WHEN AMERICA BECAME A DEMOCRARY: The Voting Rights Act of 1965

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Story by Vann R. Newkirk II **The Atlantic: INHERITANCE MARCH 2021 ISSUE**

I. To My Mother

YOU WERE BORN on July 9, 1964, in Greenwood, Mississippi, delivered into the cradle of white supremacy. Listening to the stories of terror and hope woven into the story of your birth used to frighten me. The year before you entered the world, white supremacists were blocking food aid to Greenwood, trying to starve Black sharecroppers who were demanding their civil rights. You were carried home in the middle of Freedom Summer, right down the street from where Fannie Lou Hamer led a movement that included your neighbors and cousins to demand self-determination. You suckled and wailed, oblivious to your membership in the final group of Black babies born under Jim Crow. There were many such children, born just on the wrong edge of the fight for freedom. But only one of them was my mama.

The marrow of your bones carried generations of struggle, and a year after your birth, that struggle helped bring forth something new. Acceding to the demands of your kin in Mississippi and of many others, President Lyndon B. Johnson and the white folks up in Washington passed the Voting Rights Act. The signing ceremony was in August 1965, just a month after your first birthday. Nobody knew exactly how the act would work, or what would happen when federal agents came down to the state to try to enforce it. But the local paper made things plain and simple: "President Signs Voting Law Declaring That Negroes Free."

The VRA was historic legislation, but it was still an infant, vulnerable and soft. White leaders in Jackson and other state capitals across the South worked hard to stunt it. White supremacists found new ways to lean on and intimidate Black voters while scrambling to register poor white people. The cotton oligarchs took political offices in local districts and made them countywide offices, hoping to "dilute" new Black votes with white votes. They took other offices, traditionally elective, and made them appointed—then stocked them with white politicians. They gerrymandered districts to sequester Black voters together when it suited them, or to crack apart growing Black political bastions.

But, slowly and painfully, the act cut its teeth. Black activists mobilized the people to seize the franchise. Examiners sent by Washington registered thousands of Black voters directly. Federal observers and Justice Department lawyers rooted out illegal disenfranchisement, often case by case and person by person. Black Mississippians dragged the state to federal court, over and over.

I've got pictures of you in the 1970s, in frills and patent-leather dress shoes. You had the same smile in miniature, the smile I now recognize as my own. You had the same eyes, wide and alert, and the same hands, wiry and knobby. You and the Voting Rights Act grew up together. The VRA was extended by Congress in 1970 and then given new purpose and extended again in 1975, when its provisions were broadened beyond preventing Black disenfranchisement to cover non-English speakers. In 1982, when you went off to college, in Coke-bottle glasses, Congress expanded the act's coverage beyond purposeful, intentional bigotry to consider voting laws that had disparate, discriminatory effects—such as dilution—regardless of intent. The Supreme Court added to the arsenal with decisions that specified the VRA's reach over redistricting and racial gerrymandering. The act became an integral part of the machinery of politics at every level in every state.

There were growing pains. There always are. Voting-rights opponents poked and prodded, looking for areas where the courts and the Department of Justice were not so vigilant. They continued to fight any law that might make it easier to vote. As ever, Mississippi led the way. The state still made voters register separately for state and municipal elections, a holdover from the "Mississippi plan," a strategy to deny African Americans the right to vote. When the Justice Department blocked a 1991 Mississippi redistricting scheme because it would have disenfranchised Black voters, a state representative told *The New York Times* that white politicians privately disparaged the remedy favored by Black legislators as the "nigger plan." Even as legislation, courts, and the Justice Department secured enormous increases in Black registration and turnout, racial gaps in both measures persisted.

When I think about it all, I think about you, Mama. You had always wanted to be a teacher. You always *were* a teacher, the bright girl tutoring your siblings and cousins. But educating was more than a profession. Rather, it was halfway between divine purpose and civic duty, part of your drive to help set the world right—a drive I knew was connected to the circumstances of your birth and childhood.

You lived 56 years. You witnessed the entirety of what might be considered genuine democracy in America. I fear that era might not last much longer.
That drive took you to North Carolina. You lived in a house with bad wiring and a bathroom not big enough to sneeze in, commuting 30 minutes across town every morning to teach at your school. You were 24 when you had me, your first child; American democracy, as I think of it, had just turned 23. Democracy is central to America's idea of itself, but that idea had never been a reality until the VRA. You always reminded me of the precariousness and the novelty of this experiment—of the fact that I had been granted a franchise that wasn't even yours when you were born. In school textbooks, the black-and-white photographs of civil-rights protests suggested that America had vanquished its demons ages ago. But you told me that the people marching in those photographs were the people who sang in the choir at church and who brought chitlins to family reunions. We were taught that Black folks had been granted a fundamental right in perpetuity, but in truth the boundaries and contours of that right were in flux and constantly being negotiated, renegotiated, and sometimes overruled.

There were reauthorizations and court challenges, gerrymanders and consent decrees. But you were optimistic. So much of what I remember of you comes back to your faith in this country, and your steadiness in contributing to it. My own first time voting was in 2008, when Barack Obama was elected president. That was the night the spirit of the VRA came closest to being realized, perhaps. Black turnout was now eclipsing white turnout. I called you from college as you cried on your couch. You were 44, born dispossessed and disenfranchised in a county where only 250 Black adults out of more than 13,000 were registered to vote. It felt as if your own steadfastness had won out against every obstacle.

Of course, there were more obstacles to come. Five years later, in 2013, the Supreme Court heard a challenge from a county in Alabama, arguing that Section 4(b) and Section 5 of the VRA were unconstitutional. Section 5 had forced certain jurisdictions to submit all potential changes in voting laws to the Justice Department or a federal court for review, a process known as "preclearance." Section 4(b) included the formula that was used to identify the target

jurisdictions; a history of Jim Crow–era policies was a key component of that formula. In *Shelby County v. Holder*, with Chief Justice John Roberts writing for the majority, the Supreme Court ruled that the aggressive, preemptive measures that had been crucial to ensuring the Black vote were no longer warranted—precisely because they had worked so well.

The Court's reasoning crumbled immediately, as Republicans in North Carolina moved that same week to implement a voter-ID law that activists argued would create a special burden on voters of color. A ruling by a federal appeals court held that the North Carolina law targeted voters like you with "almost surgical precision." "Once the bonds of Section 5 were released," Sherrilyn Ifill, the president and director-counsel of the NAACP Legal Defense and Educational Fund, told me recently, "the rest of the country learned from the South how to engage in voter suppression." A torrent of voter-ID laws, gerrymanders, and other election changes would steadily erode the Voting Rights Act over the next few years in states both within and beyond the South, including Indiana, Kansas, and Wisconsin. The Republican Party adopted a facsimile of the white-supremacist strategy that had ruled Mississippi.

Then it was 2016 and, well, you know what happened in 2016. But by then you were occupied with more important things. I remember how the fear rattled in your voice when you called me that summer and let me know that doctors had found cancer, and that it had already spread. You fought, as stoically and bravely as you'd done everything else in your life. You continued educating and mentoring as best you could between injections. You stood up to sing in church, even when the tumors broke bones in your spine. You became a grandmother, traveling to hold my son even as medications withered your hands and cracked your skin.

More and more Americans and institutions aligned themselves against your ballot, but you still voted. You intended not only to live, but to live on your own terms, as a citizen. You steeled yourself as an antidemocratic movement swept the courts, as the Justice Department's guiding hand disappeared, as people waited in long lines, as "voter purges" made the news. We watched protests on TV together in the hospital. We talked about whether things were heading toward the electoral confusion of fragile foreign governments, as pundits liked to say, or toward the kind of corrupt state that Mississippi was in 1964. Even knowing what I know, I tried to believe that democracy was too robust for that. You laughed at my naïveté. You'd been there before.

In the fall of 2020, you tried to schedule your chemotherapy appointments so that you'd be able to cast your ballot in person, as you'd always done. When I got a call as I watched the results roll in on Election Night, I thought it was going to be you telling me about how you'd voted, and how closely you were watching on television. The call was a bit more urgent than that. I flew a day later to your side, and held your hands and gave you sips of water as the counts in Georgia and Pennsylvania and Nevada and Arizona all dragged on. We saw the early indications of record turnout, watched news reports about people with a felony conviction voting for the first time, saw the footage of lines at the polls stretching down streets.

You died early in the morning, before we knew who won. You lived 56 years. You witnessed the entirety of what might be considered genuine democracy in America. I fear that era might not last much longer.

II. How the Ballot Was Won

A YEAR BEFORE my mother was born, Constance Slaughter-Harvey met Medgar Evers. She hadn't yet become the first Black woman to get a degree from the University of Mississippi School of Law or the high-powered advocate who sued to desegregate the Mississippi Highway Safety Patrol. Back then, she was a teenager, attending a precollege program at Tougaloo College, in Jackson. Medgar was already the kind of guy people referred to by one name; he was Mississippi's first NAACP field secretary and perhaps the most famous Black man in the state. "He was the only Black man who would come on TV other than Amos and Andy and all that," Slaughter-Harvey told me recently. During a school visit in June 1963, Medgar told her and other students some version of a familiar refrain: "Hands that once picked cotton can now pick elected officials." Days later, Byron De La Beckwith, a White Citizens' Council member, shot him dead in his driveway.

Slaughter-Harvey decided to dedicate her life to the cause of voting rights. She turned 17 that June and entered Tougaloo soon after. She shifted her ambitions from medicine to law and worked to register Black people to vote in every election. She served as a poll watcher for the legendary Mississippi Freedom Democratic Party (MFDP), helping Fannie Lou Hamer in a 1964 bid for Congress, a bid that died in the primary because fewer than 7 percent of ostensibly eligible Black people were registered to vote. Hamer's protest run came as civil-rights organizations were preparing for the Freedom Summer project, designed to register as many Black voters in Mississippi as possible, in defiance of Jim Crow.

From the King special issue: Jesmyn Ward on how racism is 'built into the very bones' of Mississippi

Slaughter-Harvey, Hamer, and the MFDP fought both for justice and for accountability. They favored decisive action to overturn Mississippi's illegitimate regime, not only guaranteeing the right to vote but ousting white supremacists and establishing Black political power. What they got was something less. In 1965, after "Bloody Sunday," when Alabama police attacked Black marchers during the Selma voting-rights campaign, President Johnson rushed forward with voting legislation that Black activists had long demanded. But whatever its deficiencies, the Voting Rights Act was a singularly aggressive piece of legislation, wielding federal muscle to protect Black voters in a way that hadn't been seen since Reconstruction.

Across a career spent in Mississippi as an attorney at the Lawyers' Committee for Civil Rights Under Law, as a state election official, and in private practice, Slaughter-Harvey has poll-watched, registered voters, challenged gerrymandered maps, and represented people brutalized by police. Her life's work is a manifestation of a simple fact: Defending the VRA and the proto-democracy it created required continued individual sacrifice, election after election. And one thing Slaughter-Harvey stressed to me is that this sacrifice was frequently borne by Black women, who so often led the local effort to register and organize—and who, in Mississippi, ran for office themselves.

The early days of the VRA saw robust federal backing. Federal examiners could directly register Black voters, and federal observers were so effective that Slaughter-Harvey and other election officials called them "federal protectors." The mere threat of sending them in would generally keep active resistance to Black voting at bay. But the success of those observers and activists underlined the fact that the Voting Rights Act was always an incomplete framework, a scaffolding for an edifice that has been in various stages of construction and demolition for the past 55 years.

The act would be strengthened by Congress, and by additional laws standardizing certain election practices and mandating registration opportunities at state DMVs. But it was not designed to create the kind of durable participatory democracy that Black people deserved. The most expedient political solution in 1965 was to address the practical factors that limited political participation *then*. That meant strict scrutiny of much of the South—where the majority of Black people lived, and where Jim Crow laws had been most prevalent. It meant mounting challenges to laws already in place. The VRA did nothing to deal with disenfranchisement by way of incarceration or felony charges, forms of targeted racial disenfranchisement that preceded Jim Crow even in states outside the South.

Section 2 of the law, which bans voting measures that "deny and abridge" the right to vote on account of race, provided some flexibility to confront future, yet-to-be-imagined forms of discrimination—and it was applicable nationwide, broadening the scope of enforcement. Many courts and advocates have interpreted denial and abridgement to mean policies—clever ones that didn't mention race at all, and didn't exactly bar people from registering—that placed a greater burden on people of color. But even that standard has required a constant concert of executive will, federal jurisprudence, congressional activity, and, above all, national attention. Over time, the intricate array of forces amplifying the VRA's effectiveness began to come apart. As Guy-Uriel Charles, a law professor at Duke and a co-director of the law school's Center on Law, Race and Politics, told me, the VRA is now "at best a second-best tool." Congress phased out the aggressive use of federal examiners, and public opinion in favor of the act faded. In 1965, more than 90 percent of Americans surveyed in a national poll were in favor of the Voting Rights Act. Even a plurality of white southerners favored it. By 2015, according to CBS News, only 55 percent of the country believed that the VRA was still necessary. The original bill received bipartisan support, and each subsequent reauthorization sailed through both houses of Congress with little opposition. But by the time *Shelby County* was decided, America had changed. "The Supreme Court's decision releasing certain states from

preclearance just destroyed me," Slaughter-Harvey told me. "It really destroyed me." No bipartisan coalition would be coming to the rescue. After the Court put the onus back on Congress to redesign the VRA's coverage formula, only one Republican, Representative Brian Fitzpatrick of Pennsylvania, voted in favor of a 2019 Democratic-led effort to do so. Under Donald Trump, the vaunted Civil Rights Division of the Department of Justice, long the most active national guarantor of voting rights, withered. An open antipathy to voting rights and a stated fear of minority-driven voter fraud had migrated all the way from the 19th century to become the central organizing principle of one of our two major parties.

III. Democracy in the Crosshairs

IN 2020, the coronavirus pandemic created obstacles to safely voting that the country had never before faced in a presidential-election year, and yet more people voted than ever. Turnout was higher than it had been in at least a century, and extraordinary levels of Black turnout in particular gave Democrats control of the White House and the Senate. Democratic voters overcame so many barriers to voting and, at the presidential level, achieved such a powerful victory that, to some, it might feel alarmist to worry about voting rights. But complacency would be a mistake.

"That always happens," Janai Nelson, of the NAACP Legal Defense and Educational Fund, pointed out when I raised this subject not long ago. "We sound the alarm on 'racism,' 'discrimination,' 'voter suppression.' And then Black folks turn out despite all the odds, and they break records and create new milestones for participation. And that somehow creates a narrative that, you know, we cried wolf. And nothing could be further from the truth."

Record turnout in 2020 was the fruit of the immense investment by voting-rights organizations in participation, something that is not sustainable and will likely falter in less pivotal elections. More important, conspiracy theories among Trump's camp about widespread fraud and cheating were animated primarily by voting in places with a large Black population, and fueled an insurrection in January, when hundreds of rioters overran the United States Capitol, waved the Confederate battle flag in its halls, and disrupted the congressional electoral count by force. Opposition to Black electoral power propels an antidemocratic front that will not likely dissipate with Trump gone. In fact, conservative lawmakers are currently targeting the very changes that helped more citizens vote in 2020.

To wit, in Georgia, where Joe Biden won on the strength of absentee ballots and where Senators Raphael Warnock and Jon Ossoff won riding a record wave of Black votes, Republicans have vowed to pass legislation making absentee voting more difficult, including potentially ending at-will absentee voting and eliminating ballot drop boxes. Texas, Pennsylvania, and Michigan face GOP-led efforts to limit mail-in voting. Even in the middle of an emergency expansion of ballot access necessitated by the coronavirus pandemic, a handful of red states actually tried to make it *harder* to vote.

"This is a project to chip away at the Voting Rights Act," Sherrilyn Ifill told me. "It is one of the most effective pieces of civil-rights legislation ever, and it goes to the heart of challenging white supremacy and white political power. We've always known that it's in the crosshairs." Today, even with Trump out of the White House, the VRA is in immediate danger. Politicians who want to constrain the electorate will benefit from his efforts. They will find the legal framework of voting rights to be fragile and contingent. The federal judiciary, as reshaped by Trump, is a machine that has been purpose-built for many things, among them rolling back the right to vote. And there will be no shortage of opportunities for that machine to do its damage.

The engine of disenfranchisement was primed by *Shelby County*, which left Section 2, the component broadly banning nebulous voter discrimination in all parts of the country, as the only major federal enforcement mechanism. Justice Ruth Bader Ginsburg's dissent has proved prescient: "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," she wrote.

For nearly eight years now, it has been raining. In that time, predictably, more restrictive voting laws have proliferated, often rationalized by Republican officials as necessary to fight voter fraud, which is neither widespread nor escalating. According to the nonpartisan Brennan Center for Justice, at NYU's law school, half of all states have

passed laws since 2010 that increase the burden on would-be voters, including laws requiring strict voter-identification procedures and laws making it more difficult for third parties to register voters. Both of these practices have been met by challenges based on Section 2.

But every such challenge risks triggering a Supreme Court reaction against what remains of the Voting Rights Act. "We don't have any reason to know for sure whether the Court has fully understood the error of its ways," Nelson told me, noting that the Court has only become more conservative in the years following *Shelby County*. The Court may well continue what it started in 2013. If Roberts led the fight to strike down Section 4(b) of the Voting Rights Act, Guy-Uriel Charles, at Duke, told me, "it's hard to fathom that then he would think that Section 2 is constitutional." Already, most of the conservative members of the Court have signaled that they oppose findings of discrimination that rely on the disparate racial impact of policies, and seem to be moving away from ruling against anything but deliberate and blatant racism in the present.

The Court will consider a pair of Section 2 cases this term, consolidated from two legal controversies in Arizona. The cases involve a restriction that invalidates every voting choice, even for national and statewide offices, on a ballot that has been accidentally cast in the wrong precinct, and a restriction intended to ban the collection of completed ballots by third parties, a practice known as "ballot harvesting."

Democrats have argued that the restrictions create unfair burdens for Black, Latino, and Indigenous voters. According to the Leadership Conference Education Fund, election officials in Maricopa County, whose population is nearly a third Latino, have closed more than 150 polling places since 2012. Meanwhile, ballot collection by community groups and other nonprofits has helped enable minority voting across the country, allowing communities to effectively overcome Election Day obstacles posed by work, lack of transportation, and the sheer sparseness of polling places.

Without evidence, Republicans have targeted ballot harvesting as potential vectors of fraud. They have resorted to racial innuendo: GOP officials circulated a 2014 video suggesting that legal and innocuous ballot harvesting by a volunteer might have been the fraudulent work of an "illegal alien" or a "thug." In January 2020, the U.S. Court of Appeals for the Ninth Circuit Court found that Arizona's restrictions on ballot harvesting and out-of-precinct votes had clearly produced discriminatory results. Additionally, the ballot-harvesting restriction possessed discriminatory intent. The ruling was a straightforward application of the protections provided by Section 2 of the VRA.

In a brief backing Arizona's restrictive laws, Republican politicians have made clear that they want to disable Section 2. Twenty states supported Arizona, claiming that using only "disparate impacts" to gauge the discriminatory effects of voting laws is unconstitutional.

Despite the Supreme Court's rejection, in December, of an attempt by Trump supporters to overturn the presidential-election result, the 18 Republican state attorneys general who backed the effort are still free to push antidemocratic measures in their own states. According to one recent opinion survey, just over half of Republicans agree that "the traditional American way of life is disappearing so fast that we may have to use force to save it." In this climate, the bureaucratic tinkering once relied on to restrict voting by the wrong kinds of people might look less and less controversial, and more and more attractive.

States so inclined can experiment with the most extreme antidemocratic measures, knowing that court decisions will eventually lead them to find out exactly how much tyranny is permissible.

We don't know what the Supreme Court will do. The addition of the conservative Justice Amy Coney Barrett, replacing the liberal Justice Ginsburg, only heightens the uncertainty. When the Court had a one-seat conservative tilt, Roberts, perhaps with an eye on the judgment of history, sometimes sided with the liberals to maintain the status quo or to guide the Court to narrow decisions that softened the legal impact. But even if Roberts still wanted to take that tack, it's probably unavailable to him now. Justices Clarence Thomas and Neil Gorsuch have indicated in the past that Section 2's scope should be radically diminished. Justice Samuel Alito has written in favor of presuming "good faith" on the part of lawmakers in redistricting cases, which would effectively preclude federal intervention in all but the most blatant instances of electoral bigotry. During his tenure as a federal judge, Justice Brett Kavanaugh issued a decision that allowed for implementing a voter-ID law. The wild card would appear to be Barrett, and many

observers don't expect a liberal defection by her, although Charles, who knew her when she was a law professor, says he wouldn't be surprised if she ended up playing a similar swing-vote role as Justice Anthony Kennedy in race-related cases. It could be only a matter of time before Section 2 falls. When it comes to voting, the majority of states have few tools to address anything but purposeful, directly targeted racism—the kind that southern leaders learned to avoid after the civil-rights victories of the 1960s.

With a gutted VRA, we will have a country where the forces of disenfranchisement are nearly unstoppable. The result could prove to be more durable and intractable than Jim Crow at its worst. Literacy tests, felony disenfranchisement, and grandfather clauses were effective but unsubtle tools, designed to overtly deny Black people the opportunity even to register to vote. Today, disenfranchisement is algorithm-aided and technocratic, with highly paid lawyers and consultants seeking to find ways to raise the individual cost of each minority vote, while at the same time diminishing the electoral impact of each minority vote—creating the illusion of participation while perpetuating advantages for white voters. Architects of gerrymanders and ostensibly "race neutral" voting laws have many ways to target Black, Latino, and Indigenous voters in a manner that doesn't seem to involve race or ethnicity at all. For instance, according to voting-rights activists, a Georgia policy requiring exact spelling matches for voter registration and identification affected nonwhite voters more than white ones because officials are more likely to misspell the names of nonwhite voters.

An America without robust legal tools to challenge such practices does not need cruder devices to disempower people of color. The future becomes one of tyranny by gaslight.

IV. The Path to a New Country

IN 1966, James Meredith, the man who a few years earlier had integrated the University of Mississippi, was shot and wounded by a sniper as he undertook a personal protest march from Memphis, Tennessee, to Jackson. One of Meredith's goals had been to urge Black Mississippians to register to vote. The big civil-rights organizations decided to pick up the torch, turning a one-man statement into a massive, three-week operation. More than a week into the march, there was a nighttime rally in Greenwood. The chair of the Student Nonviolent Coordinating Committee, 24-year-old Stokely Carmichael (known later as Kwame Ture), addressed the crowd: "We want Black power!" The crowd said back, according to *The New York Times*: "Black power!" A new phase in the Black civil-rights movement had begun.

Among those at the rally was Charles V. Hamilton, a lawyer and an academic who served as an unofficial adviser to SNCC. In 1967, Hamilton and Carmichael published the book *Black Power*, which sought to diagnose the contagion of American racism and crystallize a new, radical Black consciousness. Hamilton's interest in the constitutional underpinnings of American white supremacy pulled his and Carmichael's work toward a study of the history of voting rights. In the book, Hamilton and Carmichael argued that gaining access to the ballot box was the first step in ending "centuries of fear" and achieving "political modernization." To paraphrase the historian David Garrow, *Black Power* illustrated that voting was not only *instrumental*, or useful to effect change, but also *consummative*, or radically self-affirming.

I spoke with Hamilton several times this summer, sometimes calling him from outside my mother's hospital room. He spent the past 45 years as a professor at Columbia University, continuing to track Black political power in America but also keeping an eye on international freedom movements, especially in South Africa. He is in his early 90s, retired, and living in an assisted-care facility in Manhattan. On days when he felt up to it, attendants or friends would wheel him outside with his iPhone, to a place under some trees, and he and I would talk. He has good days for talking and not-so-good days for talking, but especially on the subject of voting rights and elections, he's still clear and fierce.

"We need to change the Constitution," he told me during our initial conversation. The first thing Hamilton thinks Democrats should do is push for an overhaul of the election system, making voting easier while at the same time reforming or replacing the Electoral College. He believes that the Constitution, the nation's foundational document, has to be revised so it can play a more active role in securing and protecting the right to vote. When I asked why he

favors the arduous—and likely impossible, under current partisan circumstances—process of amending the Constitution instead of just passing legislation, his answer was short:

"That's the only way to ensure it."

"Ensure what?" I asked.

"Posterity," he responded.

It was fitting that a constitutional scholar should evoke the preamble—with its language about securing "the Blessings of Liberty to ourselves and our Posterity." But, in notes and unpublished essays written over the past two years that he shared with me, it's clear that "posterity" for Hamilton is also somewhat subversive. The Founders were not uniform in their views, but the document they created did not propose anything like universal suffrage, and it embodied skepticism, if not fear, of an active, powerful federal government. To Hamilton, "posterity" would give Black Americans a claim to changes that challenge the Founders' conception of limited government and individual liberty. In his writings, he stresses his belief that a strong, interventionist national government is the only kind capable of protecting Black civil rights. Even a Voting Rights Act at full strength is not strong enough, Hamilton would argue. And it is certainly not at full strength now.

The most direct way to shore up the VRA would be to restore the elements curtailed by the Supreme Court. Technically, Roberts did not discard preclearance itself in his *Shelby County* opinion; he merely disagreed with the existing language detailing which jurisdictions were subject to it. Representative Terri Sewell of Alabama and Senator Patrick Leahy of Vermont, both Democrats, have put forward the Voting Rights Advancement Act, now renamed after John Lewis, the late congressman and civil-rights hero. The proposed law would scrap the old basis for preclearance and would instead apply strict oversight to any jurisdiction that has committed repeated voting-rights violations in the previous 25 years. The law would restore some of the punch of the VRA's federal-observers program and would focus on insidious innovations in voting laws that have been shown to increase burdens on people of color.

The John Lewis Voting Rights Advancement Act cannot be fully considered without its legislative sibling, the For the People Act, championed by House Speaker Nancy Pelosi. The voting-rights components of this bill would establish nationwide automatic voter registration, state-level redistricting commissions, and voting by mail, and it would fend off efforts such as voter-ID and anti-ballot-harvesting laws. In essence, the For the People Act would nationalize many of the reforms that states experimented with during the pandemic.

If both pieces of legislation were passed, they would represent the most significant expansion of federal voting-rights protections in at least a generation. But in a political climate where meaningful legislative action is almost impossible and party fortunes rise and fall every two years, getting the two bills through Congress may be a stretch goal. Meanwhile, the courts will remain a threat. The American right still has plenty of energy for abolishing preclearance and curbing proactive federal oversight. The VRA's premise and constitutionality are still debated in conservative circles. And the Supreme Court and other federal courts now have a decidedly rightward bent.

Black Americans deserve better. Their struggle over the centuries helped create essentially all of the measures that we now associate with suffrage—the Fourteenth and Fifteenth Amendments; the Twenty-Fourth Amendment; the Voting Rights Act; the "one person, one vote" principle; and the Nineteenth Amendment, which Black women fought to secure. Black Americans should be counted above the Athenians as progenitors of democracy. Widespread political participation was simply not anticipated in the Constitution—least of all for Black Americans—and Americans have done well to retrofit its chassis into something resembling universal suffrage and representative democracy. But what Charles Hamilton and the people who marched with him always knew is that the vehicle is still flawed.

Despite the Fourteenth, Fifteenth, and Nineteenth Amendments, which prevented states from denying the ballot on account of race or gender, and the Twenty-Fourth Amendment, which eliminated poll taxes in federal elections, the Constitution doesn't guarantee the right to vote in all cases, and only provides a tenuous framework—dependent on

the interpretation of the three branches—for understanding what counts as discrimination or unlawful levels of voter dilution. Moreover, the way we currently fight unlawful practices often requires that people experience disenfranchisement, dilution, or undue burden first; in the worst cases, entire governments can be, and are, elected under illegitimate circumstances. There is no universally accepted way to penalize bad actors. States so inclined can experiment with the most extreme and shocking antidemocratic measures, knowing that court decisions will eventually lead them to find out exactly how much tyranny is permissible. And, as the events of January showed, white backlash against Black voting is still too powerful to leave the franchise in the hands of states.

One simple way to amend the Constitution in order to counter these dynamics would be to guarantee everyone over 18 the right to vote, and to specify a bare-minimum national electoral infrastructure. One further step would be to outlaw measures at the state level that dilute the votes of a specific racial group, ethnicity, or political party. Finally, the amendment should eliminate felony disenfranchisement. An amendment that accomplished all of this would replicate or enhance the strongest interpretations of the VRA, without the specter of an unfavorable Court or obstructionist politicians weakening its protections.

There are other possibilities. A prodemocracy amendment could also reform or dismantle the Electoral College and could standardize the way House districts are drawn, creating nonpartisan redistricting. Each of these changes would push the country closer to true representative democracy, premised on an equal weighting of votes across states, regions, and races. This amendment would mandate that states collect information on voting activity and would automatically trigger reductions in congressional apportionment, under the Fourteenth Amendment, if a state is known to discriminate.

It has been 50 years since an amendment was last proposed by two-thirds of both houses and ratified by three-quarters of all states. It's almost laughable to even consider the idea now, with congressional votes becoming ever more polarized along party lines and most states embracing hard identities as either red or blue. Ifill didn't exactly laugh at me when I asked about the idea of a constitutional amendment, but she was skeptical about "going to the hardest part of the solution first." She also warned that, with conservatives dominating many state governments, opening up the Constitution for amendment could push momentum in the other direction—against an expansion of voting rights.

Achieving a more straightforwardly democratic Constitution involves playing the long game, as previous suffrage movements have. The long game would mean prioritizing the two bills now in Congress, then pushing long-overdue extensions of real political power to the District of Columbia and the American territories, should they choose to have it. The states of Washington and California have implemented their own statewide versions of the VRA, and New York is considering a similar measure. States interested in joining the democracy project could go even further, creating their own interstate networks of standardized election practices, amplifying pressure on states with more burdensome laws.

Charles Hamilton, who once ate sandwiches with sharecroppers on the road to Jackson, told me that he maintains "continued faith in the representative route to power," and could see a future of "mass democratic pressure" reshaping American government. The NAACP Legal Defense and Educational Fund's Nelson believes we are in a moment when ambition and dramatic change are possible. "This is the time for a new democracy movement," she said. "I feel confident that we are in the midst of one and haven't seen the end of it yet." Constance Slaughter-Harvey told me, "I worried a long time about whether or not there would be any responsible person to take up where we left off. But it was not until I saw those kids—with the pandemic—walking, protesting, did I realize that, Lord, it has not been in vain. And young people are realizing that they are going to be responsible for this country, and that if they let this country be taken to hell, they can never get it back on the right track."

The package of provisions outlined here would fundamentally restructure the nature of political engagement in America and put a final nail in the coffin of the idea of the republic as laid out by the Founders. It would create a true birthright and for the first time make American citizenship and American political participation roughly coterminous. To create a true democracy in this country would be to create a new country.

It's a long shot, but so was the Voting Rights Act.

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