

DEMOCRACY



POPULAR
PRECEDENTS
PRACTICE
CULTURE

13 - 15 JULY 1994

UNIVERSITY OF THE WITWATERSRAND

HISTORY WORKSHOP

RACE, DEMOCRACY, AND CITIZENSHIP IN
NINETEENTH-CENTURY AMERICA

Eric Foner
DeWitt Clinton Professor of History
Columbia University

MWS 119

Race, Democracy, and Citizenship in Nineteenth-Century America

Eric Foner
DeWitt Clinton Professor of History
Columbia University

Paper Delivered at Sixth History Workshop Academic Conference,
Johannesburg, South Africa, July 1994

Please do not quote or cite without permission of the author

Today is an exciting and troubling time for American historians. Rarely has the study and teaching of the nation's past aroused such heated public debate. We in the academic world should welcome this intense scrutiny, even as we deplore the oversimplifications of both history and politics in magazine features and instant best sellers decrying "political correctness," "multiculturalism," and the "new history."

These debates reflect the enormous changes that have swept over the study of American history in the past generation. Increased attention to the experience of previously neglected groups, such as women and members of racial minorities, and to previously neglected subjects, like the subfields of social history, as well as new methodologies borrowed from other disciplines such as anthropology and literary theory, have transformed our understanding of the American past. They have also, some complain, sacrificed a coherent sense of what has unified our nation. I respond to these admonitions with mixed feelings. On the one hand, it seems irrefutable that the new history paints a far more inclusive, nuanced, and accurate portrait of the American experience. I do not regret the demise of older generalizations that claimed to distill the essence of the American saga, even as they reflected the history of only a single part of the American people. On the other hand, I myself have written of the desirability of moving beyond a portrait of the United States as a collection of fractious racial, ethnic, and sexual groups, to an appreciation of the

common themes that give coherence to the nation's past.

The debate over difference and commonality today, I fear, threatens to become as sterile as that over conflict and consensus a generation ago. We can transcend it only by recognizing that these are not mutually exclusive categories. Not only are both diversity and commonality intrinsic parts of the American experience, they are symbiotically related to one another. Thus, identification and appreciation of the common themes of American history may not be quite so easy as some writers have recently suggested. Not long ago, Lynne V. Cheney, then chair of the National Endowment for the Humanities, called on scholars to devote less attention to the "flaws of . . . American history" (by which, I suppose, she meant the history of groups that have not shared fully in the promise of American life) and concentrate on the "truth" that "belief in equality and freedom" has been the central theme of the nation's past. More substantively, Arthur M. Schlesinger, Jr., in his best-selling critique of current cultural politics, The Disuniting of America, identified a common belief in the inalienable rights to freedom and democracy as among those central ideas that has "managed to keep American society whole." I want to suggest today, however, that these concepts are anything but unproblematic. The difficulty is not merely that the United States has often failed to live up to its professed ideals -- a failure of which Professor Schlesinger is, of course, perfectly aware. More important, these failures cannot be understood simply as aberrations in a Whiggish progress toward ever greater liberty and human dignity, in

which the expansion of Americans' rights can be understood as the logical and necessary fulfilment of a vision articulated by the founders but for historical reasons not fully implemented by them. Rather, apparently universal principles and common values -- like freedom, democracy, and the inalienable rights of mankind -- have themselves been historically constructed on the basis of difference and exclusion.¹

Nowhere is this symbiotic relationship between inclusion and exclusion, between a creed emphasizing a commitment to democracy and freedom as universal rights and a reality of limiting those rights to particular groups of people, more evident than in debates over that fundamental question: who is an American? This is an issue that agitates American politics even as I speak. Last year, Gov. Pete Wilson of California, a state in the grip of economic recession and experiencing a massive population influx from Asia and Latin America, proposed to deny American citizenship to children born in the United States to illegal residents.² This year, he is making this demand a central part of his campaign for reelection. Although evidently unaware that his proposal would require abrogation of the Constitution's Fourteenth Amendment, the governor did, at least, draw attention to the fact that citizenship and nationality are once again topics of intense public debate -- a result of the upsurge of ethnic, religious, and linguistic particularism in Europe and the Third World and the ever-increasing visibility of the multicultural character of the United States. The latest in a long line of American statesmen to substitute a nickname or diminutive for their

actual first name in hopes of creating a false impression of folksy populism, Pete Wilson is also not the first politician to blame America's problems on an alien invasion or to propose to redefine American nationality along racial and ethnic lines. There is nothing new, at least in the United States, about bitter conflicts over who should and should not be a citizen.

Perhaps the intensity of these debates arises from the tension between the universal principles of what is sometimes called the American Creed and the need to define national identity. From the time of independence, American political culture, unlike that of other nations, has been predicated on abstract verities that ostensibly apply to all mankind -- the inalienable rights enumerated in the Declaration of Independence, the universal rationality and propensity for self-improvement taken for granted by classical economics. Our *raison d'être* as a nation rests on principles that are universal, not parochial. Yet the process of defining nationality is inherently exclusionary. Nationalism always involves defining a community or people in contradistinction to outsiders. No matter how wide the "circle of we," most people on earth will remain excluded from it. It is now almost obligatory to refer to Benedict Anderson's celebrated definition of the nation as a state of mind, "an imagined political community," a construction or invention rather than a timeless entity. The nation's borders are as much intellectual as geographic. (Anderson, I may note, ignores the United States almost entirely in his fascinating book, a feature shared by nearly all recent general studies of nationalism,

which are more concerned with Europe and postcolonial nationalism in the Third World than the world's first democratic national state.) One needs to add, however, that the process of imagining is itself contentious and ultimately political. Who constructs the community, who has the power to enforce a certain definition of the nation, will determine where the boundaries of inclusion and exclusion lie. Rather than being permanently fixed, moreover, national identities are inherently unstable, subject to continuing efforts to draw and redraw their imagined borders. "The history of freedom," a scholar of British history has recently written, "is really the history of controversies over its constructions and exclusions." The same may be said of citizenship.³

In a society resting, rhetorically at least, on the ideal of equality, the boundaries of the imagined community take on extreme significance. Within the cognitive border, Americans have long assumed, civil and political equality of some kind ought to prevail; outside its perimeter, equality is irrelevant. The more rights are enjoyed within the circle of citizenship, the more important the boundaries of inclusion and exclusion become. Since citizenship implies the ability to enjoy the full benefits of American freedom, "who belongs?" has long been the central question of American nationality.⁴

From the foundation of the American nation, of course, the existence of slavery constituted not simply the most vivid contradiction to America's professed ideals, but the most impenetrable boundary of citizenship itself. Already deeply-entrenched in the Southern states by the time of the

American Revolution, slavery helped to shape the identities, the sense of self, of all Americans, giving citizenship a powerful exclusionary dimension. The value of American citizenship, as Judith Shklar has argued, derived to a considerable extent from its denial to others. The Constitution's very language revealed that three distinct populations co-existed on American soil. One was the Indians, dealt with as members of separate nations and not counted in apportioning representation in Congress. The Constitution divided the non-Indian population into "people," and "persons," a seemingly innocuous distinction which, in fact, reflected enormous differences in status and rights. "We the people," according to the preamble, created the Constitution and, presumably, the nation itself. Later in the document, however, reference is made to "other persons," apparently existing outside the political community. These "persons," of course, are slaves (although the word itself is studiously avoided). By leaving the fate of slavery to the individual states and mandating that the condition adheres to those who escape to a jurisdiction where slavery has been abolished, the Constitution virtually guarantees the future continuation of bondage. Slaves, as Edmund Randolph later wrote, were "not. . . constituent members of our society," and the language of liberty and citizenship did not apply to them.⁵

What of those within the "circle of we?" The word citizen appears in four places in the original Constitution -- in articles elaborating the qualifications for the President and members of Congress and in the comity clause requiring each

state to accord citizens of other states "all the privileges and immunities of citizens of the several States." Nowhere does the original Constitution define who in fact are citizens of the United States, or what privileges and immunities they enjoy. It is left to the individual states to determine the boundaries of citizenship and citizens' legal rights.

Nothing in the Constitution limits the rights of citizens according to race, sex, or any other accident of birth. The Constitution does, however, empower Congress to create a uniform system of naturalization, and the laws passed in the 1790s to implement this provision offered the first legislative definition of the boundaries of American nationality. The very effort to establish a uniform naturalization procedure marked a break with the traditions of Britain, where until 1844 only a private Act of Parliament could confer citizenship upon a foreigner. Americans, however, thought of their country as a refuge for those fleeing the tyranny of the Old World, an "asylum for mankind," as Thomas Paine put it so memorably in Common Sense. Yet slavery rendered blacks all but invisible to those imagining the American community. When the era's master mythmaker, Hector St. John Crèvecoeur, posed the famous question, "What then is the American, the new man?," he answered: "a mixture of English, Scotch, Irish, French, Dutch, Germans, and Swedes . . . He is either a European, or the descendant of a European." This at a time when fully one-fifth of the American population (the highest proportion in our entire history) consisted of Africans and their descendants.⁶

The naturalization law of 1790 confirmed this racialized definition of American nationality. With no debate, Congress restricted the process of becoming a citizen to "free white persons" (a provision already included in the naturalization requirements of several Southern states, and a good illustration of how slavery, from the beginning, helped to define the American way.) This limitation lasted a long time. For eighty years, only white immigrants could become naturalized citizens. Blacks were added in 1870, but not until the 1940s did most persons of Asian origin become eligible. Only in the last quarter of the nineteenth century were groups of whites barred from entering the country and becoming citizens. Beginning with prostitutes, convicted felons, lunatics, polygamists, and persons likely to become a "public charge," the list of excluded classes would be expanded in the twentieth century to include anarchists, communists, and the illiterate. But for the first century of the republic, virtually the only white persons in the entire world ineligible to claim American citizenship were those unwilling to renounce hereditary titles of nobility, as required in an act of 1795.⁷

The two groups excluded from naturalization -- European aristocrats and non-whites -- had more in common than might appear at first glance. Both were viewed as deficient in the qualities essential for republican citizenship -- the capacity for self-control, rational forethought, and devotion to the larger community. These were precisely the characteristics that Jefferson, in his famous comparison of the races in Notes on the State of Virginia, claimed blacks lacked,

partly due to natural incapacity and partly because the bitter experience of slavery had (quite understandably he felt) rendered them disloyal to the nation. Jefferson still believed black Americans should eventually enjoy the natural rights enumerated in the Declaration, but they should do so in Africa or the Caribbean, not the United States. For him, as for many of his contemporaries, the concept of politics as an arena where citizens left behind self-interest in pursuit of common goals implied the desirability of a homogenous citizenry whose common experiences, values, and innate capacities made the idea of a public good realizable.⁴

Blacks formed no part of the imagined community of Jefferson's republic. But no dream of "colonizing" the entire black population outside the United States could negate the fact of the black presence. Whether free or slave, their status became increasingly anomalous as political democracy (for white men) expanded in the nineteenth century along with an insistent self-congratulatory rhetoric celebrating the United States as a "empire of liberty," a unique land of equality and democracy. Without a long tradition of history to weld their country together, Americans emphasized the recent past (glorifying the founding fathers) and the future (the nation's God-given mission of spreading freedom throughout the globe). Indeed, in a country which lacked more traditional bases of nationality -- long-established physical boundaries, a powerful and meaning neighbor, historic ethnic, religious, and cultural unity -- America's democratic political institutions themselves came to define nationhood. Increasingly, the right

to vote became the emblem of American citizenship -- if not in law (since suffrage was still, strictly speaking, a privilege rather than a right, subject to regulation by the individual states) then in common usage and understanding. Noah Webster's American Dictionary noted that the term "citizen" had, by the 1820s, become synonymous with the right to vote. In America, unlike Europe, "the people" ruled, and the "public" itself was essentially defined via the ballot. Hence, who was and was not included as part of "the people" took on increasing importance. Suffrage, said one advocate of democratic reform, was "the only true badge of the freeman." Those denied the vote, said another, were "put in the situation of the slaves of Virginia."

Various groups of Americans, of course, stood outside this boundary. Dealt with by treaties and assumed, as a legal fiction, to be citizens of other nations, Indians were not generally held to be citizens of the United States even though certain statutes contemplated this possibility for those who left their tribes and received land allotments from the federal government. Women's citizenship was something of an open question. Free women were certainly members of the imagined community called the nation; indeed according to the prevailing ideology of separate spheres they played an indispensable role in the training of future citizens. The common law subsumed women within the legal status of their husbands. But courts generally (although not always) held that married women had a civic status of their own. They could be naturalized if immigrating from abroad, and a native-born American woman did

not automatically surrender her nationality by marrying a foreigner. (Not until 1907 did Congress, alarmed by massive immigration, require American women who married aliens to take the nationality of their husbands, a provision that remained on the statute books until the 1930s.)¹⁰

In the nineteenth century, however, the public arena was very much a male preserve; indeed as democracy expanded, participation in politics became a defining characteristic of American manhood. In both law and social reality, women lacked the essential qualification of political participation -- the opportunity for autonomy (whether the propertied independence of the republican tradition, which enabled men to devote themselves to the public good, or the personal independence deriving from ownership of one's self and one's labor, celebrated in the emerging liberal ethos.) Women were also widely believed (by men) to be naturally submissive, by definition unfit for independent-minded citizenship. Nature itself, said a delegate to Virginia's constitutional convention of 1829, had pronounced on women an "incapacity to exercise political power." The democratic citizen was emphatically a male head of household, and it was rarely noticed that without women's work in the domestic sphere few men would have enjoyed the freedom to take part in the political arena.¹¹

If women occupied a position of subordinate citizenship, non-whites were increasingly excluded from the imagined community altogether. Slaves, of course, were by definition outside the "circle of we," and, in the South, in the words of a Georgia statute, free blacks were "entitled to

no right of citizenship, except such as are specifically given by law." Apart from the ability to possess property, few indeed were given. The North's black community on the eve of the Civil War numbered a mere 220,000, or about one percent of the region's population. Yet as the nineteenth century progressed this tiny group was subjected to increasing discrimination in every phase of its life. In most Northern states blacks were barred from public schools, denied access to public transportation, excluded from places of public accommodation, and prohibited from serving on juries and in state militias. The position of Northern blacks, said Frederick Douglass, was "anomalous, unequal, and extraordinary. . . . Aliens we are in our native land." Over a century later, Malcolm X would say much the same thing with his customary directness. "Being born here in America doesn't make you an American. Why, if birth made you an American, you wouldn't need any legislation They don't have to pass civil rights legislation to make a polack an American." Malcolm X's point was that despite prejudice against white immigrants, they were always viewed as potential citizens. Almost as soon as they landed on these shores, alien men became entitled to legal equality, and eligible to vote.¹²

Democracy for whites, however, expanded hand in hand with deterioration in the status of free blacks. In 1800, no Northern state restricted the suffrage on the basis of race. Most black men were poor, but those able to meet property qualifications could vote alongside whites. Between 1800 and 1860, however, every state that entered the Union, with the

single exception of Maine in 1821, restricted the suffrage to white males. Moreover, as property qualifications for whites were progressively eliminated, blacks' political rights became more and more constrained. In 1821, the same New York Constitutional Convention that removed property requirements for white voters raised the qualification for blacks to \$250 -- a sum beyond the reach of nearly all the state's black residents. Sixteen years later, Pennsylvania revoked African-Americans' right to vote entirely. By 1860, only five states, all in New England, allowed blacks to vote on the same terms as whites. In effect, race had replaced class as the major line of division between men who could vote (and thus be regarded in popular usage as citizens) and those who could not.¹³

Were blacks citizens, of individual states or of the nation? Despite the naturalization law's exclusion, there seemed no way to deny the citizenship of native-born free blacks. Citizenship, however, was increasingly believed to confer a variety of rights that most whites did not wish to see blacks enjoy. The federal government treated them as, in effect, resident aliens, generally refusing requests from free blacks for American passports. Most Northern states appear to have recognized the citizenship of free blacks, but at the price of severing, in their case at least, the tie between citizenship and anything resembling civil and political equality. The logical peculiarities of the situation were revealed in the political crisis of 1819-21, when Missouri sought admission to the Union with a constitution establishing slavery and excluding free blacks from the state. As a number

of Northern Congressmen pointed out, this latter provision blatantly violated the comity clause forbidding each state to discriminate against citizens of other states. If Massachusetts recognized blacks as citizens, how could Missouri exclude them? Southerners responded, in effect, that whether or not individual states recognized free blacks as citizens, the comity clause applied only to whites. In the end a compromise was reached, whereby Congress ordered Missouri not to prohibit citizens of other states from entering, without defining who such citizens were. Almost immediately, the issue resurfaced when, in the wake of the Denmark Vesey conspiracy, South Carolina decreed that black seamen arriving in Charleston would be imprisoned until their vessels were ready to depart -- another violation of the comity clause, which Massachusetts protested to no avail."

Not until 1857 did the Supreme Court offer a definitive answer to the question of black citizenship. (By then, four Northern states had adopted the same disputed rule as Missouri, prohibiting all blacks from entering their territory.) In the Dred Scott decision, Chief Justice Roger B. Taney announced that no black person could be a citizen of the United States. It was, ironically, because the definition of citizenship mattered so much that Taney felt constrained to produce his complex argument excluding blacks. America was a land of equality, he insisted, with only one class of citizens -- "members of the sovereignty," equally entitled to their "liberties and rights." States could treat blacks in any way they chose, but no state could introduce "a new member" into

the national political community. Blacks, the Chief Justice went on, had not formed part of the "people" who created the constitution, and had, in the eyes of the founders, been "considered as a subordinate and inferior class of beings. . . They had no rights which the white man was bound to respect."¹⁵

The relationship between inclusion and exclusion, between the expanding rights of white citizens and the deteriorating condition of blacks, was symbiotic, not contradictory. As the substance of citizenship expanded and Americans' rhetoric grew ever more egalitarian, a fully developed racist ideology gained broad acceptance as the explanation for the boundaries of nationality. Unlike republicanism, in which the citizen is or ought to be willing to sacrifice private interests in the pursuit of the common good, nineteenth-century liberalism seemed more comfortable with the actual diversity of needs, experiences, and interests of a heterogeneous population. But liberalism contained its own thrust toward homogeneity. The liberal citizen is guided by rational self-interest. Yet were all human beings capable of disciplined self-governance? If not, then nature itself -- inborn incapacity, rather than human contrivance -- explained the exclusion of blacks from citizenship rights. Of course, as John Stuart Mill once asked, "was there ever any domination which did not appear natural to those who possessed it?" Yet Mill himself argued, in his great work, On Liberty, that the right to self-government applied "only to human beings in the maturity of their faculties." Entire "races" of less than "civilized" people lacked the capacity for rational action

essential to democratic citizenship.¹⁶

Mill's view was widely shared in the United States. Perhaps this was inevitable in a nation whose economic growth depended in large measure on the labor of black slaves and whose territorial expansion involved the dispossession of one non-white people, the Indians, and the conquest of the lands inhabited by another, the Mexicans. The encounter with Mexicans via the Texas controversy of the 1830s and the Mexican War the following decade crystallized an emerging ideology that grounded American citizenship in a racially-defined set of virtues. These were the years when American historians -- George Bancroft, Francis Parkman, and others -- constructed a narrative of the American past in which Anglo-Saxon qualities were said to constitute the essence of American nationality. In this story, blacks made no contribution to American civilization, and the Spanish and French-derived cultures of the trans-Mississippi West, like Indians and Mexicans, were simply barriers to be overcome in the onward march of Anglo-Saxon progress. This rhetoric of racial exclusion suffused the political language. Only the Caucasian race, insisted John C. Calhoun, possessed the qualities necessary for "free and popular government. . . . Ours, sir, is a government of the white race." This sentiment was not confined to the South. Much the same idea was expressed by Stephen A. Douglas in his debates with Abraham Lincoln: "I believe this government was made on the white basis. I believe it was made by white men for the benefit of white men and their posterity for ever, and I am in favor of confining citizenship to white men"

instead of conferring it upon negroes, Indians, and other inferior races." Although Whigs tended to be somewhat more open to the possibility that non-whites could be assimilated into the political nation, they too, were attracted to the idea of racial and cultural homogeneity and to the idea that Anglo-Saxon Protestantism was the unique seedbed of American freedom. Even as this focus on "race" (in the nineteenth-century an amorphous category amalgamating ideas about culture, history, religion, and color) helped to solidify a sense of national identity among the diverse groups of European origin that made up the free population, it drew ever more tightly the lines of exclusion of America's imagined community. Gone was the idea of liberty and self-government as universal human rights, for only some peoples were "fit" to enjoy the blessings of freedom or capable of governing themselves.¹⁷

This racialized definition of citizenship and American nationality was challenged, of course, by abolitionists, black and white, in the years before the Civil War. The antislavery crusade insisted on the "Americanness" of slaves and free blacks and repudiated not only slavery but the racial boundaries that confined free blacks to second-class citizenship. Drawing on eighteenth-century traditions of natural rights, the Declaration of Independence, and the perfectionist creed of evangelical religion, abolitionists sought to define the core rights to which all Americans, regardless of race, were entitled. In so doing, they pioneered the idea of a national citizenship whose members enjoyed equality before the law protected by a beneficent national

state. Revising Crèvecoeur, Ralph Waldo Emerson wrote of America's destiny as the forging of a "new race" amalgamating not only Europeans, but "Africans" and "Polynesians" as well. Although far less egalitarian in their racial views than most abolitionists, Republicans in the 1850s also insisted that America's professed creed was broad enough to encompass all mankind. While hardly a proponent of black suffrage or equality before the law, for example, Lincoln explicitly rejected Douglas's race-based definition of liberty, insisting that the basic rights enumerated in the Declaration of Independence applied to all peoples, not merely Europeans and their descendants."¹⁸

Thus, the crisis of the Union, among other things, was a crisis of the meaning of American nationhood, and the Civil War a crucial moment in which key elements of the language of politics were reconstituted and their outer boundaries redefined. The struggle for the Union produced a consolidation of national loyalties and of the national state itself. Inevitably, it propelled to the forefront of public discussion the question, "who is a American?" "It is a singular fact," Wendell Phillips wrote in 1866, "that, unlike all other nations, this nation has yet a question as to what makes or constitutes a citizen."¹⁹

Four decades earlier, during Spanish America's wars of liberation, José de San Martín had proclaimed that the empowerment of the nation state demanded a uniform definition of citizenship, rendering previous divisions and exclusions obsolete: "In the future the aborigines shall not be called

Indians or natives; they are children and citizens of Peru and they shall be known as Peruvians." In the United States, too, the state-building process itself, coupled as it was with the destruction of slavery and the enrollment of 200,000 black men in the Union Army, threw into question earlier definitions of nationality. "The defiant pretensions of the master, claiming control of his slave," declared Senator Charles Sumner in 1864, "are in direct conflict with the paramount rights of the national government." The "logical result" of black military service, another Senator observed in the same year, was that "the black man is henceforth to assume a new status among us." Indeed, emancipation and the raising of black soldiers were themselves crucial moments in the wartime process of state-building, which, by their very nature, linked the rise of national power with the vision of a national citizenry whose equal rights were enjoyed regardless of race. Even before the death of slavery, the Lincoln administration effectively abrogated the Dred Scott decision by explicitly affirming the citizenship of free blacks. This stance was strongly seconded by Francis Lieber, at the time perhaps America's leading political scientist, who advised Attorney General Edward Bates that there could be "not even a shadow of a doubt" that blacks were entitled to citizenship. As for Dred Scott, wrote Lieber, "I execrate that opinion from the bottom of my soul."²⁰

By the beginning of Reconstruction most Republicans were agreed on two principles: "the national citizenship," as one newspaper put it, "must be paramount to that of the State," and the emancipated slaves were entitled to the basic rights of

American citizens. Precisely how to define these rights became the focus of the political struggles of early Reconstruction. Before the war, Republicans like Lincoln had insisted that the principles of "free labor" -- the right to pursue a calling and earn a living without encountering onerous discrimination, opportunity for social advancement, and command over the "fruits of one's labor" -- differentiated the free society of the North from the slave South. The destruction of slavery fixed free labor principles as a central element of American freedom. Free labor formed the basis of the first statutory definition of American citizenship, the Civil Rights Act of 1866, which declared all persons born in the United States (except Indians) national citizens and spelled out rights they were to enjoy equally without regard to race -- the ability, essentially, to compete in the marketplace, own property, and receive equal treatment before the law. States could not deprive an individual of these basic rights; if they did so, state officials would be held accountable in federal court.

"American citizenship must mean something," the measure's author, Sen. Lyman Trumbull, told the Senate, and in constitutional terms, the Civil Rights Act represented the first attempt to spell out the consequences of emancipation and define, in Trumbull's words, "the inherent, fundamental rights" of American citizens. Soon afterwards, Congress approved the Fourteenth Amendment, placing in the Constitution the definition of citizenship as birth on American soil or naturalization, and prohibiting states from abridging any citizens' "privileges and immunities" or denying them "equal

protection of the law." This broad language opened the door for future Congresses and the federal courts to breathe substantive meaning into the guarantee of legal equality.²¹

The Civil Rights Act and Fourteenth Amendment said nothing about the suffrage -- this remained a privilege, to be regulated by the states, not a fundamental right of citizens. Black spokesmen bitterly resented this exclusion, and in their newspapers, conventions, and public speeches put forth persistent claims for full recognition of their membership in the political community. The country's very democratic ethos made their exclusion all the more onerous. In a democracy, said Frederick Douglass, to be denied the vote was "to brand us with the stigma of inferiority." "To say that I am a citizen to pay taxes . . . obey laws . . . and fight the battles of the country, but in all that respects voting and representation, I am but as so much inert matter . . . is to insult my manhood," he added. In 1867, spurred by the insistent demands of African-Americans and deep dissatisfaction with the results of President Andrew Johnson's Reconstruction policy, Congress enfranchised black men in the South. Two years later, it approved the Fifteenth Amendment, barring any state from making race a qualification for voting.

"The great Constitutional revolution . . . ,"

declared Republican leader Carl Schurz, "found the rights of the individual at the mercy of the States . . . and placed them under the shield of national protection." Transcending boundaries of race and region, the statutes and Amendments of Reconstruction broadened the boundaries of freedom for all

Americans, requiring that the states respect the fundamental individual liberties that the Bill of Rights had protected against infringement by the federal government. Indeed it was precisely because they represented so striking a departure from the previous traditions of American law that these measures aroused such bitter opposition. "We are not of the same race," declared Indiana Sen. Thomas Hendricks, "we are so different that we ought not to compose one political community." Federal definition of the citizens' rights and civil and political equality for black Americans, declared President Johnson, violated "all our experience as a people." His veto messages sought to resurrect the racial boundaries of nationality that Congress had abandoned. History demonstrated, Johnson insisted, that only "white men" possessed the "peculiar qualities" that equipped them for democratic self-government. As for blacks, neither "mentally" nor "morally" were they fit for American citizenship."

Reconstruction Republicans rejected this reasoning, and insisted that blacks now formed part of the national community. But their universalism, too, had its limits. In his remarkable "Composite Nation" speech of 1869, Douglass condemned prejudice against immigrants from China, insisting that America's destiny was to serve as an asylum for people "gathered here from all corners of the globe by a common aspiration for national liberty." Any form of exclusion, he insisted, contradicted the essence of democracy. A year later, Charles Sumner, the Senate's leading Radical, moved to strike the word "white" from naturalization requirements. Senators

from the Western states objected vociferously. They were willing to admit blacks to citizenship, but not persons of Asian origin. Sumner's measure, remarked Republican Senator Cornelius Cole of California, "would kill our party as dead as a stone." In the end, instead of eliminating "white," Congress added people of African descent to those eligible for citizenship via naturalization. The racial boundaries of nationality had been redrawn, not eliminated.²³

Nor did Reconstruction policy makers make any effort to expand the definition of citizenship rights to incorporate women. Congress intended to overturn the nation's racial system, but to leave its system of gender relations intact. Like race, claimed the postwar women's movement, sex was an "accident of the body," an illegitimate basis for legal discrimination. Reconstruction, declared Olympia Brown, offered the opportunity to "bury the black man and the woman in the citizen." Yet slavery's denial of blacks' family rights -- including the right to the man to stand as head of the household and represent his family in political society -- had been among abolitionism's most devastating indictments of the peculiar institution. Even as feminists sought to reform the institution of marriage to make it more egalitarian, Republicans -- including many former slaves -- saw emancipation as restoring to blacks the natural right to family life, in which men would take their place as heads of the household and women would return to the domestic sphere from which slavery had unnaturally removed them.²⁴

As is well-known, the feminist effort to gain legal

equality and the right to vote fell on deaf ears in Congress. In its representation clause, the Fourteenth Amendment for the first time introduced the word "male" into the Constitution, producing a bitter schism between advocates of blacks' rights and those demanding woman suffrage. When women tried to employ the Amendment's expanded definition of citizenship to press their own rights, they found the courts singularly unreceptive. In 1872, the Supreme Court upheld an Illinois law barring women from practicing law; woman, said Justice Bradley, was confined by nature to the "domestic sphere" and restricting her occupational opportunities did not, therefore, violate the principles of free labor or the equal rights of citizens. In Minor v. Happersett, the Court rejected the claim that the right to vote was intrinsic to citizenship. Citizenship, declared Chief Justice Morrison Waite, was compatible with disenfranchisement; it meant "membership of a nation and nothing more."¹⁵

Virtually no Republican lawmakers, in fact, had intended, in rewriting the Constitution, to invalidate discrimination based on gender. The language of the Fifteenth Amendment clearly left the door open for suffrage distinctions based on grounds other than race -- a sign that in law, citizenship still did not necessarily encompass the right to vote. But the Court's argument in cases involving women constituted a step in the progressive narrowing of the boundaries of citizenship, a narrowing soon extended to other groups as well. With the end of Reconstruction, the egalitarian impulse faded from national life, and the imagined

community was reimagined once again. The Supreme Court progressively restricted the rights protected under the Fourteenth Amendment and did nothing when, beginning in the 1890s, one Southern state after another stripped black citizens of the right to vote.

The "failure" of Reconstruction strongly reenforced the racist thinking that came to dominate American culture in the late nineteenth century, fueling the conviction that blacks were unfit for self-government. "A black skin," Columbia University political scientist John W. Burgess would write at the turn of the century, "means membership in a race of men which has never of itself succeeded in subjecting passion to reason, and has never, therefore, created any civilization of any kind." The retreat from the postwar ideal of color-blind citizenship was also reflected in the resurgence of racial Anglo-Saxonism linking patriotism, xenophobia, and an ethnocultural definition of nationhood in a renewed rhetoric of racial exclusiveness. America's triumphant entry onto the world stage as an imperial power in the Spanish-American War of 1898 strongly promoted such arguments linking territorial expansion, national identity, and American destiny, all wrapped in a discourse that exalted the superior qualities of the Anglo-Saxon or, as it was sometimes called, Aryan race. As in the 1840s, even critics of imperialism shared in this outlook, opposing the annexation of Hawaii, the Philippines, Puerto Rico, and Cuba on the grounds that the inhabitants of these islands did not possess the capacities peculiar to whites and necessary for democratic citizenship. Even as Congress and

the Supreme Court stood by while the Southern states stripped black men of the right to vote, imperialism tied American nationalism more and more closely to notions of international racial superiority, displacing in part the earlier identification of the United States with democratic political institutions (or defining those institutions in a more and more explicitly racial manner).²⁶

This language was applied by scientists and sociologists not only to groups of whites whose growing numbers alarmed self-proclaimed defenders of America's racial and cultural heritage. "Lower races" -- a term that often included the urban poor, the insane, and immigrants from Southern and Eastern Europe -- were said to be impulsive and emotional, and to lack the capacity for abstract reasoning (much as Jefferson had described blacks a century earlier). The idea that many immigrants (like blacks) were representatives of "servile" races unfit for democratic citizenship legitimated renewed efforts to narrow the boundaries of nationhood. The Exclusion Act of 1882 prohibited for ten years the further entry of immigrants from China and forbade courts to naturalize those already here. Renewed in 1892, the law was made permanent a decade later. In 1921 and 1924, in a fundamental break with the tradition of open entry for whites except for specifically designated classes of undesirables, Congress imposed the first sharp numerical limits on European immigration, establishing a nationality quota system that sought to ensure that new immigrants would forever be outnumbered by descendants of the old and that within a generation the foreign born would cease

to be a major factor in American life. Until well after World War II, applicants for immigration visas were required to declare their "race," even if this meant nothing more, in fact, than being Dutch or French."

By the early twentieth century, with black disfranchisement in the South, the exclusion of Asians from entering the country, and the broad segmentation of immigration and labor markets along racial, ethnic, and gender lines, the boundaries and substantive content of American citizenship had again been severely curtailed. Not until our own time would a great mass movement reinvigorate the ideas of the Reconstruction era and erase, permanently (one hopes) the second-class legal status of blacks, even as nationality quotas for immigration fell by the wayside. The triumph of a far more inclusionary vision of American nationality reflected not so much the unfolding of the immanent logic of the American Creed as a set of specific historical circumstances -- the discrediting of racist ideologies by the struggle against Nazism; the advent to positions of power in the political and academic worlds of the children and grandchildren of the new immigrants; the consolidation of a trade union movement committed in principle and, to some extent, in reality, to racial and ethnic inclusiveness; the deployment of the ideal of America as an asylum for freedom as a weapon in the Cold War; the rise of the civil rights movement; and, last but not least, a rapidly expanding economy that appeared able to absorb new waves of immigrants. Today, some of these conditions retain their potency while others have already faded into history. It

seems safe to predict that in the twenty-first century, the boundaries of citizenship and the definition of American nationality will remain, as they have been throughout our history, sources of social contention and political struggle.

Notes

1. Eric Foner, ed., The New American History (Philadelphia, 1990); Lynne V. Cheney, Telling the Truth: A Report on the State of the Humanities in Higher Education (Washington, 1992), 40-44; Arthur M. Schlesinger, Jr., The Disuniting of America: Reflections on a Multicultural Society (New York, 1992), 13-17.
27. For a recent statement of the Whiggish view see John Rawls, Political Liberalism (New York, 1993), 122-25, 238-39.
2. Los Angeles Times, August 10, 1993.
3. David A. Hollinger, "How Wide the Circle of the 'We'? American Intellectuals and the Problem of the Ethnos since World War II," American Historical Review, 98 (April 1993), 317-37; Benedict Anderson, Imagined Communities: Reflections on the Origin and Spread of Nationalism (rev. ed.: London, 1991), 6; Ian C. Fletcher, "Rethinking the History of Working People: Class, Gender, and Identities in an Age of Industry and Empire," Radical History Review, 56 (Spring 1993), 85.
4. Kenneth L. Karst, Belonging to America: Equal Citizenship and the Constitution (New Haven, 1989), 2-3.
5. Judith N. Shklar, American Citizenship: The Quest for Inclusion (Cambridge, MA, 1991), 15-16; Edmund Randolph, History of Virginia, ed., Arthur H. Shaffer (Charlottesville, 1970), 253.
6. J. C. D. Clark, The Language of Liberty 1660-1832: Political Discourse and Social Dynamics in the Anglo-American World (Cambridge, 1993), 53; Yehoshua Arieli, Individualism and Nationalism in American Ideology (Cambridge, MA, 1964), 72-73; Winthrop D. Jordan, White Over Black: American Attitudes Toward the Negro, 1550-1812 (Chapel Hill, 1968), 336-41.
7. James H. Kettner, The Development of American Citizenship, 1608-1870 (Chapel Hill, 1978), 214-46; Rogers M. Smith, "'One United People': Second-Class Female Citizenship and the American Quest for Community," Yale Journal of Law and the Humanities, I (May 1989), 246n.; E. P. Hutchinson, Legislative History of American Immigration Policy 1798-1965 (Philadelphia, 1981), 65-66, 309, 405-42.
8. Thomas Jefferson, Notes on the State of Virginia (New York, 1964 ed.), 132-37; Joyce O. Appleby, Without Resolution: The Jeffersonian Tensions in American Nationalism (Oxford, 1992), 17-18, 23-24.

9. Arieli, Individualism, 24; Robert J. Dinkin, Voting in Revolutionary America: A Study of Elections in the Original Thirteen States, 1776-1789 (Westport, CT, 1982), 266-67; Noah Webster, An American Dictionary of the English Language (2 vols.: New York, 1828); William B. Scott, In Pursuit of Happiness: American Conceptions of Property from the Seventeenth to the Twentieth Century (Bloomington, IN, 1977), 76-78; Merrill D. Peterson, ed., Democracy, Liberty, and Property: The State Constitutional Conventions of the 1820's (Indianapolis, 1966), 60-61.
10. Kettner, Citizenship, 291-93; Linda K. Kerber, "The Paradox of Women's Citizenship in the Early Republic: The Case of Martin vs. Massachusetts, 1805," American Historical Review, 97 (April 1992), 351-53; Smith, "'One United People,'" 253; Virginia Sapiro, "Women, Citizenship, and Nationality: Immigration and Naturalization Policies in the United States," Politics and Society, 13 (1984), 1-26.
11. Carroll Smith-Rosenberg, "Domesticating Virtue': Coquettes and Revolutionaries in Young America," in Literature and the Body: Essays on Population and Persons, ed. Elaine Scarry (Baltimore, 1988), 161; Peterson, Democracy, Liberty, and Property, 293-94; Joan R. Gunderson, "Independence, Citizenship and the American Revolution," Signs, 13 (Autumn 1987), 59-77.
12. Howard McGary and Bill E. Lawson, Between Slavery and Freedom: Philosophy and American Slavery (Bloomington, 1992), 10; Leon F. Litwack, North of Slavery: the Negro in the Free States 1790-1860 (Chicago, 1961); David W. Blight, Frederick Douglass's Civil War: Keeping Faith in Jubilee (Baton Rouge, 1989), 13; George Breitman, ed., Malcolm X Speaks (New York, 1965), 25.
13. Robert J. Cottrol and Raymond T. Diamond, "The Second Amendment: Toward an Afro-Americanist Reconsideration," Georgetown Law Journal, 80 (December 1991), 334.
14. Kettner, Citizenship, 311-23; Litwack, North of Slavery, 35-36, 50-53; Annals of Congress, 16th Congress, 2d Session, 549, 1134-36.
15. Karst, Belonging to America, 44-45; J. R. Pole, The Pursuit of Equality in American History (2d ed., Berkeley, 1993), 182-84.
16. Susan M. Okin, Women in Western Political Thought (Princeton, 1979), 215; Richard Bellamy, Liberalism and Modern Society: A Historical Argument (University Park, PA, 1992), 25-28; David F. Ericson, The Shaping of American Liberalism: The Debates Over Ratification and Slavery (Chicago, 1993), 12-20; Uday S. Mehta, "Liberal Strategies of Exclusion," Politics and Society, 18 (December 1990), 427-30.

17. Reginald Horsman, Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism (Cambridge, MA, 1981), 208-09; Thomas Bender, "The Geography of Historical Memory and the Remaking of Public Culture," Unpublished Paper, Conference on "Toward a New American Nation?" Florence, 1994; Paul M. Angle, Created Equal? The Complete Lincoln-Douglas Debates of 1858 (Chicago, 1958), 111-12; Rogers M. Smith, "The 'American Creed' and American Identity: The Limits of Liberal Citizenship in the United States," Western Political Quarterly, 41 (June 1988), 233-35.

18. William E. Nelson, The Roots of American Bureaucracy, 1830-1900 (Cambridge, MA, 1982), 42-52; Stanley N. Katz, "The Strange Birth and Unlikely History of Constitutional Equality," Journal of American History, 75 (December 1988), 753; Milton M. Gordon, Assimilation in American Life: The Role of Race, Religion, and National Origin (New York, 1964), 117; Roy F. Basler, ed., The Collected Works of Abraham Lincoln (9 vols.: New Brunswick, 1953-55), II, 405.

19. Eric Foner, Reconstruction: America's Unfinished Revolution, 1863-1877 (New York, 1988), 258.

20. Anderson, Imagined Communities, 49-50; Congressional Globe, 38th Congress, 1st Session, 523; Foner, Reconstruction, 8; Cottrol and Diamond, "Second Amendment," 243; Francis Lieber to Edward Bates, November 25, 1862, Francis Lieber Papers, Huntington Library.

21. Robert J. Kaczorowski, "To Begin the Nation Anew: Congress, Citizenship, and Civil Rights After the Civil War," American Historical Review, 92 (February 1987), 53; Foner, Reconstruction, 243-44, 256-58; Congressional Globe, 39th Congress, 1st Session, 1757.

22. Philip S. Foner, ed., The Life and Writings of Frederick Douglass (4 vols.: New York, 1950-55), IV, 159; Blight, Douglass's Civil War, 192; Frederic Bancroft, ed., Speeches, Correspondence and Political Papers of Carl Schurz (6 vols.: New York, 1913), I, 487-85; Foner, Reconstruction, 250, 279; LaWanda Cox and John H. Cox, ed., Reconstruction, the Negro, and the New South (Columbia, SC, 1973), 92-93.

23. Philip S. Foner and Daniel Rosenberg, ed., Racism, Dissent, and Asian Americans from 1850 to the Present (Westport, CT, 1993), 223-27; Cornelius Cole to Olive Cole, June 25, July 5, 1870, Cornelius Cole Papers, University of California, Los Angeles.

24. Ellen C. DuBois, "Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage, and the United States Constitution, 1820-1870," Journal of American History, 74 (December 1987), 846; Congressional Globe, 38th Congress, 2d Session, 193, 215; Amy D. Stanley, "Conjugal Rights and Wage Labor: Rights of Contract in the Age of Emancipation," Journal of American History, 75 (September 1988), 480.

25. Smith, "'One United People,'" 260-62; Norma Basch, "Reconstructing Female Citizenship: Minor v. Happersett," in The Constitution, Law, and American Life: Critical Aspects of the Nineteenth-Century Experience (Athens, GA, 1992), 52-66.
26. John W. Burgess, Reconstruction and the Constitution, 1866-1876 (New York, 1902), 44-45, 133, 244-46; Smith, "'American Creed,'" 233-36; Gwendolyn Mink, "The Lady and the Tramp: Gender, Race, and the Origins of the American Welfare State," in Women, the State, and Welfare, ed. Linda Gordon (Madison, 1990), 96-100; Andrew Neather, "Race, Patriotism, and Labor Response to Empire, 1890-1914" (unpublished paper, Annual Meeting, Organization of American Historians, April 1994).
27. Nancy L. Stepan, "Race and Gender: The Role of Analogy in Science," Isis, 77 (1986), 261-77; Alexander Saxton, The Indispensable Enemy: Labor and the Anti-Chinese Movement in California (Berkeley, 1971), 177-78; John Higham, Strangers in the Land: Patterns of American Nativism, 1860-1925 (New Brunswick, 1955), 311-29; Pole, Idea of Equality, 285n.