

# WHEN CLASS COMPETED WITH RACE AND LOST: AN ORIGIN STORY OF THE POLITICAL MARGINALIZATION OF THE POOR

## INTRODUCTION

On March 1, 2024, the *University of Richmond Law Review* hosted a symposium entitled *Vestiges of the Confederacy: Reckoning with the Legacy of the South*. Professor Bertrall L. Ross II<sup>1</sup> delivered the presentation transcribed below, which has been edited for clarity and cohesion. The *University of Richmond Law Review* was honored to host him and is thrilled to publish this transcript of his thoughtful discussion.

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*Professor Bertrall L. Ross II:* Thank you. It is great to be here. I thought I would spend the first part of my talk just telling you about who I am, what moves me, and what motivates me.

I am a codirector of the Karsh Center for Law and Democracy at UVA Law. And one of the things that I've created at the Karsh Center is the Designing Democracy Project.<sup>2</sup> What this project is focused on is trying to get students involved in the process of correcting democracy's defects. Democracy has, in America, several different defects. And yet, we have this mindset that these defects should be left to the so-called experts to resolve: to come up with different ideas to resolve the problems of money and politics, unequal representation, turnout gaps and deficits, and so on and so forth. What I think we need are new and fresh ideas, and we need an investment into our democracy by the newest generation of folks who are going to be taking over our democracy. So, the Karsh Center has three different projects of students who are working on

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1. Justice Thurgood Marshall Distinguished Professor of Law, University of Virginia School of Law.

2. See Melissa Castro Wyatt, *Bertrall Ross Brings Paper Idea into Real-Life Course Aimed at Reform*, UNIV. VA. SCH. L. (Oct. 12, 2022), <https://www.law.virginia.edu/news/2022/10/bertrall-ross-brings-paper-idea-real-life-course-aimed-reform> [https://perma.cc/2JV2-7P SD].

different democratic defects: the participation gap between the rich and the poor; the representation gap between the rich and the poor; and the problem of populism, polarization, and inequality. Those projects stem from my own interests in what's going on in democracy in America.

I entered into the academy focusing a lot on voting rights. My real interest and my passion at the beginning was racial discrimination and inequality in voting rights. But I then started to explore something that's directly connected to this racial inequality in voting rights, and that was economic class-based inequality in participation and representation.<sup>3</sup> What we see, if we go back to 1964—which was the first census to collect data on turnout by different economic groups—is a persistent and consistent thirty percent gap in voting between the highest and the lowest income quintiles in the United States.<sup>4</sup> That has corresponded with a massive representation gap. Martin Gilens, Larry Bartels, and other social scientists have found elected officials to be highly representative of the wealthy, somewhat representative of the middle class, but not at all representative of the poor.<sup>5</sup>

When you see the surveyed interest of low-income individuals and you assess the correlation between their interests and the representatives' roll call votes and policy actions, there is no correlation. There is no linkage. It's only when the interests of the poor align with the interests of other classes do the poor get represented.<sup>6</sup> What we thus see here is this vicious cycle that has emerged in our politics: a vicious cycle in which low-income individuals do not participate in the voting process because they see

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3. See Bertrall L. Ross II, *Addressing Inequality in the Age of Citizens United*, 93 N.Y.U. L. REV. 1120 (2018) [hereinafter *Addressing Inequality*]; Bertrall L. Ross II & Douglas M. Spencer, *Passive Voter Suppression: Campaign Mobilization and the Effective Disfranchisement of the Poor*, 114 NW. U. L. REV. 633 (2019); Bertrall L. Ross II & Douglas M. Spencer, *Voter Data, Democratic Inequality, and the Risk of Political Violence*, 107 CORNELL L. REV. 1011 (2022) [hereinafter *Voter Data*].

4. See *Voter Data*, *supra* note 3, at 1014–15; JAN E. LEIGHLEY & JONATHAN NAGLER, WHO VOTES NOW? DEMOGRAPHICS, ISSUES, INEQUALITY, AND TURNOUT IN THE UNITED STATES 1, 6 (2013) (showing how income bias in voter turnout has been stable since 1972).

5. See generally LARRY BARTELS, UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GUILDED AGE (2d ed. 2008); MARTIN GILENS, AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA (2012).

6. See BARTELS, *supra* note 5, at 260–65 (“[T]he views of low-income constituents had no discernible impact on the voting behavior of their senators.”); GILENS, *supra* note 5, at 79–81 (“[W]hen preferences between the well-off and the poor diverge, government policy bears absolutely no relationship to the degree of support or opposition among the poor.”).

their representatives as nonresponsive to their interests. Then, we see representatives who are unresponsive to the interests of low-income individuals because the poor do not vote. The question is, and the question I've been struggling with is: how do we intervene? How do we break that cycle? How do we create a more virtuous one?

Some may think: why does this matter? One theory is that non-voters and voters represent the same interest, so it doesn't really matter who votes and who doesn't. However, that theory has been debunked in many social science studies.<sup>7</sup> The other, more cynical account is well, that's their problem; that's the problem of the poor. And if they don't want to vote, they're not going to get represented. So that's on them. Right? But when you see events like January 6th, you start to recognize that there are broader social costs to nonparticipation, marginalization, and alienation.<sup>8</sup> When you have a marginalized group of individuals in a society, in a democracy, that feel disaffected from politics, that is a reservoir—a pool from which authoritarian, antidemocratic forces can recruit. And to the extent that we have authoritarian, antidemocratic forces recruiting from that pool, it serves as a threat to American democracy and democracies worldwide.

What I seek to introduce is a discussion of where we are with respect to inequality, really focusing on the states of the former Confederacy. Here's where you see the racial and economic inequality nexus is particularly strong and powerful. Then, I seek to go back in time to explore a counterfactual of what Southern politics could have looked like if things had gone a little bit differently: a counterfactual in which African Americans are the pivotal vote in that democracy. A counterfactual in which both parties, or all parties that are in play at that time, are vying for African American support, and are seeking to be responsive to their demands. That counterfactual reality could have led to a different future for the South from what we have right now.

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7. *Addressing Inequality*, *supra* note 3, at 1154–1160 (providing an account of the relevance of nonvoting in U.S. democracy).

8. *See Voter Data*, *supra* note 3, at 1017–18 (identifying source materials suggesting that many of those who participated in the January 6, 2021, insurrection were on the economic and political margins).

So, there are eleven states in the former Confederacy, from Virginia to Texas. Now, what do we know about these eleven states of the former Confederacy? Well, we know that six of those states are in the bottom ten in welfare spending.<sup>9</sup> We also know that six of those states are also in the bottom ten in terms of education spending.<sup>10</sup> We know that of the ten states that refused to adopt Medicaid expansion, seven of those states were in the former Confederacy.<sup>11</sup> Now remember that deal under Medicaid expansion? The deal described in *National Federation of Independent Business v. Sebelius*<sup>12</sup> was that the federal government would pay one hundred percent of the cost of Medicaid expansion until 2018.<sup>13</sup> And then ninety percent thereafter. If I'm a politician in a state, I'd say sign me up immediately, if not sooner. I'm going to go ride my horse into those communities in need and tell them, I got that for you, and give them that reason to vote for me. But many states and their elected officials made different choices. And several of those states that made different choices are members of the former Confederacy.<sup>14</sup>

So maybe you're thinking, Well, why in these states do we have such low welfare spending? Why do we have such low education spending? Why didn't they expand Medicaid? Maybe it's because these states are wealthy, and their people don't need it. Maybe their people are doing so well that they don't even want this government money. Well, then you start to look at the data. And you

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9. See *Public Welfare State Expenditures per Capita in 2021*, STATS AMERICA, [https://www.statsamerica.org/sip/rank\\_list.aspx?rank\\_label=censgovtre\\_exp\\_1\\_c&item\\_in=040](https://www.statsamerica.org/sip/rank_list.aspx?rank_label=censgovtre_exp_1_c&item_in=040) [<https://perma.cc/LQB6-NMDA>] (noting that Georgia, Florida, Alabama, North Carolina, Texas, and South Carolina are in the bottom ten in public welfare spending per capita).

10. See *Per Pupil Spending by State*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/per-pupil-spending-by-state> [<https://perma.cc/L6DA-NMRA>] (noting that Mississippi, North Carolina, Texas, Tennessee, Florida, and Alabama are in the bottom ten in per-pupil spending on education).

11. See Patrick Drake, Jennifer Tolbert, Robin Rudowitz & Anthony Damico, *How Many Uninsured Are in the Coverage Gap and How Many Could Be Eligible if All States Adopted the Medicaid Expansion?*, KFF (Feb. 26, 2024), <https://www.kff.org/medicaid/issue-brief/how-many-uninsured-are-in-the-coverage-gap-and-how-many-could-be-eligible-if-all-states-adopted-the-medicaid-expansion/> [<https://perma.cc/57TN-JLLP>] (charting states that have not adopted the Medicaid expansion).

12. 567 U.S. 519 (2012).

13. *Id.* at 576.

14. See *Status of State Medicaid Expansion Decisions: Interactive Map*, KFF (Mar. 20, 2024), <https://www.kff.org/affordable-care-act/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/> [<https://perma.cc/R38F-A2YP>] (showing that Tennessee, Texas, Mississippi, Alabama, Georgia, South Carolina, and Florida have still failed to adopt Medicaid expansion).

realize that five of the states of the former Confederacy are in the bottom ten in terms of states with the highest poverty rate.<sup>15</sup>

So, how did we get here? And what can the past tell us about the state of the present? For me, this Symposium represents an opportunity to learn more about an overlooked decade between the end of Reconstruction and the beginning of Redemption in the 1870s on the one hand, and the state constitutional conventions that disenfranchised African Americans from the period of 1899 to 1901 on the other.<sup>16</sup> Now, what is going on during that period between the end of Reconstruction and the near total disenfranchisement of African Americans? The myth that I was told in school was that with Redemption came the wholesale disenfranchisement of African Americans. That's the story that I remember. I thought a little bit about it at the time; and I thought, Well, when did Reconstruction end? Around 1876. When did we have this wholesale disenfranchisement of African Americans? Mostly from about 1899 to 1901. I did the math, slowly, and thought, Well, that's twenty-three years. What happened during that twenty-three-year period? Was there a kind of gradual disenfranchisement, and why was it gradual? Did African Americans passively accept their fate, acknowledging the inevitability of their eventual disfranchisement? Or was there something else going on during this period? This Symposium provided me with an opportunity to learn more about this period and what I learned was that the story I remember was indeed a myth.

My curiosity led me to an exploration of some historical sources and there are many historians that have covered this period: J.

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15. *Top 10 Poorest States in the U.S.*, FRIENDS COMM. ON NAT'L LEGIS. (Nov. 6, 2023), <https://www.fcnl.org/updates/2023-11/top-10-poorest-states-us> [<https://perma.cc/YE6L-CD SZ>] (finding that Mississippi, Louisiana, Arkansas, Alabama, and Texas are among the ten states with the highest poverty rates in 2022).

16. MICHAEL PERMAN, *STRUGGLE FOR MASTERY: DISFRANCHISEMENT IN THE SOUTH: 1888-1908*, at 9–10 (2001) (“Despite the seeming finality of the overthrow and dispersion of the federally installed Republican governments, the Democrats’ counteroffensive stopped short of fulfillment.”); J. MORGAN KOUSSER, *THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTIONS AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH: 1880-1910*, at 2–3 (“[H]istorians holding this view [that the South was a political monolith after 1877] dismiss too easily the national Republican party’s post-1877 commitment to protecting the political rights of its Southern followers, underestimate the residual power of the Southern GOP in the late nineteenth century, and disregard the transformation of Southern politics that took place about the turn of the century.”).

Morgan Kousser,<sup>17</sup> Gunnar Myrdal,<sup>18</sup> C. Vann Woodward,<sup>19</sup> V.O. Key Jr.<sup>20</sup> You also have the accounts of this period from folks like W. E. B. Du Bois and Booker T. Washington, who are thinking about this era from their perspectives as leading African American thinkers reflecting on the hopes and possibilities for democracy while recognizing the undemocratic realities.<sup>21</sup> Those detailed and sweeping accounts of Southern history provided me with an opportunity to understand the 1870s, 1880s, and 1890s.

What brought me closer to understanding the post-Reconstruction African American disenfranchisement was really focusing on the Southern constitutional convention debates from the period. What were they saying? What were they concerned about? What struck me in reading these constitutional convention debates is the fear and concern that the system of white supremacy could fall.<sup>22</sup> That just kind of blew my mind, because I'm thinking: The union troops left, y'all got this, right? But they didn't feel like they got this. They felt worried. And it's that worry that led to their decision to engage in the massive disenfranchisement of African Americans. That worry based on a fear that the so-called inferior classes would somehow take over, that class solidarity between economically marginalized white and Black Americans might, someday, overcome the desire to maintain the racial hierarchy.

My starting point is a question. Why didn't white Southerners, when they took over state legislatures at the conclusion of Reconstruction, immediately disenfranchise African Americans?<sup>23</sup> I think that there are two primary reasons for that decision.

First, there was a provision of the Fourteenth Amendment that seems rather obscure now but was more relevant then: Section 2 of

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17. See generally J. MORGAN KOUSSER, *COLORBLIND INJUSTICE: MINORITY VOTING RIGHTS AND THE UNDOING OF THE SECOND RECONSTRUCTION* (1999).

18. See generally GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* (1944).

19. See generally C. VANN WOODWARD, *THE BURDEN OF SOUTHERN HISTORY* (1960); C. VANN WOODWARD, *ORIGINS OF THE NEW SOUTH, 1877-1913* (1971) [hereinafter *ORIGINS*].

20. See generally V.O. KEY, JR., *SOUTHERN POLITICS* (1984).

21. W.E.B. DU BOIS, *DEMOCRACY FAILS IN AMERICA* (1954); BOOKER T. WASHINGTON, *DEMOCRACY AND EDUCATION* (1896).

22. See, e.g., KEY, *supra* note 20, at 8 ("Intense agitation over [African American] voting came as an aftermath of the Populist crisis.").

23. Southern states did pass laws that discriminatorily burdened the voting rights and representational opportunities for African Americans, but they stopped well short of complete disfranchisement. *ORIGINS, supra* note 19, at 54-55.

the Fourteenth Amendment. We don't talk about Section 2 a lot in law school, right? We're a Section 1 people, right? But Section 2 has a lot to say. Section 2 of the Fourteenth Amendment is a pretty innovative device that was put into the Constitution to incentivize states to enfranchise African Americans. What it said is that to the extent that a state fails to enfranchise African Americans, it loses representation in Congress.<sup>24</sup> So it was a bit of a carrot-and-stick approach. You enfranchise, you'll get these representatives that you're entitled to. You don't, you won't. And during this period, you saw white-controlled state legislatures expressing concerns about this provision. That this provision would be invoked to deny the states representation in Congress to the extent that they enacted disenfranchising—discriminatorily disenfranchising—laws.

During Reconstruction, this tool was neither used nor necessary, as Black officeholders in Southern state legislatures, and military occupation of the South, blocked any effort to disfranchise African Americans. But even after the military left, and even after Black officeholding had diminished due to the actions of white Southerners, Section 2 continued to have a deterrent effect. White Democrats did successfully use tactics of fraud, intimidation, and violence to secure control of state legislatures and reduce Black officeholding. But once in office, for the most part, they declined to enact laws that would lead to the wholesale disenfranchisement of African Americans. They feared the return of the Union Army, and they also feared the potential loss of representation in Congress.

Second, there was the Fifteenth Amendment, which functioned as another important deterrent to Black disenfranchisement.<sup>25</sup> African Americans during this period exercised tremendous agency that should not be forgotten. They weren't passive recipients of discriminatory laws; they were active resisters. And to resist at this time meant something very different than to resist today. To resist at that time meant putting your life at stake. It meant a potential lynching or killing without any retribution or consequences for

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24. U.S. CONST. amend. XIV, § 2 (“But when the right to vote at any election . . . is denied to any of the male inhabitants of such State . . . or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.”).

25. U.S. CONST. amend. XV, § 1 (“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.”).

those who committed those violent crimes. Nonetheless, African Americans in the face of violence exercised agency and actively exercised the right to vote such that, even during Redemption, a majority of African Americans continued to participate actively in the democratic process.<sup>26</sup> Some even held office, despite the efforts of white Democrats to keep them out. And African Americans also exercised agency with respect to bringing matters to the courts.<sup>27</sup> They relied on the Fifteenth Amendment to counter Southern efforts to reduce their voting power. And while their success rate wasn't high in courts, it was high enough to prevent the full-scale legal disenfranchisement that we would see at the turn of the century.

Finally, something that is often overlooked is the fact that white Southerners were not a monolith. There were certainly a fair share of white conservatives, racially regressive white supremacist Southerners who held considerable power. They tended to be the old plantation owners and their heirs from the antebellum South along with merchants and owners of capital emergent in the industrializing South. These Southerners had everything to gain from the preservation of the racial hierarchy. Such a hierarchy not only comported with their sense of social, civil, and political superiority, but also served their economic interests. As tenants, sharecroppers, or cheap forms of labor in factories, many African Americans were indebted to white creditors. That status of debtor contributed to a cycle of racial economic exploitation that blurred the line between slavery and freedom.

There were other whites, however, who also held racially regressive views and also rejected notions of Black social, civil, and political equality, but suffered from the same economic vulnerabilities that ultimately aligned their economic interests with those of their Black counterparts. These whites were the small farmers and factory laborers who often stood in the same debt relationship as vulnerable African Americans with the wealthier white creditors. And many of these whites, like their Black counterparts, were merely an economic crisis or panic away from economic disaster. In the

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26. See Bertrall L. Ross II, *Race and Election Law: Interest Convergence, Minority Voting Rights, and America's Progress Toward a Multiracial Democracy*, in *THE OXFORD HANDBOOK OF RACE AND LAW IN THE UNITED STATES* (2023)

27. *Id.*; see also Melissa Milewski, *From Slave to Litigant: African Americans in Court in the Postwar South, 1865–1920*, 30 *LAW & HIST. REV.* 723 (2012) (discussing African Americans' broader reliance on courts to obtain relief from predatory behavior).



late 19th century, economic crises and panics were relatively frequent events. The emerging industrial capitalism was subject to minimal regulations, and the social welfare state was in its infancy, with charity serving as a primary source of social support. The South, as a region comprised mostly of poor and vulnerable farmers and laborers, could have been the site of a progressive and redistributive policymaking apparatus. If farmers and laborers organized, and if racist feelings were subordinated to economic self-interest, then a cross racial economic coalition could have taken the South in a progressive direction.

In the 1880s, farmers and laborers did begin to organize in response to the economic exploitation that they suffered at the hands of large landowners.<sup>28</sup> A regional Farmers' Alliance emerged in the mid-1880s that, according to one historian, "spoke of voluntary cooperation so that working Americans could free themselves from a demeaning dependence on the men who handled the money in Gilded Age America."<sup>29</sup> The Farmers' Alliance established state and local exchanges for their products and cooperatives that allowed for the sharing of tools and resources. The Alliance also tried to pressure politicians into adopting policies more protective of farmers, including the ambitious sub-treasury program, which was a mechanism designed to maintain a floor on the price of farm products.<sup>30</sup> In one respect, the Alliance was more inclusive than other farmers' organizations that came before because women were allowed to be members. But in another respect, the alliance retained the old ways of prior organizations through their exclusion of African American farmers.

African Americans did not just passively hope and await entry into this Farmers' Alliance. Instead, African American farmers organized on their own. African American farmers created the

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28. See MATTHEW HILD, *GREENBACKERS, KNIGHTS OF LABOR, AND POPULISTS: FARMER-LABOR INSURGENCY IN THE LATE-NINETEENTH-CENTURY SOUTH* 10–12 (2007) (describing the roots of agrarian discontent arising from exploitative systems of finances, monetary policy, and taxes).

29. EDWARD L. AYRES, *THE PROMISE OF THE NEW SOUTH: LIFE AFTER RECONSTRUCTION* 216 (2007).

30. See ORIGINS, *supra* note 19, at 235–242 (describing the sub-treasury plan and other proposals to satisfy the needs of farmers).

Colored Farmers' Alliance in 1886.<sup>31</sup> Through this Alliance, African Americans set up their own exchanges and cooperatives that functioned as institutions of mutual support. They also sought to influence policymaking toward two ends. First, they lobbied for laws that would protect and advance farmers' economic interests.<sup>32</sup> And second, they advocated for laws that would redress the discriminatory practices in Southern states, particularly those practices of violence, intimidation, and fraud that reduced the voting power of African Americans.<sup>33</sup> The two farmers' alliances were important political innovations that provided some protections for farmers against the vagaries of unregulated capitalism. As separate organizations, their efforts proved much less effective than they would have been if the two organizations had combined. But in the 1880s South, racism proved to be too much of an obstacle to sustained and robust collaborative and coordinated actions between the two alliances.

On the labor side, there was much more progress toward a cross racial alliance. The idea of a nineteenth-century labor organization promoting cross racial alliance might seem weird; we generally understand labor history as an exclusionary and racist history. But in this blip of a moment in the South that feels like an alternative reality, it makes you think: What if? As the leading labor organization in the South during the Redemption Period,<sup>34</sup> the Knights of Labor recognized that racially exclusive organizing would be counter to the interests of the movement. A cheap reservoir of unorganized Black labor would directly serve the interests of the owners of capital and undermine the goals of the nascent labor movement to secure better wages, hours, and better working conditions. As one labor historian describes it, "The Knights opened their doors to [B]lack members and declared that racial divisions must

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31. OMAR H. ALI, *IN THE LION'S MOUTH: BLACK POPULISM IN THE NEW SOUTH, 1886–1900*, at 8–9 (2010) (describing the mobilization and organizing activities of Black Southerners during the 1880s and 1890s).

32. *Id.* at 26.

33. *Id.*

34. See generally Donald L. Kemmerer & Edward D. Wickersham, *Reasons for the Growth of the Knights of Labor in 1885–1886*, 3 *ILR REV.* 213 (1950); Peter Cole, *African Americans and the Knights of Labor (1869–1949)*, *BLACKPAST* (Jan. 24, 2022), <https://www.blackpast.org/african-american-history/african-americans-and-the-knights-of-labor-1869-1949/> [<https://perma.cc/QL7J-37HM>].

be overcome if working people were to advance in the new era of Gilded Age capitalism.”<sup>35</sup>

Although the Knights of Labor, as an organization, knew that interracial solidarity was necessary to advance the interests of the movement, they still couldn't entirely get over the deep-seated racism of its members. And one result of this deep-seated racism was the continued segregation of most Black and white members into separate local assemblies.<sup>36</sup> Despite this segregation, the Knights did achieve some successes by supporting boycotts of companies that used convicts or non-union labor. Ultimately, the organization's choice to divide according to race and its choice to not engage in politics more directly limited the Knights' capacity to achieve greater successes.

As the nascent farming and labor organizations were emerging, an economic panic hit: the panic of 1890.<sup>37</sup> The panic had broad impacts on Americans. But those who bore most of the brunt were the small farmers and laborers. Many small farmers had their lands confiscated due to their inability to repay debts. Tenants were kicked off their lands for the same reasons, and laborers were left jobless as factories shuttered their doors. Those who kept their jobs had to suffer the hardship and indignity associated with low wages, long hours, and poor working conditions.

The panic increased the urgency on the Farmers' Alliance and the Knights of Labor to more effectively respond to the vagaries of capitalism. One response to the changing economic conditions was to engage more directly with politics. The political scene in the 1880s was a bit complicated. Democrats held a majority of the legislative seats and most gubernatorial mansions throughout the South. But Republicans maintained a stronghold in some states

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35. JOSEPH GERTAIS, CLASS AND THE COLOR LINE: INTERRACIAL CLASS COALITIONS IN THE KNIGHTS OF LABOR AND THE POPULIST MOVEMENT 3; see also PHILIP S. FONER, 2 HISTORY OF THE LABOR MOVEMENT IN THE UNITED STATES 69 (1955) (“For the first time in the history of the American labor movement, widespread Negro-white unity flourished as Negro and white members of the Order acted together for common purposes.”)

36. GERTAIS, *supra* note 35, at 7; see also Gerald Friedman, *The Political Economy of Early Southern Unionism: Race, Politics, and Labor in the South, 1880–1953*, 60 J. ECON. HIST. 384, 397 (2000) (“Abandoning the egalitarian ethos of the Knights of Labor and the early AFL, some unions sought to reduce the labor supply in their trade by excluding blacks or admitting them on such an unequal basis that few sought membership.”).

37. This panic is also known as the Baring Crisis. See generally DAVID J. TEARLE, SAME OLD GAME!: THE BARING CRISIS OF 1890 – RISK AND REWARD (2018).

and in some areas of the South. A problem emerging for Southern Republicans, however, was growing African American disaffection with the party. The Republican Party's roots remained staunchly in the industrial North, and its leading party officials aligned themselves much more with commercial and trade interests than it did with farmers' and laborers' interests.<sup>38</sup> Since most African Americans in the South were farmers and laborers, and not commercial factory owners or traders, there was a misalignment between their economic interests and those of their long standing partisan partner the Republican Party. Thus, African Americans, a majority of whom remained voters even after Reconstruction ended, were ripe for recruitment from a party alternative to the Democrats and the Republicans.

At the same time, partisan divisions started to emerge amongst white Southerners. Economic differences meant that small farmers and laborers opposed large-scale landowners and owners of capital in economic disputes, which opened the door to partisan divisions amongst white Southerners. The large-scale landowners and owners of capital controlled the Democratic Party, its platform, and its agenda, meaning that the small farmers and laborers had to look elsewhere to secure political power. This vacuum provided an opportunity for a populist party to gain strength in the South. Now, I'm almost hesitant to raise populism because of its association with the current day populism of red hats with "MAGA" on them. But this is a different populism with a different orientation. Whereas the populism of the current moment has kind of a cultural, racial, and social dynamic connected to it, as its leaders seek to appeal to cultural and racial differences, the populism of the Gilded Age was more focused on economics. And what some populist leaders tried to do was subordinate race to economics.

The Farmers' Alliance and the Knights of Labor emerged as the dominant elements in this new Southern Populist Party. They engaged in a practice of contesting executive and legislative elections throughout the South. But the Southern Populists knew that they could not win without the Black vote. What was a weak and mostly non-existent alliance between Black and white farmers and labor

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38. ORIGINS, *supra* note 19, at 28 ("The [Republican Party] had now become the party of vested interests and business . . . . Yet in the South the party still appealed for the votes of a propertyless electorate of manumitted slaves . . . . The contradiction was obvious.").

groups developed into something a little bit stronger. The Farmers' Alliance, while not yet opening the doors to Black members, collaborated more closely with the Colored Farmers' Alliance on matters of politics.<sup>39</sup> And the Knights of Labor developed into the closest thing to a cross racial labor union that the United States would see until the 1930s, when the Congressional Industrial Congress organized large numbers of Black workers. And the Populists directly appealed for the Black vote on the basis of shared interests between Black and white working men and farmers.

In 1892, Tom Watson, a white leader of the Populist Party, made an appeal to Black voters on the basis of shared interests. In a speech, he said:

There is no reason why the Black man should not understand that the law that hurts me, as a farmer, hurts him, as a farmer. That the same law that hurts me, as a cropper, hurts you, as a cropper. That the same law that hurts me, as a mechanic, hurts you, as a mechanic.<sup>40</sup>

Another white Populist who signed off as Hayseeder from Georgia, questioned, "Why is it that Democrats are hallooing Negro supremacy so persistently?"<sup>41</sup> Raising the specter of "Negro supremacy" was the strategy by which Democrats appealed to the fears of white Southerners that African Americans could take over the joint, that they could undermine the traditional racial hierarchy and the white man at the top.<sup>42</sup>

Hayseeder sought to counter this appeal with a call for cross class solidarity with respect to political action. In response to the competing Democratic demand for political action based in white solidarity, Hayseeder asked:

Are they [African Americans] not citizens of the state holding the same rights under the law that the white man does? If so, isn't it better to give them representation in the convention that they may know for whom they are voting, thereby getting them to vote with the white people at home than to ignore them until the day of election and then

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39. GERTAIS, *supra* note 35, at 3 (describing the evolving relationship between the Farmers' Alliance and the Colored Farmers' Alliance from "quiet coalition [and] collaborat[ion] on collective goals" to open white Populist campaigning for black votes).

40. EDWARD L. AYRES, *SOUTHERN CROSSING: A HISTORY OF THE AMERICAN SOUTH, 1877-1906*, at 145 (1995).

41. AYRES, *supra* note 29, at 272.

42. PERMAN, *supra* note 16, at 25–27 (describing the Democratic political strategy of building white racial solidarity by invoking the threat of "Negro domination").

try to buy or force them to vote, thereby driving them into the Republican Party?<sup>43</sup>

This was 1892 Georgia. This is not 1992 Georgia, this is not 2022 Georgia, this is 1892 Georgia. And 1892 Georgia was a very racist place. White supremacy was a dominant ideology amongst white Southerners. And yet there is a recognition amongst economically vulnerable Whites that they needed to engage in concerted political action with their Black counterparts if they were to have any chance of securing the protection of their own interests. You have a white Populist labor organizer and farmer recognizing African Americans not only as humans, but as political beings entitled to some respect. Now that's not a story of redemption that's typically told.

But don't get it twisted. The Populists were not racial egalitarians. Watson and most other Populists still considered African Americans to be their social inferiors. As Watson declared in his speech:

They say I'm an advocate of social equality between the whites and Blacks. That is an absolute falsehood. And the man who utters it knows it. I have done no such thing, and you colored men know it as well as the men who formulate the slander. It is best for your race and my race that we dwell apart in our private affairs. It is best for you to go to your churches, and I will go to mine. It is best that you send your children to your colored schools and I'll send my children to mine. You invite your colored friends to your home and I'll invite my friends to mine.<sup>44</sup>

So, for many Populists, the relationship was one of political convenience and opportunity rather than true equal partnership. But ultimately, as one historian explains, "The political exigencies of the populist revolt put good orthodox white men in the position where the racial injustice of their society suddenly appeared to them as injustice."<sup>45</sup>

Black voters, however, did not simply just fall in line as supporters of the Populists. They were an appropriately skeptical group of people. They had been lied to, they had been harassed, they had been subjugated, and they had been murdered by white Southerners of all political stripes, throughout Reconstruction and into Redemption. Some certainly did join the Populist efforts. Others,

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43. AYRES, *supra* note 29, at 272 .

44. *Id.* at 273.

45. *Id.*

however, remained open to political pitches from Republicans and Democrats. And in these strange times, even Southern Democrats found themselves appealing for the Black vote to blunt the rise of the Populists.

Thus, for a time in the 1890s, African Americans were pivotal voters in many Southern state elections. Southern African Americans were as close as they would ever come to being kingmakers. And the South was as close as it would ever come to being the site of cross racial parties advancing a progressive class agenda and seeking to advance the interests of laborers and small farmers. Just think about that, and just think about what could have been. Would the South, with an interracial and economically focused Populist Party competing against Democrats and Republicans, have been the home of states with the most regressive social welfare policies in the nation? It's hard to imagine that being the case, and yet, here we are.

What happened? Well, there are many things. The Populists, despite their growing strength, were only able to make minimal inroads politically, only winning state-level control in North Carolina and some power in a few other states. Democrats retained control over elections and used that control to their advantage as they engaged in various forms of fraud to ensure that the Populists came up short.<sup>46</sup> Further, Democrats employed a hedging strategy, combining their appeals to Black voters with traditional tactics of violence, intimidation, and economic retaliation to deter African Americans from voting at all. The combination of these tactics secured Democratic control in most of the elected institutions in the South, but also so disheartened white Populists that they ultimately sought a partnership with their former Democratic opponents shifting their focus to defeating Republicans at the national level. So, in the 1896 federal election, the Populists endorsed and put Democrat William Jennings Bryan on the Populist ticket, even though he never agreed to be the Populist Party nominee.

In the Populist decision to join the Democrats that they could not beat, they abandoned the Black farmers and laborers with whom they shared so many economic interests. By the end of the decade, the Democrats reassumed full and complete control of state legislative and executive mansions throughout the South. The

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46. See KOUSSER, *supra* note 16, at 123–29, 183–85 (describing the Populist and Republican Party threat to Democratic hegemony in Arkansas and North Carolina).

Democrats were not going to take any chances that some party might unseat them with the help of the Black vote in the future. It was thus the Populist movement and that brief window in which African Americans emerged as pivotal voters that triggered state constitutional conventions that comprehensively disenfranchised African Americans.

The harm from such comprehensive disfranchisement did not only fall on African Americans alone. Those white laborers and farmers who sold out to the Democratic Party found themselves neglected and marginalized and unable to do anything about it once their former political partner, African Americans, were banned from voting. An era of Southern economic regressive politics associated with the region's one-party politics began and continues to this day. Now, there certainly have been occasional Populist revivals, such as that associated with Louisiana Governor Huey Long,<sup>47</sup> but that remains very much the exception to a dominant period of nearly entirely unfettered race-class capitalism.

So, why did most of the states of the former Confederacy reject Medicaid? Well, I would argue that it is a legacy of this moment: the legacy of the construction of the one-party state arising from the inability of class solidarity to effectively compete with the system and mindset of racial hierarchy. The emergence of the one-party state has diminished any need to compete for the Black vote or the low-income vote. African Americans are almost entirely loyal to a minority party in the South that still has no chance of winning state-wide elections in most of the states of the former Confederacy. And low-income voters divided by race are irrelevant in Southern politics. That combined marginalization of African American and low-income voters in the South has been detrimental to the development of democracy because democracy and economic inequality are fundamentally incompatible. As economics and resources have gotten more and more concentrated at the top, it has undermined the egalitarian operation of democracy in the present.

What is critical for the future of democracy is a change in orientation in terms of who is entitled to representation, and who should be engaged. I'm wondering if we'll get to that moment and whether we can return to the 1880s as that counterfactual, in which we reimagine what our politics could be. Earlier, a question was asked

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47. See generally Glen Jeansonne, *Challenge to the New Deal: Huey P. Long and the Redistribution of National Wealth*, 21 LA. HIST.: J. LA. HIST. ASS'N 331 (1980).



about cross racial alliances with respect to politics. Is that a possibility now or will it be a possibility ever? It's very challenging for both sides. For African Americans, the difficulty arises from the racial discrimination that they experience, which is of such critical salience and impact on their lives that it remains an appropriate focal point for political activism. The difficulty for economically vulnerable white Americans is too many have been conditioned into seeing African Americans as the other, thinking of them as different and often seeing them as inferior, ultimately deriving racial capital from the racial hierarchy.

These are difficult things to overcome and even to imagine ways in which they could be. But the linkage between the interests of economically vulnerable African Americans and whites persist. It makes you wonder whether that linkage can be a coordinating political force once again and someday win the competition with racial hierarchy. Is there a way to come to some sort of agreement or collaboration recognizing each others' economic vulnerabilities and overcome each others' political marginalization so that we can move productively together toward a better democracy?

I'll leave us with that question. This was meant to be an account that inspired hope, but perhaps I have failed. I don't know. But at least I was able to share what's on my mind, and I appreciate the opportunity that this Symposium provided me for immersing myself in a history that I knew too little about before.