



A REPUBLIC, If We Can Keep It

The Regime Question in the 19th Century: The Civil War and Black Disenfranchisement

Rick Valelly (Swarthmore College)

MEMO PREPARED FOR CONFERENCE: A REPUBLIC, IF WE CAN KEEP IT

On April 12-13th, 2018, researchers, scholars, journalists, and policymakers came together at New America in Washington D.C. to address questions about the health and resiliency of American democracy. This conference considered questions such as: Can a liberal democracy and representative government persist in the United States? Are we experiencing a breakdown of democracy? Are checks and balances that are built into the political system and the mediating institutions that link citizens and government strong enough to sustain liberal democracy?

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By Rick Valelly

A key purpose of placing our current crisis in developmental perspective, and of comparing it with previous moments of grave political crisis, is to dissolve the view that the U.S. is a uniquely stable regime that has only *recently* become vulnerable to democratic backsliding or regime transformation.

Truly deep political crises have beset us many times. By “deep political crisis” I mean (borrowing here from a German political scientist) “*clearly discernible events that unfold over a limited time span and that directly threaten the democratic political institutional order.*” The crisis of the early Republic is one example, as Suzanne has just suggested. Federalists sought to entrench themselves in a sharply expanded federal judiciary set up by the 1801 Judiciary Act. They also, of course, criminalized press criticism of the Adams Administration.

Let me sketch two other political crises of the 19th century: the Civil War and formal-legal black disenfranchisement from 1889 to 1907.

The first has inspired great scholarship and a rich politics of collective memory. It needs little sign posting.

The second crisis does need a bit of sign posting, however. Many people think that black disenfranchisement was not actually a major public reversal -- that is, a dismantling of the impartial rule of law, rights of association, the right to vote and to hold office, and the shutting down of competitive party politics.

For example, the Yale-New Haven Teachers Institute has the following at an on-line lesson plan: “Immediately following the end of Reconstruction, the Federal Government of the United States restored white supremacist control to the South and adopted a ‘laissez-faire’ policy in regard to the Negro. The Negro was betrayed by his country.”

If you take this mostly incorrect view, as many do, then you will treat the diffusion of formal-legal disenfranchising policies within the ex-Confederacy from 1889 to 1907 as nothing more than state-by-state finishing touches on Republican betrayal of black Southerners in the Compromise of 1877.

Think, however, of the 1889-1907 disfranchisement sequence – certainly I do – as something like a war of attrition. It pitted political parties and social movements against each other in great clashes state by state. It was an historical period all by itself, with its own dynamics and contingencies. As in all cases of democratic backsliding, there was no completely clear, unmistakable signal during the sequence about what the final outcome would be until it was all over.

What about these two crises made (and still makes) them shocking?

In the first case, the Civil War, a large part of the answer, to borrow from Drew Gilpin Faust, is that we became a “Republic of Suffering.” We think of the Civil War as a “good” war. But it was colossally lethal. It saw 600,000 combatant deaths, the equivalent today of 6 million combatant deaths.

We also think of it as a good war because the Union won a total victory. But the war could have easily ended in partition. Gettysburg, July 1863, was the turning point. But during the second day at Gettysburg the Army of Northern Virginia twice nearly smashed the Union lines. Only able command of the Maine and Minnesota regiments and regimental willingness to take enormous casualties prevented the Army of the Potomac's defeat.

Finally, the Lincoln Administration was more repressive and illiberal than we typically remember. Although Republicans permitted a loyal and vigorous opposition, and although the Union held a presidential election in 1864 whose outcome, *ex ante*, was uncertain, Lincoln also packed the Supreme Court and he suspended the writ of habeas corpus.

Turn now to black disenfranchisement and why *it* was a shocking chain of events.

Consider the broad contours of suffrage restriction. In 1880 black voter turnout in the presidential elections in the ex-Confederate states was 61% -- a very respectable, roughly Canada-level figure. It is about what national voter turnout was a year and a half ago, in 2016. Twelve years later, in 1892, black voter turnout was 32%, pulled down in part by disenfranchisement in Mississippi and Florida, and voter suppression in South Carolina. It was 17% in 1900. By 1912 black voter turnout was about 2%. As all of this happened black office holding dwindled to zero. In 1901, George White of North Carolina's Second District gave a farewell speech in the U.S. House, ending with the following poignant words, "This, Mr. Chairman, is perhaps the negroes' temporary farewell to the American Congress; but let me say, Phoenix-like he will rise up some day and come again."

Most African-Americans then lived in the ex-Confederacy. Their disenfranchisement was a massive extrusion from the polity.

A very frightening concomitant of suffrage restriction was the surge in lynching. From about 1890 to 1900 over 1000 African-American men were lynched. That works out to a white-on-black lynching every fourth day. From 1901 to 1909 another 800 were lynched. These were extra-judicial killings, often carried out publicly. Indeed, they were often advertised in advance and became local festivals with postcards of the deceased for sale. Lynchings typically meted out “justice” for alleged petty crimes, ranging from stealing 75 cents to supposed poisoning of a mule to hog theft.

Another concomitant of suffrage restriction was monument building and commemoration when disenfranchisement was over and done and the Democratic party ruled in each state with no opposition. The U.S. Capitol saw new statues honoring Confederate heroes, states changed their flags to commemorate the Confederacy, and the United Daughters of the Confederacy and Confederate veterans associations pushed for statuary all over the South.

Let me end these sketches with some thoughts on the persistence of our constitutional forms during these crises.

In 2000 David Mayhew, a great APD scholar, wrote, “From a comparative perspective, nothing is more striking about the American constitutional system than its stability since 1789.” By that he meant that the “form” and the “standing” of the Article I-III institutions, along with robust federalism, have held up. *Why* that has been the case is beyond the scope of

my remarks. But the larger point here is that the unusual persistence of constitutional forms over more than two centuries is much of why we think of really deep political crisis as a *bug*, not a feature of American politics.

If the 19th century saw three regime crises, however, then the regime question – to use Ken’s language -- has been a *recurring* question, one that has haunted American political development and haunts it now in ways that surprise and unsettle us every day.

With that let me turn it over to Rob.