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LIBERTY MATTERS

WHAT DOES LIBERTY HAVE TO SAY TO BLACK HISTORY?

Black History Month began in 1926 when Dr. Carter G. Woodson and the Association for the Study of Negro Life and History declared the second week of February to be Negro History Week. In 1969, Black History Month was declared first by students at Kent State University, and it has since become officially recognized by many governments. For this edition of Liberty Matters, we asked a group of scholars to reflect on what role liberty has, can, and should play in Black History Month.

LIBERTY AND HUMAN EQUALITY IN BLACK HISTORY

by Susan Love Brown

> "Four score and seven years ago, our fathers brought forth upon this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal."
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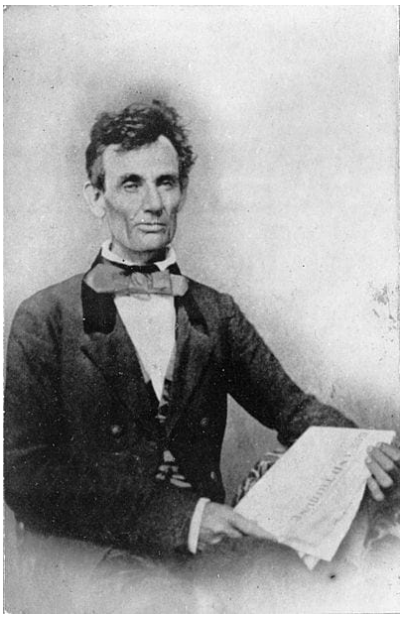
> - The Gettysburg Address, Abraham Lincoln, November 19, 1863



The **founding fathers** of the United States defined liberty in terms of individual rights: life, liberty, and the pursuit of happiness, and the right to own property. This hierarchy of rights illustrates the relative importance of these rights, but their distribution among the population occurred only over time. The establishment of individual rights as fundamental to a free society was innovative and represented a redistribution of power from monarchs and rulers to individuals, a radical idea then and now. Although these rights were not afforded to people of African descent, Native Americans, or women initially, these same founders did acknowledge that they should apply to everyone. The struggle to fully realize these rights is ongoing. For African Americans, from enslaved status to its end and from segregation to the present day, the quest for liberty has been identical to the quest for equal rights and equality itself. Black history, therefore, has been the history of the struggle for equality: human equality, equality before the law, and equal access to resources. This essay argues that Black history cannot be understood without attention to the meaning of equality for African Americans themselves; that the struggle for liberty is the struggle for equality and the essence of Black history itself.

Equality is a core principle of American culture, established, as Abraham Lincoln noted, from the beginning of the nation. Although many disputes over the

exact meaning of equality continue to occur, it is what is central to the quest for liberty by African Americans. Equality should not be confused with mathematical sameness; rather, it should be taken as a commonality of nature that requires certain conditions in order to flourish. For human beings, that condition is liberty. There are three kinds of equality that are relevant to African Americans in their quest for liberty: human equality, equality before the law, and equal access to resources. This essay will focus on the most central form of equality: human equality.

Human equality

Human equality is the acknowledgement that all people are equally human – a fact often contested for African Americans, largely through the false mythologizing of slaveowners to justify the institution of slavery and later to maintain the subservience of Blacks by any means, including scientific racism, to support cultural racial biases. (For example, see Herskovits, *The Myth of the Negro Past* written in 1941, or Smedley and Smedley, *Race in North America*, 2011.) Due to advances in paleoanthropology, osteology, and advances in genetics, we now know that human equality is a fact. That is, we know that there is only one human species, and we all belong to it. Furthermore, race itself is not a biological fact, but a social construction derived from early false assumptions about human biological variation and cultural differences. In other words, **race does not exist in nature**; therefore, it cannot be used to assert the inferiority or superiority of any group. But because the idea of race is so deeply ingrained in American culture, it persists and continues to color discussions of Black history, even though racial designations have given way to ethnic ones.

Much of Black history has been directed toward documenting the achievements of African Americans, reaching back to the origin of all human life on the continent of Africa to the achievements of Africans and people of African descent all over the world, but especially in the United States. These achievements have been missing from history with minor exceptions, and their recovery has been the work of Black historians for more than a century. While many people are aware of such iconic figures as **Frederick Douglass** and Harriet Tubman, it was in the 1970s that a rich vein of "undiscovered" African American inventors, scientists, politicians, entrepreneurs, artists, writers, dancers, and musicians rose to the surface of national awareness. However, before that, two African American scholars emphasized the importance of Black history as a subject for research: W. E. B. Du Bois (1868-1963) and Carter G. Woodson (1875-1950).

"IN OTHER WORDS, **RACE DOES NOT EXIST IN NATURE**; THEREFORE, IT CANNOT BE USED TO ASSERT THE INFERIORITY OR SUPERIORITY OF ANY GROUP."

When W. E. B. Du Bois became the first African American to receive a Ph.D. (Harvard, 1895), colleges and universities were still hostile to the idea of Black academics. Although DuBois was a social scientist, he also contributed to African American history. In his *Black Folk Then and Now: An Essay in the History of the Sociology of the Negro Race* (2014), he not only felt it necessary to correct errors in that history but to challenge prevailing views of the continent of Africa itself by devoting chapters to different parts of the continent and their geographical significance, to discuss the forced migration of millions of Africans from the slave trade in Africa and into the West, and to take up the problems of emancipation and the right to vote. When DuBois invited anthropologist Franz Boas to be a commencement speaker at Atlanta University in 1906, he encouraged Boas to undertake studies of African Americans in conjunction with his visit. Although Boas attempted to raise funds for such a project, he was unsuccessful (Zumwalt and Willis, 2008:44-49). But while "mainstream" historians had little interest in Black history, African Americans themselves pursued this research avidly.

Carter G. Woodson, who became the second African American to receive a Ph.D. (Harvard, 1912), was the son

of former slaves and the father of Negro History Week, which eventually became Black History Month. He was unable to find a major university position after receiving his doctorate, and he and other Black historians were sometimes prohibited from attending sessions of the American History Association (AHA) when it met in the South (Hine 1986:406). Consequently, he founded the Association for the Study of Negro Life and History (ASNLF), as well as a journal, *The Journal of Negro History*. Like Du Bois, Woodson was also a prolific writer and continually pressed for more research into Black history, which he felt had been neglected.

Carter G. Woodson

Both Du Bois and Woodson faced similar circumstances – that of being Black scholars who were themselves subject to the same struggles for equality as other African Americans, and who were at the same time trying to bring the history of those struggles into general knowledge. This alone often affected the way in which Black history was interpreted. In the 1960s, a fertile period following the civil rights movement, the reclaiming of that history and its instantiation in university courses, popular television shows, and books brought recognition of the roles African Americans had played in the U.S. military (the Buffalo soldiers and the Tuskegee Airmen), sports (the fact that Black jockeys were the early winners of the Kentucky Derby but later banned on the basis of race, and the existence of the Negro leagues in baseball), literature (the work of Phillis Wheatley, Olaudah Equiano, William Wells Brown, the slave narratives of Nat Turner, Frederick Douglass, and Harriet Jacobs, and the Harlem Renaissance poets), and the arts (the Black Arts Movement), and music (for example, the creation of new American forms, such as jazz and the blues). The push for the recognition of achievement is the push for the recognition of a common humanity. The long list of "firsts" among African Americans speaks to progress being made and to past attempts to block achievements.

The focus on human equality has not received as much attention in theories about liberty as equality before the law, even though it is crucial for an understanding of Black history and the nature of individual rights. The emphasis is usually placed upon the technical aspects of equality before the law and whether the attempt to rectify the damage done by the denial of common humanity and individual rights in the past actually violates the rights of some in the present. Almost no positive attention has been paid to the role of unequal access to resources, the third kind of equality that I mentioned earlier. The unequal economic status of African Americans has a number of causes, but the use of force to prevent productivity and accumulation of wealth is problematic, as are attempts to remedy past injustices in the present.

An examination of Black history and the quest for equality provide the opportunity to revisit these issues and recalculate the meaning of liberty itself.

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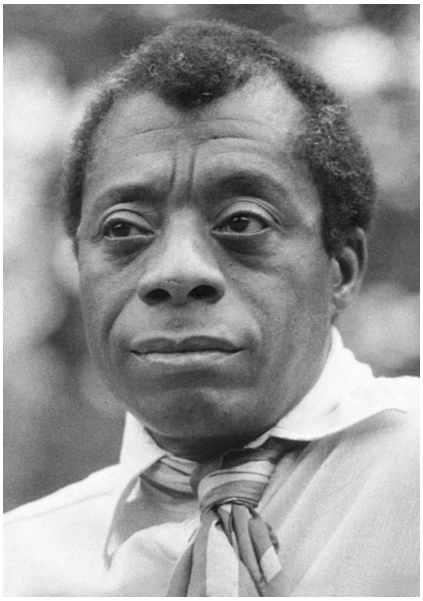
HOW SHOULD WE CELEBRATE BLACK HISTORY?

by Erec Smith

Black History Month is upon us once again. Given the contentiousness around racial justice in the past two years, this celebration of Black American history may be more important than ever. However, observing Black history is not just a celebratory endeavor. For many people, history is more about the present than the past. Many contemporaries look to the past as the source of their present identity, their outlooks, and their ways of interpreting the world. James Baldwin went as far as to say history has "tyrannical power," over us, and, for Black Americans, that power may insist on adopting and maintaining a downtrodden and painful identity.



James Baldwin

That is not the only way to engage history. I see Baldwin's point about history being a tyrant, but it can also be a teacher. As a teacher, history shows us what happened so we can be better informed and prepared when similar circumstances appear in our present. It can provide encouragement and warning, and it can celebrate, if only inadvertently, the triumphs of a people, a country, or a civilization. History as teacher implores us to "never forget" so that the atrocities of the past are not reborn in our present. As a tyrant, however, history is an incessant reminder of past atrocities and an explicit or implicit demand to do something about them. It implores one to "never forget" in a negative sense, to hold the pain of the past in the hands of the present, and to show allegiance to a people by taking on and feeling the worst that has happened to them. In fact, tyrannical history has prompted people to hold its pain so tightly and intently that they begin to see the present through the filter of the past. Hence, some people will go as far as to say Black people are as oppressed now as they have ever been. Tyrannical history insists on being a tyrannical present.

Rendering the past and present synonymously may be what philosophy professor Shannon Sullivan would call "archeologically" thinking of time, a conception she argues is most beneficial for contemporary race relations. To think of time archeologically, one must begin "thinking of the past and present (and the future) as layered on top of each other in the same lived ("vertical") space." Sullivan's explanation is worth quoting.

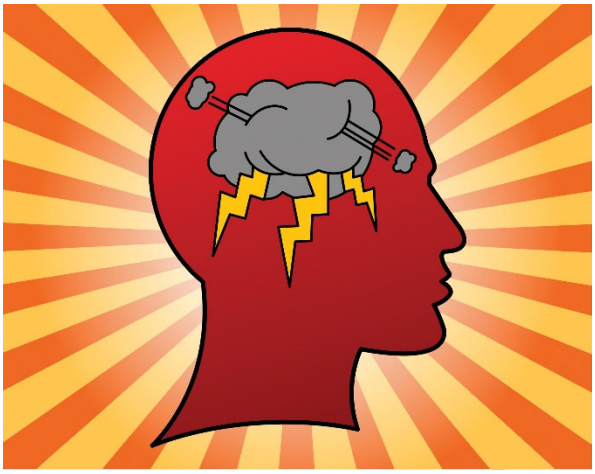
> As I completed this essay in March 2019, for example, Sacramento, California, was reeling from the lack of charges filed against police officers who shot and killed Stephon Clark, an unarmed African American man who held a cell phone that the police identified as a gun. In a meaningful, non-metaphorical sense, Sacramento is co-temporally living 1492 (the year that systemic European colonization began in what came to be the Americas), 1619 (the year the first boat with captured Africans landed in what is now Virginia), and 1857 (the year of the

> infamous Dred Scott decision, in which the Supreme Court ruled Black people have no rights that white people must respect), as well as 1955 and a host of additional times. The years 1492 and 1619 and 1857 and 1955 are still now. (Emphasis added)

Clearly, Sullivan takes "vertical" time quite literally. To her, the present is not *like* the past; it is the past. What's more, the inherent negative emotionality of this way of thinking is highlighted by the fact that only the bad things that happened in the past are synonymous with the present. Apparently, the Reconstruction period, Supreme Court victories, and the election of the first Black president must remain in the past. If only tragic events of the past manifest presently, then to be Black is to be perpetually victimized by a leviathan of racism in a sea of white supremacy.

Why would someone choose to live in the past? Trauma, coupled with "the devil you know" logic, stifles many Black Americans with anxiety and depression. Tyrannical history tends to induce debilitating fear of the unknown, but improving one's condition often necessitates entering into previously unknown territory. Yes, Black History is, for the most part, the history of degradation. An entire race was enslaved and subsequently relegated to peonage for centuries. One should not be surprised that emotional and psychological damage was done, but must these effects still persist?

Dr. Joy DeGruy, a Black researcher in trauma, race, and education, calls the residual effects of Black degradation "Post-Traumatic Slave Syndrome (PTSS) and describes it as "a condition that exists when a population has experienced multigenerational trauma resulting from centuries of slavery and continues to experience oppression and institutionalized racism today." Along with this condition "is a belief (real or imagined) that the benefits of the society in which they live are not accessible to them." This syndrome has three characteristics—vacant esteem, ever-present anger, and racist socialization—which correspond to low self-worth, consistent antagonism, and racial self-hatred, respectively. DeGruy laments the reality of PTSS as a cause for many problems faced by Black Americans, but she insists that to believe anything else is "nonsensical."



Some construe this PTSS as the underlying antecedent to current aversions to mainstream culture, including the ideals of integration and, ultimately, liberty. In The Content of Our Character, Shelby Steele, a Black academic, calls this aversion "integration shock" and writes "When blacks move into integrated situations or face challenges that are new for blacks, the myth of black inferiority is always present as a *condition* of the situation, and as such it always threatens to breach our denial of racial vulnerability." Steele suggests that many Blacks downplay their present freedoms because those freedoms open doors they feel too vulnerable to walk through.

> To avoid the shocks of doubt that come from entering the mainstream, or plunging more deeply into it, we often pull back at precisely those junctures where segregation once pushed us back. . . . The way in which integration shock regenerates the old boundaries of segregation for blacks is most evident in three tendencies—the tendency to minimalize or avoid real opportunities, to withhold effort in areas where few blacks have achieved, and to self-segregate in integrated situations.

Liberty is not seen as the key to achieving one's hopes and dreams in a fulfilling life. Instead, liberty is seen as a set-up, an opportunity to fail and confirm the idea of Black inferiority. Segregation and pre-Civil Rights America, in which few Blacks were afforded liberty and

opportunity, did not have such a keen societal pressure to perform. But when using history to define the present, that pressure is alleviated. If past atrocities are also present atrocities, then if a Black person does fail, it is the fault of an oppressively racist America. So seeing 1492 and 2022 as exactly the same is a source of relief.

At this point, I want to be clear that I am not saying all is well with race relations in 2022. As far as we've come as a nation, we still need to weed out racism where we can and make sure that institutional policies don't exacerbate racial disparities. Also, although I do not agree with Sullivan's conception of time and do not exemplify PTSS or integration shock myself, I can see this relentless embrace of negative history as less of a confluence of past and present and more as a historical specter, a haunting feeling that never dissipates.

Perhaps the issue is not that many Black people cannot see the beauty and liberty of the present, but that they cannot handle the unpunished cruelty of the past. Many Black people may walk around with a nagging refrain firmly settled in the recesses of their minds, a malignant maxim that colors everything they see in shades of degradation and defeat: "They got away with it." So, if Blacks move on, they are, in effect, saying that what happened is fine, letting bygones be bygones. White people will have literally gotten away with murder, enslavement, and other atrocities.

Thus, many believe we must honor those who came before us by bringing the past into the present and insisting that the atrocities that happened to past Black Americans are still happening today. It is not a phenomenon like PTSS that prompts this identification with the past. Instead, this identification is a version of celebration that can only be understood by those who have never had real restitution for centuries of wrongs perpetrated against them.

I have a different perspective. To honor Black history, we must respect those Black Americans who struggled to get us the liberty we currently have by exercising that very liberty. To do otherwise would be a profound act of disrespect. They fought for Black liberty just for us to neglect it? We should acknowledge the good and bad of the past in our classrooms, our workplaces, our congregations, and our homes, but the present is its own thing, with its own living beings, with their own hopes and dreams, creating their own reality. The point of the past is to inform us of what we want to do and where we want to go in the future. Again, the past should be acknowledged, respected, and learned from, but the present and the future should be our most salient concerns.

To insist that things are as bad now as they once were is to ignore a significant part of the Black history we should be celebrating. It also erases Black accomplishments and strongly suggests that many happy and successful Blacks are ignoring the past and sticking their heads in the sand regarding the present. As I see it, my duty as a Black person is to embrace the life, liberty, and pursuit of happiness my predecessors fought to make available to Black people.

Baldwin, in the same essay that labeled history "tyrannical," insists that the "old men and women" who were too elderly to fully participate in the Civil Rights Movement believed that the goal of the movement was to bring Blacks to a position where they can "trust life," because "it will teach you, in joy and sorrow, all you need to know." These men and women "waved and sang and wept and could not join the marching, but had brought so many of us to the place where we could march." Baldwin wrote this in 1965; it rings even truer now. If Black history is full of people who fought so that Blacks can have a good life, pursuing and acquiring a good life is the strongest way to honor them.

So let us all celebrate Black history with gusto, but not to the detriment and neglect of our Black present.

OUT OF MANY, ONE

by Brandon R. Davis

In January 1865, four months before the end of the Civil War, Frederick Douglass addressed the question of what the nation should do with the emancipated. Douglass argued that there had been "but one answer from the beginning. Do nothing with us! Your doing with us has already played the mischief with us. Do nothing with us!" Douglass goes on to say: "let [Blacks] fall if [they] cannot stand alone! If [African Americans] cannot live by the line of eternal justice…the fault will not be yours," but first you must provide them an unfettered opportunity to stand. Douglass knew, as did Baldwin, that African Americans are like any other people and that life is tragic and that everyone is accountable to life.[1] Douglass believed that "if you [would] only untie [their] hands, and give [Blacks] a chance, I think [they] will live. [They] will work as readily for [themselves] as [any other]."[2] However, in "doing nothing," the nation also has a positive obligation to protect and enforce the rights and privileges of African Americans to ensure that others "do nothing" to them. With states' rights comes an equal if not greater obligation of states' responsibilities.

Douglass's request, alas, went unfulfilled. After Reconstruction, southern states began interfering with African American progress, both through action and inaction. The Reconstruction Amendments (13th, 14th, and 15th), the Civil Rights Act of 1866, the Enforcement Act of 1870, the Ku Klux Klan Act of 1871, and the Civil Rights Act of 1875 collectively provided a constitutional and legal framework for protecting the rights and privileges of citizenship and created two avenues of redress: federal prosecution and the franchise. Nevertheless, by the 1880s, progress towards racial equality had stalled. The federal government was largely unable, and states largely unwilling, to protect African Americans. In their failure, they were bolstered by six infamous Supreme Court decisions.[3]

> "DOUGLASS ARGUED THAT THERE HAD BEEN "BUT ONE ANSWER FROM THE BEGINNING. DO NOTHING WITH US! YOUR DOING WITH US HAS ALREADY PLAYED THE MISCHIEF WITH US. DO NOTHING WITH US!""

The first was the *Slaughter-House* (1873) decision, which limited the privileges and immunities clause of the 14th Amendment to those negligible privileges and immunities not already allegedly protected under state law. Then, on March 27, 1876, the Supreme Court handed down two more notorious decisions. In *United States v. Cruikshank*, spawned by the Colfax Massacre in Louisiana, the court's decision largely eliminated the 13th and 14th Amendments as avenues of protection and enforcement. The *United States v. Reese* decision then struck a blow to voting rights, weakening the 15th Amendment by holding that the Enforcement Act of 1870 was not tied to race, even though it obviously and certainly was.[4] Following these two decisions, Blacks could be murdered or disenfranchised with impunity, and the decisions initiated a period of over one hundred years of unchecked domestic terrorism—a veritable nadir for African Americans.

This was not the end. In *Virginia v. Rives* (1880), the Supreme Court upheld the legality of all-white juries, significantly weakening the equal protection clause of the 14th Amendment. This decision paved the way for over half a century of fraudulent all-white juries. It would not be until *Norris v. Alabama* (1935), a Scottsboro case, that the Supreme Court would reverse a conviction due to Blacks' systematic exclusion from juries.[5] In 1883, the Supreme Court's decision in *United States v. Harris* (1883) held that the Ku Klux Klan Act could not be used to prosecute individuals, and the decision in the *Civil Rights Cases* (1883) ruled that the Civil Rights Act of 1875, which banned segregation in public spaces, was unconstitutional. These two cases stripped away the

federal government's power under the 13th and 14th Amendments to prosecute individuals. They also established the state action doctrine, which maintained that neither the Civil War Amendments, nor Congress acting to enforce them, could apply to individuals unsupported by state authority such as laws and judicial or executive action. The court recognized that an individual's constitutional rights could be violated, but argued that states had their own remedies. Lastly, the decision in *Civil Rights Cases* (1883) went a step further in eliminating Congress's power to define discrimination (or the badges and incidents of slavery) under Section 2 of the 13th Amendment.[6] These cases collectively collapsed the wall of protection around African Americans' rights and privileges.

African Americans entered the 1890s with no meaningful way to protect or enforce their rights, and subsequently the "twin pillars" of racial discrimination emerged: segregation and disenfranchisement.[7] Mandated white supremacy reigned for over one hundred years. It was not until after the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 that our nation truly became a democracy. Between then and now, at all levels of governance, through action and inaction, we have seen discrimination in housing, banking, criminal justice, and other areas of public policy.[8] Yet African Americans have persisted and excelled. This is what liberty has to say: Black history *is* American history. African Americans have broken down barriers and shattered glass ceilings. Despite discrimination, Blacks have served this nation at home and abroad. Despite undeserved de jure and de facto inequalities, African Americans have, and will continue to, overcome.

The key word here is "undeserved." Natural inequalities of ability can create unequal outcomes. When a person studies longer, exercises harder, and practices more, they might overcome some natural inequalities. But they will not overcome all undeserved inequalities. Undeserved inequalities, such as racism, are structural or institutional disadvantages based on who a person is within the polis, and they inhibit the capacity of that person to fully access the rights and privileges afforded them as citizens. Undeserved inequalities are not the cause of all inequalities, and yet they can pose significant impediments. This is important because any patterns of inequality that emerge within a society should reflect a commitment of that society to acknowledge and ensure that all citizens have access to the goods they need to make their freedoms valuable.[9] The central problem within the liberty movement is the significant discrepancy between liberalism in theory and liberalism in practice. The adherents of liberalism have failed to deliver on its theoretical and normative promise by neglecting to advance the cause of liberty for historically marginalized groups. Liberty *must* be for everyone. When it is not, it becomes merely a form of patronage.

Today, the primary question facing African Americans and liberty is: will it all be for naught? On January 6, 2021, members of the Republican Party attempted to invalidate the ballots of over 20 million voters.[10] On that same day, their supporters stormed the Capitol in an effort to forcibly prevent Congress from validating the 2020 presidential election.[11] Since this insurrection, Republican congressional lawmakers have continued to push "The Big Lie" that the election was stolen, and it appears that they are unified against passing any new federal voting rights legislation precisely because it will increase voter participation.[12] Republican-held state legislatures, citing their constituents' distrust in the electoral system—which they themselves created—have filed over 440 bills aimed at restricting voting rights across America.[13] In addition, supporters of voter

nullification are openly running for key positions in many states.[14] The party's electoral strategy seems to be based primarily on pushing the myth of voter fraud, preventing detractors from voting, and if they lose, nullification.[15] The result is that in Blue States, Democrats receive 60% of the vote and 69% of the seats, but in Red States, Republicans receive 59% of the vote and 75% of the seats.[16] If Republicans can prevent enough people from voting in 2022, they will (1) increase their political hold on their respective states, (2) increase their overrepresentation in Congress, and (3) prevent any future opponents of these policies from being elected to the presidency. All checks on the nation's decent into authoritarianism will be lifted.[17]

The bottom line is that American democracy is at risk. So, the question is: what does liberty have to say to white America? We have yet to fully defeat the twin pillars of discrimination: segregation and disenfranchisement. The nation defeated the monster of segregation, but it has yet to slay the beast of disenfranchisement. As with Typhon and Echidna, these monsters are wed, and their collective progeny feed off their existence. If we allow disenfranchisement to persist and expand, Typhon will surely resurrect Echidna and together they will end liberal governance in America. For the sake of the nation, we must expand voting rights, and in doing so, we will finally strike mortal blows to both pillars of discrimination. We have arrived at a decisive moment. Will this year mark the start of another post-Reconstruction-era retraction of liberty? Will this year mark the beginning of the end for democratic governance? Will this year witness the entrenchment of fascism as the new American realpolitik? To unlock the potential of American democracy, we must give voice to the people. Together, we shall overcome. *E pluribus unum.*

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WHAT DO CLASSICAL LIBERALISM AND BLACK HISTORY HAVE TO DISCUSS?

by Rachel Ferguson

I contend that the classical liberal tradition has far more to say about Black American history, our current racial reckoning, and Black flourishing in the future than is generally understood, even among classical liberals themselves. The Hayekian understanding of a legal and cultural infrastructure for a just liberal order makes it obvious that the exclusion of one particular group from fundamental legal rights and protections will be not only *structurally* unjust but will also result in a corresponding exclusion from the prosperity that such an order promised. In fact, the free market economic analysis of classical liberalism allows us to criticize both traditional and progressive racism in American law. Should these insights be merely theoretical, however, should they have resulted in no action on the part of classical liberals to remedy the injustice, we may be forced to cede some ground to the claim of critical race theorists that liberal neutrality only perpetuates historic oppression and does not liberate. Classical liberals can avoid this conclusion by appealing to a train of figures who played central roles in the abolitionist movement, the rise of the NAACP, and current battles such as criminal justice reform.

On the other hand, while we ask what classical liberalism has to say to Black America, we should also ask what Black America has to say to classical liberalism. While many figures fought hard for the liberation of Black Americans, some ignored their plight in spite of the fact that liberal standards for law were consistently undermined and compromised to establish and maintain economic and social divisions between white and Black people. This opportunity for reflection should lead classical liberals to a greater appreciation for the role of a certain kind of civil society that any truly flourishing, free society must rely upon: one informed by the kind of prioritization of the voiceless that we see, for instance, in the prophetic Hebrew scriptures so beloved and vital to

the Black church and the civil rights movement.[1] It reminds us that oversimplified notions of simply minding our own business or keeping government as small as possible don't actually lead to a free and just society. Rather, we must both limit government within its proper bounds and ensure it provides equal protection of the law to all citizens. We must fight whenever the state treads on *anyone's* rights and dedicate ourselves to wise philanthropy that heals the wounds of the past, because we know that the state causes problems that it cannot solve.

In such a short space we can only review the way that the state enabled and extended ethnic hatred throughout American history. As far back as 1741 states began passing laws forbidding Blacks from selling products in the marketplace, and by 1796 forbade property ownership as well. Legislators argued that doing so would bury Black "seeds of ambition" too deep "ever to germinate."[2] The institution of slavery itself involves the most egregious forms of violent crime, including kidnapping, false imprisonment, the violation of one's rights to bodily autonomy, the theft of another's labor, the violation of parental rights, physical and sexual assault, and even murder. After a rash of manumissions following the Revolutionary War, many states forbade or imposed prohibitive regulations on the voluntary freeing of one's slaves, such as requiring the exile of the enslaved person from the state. Unfortunately for those who chose exile, non-slave states instituted Black codes that stripped Black people of basic rights such as access to the justice system, the right of assembly, and the right to bear arms. After emancipation, Black citizens could hardly find a court that would defend their property rights when whites stole their land or that would punish whites for breach of contract (although the Freedmen's Bureau provided some relief). Ultimately, formerly enslaved people received no financial compensation for the rights violations they were allowed to suffer or for their lost wages.

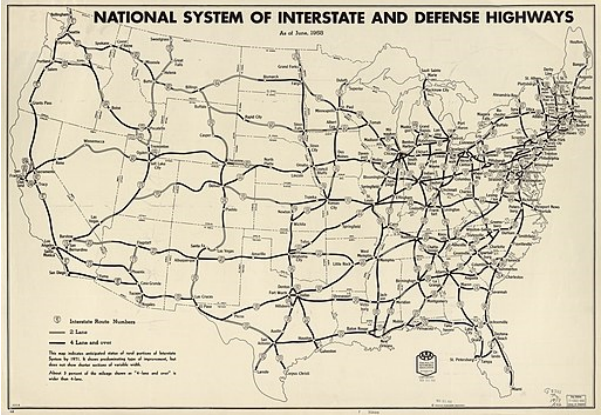
"Slavery by another name" persisted through convict leasing, which involved layers of deep legal corruption. Unjust laws, coupled with trumped up court fees led to long sentences of work in the mines. Poor nutrition, lack of sunlight, dirty water, and constant abuse resulted in a high death toll when sickness would sweep through the camps. The death rates increased at such an alarming rate that the head of the 1906 Board of Inspectors of Convicts argued that "[i]f the state wishes to kill its convicts it should do it directly and not indirectly."[3] Records reveal boys as young as seven years old included on lists of convicts.

Thomas Rice as Jim Crow

Jim Crow consisted of municipal and state laws that violated the freedom of association between individuals and businesses across the south. Some fought back, as when streetcar companies and train companies funded cases that might overturn the requirements to have racially segregated cars. Others found work-arounds, as when Sears became immensely popular with Black customers because they could order high quality goods through the mail rather than deal with the indignity of bad treatment (or no service at all) in white shops.

The Progressive Movement of the late 19th and early 20th century was deeply racist in the purest sense; progressive ideology was grounded in a commitment to shape the direction of evolution through eugenics. Eugenic ideas were "politically influential, culturally fashionable, and scientifically mainstream," including among elites like John Harvey Kellogg, Teddy Roosevelt, and Woodrow Wilson.[4] Black leaders begged Wilson not to re-segregate federal government jobs, but to no avail. Progressives believed that the

healthy family life of the Anglo-Saxon male had to be upheld by excluding women, foreigners, and Black people from employment as much as possible. This kind of social engineering mindset resulted in schemes such as wage and hour laws and the minimum wage, which guaranteed the exclusion of women and non-white men by making them too expensive to hire. The Federal Housing Administration also endeavored to keep the races separate through federal housing policy that forbade banks from lending to people in Black or mixed-race neighborhoods or from building such neighborhoods. In the thousands of lynchings and dozens of race-based massacres that occurred during this period, law enforcement was overwhelmingly complicit. Whites who attempted to uphold Black rights to a fair trial were lynched as well.



As municipal leaders designed the routes of the Federal Highway System through every major city, city leaders plowed through Black economic centers, destroying them, and purposefully chose routes that would cut between Black and white parts of town, making the organic movement of people impossible. The federal government also funded Urban Renewal, known to Black Americans as "negro removal" because the state took their homes through eminent domain and destroyed them. Poor but upwardly mobile Black neighborhoods were scattered to the four winds. No miracle of planning could have reconstituted the community networks they had worked so hard to build.

While race relations were still in very bad shape, the Black American poverty rate dropped astoundingly from 89% to 41% between 1948 and 1960. While every legal barrier of Jim Crow, northern sundown towns, and recalcitrant courts still remained, nothing could stop the economic juggernaut of the post-war boom. Almost half of Black America was swept out of poverty right along with it.

Today, we know that while the war on drugs and our out-of-control incarceration rates are not based on explicitly race-based laws, they often have a disparate effect on Black Americans who have a higher likelihood of living in concentrated poverty. Overcriminalization; stacked charges; mandatory minimum sentences; unaccountable and badly-incentivized prosecutors with wide discretion; prison guard unions that lobby for harsh sentences; and a slow and labyrinthine legal process all conspire to crush citizens with few resources and limited social networks.

This is just a gloss of the way that municipal, state, and federal laws violated the commitment of liberal law to individual rights – sometimes by specifically targeting Black Americans, but also by passing laws that were facially neutral but were overtly intended to target them. While the Davis-Bacon Act, which limited federal contracts to union labor, mentions nothing about race in its text, representative Robert Bacon championed the law in Congress by arguing, "[o]nly by this method can that large proportion of our population which is descended from the colonists…have their proper racial representation" in the work-force.[5]

Classical liberals love civil and economic liberty, believe that the state should be as neutral between citizens as possible, and treat state power with healthy suspicion. They *should* be the most attuned to the systemic oppression of Black Americans, and some of them have been. William Lloyd Garrison was not only a great abolitionist, but called himself a "radical free trader." Along with Henry Ward Beecher, Joshua Leavitt, and Ralph Waldo Emerson, Garrison was influenced by Richard Cobden, a British classical liberal thinker who saw both the abolition of slavery and freedom from tariffs as arising from the same philosophy of non-violence. Frederick Douglass defended the Constitution based on the great individualist Herbert Spencer's contractual reading of it. Douglass was a free trader, arguing that the way that the unions pitted workers

against one another and against employers was not so much "villainy" as the "honest stupidity" of people who didn't understand the concept of a positive sum game.[6] Two of the founders of the NAACP were outspoken classical liberals as well, Oswald Garrison Villard and Moorfield Storey. The whole approach of the NAACP relied on the idea that our Constitutional structure would uphold the rights of Black citizens if these unjust laws were consistently challenged.

It's worth noting that the success of the NAACP and the civil rights movement depended heavily on the economic success of the Black middle and upper classes, established through the efforts of men like Booker T. Washington to encourage property ownership and business networking. Successful entrepreneurs like Madame C.J. Walker and T.R.M. Howard provided pivotal funding. Classical liberals can also draw attention to the relevance of strong civil society associations for freedom and flourishing. Classical liberals can emphasize the centrality of the Black church to the astounding accomplishment of majority Black literacy by 1910, to the whole philosophy of the civil rights movement, and as the "cultural womb" from which so many other voluntary institutions arose, such as the fraternal associations that provided a kind of community insurance for a majority of Black families in the early 20th century.

Madame C.J. Walker

We don't have space here to discuss many other notable pro-Black classical liberals, such as Rose Wilder Lane (one of the three "mothers of libertarianism" who wrote about Black liberty at the *Pittsburgh Courier*) or Zora Neale Hurston (anthropologist and novelist who was eventually black-balled for her stubborn individualism). The efforts of Charles Koch to address our mass incarceration crisis pre-dated the more general popularity of the cause, and was pivotal in inspiring conservative openness to reform.

Still, it's disappointing that F.A. Hayek, who spent his career in America discussing the legal and cultural infrastructure of a free and prosperous society, nowhere so much as mentions that a whole subset of the American population was being systematically excluded from those institutions and their many benefits. It's inconsistent for classical liberals to be unconcerned with the property, contract, and due process rights violations Black people suffered under a wide variety of laws prior to 1964, but deeply concerned about the issue of freedom of association in the Civil Rights Act of 1964.[7] Just as the founders consistently argued that a free society requires virtuous citizens, so must we argue that a just society requires sacrificial citizens, citizens who will champion those with less clout and fewer resources, those who are too easily victimized by America's justice system, economic regulation, and ham-fisted attempts at social engineering. The liberty movement in America has been, and must continue to be, pro-Black.

[1] See Raboteau's Slave Religion, Marsh's God's Long Summer, and the opening of Tanner's The Inclusive Economy.

[2] Roy W. Copeland, "In the Beginning: Origins of African American Real Property Ownership in the United States," Journal of Black Studies 44, no. 6 (2013): 649, http://www.jstor.org/stable/24572860.

[3] Blackmon, Slavery by Another Name, 288.

[4] Leonard, Illiberal Reformers, 110.

[5] Quoted in George F. Will, "A Racist Vestige of the Past That Progressives Are Happy to Leave in Place," Washington Post, June 19,

2017, https://www.washingtonpost.com/opinions/a-racist-vestige-of-the-past-that-progressives-are-happy-to-leave-in-place/2017/06/16/6d5cbbba-51f3-11e7-91eb-9611861a988f_story.html.

[6] Quoted in Paul D. Moreno, Black Americans and Organized Labor, 37.

[7] To be fair to Barry Goldwater, he voted for every other piece of civil rights legislation prior to 1964, felt torn about his vote in 1964, and regretted it later.

FROM EUTOPIA[1] TO THE RULE OF JUST LAW

by Susan Love Brown

I lived in Eutopia once on a small street of rowhouses off of a main shopping street in West Philadelphia. Our neighbors were African American like us (we were called Negroes then), Jewish, Italian-American, Polish-American, Armenian, Chinese-American, and Hungarian refugees. I went to school with the children of Holocaust survivors, knew people who had escaped from communist countries, and other Black people who had left the American South under threat. We shopped at the Armenian grocery store, steak and hoagie shops, a local pharmacy, a tailor shop, Murray's Delicatessen, the corner grocery store, and the Five-and-Ten. We walked to school together in the mornings, walked home together for lunch, back to school, and home again in the evenings, carrying on conversations the whole way. Police officers walked the beat up and down 60th Street, and we knew who they were by name.

We played games on our street: jumped double dutch between parked cars with our mothers' clotheslines, ran from one curb to the other playing dodgeball, played baseball with pink rubber balls that we hit with our hands, running around bases chalked onto the blacktop with concrete that had fallen off the sidewalks. We knew that there were differences among us, but they didn't seem salient then. We discussed our religions and asked each other questions. On Saturdays, our parents shunted us off to the movie theater around the corner, where we watched the complete works of Frankenstein, Dracula, and the Wolf Man, scaring ourselves silly across racial and ethnic lines of the time.

"WE PLAYED GAMES ON OUR STREET: JUMPED DOUBLE DUTCH BETWEEN PARKED CARS WITH OUR MOTHERS' CLOTHESLINES, RAN FROM ONE CURB TO THE OTHER PLAYING DODGEBALL, PLAYED BASEBALL WITH PINK RUBBER BALLS THAT WE HIT WITH OUR HANDS, RUNNING AROUND BASES CHALKED ONTO THE BLACKTOP WITH CONCRETE THAT HAD FALLEN OFF THE SIDEWALKS."

If we ventured downtown, which was easy to do on the #42 or the #46 bus, we always gave up our seats to older people if it got crowded. We wandered around the department stores, bought pizza by the slice on Market Street, ate mustard pretzels, relived the founding stories of America at Independence Hall, on the cobblestone streets, at Betsy Ross's house, on Benjamin Franklin Parkway, while the shadow of William Penn, the most prominent Quaker of Quaker City, was cast down from the top of City Hall. On the Fourth of July, we drove out to picnic at Valley Forge and play in the cabins where Washington's soldiers nearly froze to death. We absorbed all those stories and developed a love of country, even though those stories seldom included Black people. We latched onto Crispus Attucks as some kind of proof that we were there at the beginning.

There were hardly any Black people on television, and when one appeared, we rejoiced. The same applied to movies; mostly, we projected our own fears and fancies onto the white characters, something we had been doing for years anyway. This was the age of American Bandstand and Motown, of transistor radios, and Sputnik, of schoolyard basketball games, and special programs at

the "Y". We stood on Irving Street and looked up at the sky at night to see if we could catch a glimpse of that satellite as it went overhead. We played air-raid-shelter in the basements and had air-raid drills in our schools, singing B-I-N-G-O as we sat on the floors in the hallways. It was all fun.

I thought the differences among people were coincidental. All that began to change, though, as reality began to encroach on my eutopia, eventually sweeping it away. We watched the Civil Rights movement on television and saw German shepherds nipping at the heels of protestors in Birmingham; drinks being poured over the heads of college students who staged sit-ins at lunch counters; heard about churches being bombed; watched leaders assassinated and their assassins assassinated before our very own television eyes.

We watched the police in Philly pick up young black men in sweeps through neighborhoods for no particular reason. And one day, long after I had left home, one of those young men on our street was shot to death by a policeman who had a grudge against him. Neighborhood outrage flared, the police officer was exonerated, only the people in that neighborhood aware that anything untoward had happened. That was during the rising tide of the 1960s. Only later would I learn the long and brutal history of blacks in the United States mirrored in that incident. Now television news carries stories of police shootings of black men, made possible by a new technology.

My eutopia had fixed itself in my mind as the way people should live together. I had no way of knowing that it was just a moment in history. That wonderful mix of people disappeared, as each ethnic group moved away into its own residential enclave, and the economic underpinnings of the neighborhood melted away, along with the record shop, the roller skating rink, and Murray's delicatessen. The now all-black neighborhood managed to maintain itself, but struggled with the harsh realities of police brutality, deteriorating schools, and a business ghost town. The companies that had hired my father and uncles shut down as the U.S. lost its manufacturing edge.

The 1960s and 1970s brought change happening so quickly that even those in favor of it could barely keep up. Along with the various civil rights movements and civil rights legislation came the uncovering of Black history. I never read any Black writers while I was in high school and only a few (enough to count on one hand only) in college. I remember combing the libraries for books about inventors, looking for Black inventors, then for female inventors. There were none. Then, they began to appear in books that the local library carried. Those photographs of my father in his flight gear that had festered in the dining room junk drawer suddenly became important. But even as we discovered the fantastic history of the Tuskegee Airmen, we would learn that Black military pilots had no chance of becoming commercial pilots solely because of their color.

As I delved into more and more history, my eutopian years were cast into a larger perspective. Erec Smith's examination of James Baldwin's "tyranny of history" recounts experiences that many of us have gone through (2022). When the facts of history suddenly become known – facts that cannot be changed or victims helped – it does not eliminate the anger that rises with the discovery, and the tendency is to latch onto that anger, as if we could remedy the past or part of a lost identity. As Erec Smith pointed out in his essay, "How Should We Celebrate Black History," in spite of the trauma-ridden past and all of its difficulties, one way out of this predicament, according to Smith, is to honor the people who, over time, fought to fulfill the promise of a free country. "If Black history is full of people who fought so that Blacks can have a good life, pursuing and acquiring

a good life is the strongest way to honor them" (Smith 2022).

But to live a good life, which many more of us do than in the past, the political machinations that constantly seek to reinstate the past of segregation and economic intimidation, so well outlined by Brandon Davis, must be squelched. As he reminds us in his essay, "Out of many: One": "We have yet to fully defeat the twin pillars of discrimination: segregation and disenfranchisement," both of which are current concerns (2022).

And, as Rachel Ferguson also reminds us, "the classical liberal tradition has far more to say about Black American history, our current racial reckoning, and Black flourishing in the future than is generally understood, even among classical liberals themselves" (2022). Classical liberals have often failed to rally around the deeply relevant classical liberal principles when it would have been particularly useful to support the quest of Black Americans for freedom.

In discussing F.A. Hayek, Ferguson reminded me of the emphasis that Hayek placed on the rule of law, and how that comes up frequently in contemporary news reports. But, as the scholars in this series of essays and elsewhere have pointed out, the rule of law can as easily work against liberty as for it. Black history and American history have demonstrated this again and again. To truly achieve liberty for all, it is necessary to reframe the emphasis to be on **the rule of just law**, for it is justice that has been missing in much of black history.

The truth is, in spite of all past and present denials, African Americans have been an integral part of American history since August 20, 1619. Now, all that remains is for those facts to be integrated into the national story, and the full promise of the founders extended in the form of unassailable individual rights for all. If we can do that, **the rule of just law** may just pave the way to American experiences that come close to realizing my Eutopia.

[1] Utopia, generally glossed as an ideal society, has two expressions: eutopia, or the good society; dystopia, a society gone astray to the detriment of its members.

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TO CELEBRATE BLACK HISTORY, DISPENSE WITH THE NEED FOR APPROVAL: A RESPONSE TO 'LIBERTY MATTERS

by Erec Smith

> Must I argue that a system thus marked with blood, and stained with pollution, is wrong? No! I will not. I have better employments for my time and strength than such arguments would

> imply. . . . What, then, remains to be argued? Is it that slavery is not divine; that God did not establish it; that our doctors of divinity are mistaken? There is blasphemy in the thought. That which is inhuman, cannot be divine! Who can reason on such a proposition? They that can, may; I cannot. The time for such argument is passed.

-Frederick Douglass, "What to the Slave is the Fourth of July?"

I appreciate the essays written by Brandon Davis, Susan Love Brown, and Rachel Ferguson for their honest and thorough—though necessarily brief—takes on the relationship between Liberty and Black History. I especially resonated with Davis' piece and his astute reference to Frederick Douglass to make the point that too much interference from the government or well-meaning abolitionists can actually be detrimental to blacks. I am inclined to agree. In fact, as Davis points out, many initiatives only work to keep Black Americans from gaining the necessary agency to attain and maintain upward mobility. Davis is clear that what the government should do first and foremost is provide blacks with "an unfettered opportunity to stand," for government has "a positive obligation to protect and enforce the rights and privileges of Africans to ensure that others "do nothing" to them." (Emphasis mine.) I focus on this section of Davis' piece because it drives home a personal belief induced in me by all the essays: as long as I am afforded the same rights and privileges as the most well-off white people, as long as I can enjoy recognition and equality before the law, I am all good. Regarding anything else, I implore society to "do nothing."

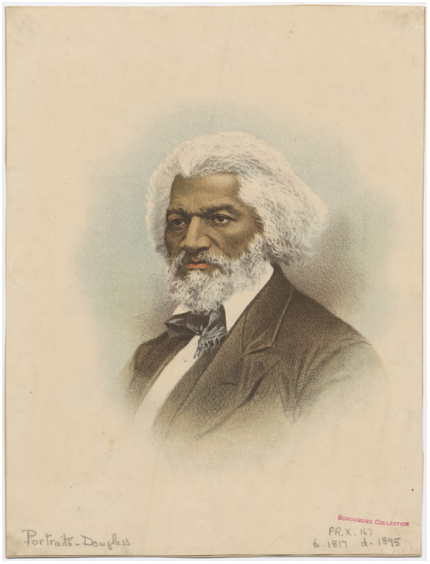
A thread that runs through all three of the aforementioned authors' essays is an explicit or implicit argument for the importance of recognition and respect from white society. Clearly, this is an understandable argument. However, I am less concerned about what white people think of me than I am about how they may impede my life, liberty, and pursuit of happiness. I don't need their respect or approval as much as I need them to recognize the laws that prohibit them from acting on any lack of respect or approval they may have for me. I may want their respect and approval, but all I need is for them to refrain from blocking my upward mobility, my quest to achieve my goals, and my right to personal dignity and livelihood. Believing one is superior to someone and acting on that sense of superiority are two different things. Unless you hold a position in which your views could hinder my hopes and dreams (a supervisor, a police officer, a local politician), I really don't care what you think. Just get out of my way.

I am reminded of the arguments put forth by scholars of African philosophy when asked to argue for the legitimacy or mere existence of philosophical thought derived from the African continent. Jennifer Lisa Vest, a professor of philosophy, calls such an endeavor a "perverse preoccupation" with white, Western culture's approval; it smacks of pleading for respect from people whose opinions may matter less than popularly perceived. Vest is worth quoting at length.

> Am I a human being? Are my thoughts rational? Am I capable of philosophical thought? Is it possible for me to be both an individual woman and a philosopher? Or does my particular identity as Woman? As Black? As African? As Native? foreclose any possibility of my being considered in more general or universal terms as a thinker? These are perverse questions. Others may ask them of me but I will not ask them of myself. Nor will I spend valuable time in dialogue to resolve them. I must begin my intellectual career with certain assumptions

> about my own capacities, integrity, self worth, and importance in the world. So too should be the case with African philosophy. . . . I argue, we must not devote all of our intellectual energy to convincing the world that African philosophy is a worthwhile endeavor. To engage and respond to questions about the intellectual capabilities of African thinkers or the possible existence of philosophical resources in African cultures is to respond to perverse questions. To engage in academic dialogues implicitly or explicitly guided by a request or a felt need to justify and defend the very possibility of African philosophy or African rationality is to engage in perverse and unnecessary dialogues. Because these perverse debates often precede, prevent, or condition the formulation of necessary debates, it is important that they be identified and critically assessed, and when possible, dispensed with.[1]

I, too, resolve to dispense with the need for white approval. I have enough approval from myself and others to go around.



Vest even cites Frederick Douglass' disapproval of perverse questions or preoccupations like the concern for white approval. Douglass, even in the midst of legal slavery, insisted that the need to argue for his humanity was an absurd endeavor. "To do so," he said, "would make myself ridiculous."[2] How much more ridiculous would it be to do so today? As Douglass said in 1852, "The time for such an argument has passed."[3]

To be clear, I don't think my fellow "Liberty Matters" authors are pleading for white approval. I do, however, see a slippery slope toward putting forth example after example of black achievement for the express purpose of justifying our humanity to white people. The beauty and triumph of black Americans should be celebrated, but the disapproval or lack of recognition from whites does not erase that beauty or triumph. I don't need them to love Black History. We love it. I don't need them to love African American vernacular. We love it. I don't need them to recognize me as a peer. I recognize myself just fine. All I need from them, from anyone, is to not block my road to self-actualization, to life, liberty, and happiness.

I think much contemporary anti-racism, what some call "wokeness" and others, following John McWhorter's lead, call "third-wave antiracism," is motivated by perverse preoccupations with what white people think. This leads to the contemporary "witch hunt driven by the personal benefits of virtue signaling, obsessed with unconscious and subconscious bias" McWhorter laments.[4] Thus, I believe contemporary antiracist activists and pedagogues who follow the leads of the Kendis and Diangelos of the world, are not motivated by pride, empowerment, or justice as much as they are motivated by insecurity and the need for white approval. Even egregiously insulting sentiments like "white people are demons" are kinds of reaction formations—defense mechanism meant to stave off feelings of fear, inferiority or shame. Such statements are said in order to fill a hole in people's hearts where self-respect should be.

I like and respect myself too much to be "woke."

[1] Jennifer Lisa Vest, "Perverse and Necessary Dialogues in African Philosophy," Thought and Practice: The Journal of the Philosophical Association of Kenya, 1.2 (2009), 2-3.

[2] Frederick Douglass, "What to the Slave is the Fourth of July?" The Frederick Douglass Reader, Ed. William L. Andrews, New York: Oxford University Press, 1996, 118.

[3] Ibid.

[4] John McWhorter, "The Virtue Signalers Won't Change the World," The Atlantic, 23 Dec. 2008. https://www.theatlantic.com/ideas/archive/2018/12/why-third-wave-anti-racism-dead-end/578764/

RESPONSE

by Brandon R. Davis

As Rachel Ferguson suggests, the history of the peoples of African descent in the United States is forever linked with the cause of liberty. Black history asks us to confront our delusions and to take responsibility for our actions. Racism, of course, being humanity's last great delusion. An unwillingness to acknowledge and forgo this delusion, on the other hand, will continue to hinder the expansion of political solidarity and stifle the cause of liberty. As a nation, for better and for worse, we are wed together in a unique and inseparable manner. Susan Love Brown is correct. The history that has produced our union must be known and taught in full because, if this nation is to endure and prosper, Americans deeply need to know one another. James Baldwin finds that our endeavor "to create one nation has proved to be a hideously difficult task" but "if we are really, that is, to achieve our identity, our maturity, as [one people]" we must accept the fact that we as a nation will not be truly free until we are all free.[1] Liberty is a critical exercise. Within a society, the critics drive improvement, for they are the real optimists.

The history of African Americans is rife with indescribable violence, exploitation, corruption, vehement opposition, and major setbacks, but as Erec Smith suggests, it also rife with unimaginable courage, selflessness, perseverance, ingenuity, and triumph. It is the story of our nation's collective pursuit of a more perfect union—a story that could only have been told in America, but it is not just the story of African Americans. It is unequivocally American history. The immense progress Black folks have made, despite vehement opposition, should be celebrated as an American phenomenon. African American history is liberty incarnate. We are all freer today because of the work of African Americans. Nevertheless, we cannot allow ourselves to become so enamored with the ills of the past that we cannot see clearly where we are and what we have gained, and where we need to go in the future! Ferguson contends that liberals should be most attuned to systemic oppression and Smith argues that to honor the past we must exercise the liberty we have today. I posit that we must become attune to the illiberal practices which are at this very moment threatening to unmoor American democracy from its liberal foundations. To preserve our liberal ideals, we must exercise our liberty in defense of the franchise and in honor of *all* the Americans who fought and died to secure the ballot.

[1] Baldwin, J. (1998). Collected essays. New York: New York: Library of America: Distributed to the trade in the U.S. by Penguin Putnam. p.324

RESPONSE

by Rachel Ferguson

Liberty lovers of all sorts -- classical liberals, libertarians, and fusionist conservatives -- all share one challenge. If they love freedom so much, why aren't they better known as freedom fighters for Black rights? After all, Black Americans' rights to own themselves, their labor, their property, and their freedom to exchange with others were all egregiously abrogated by every level of government. I argued in my essay on what liberty has to say to Black America that these groups ought to be better known for the parts they played in abolitionism, the NAACP, the Civil Rights Movement, and for work being done today on the drug war and mass incarceration. I also argued that liberty lovers everywhere ought to be able to speak with intelligence and grace on the history of rights violations against Black Americans and how our racial pain persists today, while maintaining the hope that extending freedom to all will lead to greater flourishing. It's clear that each of my fellow authors felt the pressure to answer the same charge.

"GIVEN OUR HISTORY OF EMPLOYING A THOUSAND SNEAKY WAYS TO EXCLUDE BLACK PEOPLE FROM VOTING, IT'S UNDERSTANDABLE THAT SOME PERCEIVE THE CURRENT PUSH TO TIGHTEN ELECTION LAW TO BE RACIALLY MOTIVATED AS WELL."

Brandon Davis offers an excellent overview of the relevant laws and cases that account for the de jure exclusion of Black Americans for 100 years after emancipation from slavery. The separate water fountains of popular imagination can hardly do justice to the overt unwillingness of the United States courts to properly defend the individual rights of Black people in the face of a barrage of crimes against them, including what can only be called domestic terrorism. I'm unsure, however, that his shift to a discussion of the current debate over voting rights is as perfectly parallel as he presents in the essay. Given our history of employing a thousand sneaky ways to exclude Black people from voting, it's understandable that some perceive the current push to tighten election law to be racially motivated as well. But there are important differences that belie this resonance. While I agree with Davis that the campaign to overturn the 2020 election was ridiculous, concerns about the need for voter identification and the use of mail-in ballots long pre-dated it. After all, out of 47 countries surveyed in Europe, 46 require voter ID already, and have for many years. We also live in a time with different technological benefits and challenges. IDs are very easy to attain, but digital votes can be deleted and hacked. While there certainly was not enough voter fraud to make a difference in the 2020 election, voter fraud is not exactly a "myth," as Davis claims. A friend of mine from the Freedom Center of Missouri discovered serious fraud that had been going in St. Louis for years, successfully sued, and the electoral victory was granted to a different Democratic candidate. While it's always hard to disentangle things, the eye-rolling behavior of the Republicans in the 2020 election shouldn't cause us to write off all concerns about election security as racist.

Erec Smith is concerned about contemporary theorists who won't let Black Americans escape their painful past. He's addressing here a balance Black Americans must strike between acknowledging the oppression in American history while honoring the efforts of their forebears by embracing their hard-won liberty and moving forward with hope. As a white American I felt this tension deeply while writing Black Liberation Through the Marketplace. Little did I know when undertaking the project that we desperately need to popularize the distinction between "Black" as a race and "Black" as a subset of American culture. Black people in America really do have a unique set of experiences and a history of shared institutions – a culture. We – all of us.

Americans – must honor these things while letting go of the concept of race. Perhaps the subtlety of the distinction is too tall an order, but I hope not.

Susan Love Brown opens her essay with the now common claim that race is not a real biological category and that claims to human equality are based on our shared membership in the species. My only concern while reading Brown's essay was whether or not, in our love for freedom of inquiry, liberty-oriented thinkers have undermined our own credibility by associating ourselves with thinkers who insist that race is a biologically significant category and that racial differences, especially with regard to intelligence, might be endemic. While scientists ought always have free rein to explore, these claims strike me as absurd. IQ is shooting up all over the world because of improved nutrition, and it's nigh impossible to disentangle environmental causes from the claim that current differences could be genetic. There are even epigenetic claims arising that could affirm the reality of inherited trauma (and therefore the possibility of inherited healing). While no one should be punished for investigating such questions, the liberty movement does well to affirm that while individuals vary quite widely, actual genetic differences in intelligence do not hold at the group level. The history of these ideas has been destructive, and only promises to be more so if they continue.

Brown goes on to suggest that part of acknowledging human equality goes beyond the mere equality before the law upon which liberty-oriented thinkers insist. She adds that Black achievement in the face of adversity, Black creativity and inventiveness, and Black cultural contributions to America ought to be celebrated as well. Among libertarian types, the more strictly rationalist among us can easily miss the deep cultural backdrop required for a free society, including the spiritual and philosophical affirmation of the value of every individual and the contributions of each cultural group. Citizenship is not merely about one's rights, but also about one's sense of belonging. Black History Month is an excellent opportunity to remind ourselves that Black history is American history, that Black religion, Black business, and Black art have shaped America powerfully, and that they even account for much of America's cultural influence around the world. Know it, appreciate it, celebrate it. Amen to that!

ABOUT THE AUTHORS

Susan Love Brown is a recently retired Professor of Anthropology at Florida Atlantic University in Boca Raton, Florida. She is a cultural anthropologist with specializations in political and psychological anthropology and areal interests in the Caribbean and the United States. Her research is in the areas of anarchism, ethnicity, gender, social evolution (especially the rise of the state), intentional communities, and utopian thought. She is a co-author of *Meeting Anthropology Phase to Phase* (Carolina Academic Press 2000) and the editor of *Intentional Community: An Anthropological Perspective* (SUNY 2002) She is the author of numerous articles and talks on the thought of Ayn Rand, the anthropology of literature, and the nature of communalism and individualism.

Erec Smith is an Associate Professor of Rhetoric at York College of Pennsylvania. Although he has eclectic scholarly interests, Smith's primary work focuses on the rhetorics of anti-racist activism, theory, and pedagogy. He is a co-founder of Free Black Thought, a website dedicated to highlighting viewpoint diversity within the black intelligentsia. Smith's recent books include A Critique of Anti-Racism in Rhetoric and Composition: The Semblance of Empowerment (2020) and The Lure of Disempowerment: Reclaiming Agency in the Age of CRT (2022). Smith is a Writing Fellow for Heterodox Academy, and an advisor for both the Foundation Against Intolerance and Racism and Counterweight, an

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Brandon R. Davis is an Assistant Professor of Law and Society at The School of Public Affairs and Administration at The University of Kansas and a former Pre and Postdoctoral fellow at the Political Theory Project at Brown University. Brandon earned an M.S.W. from Alabama A&M University and an M.A. in Women's Studies and a Ph.D. in Political Science from The University of Alabama. His research focuses on Law and Society, American Politics, and Race and Ethnicity. He is interested in normative and empirical approaches to institutions, representation, inequality, and criminal justice.

Rachel Ferguson is the Director of the Free Enterprise Center at Concordia University Chicago, Assistant Dean of the College of Business, and Professor of Business Ethics. She is also an Affiliate Scholar with the Acton Institute. She received her Ph.D. in Philosophy with a focus on political and economic philosophy from Saint Louis University. Rachel's writing has been featured at Discourse Magazine, Law and Liberty, EconLib, the Acton Power Blog, and The Journal of Markets and Morality. She is the co-author, along with historian Marcus Witcher, of the forthcoming (May 2022) work Black Liberation Through the Marketplace: Hope, Heartbreak, and the Promise of America.