons").

[51]Since the American Revolution, the dispossessed have sought to use the rhetoric of equality to advance the cause of freedom. But as freedom fighters thought American history have discovered, despite the rhetoric, nobody really wants freedom. *See generally,* ERIC FONER, THE STORY OF AMERICAN FREEDOM, 31-37 (1999) (describing the duality inherent in the ideologies of inalienable freedom and liberty espoused by

Post Script

48. Anyone from a racial group that has intentionally and methodically oppressed members of another racial or ethnic group.

49. Anyone who has, while cleaning the kitchen, fantasized about having a slave.

50. Anyone whose poverty is not due to a previous condition of servitude or legalized subjugation.

51. Anyone who would vote against their own self-interest.

the framers of the Constitution). "One element of freedom was the freedom to enslave others . . .It could in fact be argued that slavery made republican freedom possible for by eliminating the great bulk of the dependent poor from the political nation, if left the arena to men of propertied independence." *Id.*