

The Project of Democracy

by Alexander Keyssar



This article presents the second of two addresses given at the May 2002 Maine Town Meeting sponsored by the Margaret Chase Smith Library in Skowhegan. Keyssar, an historian at Harvard University, chronicles the advances and contractions of democratic political rights in American history. While on balance, this is a story of progress, it is not, Keyssar argues, unilinear, nor one that is completed. Although arguably late for the world's "greatest democracy," by the 1970s the United States had achieved universal suffrage. Today, however, the tug between democratic and anti-democratic forces continues. The contest is no longer over voting rights but over the procedures and rules governing elections (i.e., election reform and redistricting). Keyssar argues we must continue to fight for the expansion of democratic rights; it is an ongoing project, one in which we will never be finished. 🐉

Let me begin by recounting a largely unknown story about politics and the right to vote in the state of Maine. In the fall of 1932—during the election campaign between Franklin Roosevelt and Herbert Hoover—the registrar of voting in Lewiston, Maine, who was a Republican, announced that anybody receiving unemployment relief in Lewiston would be disfranchised. This was followed by similar actions in Waterville and a number of other towns. The legal grounds for this decision was a nineteenth-century law, which prohibited paupers (anyone dependent on the public for support) from voting. As a result, thousands of Maine residents were deprived of their franchise, including hundreds in Lewiston and Waterville.

Perhaps not surprisingly, these actions produced a substantial national uproar during the height of the most severe depression in American history and, for Republicans in Maine, the issue may have backfired, because for the first time in a very long time the state voted Democratic in the presidential election.

In part, I recount this story as a reminder that democratic institutions were long limited in the United States, even in recent history: poor people were sometimes kept from voting not just in the South, but in Maine and other northern states. Literacy tests existed not only in Mississippi but in New York, where hundreds of thousands of Spanish-speaking citizens, who could not pass an English literacy test, were disenfranchised as late as the 1960s.

I also mention the attempt in Maine in the 1930s because I think today we are living during a time when there are more uncertainties and trepidations about the nature of our democracy than at any point since the Great Depression. Indeed, the crisis that presented itself in the United States was primarily economic. At that time there were many citizens of the Western world—probably a majority—who were not sure that capitalism and democracy could both survive, or at the very least, survive together. “You can’t cure a disease by popular vote,” a common expression of the time, was reflective of this pessimism.

Today our discomfort has a different set of sources. On the one hand, we are feeling threatened by international adversaries that seem shadowy, lethal, and deeply rooted in societies we don’t fully understand.

Although the acute vulnerability that was occasioned by the events of September 11 has receded, a lingering nervousness remains and a sense of horror and vulnerability may well return.

At the same time, and even as we stand united against a common adversary, we are, thanks in part to the bizarre election of the year 2000, acutely aware of the limits and some of the shortcomings of American democracy. No less an expert than the ubiquitous Jimmy Carter reported that the Mexican elections of 2000 were substantially better run than ours in the United States.

Indeed, most of us have an uneasy awareness that we are not quite the model “city on the hill” our public officials depict. We know that our government is led by a president who received fewer votes than his adversary, that, in 2000, half of the electorate did not vote, two-thirds of the poor did not vote, and that the contours of recent election campaigns—indeed, the contours of political life itself—have been shaped by the imperatives of fund-raising done from the wealthy.

With this in mind, I would like to talk about what I have come to call the “project of democracy,” a way of understanding and thinking about democracy, and a way of thinking about the challenge we now face.

ELECTION 2000

Let me begin with some of the conclusions that can be drawn from Election 2000 and its immediate aftermath. First, whatever you used to think, you do not have a constitutional right to vote in presidential elections—or any federal elections, for that matter. As the Supreme Court made very clear in *Bush v. Gore*, state legislatures have the right to choose how their state’s presidential electors will be selected, and they can cut the electorate out of the deal altogether. There is no requirement of a popular vote for the presidency.

Second, the principle of one person/one vote, which we think of as fundamental to democracy, does

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not apply in presidential elections. Thanks to the structure of the electoral college, a single electoral vote in a populous state such as California or New York represents roughly 500,000 people—or it did in the last election—while in the smallest states, it represents only 220,000.

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The third lesson is that if you registered to vote, your name may or may not appear on registration lists, and you may or may not be able to cast a provisional ballot, depending on the state in which you live and the helpfulness of local officials.

Fourth, if turnout in an election was ever really high—for instance, if it was ever at a level that is common in most other industrial democracies, such as, say, 75%—we would still be in line waiting to vote in Election 2000.

Also, if you vote, your vote will probably be counted, but maybe not. Millions of ballots will be tossed out because of improper markings and machine malfunctions. Furthermore, if you are black, the odds that your vote will be tossed out are four to 10 times greater than if you are white.

If you are poor or have only a high school education or less, the odds that you will vote at all are less than half of that for people who are wealthy or well educated.

And finally, if for whatever reason, you are deprived of the right to vote—or your vote is not being counted—you can trust that one of the major political parties will help you only if its leaders are convinced they will benefit by doing so. In such an event, the other major party will oppose your re-enfranchisement because the mistake was yours, you can't prove otherwise, the letter of the law must be followed, and besides, it's too late to count your vote

anyway. Each of the two major parties deeply believes in the right to vote of its own supporters, and they agree that third parties should be abolished except possibly for those third parties that will drain votes from their adversaries.

Now, none of these unfortunate lessons was an accident. The unusual, accidental dimension of Election 2000 was that the election was so close that all these features of political life were revealed and were treated as significant by the press. But the basic dynamics leading to these deformations of political life have deep roots in American history.

Indeed, one could reasonably say that the road to Tallahassee began in Philadelphia in 1787, and it is for this reason that I will now lead you on a historical journey.

1789 THROUGH THE CIVIL WAR

I begin with what I have come to call the original sin of our Constitution, which was that the founding fathers, coming together to write a national constitution for one nation comprised of 13 states, each a former colony with its own traditions and suffrage laws, chose not to adopt a uniform national franchise or any kind of uniform law dealing with the right to vote. In fact, what they chose to do was to separate citizenship in the United States from the right to vote, and to make citizenship a federal matter and the right to vote a state matter. They left the entire issue up to the states, except for a small linkage of the right to vote to the House of Representatives. They did this not because of any principle or rationale, but rather for short-term political reasons of their own. They were concerned that any national rule would antagonize some states (or others) and thus jeopardize passage of the Constitution.

The franchise was left to the states, which had a wide variety of laws. The most common were property or taxpaying requirements. You either had to have owned property or paid taxes. Every state but Vermont had a requirement of this type, and it constituted an explicit class barrier to participation in political life.

The most vociferous opponent of property requirements was Benjamin Franklin, the oldest delegate. Franklin suggested that all adult males should vote,

but as a matter of fairness and in the interests of what we would now call “national security.” He thought that it would be easier to raise an army and retain the loyalty of soldiers if all, even the poor, could vote. There was also a story that Franklin frequently told, which is outlined below. (One necessary piece of background to this story is that potential voters in many states could meet property requirements by owning farm animals, which were of substantial value.)

Today a man owns a jackass worth \$50 and he is entitled to vote; but before the next election the jackass dies. The man in the mean time has become more experienced, his knowledge of the principles of government, and his acquaintance with mankind, are more extensive, and he is therefore better qualified to make a proper selection of rulers—but the jackass is dead and the man cannot vote. Now gentlemen, pray inform me, in whom is the right of suffrage? In the man or in the jackass?

The story is so well known that debates in state constitutional conventions 50 years later (i.e., in the 1840s) contained references to Franklin’s jackass. But Franklin’s was nevertheless a minority view at the end of the eighteenth century. In the 200 years since ratification of the constitution, a great deal changed, though these changes never moved in a simple, straight line.

From 1790 to 1850, there was a gradual repeal of property and taxpaying requirements throughout the United States. This was prompted, in part, by campaigns waged by soldiers in the Revolutionary War and the War of 1812 who stated that if we wanted them to fight, we should enfranchise them—not an unreasonable proposition. Generally, this was an era of expansion and, in numerous states, even non-citizens were given the right to vote if they lived in the United States for two years and if they intended to become citizens.

At the same time there were movements in opposite directions. One notable example is that women were enfranchised in New Jersey at the end of the eighteenth century but lost the right to vote in 1807. New Jersey was unique in its willingness to disfranchise people not by constitutional alterations, but by statute

law; the same act that deprived women of the vote also disfranchised African Americans. Indeed, in several northern states, blacks who could vote in 1800 found themselves disenfranchised by 1840.

As political historians have long noted, the United States is unusual in relaxing formal class barriers to the franchise in the first half of the nineteenth century. Still, a key factor that has not received adequate attention is that the nation did so at a time when neither the industrial working class nor the peasantry—the two classes most feared as political participants in other parts of the world—posed a threat in the United States. This was so for precise reasons.

First, in the North, the laws eliminating property requirements were passed before individual states were industrialized. There are fascinating debates one can read, beginning with the New York constitutional convention of 1820-1821, where advocates explain their support for such laws. They say, “Look, we want this [law] to enfranchise some farmers who own smaller farms, the artisans who own their shops, people who have mortgages who otherwise would not qualify. We are not talking about enfranchising any kind of working class or industrial working class.” Indeed, the chief advocate of reform says: “I am advocating this because I am convinced that New York will remain a predominantly agricultural society for the next 1,000 years. If I thought otherwise, I would never favor dropping the property requirement.”

The great counter example to this chronology is the state of Rhode Island, which did not reform its colonial suffrage laws at independence. It retained a property requirement even after it was industrialized. By 1830, when the question of universal suffrage showed up on the agenda of Rhode Island politics, the number of textile workers outnumbered the number of farmers by two-to-one. Not surprisingly, the farmers resisted. The result in Rhode Island, over a period of about 20 years, was a conflict called the Dorr War, although actual armed conflict was minimal. It included a brief period when two groups claimed to be legitimate governments, and two separate elections were held. Through the 1830s and 1840s Rhode Island was the focus of national attention, and it illustrates, I think, what would have happened

had there been an industrial working class at the moment of suffrage expansion.

The second issue is that the American equivalent of a peasantry—the analogue to what was going on in Europe—was black and enslaved. When North Carolina and Virginia decided to get rid of their property requirements, it never occurred to the people involved in those decisions that this might result in enfranchising black people who were working the land. They were enfranchising poor whites (in part to make a union against blacks), not the nation's African-American equivalent of a peasantry.

The period of expansion of the franchise culminates during or just after the Civil War with passage of the Fourteenth and Fifteenth amendments, which, officially—but only briefly in the South—enfranchised African Americans. Then, there was a long and, until recently, little understood period of contraction of the right to vote (and of democratic rights in general) that lasted, I argue, from Reconstruction to World War I. This was true in the North as well as in the South.

RECONSTRUCTION TO WORLD WAR I

In the South, the story is well known. Depending on the state, after a period of 10, 15, or 20 years in which African Americans participated in politics, they were stripped of those rights by a mixture of force and law. As a rule, force preceded changes in the laws—since force, however effective, generated a great deal of unwelcome national publicity and ran the risk of potentially leading to the reintroduction of northern troops in the South. One state after another, thus, introduced literacy tests, poll taxes, and other devices to circumvent the Fifteenth Amendment. After the Republican party had been destroyed in the South, leaving a situation in which the only elections that counted were within the Democratic party, the white primary was adopted—a very efficient means of keeping blacks disenfranchised. Democrats maintained that the Fifteenth Amendment did not apply to primaries because political parties were akin to private clubs. The Supreme Court upheld variants of this position until 1944.

What is less well known is that similar things happened in the North, although not on the same

scale as was seen in the South. For example, the first grandfather clause was not written in South Carolina or Mississippi, but in Massachusetts. It applied to a Massachusetts English language literacy test that was passed in the 1850s. Massachusetts also briefly passed a law that said if you were foreign-born, you had to wait several years after naturalization in order to vote. Maine passed an English language literacy test in the 1890s, as did New Hampshire 10 years later. Rhode Island had a property requirement for foreign-born citizens in statewide elections until the 1880s, and in city elections until the 1930s. If you were native-born, you didn't have any property requirements, but if you were foreign-born, you did.

Without going into tedious detail, these laws were aimed at the immigrant working class and they succeeded in limiting the size of the electorate. This thrust toward contraction, which was aimed predominately at blacks and immigrants, also had the effect of delaying the passage of women's suffrage for an extra 20 to 30 years. Women's suffrage was not passed until the aftermath of World War I. Even during World War I, when it was promoted by Woodrow Wilson to Congress, woman's suffrage was explicitly couched as a measure to mobilize the wartime effort.

WORLD WAR I THROUGH THE 1960S

The years between World War I and the 1960s were largely ones of stasis with respect to the right to vote. Legal changes were enacted in a variety of states, but they did not alter the basic structures that were in place by 1915. Perhaps the most significant of these changes occurred during World War II, when the Supreme Court struck down the white primary and Congress voted to prohibit poll taxes on any soldiers who were casting absentee ballots. Even the most die-hard southern political leaders thought it would be unseemly to tax men and women in uniform who were fighting overseas.

Yet in the 1940s there began processes of social and political change that would eventuate in the truly dramatic evolution of voting rights that occurred in the 1960s. These processes were spurred in part by the mobilization of armed forces veterans of World War II

and the Korean War; many African-American, Hispanic, and Native American veterans led the fight for enfranchisement. The spectacle of veterans wearing medals awarded for valor being turned away from registrars' offices, or even being beaten when they tried to vote, drew national publicity.

Also spurring change was the transformation of southern society occasioned by technological changes in agriculture that freed—or pushed—many African Americans from the land. Some migrated to the North, where they obtained voting rights and became a pressure group for civil and voting rights nationwide; others moved to southern cities such as Birmingham, Memphis, and Greensboro, where they became a part of a growing, if decentralized, movement for equal rights.

Pressure to end the disenfranchisement of African Americans in the South (as well as other minority groups) also came from abroad—or, more precisely, from the political dynamics of the Cold War. In the rhetorical combat that accompanied that conflict, the discrimination against African Americans in the United States was a serious matter. While the State Department and the White House were trying to enlist allies in Africa and Asia, the Soviet Union was saying, “Look at the way they treat blacks in their own society.”

One critical upshot of these dynamics was the passage of the Voting Rights Act (VRA) in 1965. In essence, the VRA was simply legislation designed to enforce the Fifteenth Amendment, which had been on the books for almost a century. Its passage transformed the politics of the South and eventually the nation. Moreover, the VRA was accompanied by a series of Supreme Court decisions, constitutional amendments, and acts of Congress that eliminated numerous barriers to voting.

For example, the Supreme Court in 1966 declared that wealth cannot be a criterion for voting; there could no longer be any poll taxes or any type of property requirement. As Justice William Douglas proclaimed, wealth was not “germane” to the right to vote. This decision marked the end of formal class barriers to voting rights in the United States—a great deal later than most people assume to have been the case.

Literacy tests were also thrown out and residency requirements were shortened from two years in some states to 30 or 45 days. To supplement the Fifteenth

Amendment (which focused on race), the equal protection clause of the Fourteenth Amendment was invoked to bar other forms of discrimination. Indeed, by the early 1970s it appeared as though an expansive interpretation of the equal protection clause would even lead to the abolition of felon disenfranchisement laws. The California Supreme Court struck down that state's felon disenfranchisement law for just such a reason.

But the Supreme Court of the United States overturned the California court's decision, leaving the early 1970s as the high watermark in the court's interpretation of voting rights. The Supreme Court's opinion, written by then-Justice (and now Chief Justice) Rehnquist, ruled that felon disenfranchisement laws were protected by the clause in the Fourteenth Amendment that tacitly permitted states to disenfranchise men who had been convicted of “rebellion and other crimes.” Most historians believe that this clause, written in 1868, was aimed entirely at Confederate rebels and did not envisage disenfranchising people who had held up a gas station, but Justice Rehnquist disagreed.

Nonetheless, one could say that by the 1970s the United States had achieved what one could meaningfully call universal suffrage—a bit late for the world's “greatest” democracy, but it did happen. Ironically, perhaps, our Constitution remained (and remains) lacking any affirmative statement that Americans have the right to vote. Our legal and constitutional structure is an odd one in which constitutional amendments and court decisions prohibit states from discriminating (with respect to voting rights) on a variety of grounds—without explicitly guaranteeing anyone the right to vote.

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WHAT DOES THIS HISTORY TELL US?

This story is unbalanced, yet in the end, it is a story of progress. However, I don't think progress, which is the story we live and grow up with in popular culture, is the only thing we should draw from this complex history. Let me suggest a few other ideas:

One that we should recognize is that the history of suffrage and the history of democratic political rights have been uneven histories. They have not been unilinear. There have been advances and contractions. At moments, our nation has been more democratic and, at other moments, it has been less democratic. There is a fragility of which you have to be aware. Even fairly recently, in the 2000 Massachusetts' elections, felons were disfranchised after 200 years of having the right to vote.

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The record reveals there have always been forces in the United States that have opposed expansion of the franchise. In a sense, the dirty little secret of American political life is that not everyone believes in democracy, although there is now a broad ideological presumption in its favor. Throughout American history, there have been some segments of the elite and the middle class, and even some segments of the working class, that have challenged or opposed the rights of poorer, less-educated, racially or ethnically distinct groups to vote.

Our history also tells us that the major parties generally have been complicit in denials of the right to vote; they have more often been partisan than principled. To be fair, there are many heroic stories of people acting on principle. Passage of the Fourteenth and

Fifteenth amendments resulted from such action. Still, if you look at the late nineteenth and early twentieth centuries, what you find, in broad strokes, is that the Republican party stood as the main rhetorical and political defender of black voting rights in the South, while at the same time, Republicans in the North tried to chip away at the voting rights of immigrant voters. The position of the Democratic party was precisely the opposite. It supported and tried to enroll immigrant workers in the North and was adamantly opposed to the enfranchisement of blacks in the South.

This dynamic has been an important component of the partisanship of the parties. Especially in the late nineteenth century, each party worked to gain control over enfranchisement laws and also the procedural rules that govern elections and the procedural apparatus. Political professionals know that these rules—

the details of how you register, how you go about voting, when you do what—win and lose elections. Political parties do not exist to promote democracy, but rather to win elections. That is their goal. Political professionals know that often the way you win an election is not by maximizing turnout, but by maximizing the turnout of your own reliable voters and by minimizing the turnout of anybody else.

The election laws—as they exist in most states—are not written by non-partisan commissions to try and create a fair electoral process. Instead, they are the rules of engagement between the two major parties who have gotten tired of unpredictable conflict and cheating. In a certain sense, Katherine Harris is not a new figure on the political landscape, however pivotally she fulfilled her historical role in 2000.

Importantly, one critical aspect of the rules governing elections—many of which were put in place in the late nineteenth century—has been to discourage the appearance and success of third parties. The laws that govern getting on the ballot favor the major parties at the expense of innovative start-ups. It is notable that we live in a world at the beginning of the twenty-first century where there is tremendous celebration of freedom in the markets and in our economic life. At the

same time, our entire political leadership is absolutely opposed to anything that looks like a free-market political life. There is no consensus saying, “Let’s equalize the playing fields for new political parties or new groups.” In the United States, what we really have is an institutionalized political oligopoly.

This longer historical view suggests that contests between democratic and anti-democratic forces will continue, that they are permanent and recurring, and that they go through different stages and can occupy different arenas. In other words, even after universal suffrage is achieved in a particular place and democratic voting rights are extensive, the contest continues. Only what they are fighting over shifts.

Today’s contest is no longer focused on the right to vote per se. But it may become, as it did in the late nineteenth century, about registration rules. In the 1880s, the New York State Legislature passed a law stating that you had to have personal registration in the cities of New York, and that it also had to be annual if you were in New York City—and New York City alone. For a brief period in the early twentieth century there were only about two days to register, which tended to be Yom Kippur and Rosh Hashanah, substantially limiting the Jewish vote. It is not unlikely that control over registration rules could again become an arena of contest.

Of course, in the South, we’ve seen since the Voting Rights Act of 1970 that the contest is no longer over enfranchisement; instead, it is over redistricting. The national battle over campaign finance reform is, of course, another arena in which the contest is playing itself out.

DEMOCRACY AS A “PROJECT”

All of this is to say that we ought to view democracy not as a fixed set of rules or exemptions, but as an ongoing and permanent project. Democracy is a goal, and also something that we have to nurture and revitalize all of the time. Certainly in capitalist societies—and we have none other in the world right now—economic power will remain unequally distributed, and there will be those who will resist the equalization of political power precisely because

it threatens the inequalities that are inescapably generated in a market economy.

Similarly—and perhaps more explosively in the world today—ethnic, religious, and racial tensions too often give rise to an impulse to deprive those who are different of their political rights, and a reluctance to be governed by those who are seen as “others.” In any society, those who are in power are going to try to remain in power; parties that dominate particular cities, states, or regions will seek to continue their dominance and often to create rules of politics in order to do so. The project of democracy is the project of opposing all of these anti-democratic steps, of taking many steps, big and small, to try to ensure that all voices are heard and that all carry equal weight. Election 2000 forcefully reminded us of the imperative of pursuing that project.

As we talk about this political project, I will say that my own approach is to let 100 flowers bloom, well beyond the reforms now in Congress. We need more than new machines and provisional voting mechanisms. While these are good things, we need to dig deeper. There has to be serious and ongoing campaign finance reform. I think there should be a constitutional amendment to guarantee the right to vote in general elections, and a move toward proportional representation as a way of encouraging new political groups and revitalizing political life. My own view is that we ought to do everything we can to try to increase participation in elections.

In this regard, let me mention one thing that has to do with the remarkable class skew of contemporary politics. It has to do with polling. As you know, national campaigns are increasingly governed by polls. That would be fine if you had a situation where your pollsters were going out all over the country and questioning what issues are important to people. But the fact is that even if they do poll a large sample, the results they compile and give to candidates are not a random cross section. The poll results they use are from those called “most-likely voters.” How do pollsters decide whether you are a likely voter? They use two criteria: one is that you voted in the last election; the other reflects your socioeconomic status and your level of education. If you are poor and did not vote in the

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last election, the issues of concern you raise are most likely not reflected in the results that are passed on to candidates and political leaders.

This definition of likely voter helps to explain why so much of the 2000 Senate and presidential elections seemed to be a national referendum on which prescription drug plan for senior citizens was preferable. There was no talk about health insurance for the 50 million people who don't have insurance. But senior citizens are identified as likely voters. Unfortunately, there is a vicious cycle here. People who are not considered likely voters

do not have their issues addressed. As a result they don't vote, which ensures that they are left out of the next cycle of polling.

One way or another, we need to figure out a variety of mechanisms to break those patterns and to pursue the democratic project, which began long before Benjamin Franklin, and has been the pursuit of hundreds of thousands of people throughout history.

Ironically, the aftermath of September 11 may provide a rhetorical opening or reinforcement for this project. If, on the one hand, we rightly fear a loss of civil liberties during a prolonged era of semi-declared war, we also must recognize that wars have often been moments when our nation has been challenged, often successfully, to live up to its own professed values. It was the Civil War that brought about the enfranchisement of blacks; it was World War I that brought about the enfranchisement of women; and the Cold War certainly played a significant role in promoting democratic rights in the South and key places in the West.

Of course, the current war on terror is not one of mass mobilization, not one in which we will likely need to recruit millions of additional soldiers into the armed forces, or mobilize tens of millions of civilians into active support for a military venture, dynamics that

led to the expansion of democracy in the past.

If this war against terror continues—and there is no reason to believe it won't—it will demand sacrifices of many of us. It is often when states demand sacrifices that people demand an expansion of rights and power in return. This is also a war of values and, as such, it puts a not unwelcome pressure on us to live up to our own professed values. There is a schizoid perception of the United States in much of the world. On the one hand, there is recognition that the United States is a remarkably open and democratic society. At the same time, we are seen as something of an imperialistic bully. To the extent there are imperfections in our own institutions, it may magnify that perception. As a contest and competition of values, the war against terror thus becomes a moment when we are called upon to live up to our deepest values. As important, if not more important, our place in the world, and the precariousness of the world, demands a vital politics. It demands fresh debates, new ideas and new thinking within our own political universe, and that will be far more likely to occur if our system is invigorated by new currents, new actors, and maximal political participation.

CONCLUSION

Perhaps it is pollyannaish to look at the rather grim world situation and see it as an opportunity for positive developments. Things may get worse before they get better. Still, as an historian looking back over time, it does seem things can be made better. What happened in Florida in Election 2000 was not pretty; it was an ugly election. But 50 years ago, blacks would not have been voting in Florida at all. Fifty years ago, Puerto Ricans would not have been voting in New York. Indeed, it has been less than 50 years since the Supreme Court declared that wealth was “not germane to voting,” and thus solemnly grounded the fact that, in American society, the right to vote belongs to the man and not the jackass. 🐾



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