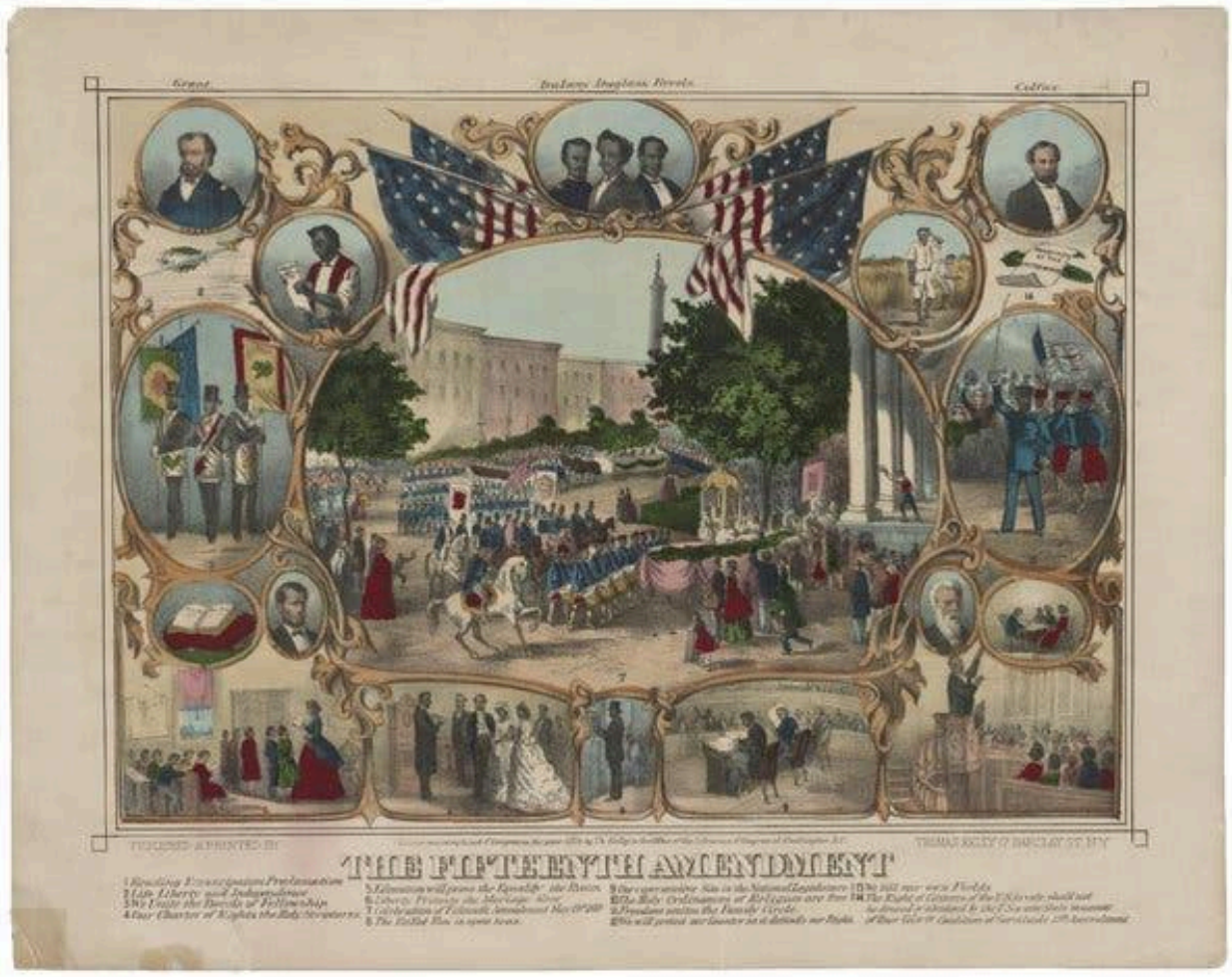
The Equality That Wasn't Enough

The most radical Radical Republicans had a better idea of how to cast the 15th Amendment. We should have listened to them.

By Jamelle Bouie **The New York Times** Feb. 15, 2020



An 1870 print illustrating rights granted by the 15th Amendment. Credit...Thomas Kelly, via The Library of Congress

Shortly after acquitting President Trump of abuse of power and obstruction of Congress, Senate Republicans moved to confirm two nominees for the federal judiciary. The first, 38-year-old Andrew Brasher, was elevated from a Federal District Court in Alabama to the U.S. Court of Appeals for the 11th Circuit. The second, Cory Wilson, is a 49-year-old state appellate judge in Mississippi. He's being considered for a federal district judgeship in the state. Like all Trump nominees, they are conservatives. But they stand out for their hostility to voting rights. In 2013, Brasher filed a brief in support of Shelby County, Ala., in Shelby County v. Holder. Congress, he wrote, did not have the power to reimpose the "burden" of federal election supervision, as it did in its 2006 reauthorization of the Voting Rights Act. "It is not a necessary and appropriate

exercise of federal power under the different conditions present today," he added. The Supreme Court agreed, ending federal "pre-clearance" for new voting laws in several states and allowing new forms of voter suppression. Wilson also took a dim view of election oversight in his state, calling instead for strict regulations on voting. The federal government, he wrote in a 2013 op-ed, "might spend less time chasing agendas that aren't there and more time investigating the voter fraud and other irregularities."

There's an irony to the fact that it was these two nominees who were on the docket. This month is the 150th anniversary of the ratification of the 15th Amendment to the Constitution. The last of the three Reconstruction amendments, it gave black men the right to vote. It sparked a revolution and a backlash, as racist white politicians used loopholes in the amendment (as well as outright violence) to undermine and eliminate black political power in the 1870s and '80s. By the end of the 19th century, the 15th Amendment was a dead letter throughout the South.

But it didn't have to be. There was an alternative vision that would have created a far more expansive right to suffrage — an alternative that almost became law. Yes, there would still have been a backlash. And yes, none of the debated visions gave suffrage to women. But they still created a broader right to vote, which, because of its scope, would have been a more secure right to vote. The 15th Amendment, in short, could have been much more than it was.

The version we have says that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude" and that "the Congress shall have the power to enforce this article by appropriate legislation." This was close to the original language, introduced by Representative George S. Boutwell of Massachusetts, a Radical Republican and staunch proponent of civil rights for black Americans. But other Radicals thought the federal government could go further than enfranchising black men. Just a few weeks after Boutwell introduced his resolution, Representative Samuel Shellabarger offered an alternative, which went beyond race-based discrimination to essentially guarantee the franchise to all men:

No State shall make or enforce any law which shall deny or abridge to any male citizen of the United States of the age of twenty-one years or over, and who is of sound mind, an equal vote at all elections in the State in which he shall have such actual residence as shall be prescribed by law, except to such as have engaged or may hereafter engage in insurrection or rebellion against the United States, and to such as shall be duly convicted of treason, felony, or other infamous crime.

This is still a negative conception of rights — restrictions on what the state can do versus entitlements for the people themselves. And yet, as the historian Alexander Keyssar notes in "The Right to Vote: The Contested History of Democracy in the United States," Shellabarger's amendment would essentially have ended "property, tax, nativity and literacy requirements" in addition to racial discrimination. This was the whole point. As Shellabarger noted, the Boutwell proposal still "leaves to the States the power to make discriminations as to who shall vote," which could be turned against the formerly enslaved. "The body of this race, made ignorant and destitute by our wrong, may substantially all be now excluded from the elective franchise under

a qualification of intelligence or property," he continued. "Let it remain possible, under our amendment, to still disfranchise the body of the colored race in the late rebel States and I tell you it will be done."

Shellabarger's plea fell on deaf ears. Most Republicans favored black male suffrage, but still wanted restrictions on other groups, including European immigrants and Chinese laborers. A sweeping amendment for the "elective franchise" would have opened the door to a truly universal suffrage. It was too much. The House killed his amendment in favor of Boutwell's. Debate continued in the Senate, where Republicans split along the same lines. Senator William Stewart, a conservative Republican from Nevada, introduced a narrow amendment similar to Boutwell's and urged immediate adoption. "This question can never rest until it is firmly disposed of," he said. "It must be done. It is the only measure that will really abolish slavery. It is the only guarantee against peon laws and against oppression."

On the other end was Senator Henry Wilson of Massachusetts (later vice president under Ulysses S. Grant), who, like Shellabarger, thought there was more to do than simply end racial restrictions. "Let us give to all citizens equal rights, and then protect everybody in the United States in the exercise of those rights," Wilson said. "When we attain that position we shall have carried out logically the ideas that lie at the foundation of our institutions; we shall be in harmony with our professions; we shall have acted like a truly republican and Christian people." Until we do that, he continued, "We are in a false position, an illogical position — a position that cannot be defended."

To that end, Wilson's amendment specified, "There shall be no discrimination in any State among the citizens of the United States in the exercise of the elective franchise in any election therein, or in the qualifications of office in any State, on account of race, color, nativity, property, education, or religious belief." He, like virtually every other Radical Republican, allowed for discrimination by age and gender. But this amendment, unlike the alternative, would create a broad right to vote and hold office. It would also be inclusive of everyone who might come to the United States. "I am in favor of the proposition of the senator from Massachusetts because it invites into our country everybody," Senator Simon Cameron of Pennsylvania said, "the Negro, the Irishman, the German, the Frenchman, the Scotchman, the Englishman, and the Chinaman. I will welcome every man, whatever may be the country from which he comes, who by his industry can add to our national wealth."

Wilson faced opposition. Democrats opposed any federal regulation of voting, while moderate and conservative Republicans still wanted restrictions on immigrants as well as literacy and property requirements. He prevailed, however, and the Senate approved his more sweeping amendment in revised form. The House was less kind. It rejected the Senate resolution, beginning a tortured back-and-forth between the two chambers as they tried to accommodate each other. Eventually, congressional leadership appointed a conference committee to hash out the differences. The committee, which included Boutwell and Stewart, produced an amendment almost identical to their original proposals. Wilson and his allies were outraged. But time was running short — this was a lame duck session, scheduled to end the next month. The Radicals

backed down and, on Feb. 26, 1869, Congress passed the conference report. The 15th Amendment was ready for ratification. A year later, it was on the books.

This was a narrow right to suffrage. Even still, as the historian Eric Foner argues in "The Second Founding: How the Civil War and Reconstruction Remade the Constitution," it was a "radical change in the political system." It affirmed that black American men were now "equal members of the body politic" and opened the door to truly universal suffrage.

Unfortunately, that would have to wait. It's not just that the 15th Amendment neglected women — setting off a schism in the women's rights movement, between those who supported the amendment and those who didn't — but that by rejecting the broad language favored by the more radical of the Republicans, Congress allowed restrictions based on property, literacy and native birth. And just as Shellabarger predicted, white Southerners rejected black enfranchisement at their first opportunity.

Through terror and violence, former Confederates toppled Reconstruction governments. With power in hand, they resurrected white supremacy and suppressed black voting. The Supreme Court could have been an obstacle to these efforts to reimpose the conditions of slavery. But it took a narrow view of the Reconstruction amendments, including the 15th. It allowed the white South to build impossibly high barriers to black voting, using the exact tools anticipated by proponents of a more extensive right to vote.

In 1890, Congress attempted to pass a law for federal supervision of congressional elections. However, Foner notes, "it fell victim to Republican infighting and a southern filibuster in the Senate." As the new century dawned, voting rights for most African-Americans were dead, killed by white hostility in the South and white indifference in the North.

But this wasn't inevitable. The Wilson amendment nearly became the 15th Amendment, and in that world, there might have been more energy for black rights — for voting rights writ large — in the face of Southern intransigence. Americans would not have had to wait until the 1960s to fully exercise their right to the franchise. We would still have anti-voting reactionaries, but they would have had to work harder to make their ideas a reality.

There's a chance I'm thinking too small. An America that guarantees the right to vote and hold office for blacks and immigrants in 1870 develops very differently from the one that doesn't. Women's suffrage might have come quicker. The idea of using government to ameliorate economic divides might have caught on earlier — the inequality of the Gilded Age might have been tamed before it ran out of control. "No matter how unpopular it is, no matter what it costs, no matter whether it brings victory or defeat, it is our duty to hope on and struggle on and work on until we make the humblest citizen of the United States the peer and the equal in rights and privileges of every other citizen of the United States," Wilson declared in defense of his amendment. There's always reaction — and there will always be backlash. But imagine if 150 years ago we had taken a longer step toward universal suffrage. It might have put us closer to, as Wilson put it, "the complete triumph of equality and justice" — or at least a lot closer than we are now.