

# OUT OF PRIVILEGE



## THE PODCAST

### **106 -- “Voting -- A Right or a Fight?” (Transcription)**

Welcome to the Out of Privilege podcast featuring Dr. Byron Burkhalter, where we will talk about issues of racism, white privilege and the role they play in current affairs. Byron earned his doctorate in sociology from UCLA and has been focused on issues of race by racial identity, whiteness and multiracial political coalitions in U.S. history. For more than 30 years, he has taught at the university level, spoken at large public rallies and published numerous pieces on these issues. He takes a historical and sociological look at the systemic racism that the United States in particular is battling today.

I'm Genevieve Haldeman and I'll be your host.

In today's episode, Dr. Burkhalter shares an historical perspective on the Voting Rights Act of 1965 that was put in place to enforce the 15th Amendment to the U.S. Constitution ratified by the states nearly 100 years earlier. In the midst of an election year, we talk about why it is necessary, how it was gutted and what it means for so many people in this country who encounter still, today, barrier after barrier just to be able to do something the Constitution guarantees them the right to do.

Take a listen and let us know your perspective in the comments.

**Genevieve:** We're in the middle of an election year, and we just celebrated the 100th anniversary of the 19th Amendment, which gave white women in particular the right to vote. We also celebrated the 55th anniversary of the Voting Rights Act, which was put in place to really enforce the 15th Amendment, which happened in 1870. And it's interesting to see the challenges that have come up against the Voting Rights Act. And now, with the passing of John Lewis and the efforts that he was working toward to reinstate some of the protections under the Voting Rights Act, I want to talk a little bit about what the Voting Rights Act is, why we needed it, considering the 15th Amendment and what the experience is like.

So, first of all, Byron, do you want to tell us what is the Voting Rights Act?

**Byron:** The Voting Rights Act of 1965 is an act designed to make the 15th Amendment to the Constitution true. In large part, what it's dealing with is federal enforcement against practices that were designed to limit the voting of Black people in the country. So it was reactive to all of the practices that had been brought up in the 100 years prior to it. Poll taxes, literacy taxes, grandfather clauses were outlawed and then special federal jurisdictions in particular states that had a history of discrimination in voting practices.

**Genevieve:** I want to read the text of the 15th Amendment that was ratified in 1870. It says: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color or previous condition of servitude."

Why do you need the Voting Rights Act if this clearly says, you can't prevent somebody from voting because of their race?

**Byron:** It's the struggle of a representative democracy. What is written down on paper and I believe the Native Americans can attest to this doesn't mean anything.

What matters is who has power, who has control and who has the will to enforce it. So just at a raw level, the words have always been whatever we needed them to be. At a more practical level, taking the words now a little bit more seriously. The 15th Amendment is not written with the same strength of character that you find in the 13th and 14th Amendment. It doesn't say slavery shall not exist. You are a citizen if you are born or naturalized. It says the rights of citizens of the United States shall not be denied or abridged, so it's not focused on establishing the right in the same way.

It's focused on trying to curtail the abridgement and the denial. And so its focus isn't quite as strong as the other two. The idea that you couldn't be denied or abridged because of race, color or previous condition of servitude makes it sound like, Well, there are good reasons for states to deny and abridge voting rights. And so they have to leave in ways for the state to deny and abridge, because the Constitution gives the states the right to manage these elections, and they have to limit that to race, color and previous condition of servitude, in part because they still want to keep women out.

So it's a weaker amendment, in part because they don't want universal suffrage. The thing that becomes large that I don't think that they really considered at the time is that first part, the rights of the citizens of the United States. Now, if you go back to the 14th Amendment, the 14th Amendment, when it talks about citizenship, says Citizen of the United States and of the state in which you reside, the 15th just speaks of the United States. And so what happens very quickly in the slaughterhouse cases -- this is a case about using slaughterhouses in Louisiana and a lot of these cases, by the way, come up from Louisiana at the time.

**Genevieve:** These are Supreme Court cases.

**Byron:** Supreme Court cases, thank you. In Slaughterhouse, the decision of the Supreme Court is that the 15th Amendment applies to you as a US citizen, but not necessarily as a citizen of the state. So you have full protection of the 15th Amendment when you're in a federal election. Unless, of course, you're voting in a particular state, so the state still can manage elections and effectively, they have eviscerated the 15th Amendment.

It's just a question of how they're going to do it. You know how they're going to do the details after that. And so almost immediately the 15th Amendment was weak and still the Reconstruction Era government. Now we're talking about where Lincoln's Republican party, obviously without Lincoln, is still trying to enforce the protection of Black people in the South. So they're bringing up a civil rights amendment almost immediately, like a few months after the Slaughterhouse case comes out. And then I know Charles Sumner is working on another one by 1870 which doesn't pass.

And so what you have then is up through 1870, they're trying to fix it. They're trying to make it stronger, but they can't really get it through. And then you're about to go into an era of Jim Crow, which really begins in 1877 but by 1890 has effectively stopped Black voting, and that's pretty much how it's gonna go until 1965. You need the Voting Rights Act of 1965 because you've got to fix the 15th Amendment.

**Genevieve:** if they weren't allowed to stop Black men in particular, because again, the 19th Amendment didn't come for some time after that. But if they weren't allowed to stop Black men from voting, What did they use to stop Black men from voting? If it couldn't be overtly because they were Black, what did they do?

**Byron:** So the thing is, is when you say “on account of” and we've dealt with this in racial discrimination, sexual harassment law, where you have to show discriminatory intent and effectively on account of was a different version. You know, the 19th century version of discriminatory intent? Well, where does intent lie? Where does “on account of” lie?

It turns out in the way that we think about it. You have to have a guilty mind and then act with that guilty mind. So what's interesting then is you could have two acts identical, But if in one case you intended it, then you're guilty. If in the other case you didn't intend it, you're not guilty. And who determines what was in your mind? Well, it turns out the perpetrator has the most access to their own mind. They get to say, and it's very difficult for us to say so unless you announce that you are stopping this person from voting because they are Black, how do you prove that it was done on account of their blackness.

**Genevieve:** So what did they put in place to stop lack people from voting? I mean, what prevented Black people from then going and in voting?

**Byron:** Well, there were all kinds of things. One of them was a grandfather clause where even if you couldn't pass any of the other tests that were put up, if your grandfather could vote, then you could vote. Now, obviously, if your grandfather was a slave in the South, they couldn't vote.

And so you didn't have that automatic get to vote card. There were poll taxes that hurt Black people who never got the 40 acres and a mule, but also hurt poor whites. And in some places, that was okay with the elites of that state. In other cases, the grandfather clause could be invoked, and everything would be all right. There were literacy tests where you had to read something out loud to the satisfaction of the election official. So that was totally discretionary. And so the election official could hear proper reading and improper reading as they wanted to. You could change the difficulty of the passage by race. And as long as you didn't announce that, that's what you were doing, then everything was fine.

And one of things that happened is that when lawsuits came up challenging those sorts of things, they would ask for the election officials to be brought in as witnesses to describe what they had done. And one of the ways of getting around that is that election officials would resign and by resigning and no longer having that office, they weren't they weren't able to bring them into court for this kind of testimony.

There were all sorts of things like this that went on.

**Genevieve:** It sounds very similar to the voter ID laws that people are talking about still today.

**Byron:** Yeah, yeah, and you know, and I haven't even mentioned the violence, which is a part of both eras. But they're exactly similar. And I think that the state of Texas has passed five different voter ID laws. Maybe in the last I want to say seven or 10 years, all of which have been struck down.

**Genevieve:** You know, I served as a poll worker in the California election primary this past March, and as I went through the training for that, what I found striking in the context of the way that other states we're talking about polling places and voting is that the California elections official who was training us, and I served as a supervisor at this polling place, effectively told us that our job was to make sure that everybody who walked in voted, that they had the opportunity to vote. We were not checking IDs. We were not confirming addresses, what have you. Our job was to make sure that whoever came in that they got a ballot.

The question that we had to figure out on our end was, Was it a provisional ballot? Was a regular ballot and based on, you know, whether they were in our book or not in our book they got a certain kind of ballot. But everybody who walked into that polling place had the right to vote and, like they bent over backwards to make sure that if somebody wanted to change their party position, if they were Democrat, they could vote. And there's cross party voting that exists except in the Republican Party, where you had to be a registered Republican to vote in the Republican primary.

But people could change their party preference right then and be able to change the party preference to Republican, vote Republican right then and there. And our job was there to figure out how to facilitate that vote for them. Which type of ballot they got, what form they had to fill out whatever it was. And I remember distinctly as I went in, one of the poll workers was there and said, "Okay, we need to start checking IDs." I was like, That is not what we do. We do not do that.

You know, if they're in our book, they get a ballot. If they're not in our book, they get a provisional ballot, and that's how this works. And so I'm shocked to hear of other states that are, you know, putting in voter ID laws, that air putting in requirements that, quite frankly, are limiting not just to Black and brown people, but older people, people who have disabilities, people who aren't able to kind of get out to the polling places. It's shocking to me to hear how they're bending over backwards to make it impossible to vote.

**Byron:** And your experience was in California, right?

**Genevieve:** That's right.

**Byron:** They've just always been two countries. There is a country where when majority rule is fine and it doesn't really hurt the elites of that area. And there are areas where minority rule is the rule and has been since the beginning of the country. So when you have half of your population enslaved and you're trying to maintain control, let me say it differently. You have half of your population that is enslaved. Maintaining control feels like life and death.

And those groups that have had to do minority control are not playing around. This is not a democracy exercise. This is not what they taught you the United States was in fourth grade. This was life or death because you knew what you had done to those people. If they ever got control, they should have the anger to come back and bring retribution, which you had to be worried about. But even outside of that, you couldn't let the vote go because you never, ever had all of the white people anyway.

And if you lost control once, you would never, ever get it back. That's the insecurity in those areas. That's slavery, meeting democracy. And so there are people who have been brought up generations, elites, people who controlled, you know, states who sent their kids to college to make sure that they got into that fraternity or that sorority so that they would marry within that group and maintain those elites right? Their whole lives have been about that. They are not living in the democracy that you are living in.

They're living in a life and death situation where they have to maintain control. And so when you tell them about your shock, you will find they will feel no shame. This is their game.

**Genevieve:** It's shocking that 15th Amendment, 1870 ratified by the states, the Voting Rights Act almost 100 years later in 1965 is there to enforce the 15th Amendment. But even after that, the Supreme Court gutted it even recently, and what was that in 2013 the Supreme Court gutted it. So talk about what happened in that case and why that was so important.

**Byron:** John Roberts, who in his confirmation hearings promised to follow precedent, said you know, these times are those times we don't really need the federal government to look at these places just because they have had a past of discrimination. Now you know what's funny about that? He also never said why you would have to get rid of the Voting Rights Act at all. Right like, Well, if those places are not currently trying to discriminate, then the Voting Rights Act doesn't really hurt them very much. Why not just leave it in place?

I mean, what's the necessity to take it out and not have Congress through the normal course of its legislation, where there are different periods to reenact, why not let them do it? What's the big hurry? Chief Justice Roberts? Well, he's like, Well, it just doesn't matter anymore. So in the Shelby case, they basically said, All of you who had these restrictions on you just reapply. It'll be cool. And with that goes the Voting Rights Act.

**Genevieve:** So the Voting Rights Act had specific clauses in it that required states with a history of voter discrimination to report to the federal government or apply to the federal government regarding any changes they were planning in the voting system and, effectively the Shelby case in 2013 wiped those out and effectively said, "You guys could do what you want, which kind of goes to a state's right states rights argument that is spinning around a lot of this as well. What's your perspective on states rights and the version there?"

**Byron:** So these are very weird times for me. You know, just I see the flip flops, and I'd like to call them out as a critic. My problem is my own flip flops. Um, I am thinking, just as we're talking today that it is the New York State charges, they're the only check left on the presidency that I can see that has any effect. And so would I want the state's right to independently investigate the presidency to go away, because for me, states rights has always been a reason to maintain apartheid.

And so, you know, from my life and for the history, I know that's what states rights has always been about. Now. What we're not talking about is that all of the people in Georgia want to rule their own state. It was never about that. States rights was about the elites in Georgia running Georgia. Not everybody, not all white people, just those

elites. So now what we had at the beginning of the country was a battle of different elites in different states and the South knew that their population was a problem.

Which is to say, either you were going to count Black people and lose control to Black people where you weren't going to count Black people. And then your population was so small that you were gonna lose in any sort of representative democracy to the Northern elites that could control their populations. And so states rights was a way of creating a security blanket for those Southern elites because of their, uh, numbers problem. So whenever I hear it, I just go back to that. But in the current situation, things have flipped a little bit, and I'm a unless sure of my If my position is a principle.

**Genevieve:** What do you mean by that?

**Byron:** I mean, I've always thought elections should be federal, that states rights was a way to maintain the control of the racists in the country. Am I really willing to say today in 2020 that I want federal control of elections. So maybe my principle that I grew up with is moving on me a little bit. Perhaps I should rethink my position.

**Genevieve:** You know, it makes me think of the Electoral College and the fact that it protects those states who had a large population -- the Electoral College specifically -- protects those states who had a large population of nonvoting Black people who are counted as three-fifths and those counted in terms of their representation on their ability to elect a president. But those individuals who were contributing to those numbers for those states were not allowed to actually vote. And so I'm curious about your take on that.

**Byron:** So now you're back to the principle. The principle isn't states rights, the issues are not federalism. You know, the issue is minority control. The 3/5 Rule and the Electoral College walk hand in hand. We've gotten rid of the 3/5 rule, but not the Electoral College that made sense of the 3/5 rule, right? And so what we're talking about, even though for so many generations it was couched, as you know, States rights and I can still hear, um, the conservatives of my youth talking about such things, and certainly they heard it in 65.

We're talking only about minority control. The reason today I am worried about federal control of elections isn't because of a concern I have in federalism. It's because of the control of a minority over a majority. Right now, the state of Georgia has one governor. It should have had his opponent. The only reason it doesn't is because of minority control.



And the thing about it is we see Georgia as a red state. If Georgia really was a red state, they wouldn't have to work so hard to suppress the vote. Georgia is a blue state, has been for a while. This is the work that has to be done if they're going to maintain control, as they have since before the Constitution made its compromises with the Electoral College in the fractional understanding of a person.

**Genevieve:** I think this points to those in control being afraid of those who aren't in control, getting control.

**Byron:** Yeah, I think that's right. And that may go across the political spectrum a bit. Um, I mean, we could call it what you know, like what you know is your history. What your parents told you was the way things are, what was right and wrong. And you just want to keep those things going.

In Oklahoma, I went to high school with people who I would consider a part of the elite of Oklahoma. Although Oklahoma has a boom and bust economy and as oil prices would go up and down, there would be some, uh, changes in these things. Um, but one of the things that works so well is because those elites are so segregated, because they live in places where there are really only their own around.

Then it's very easy to fill even the elite imagination with what the other is. So the understanding from the elites about, say, the white elites in a place like Georgia or Oklahoma about what Black and brown people are, what they're like, what they're capable of, what words you should associate with them. Those sorts of things are built up over a lifetime. And so the elites themselves feel like they're doing the right thing. Like this is the only way to keep the country going like without us holding back the savage hordes all is lost, and so they do it out of this sort of moral righteousness.

**Genevieve:** What I think is interesting too, is that for the first time, I think in my lifetime, that I can remember, we have had such overt efforts by the government, the federal government now, to negatively impact not just the rights of Black and brown people to vote or minorities to vote, but a particular party to vote. You know, we see the work of the government now to effectively kneecap the United States Postal Service. And you can tie that almost directly to the fact that 70% of those who say they will use a mail-in ballot are voting for the party, not in power.

And it is shocking to me to see such overt actions being taken to prevent people to vote to influence that outcome, especially in contrast to what you see throughout the rest of

the world. I mean, other countries have voting as a requirement. You get fined if you don't vote. They have holidays for voting. They require voting on weekends so that everybody can go and do it, but they mandate voting. And so it's just shocking to me the dichotomy of what we're facing in modern day United States relative to other parts of the world. And it makes me think of those countries that are still authoritarians or still run by fascists Thio. But now it's impacting me personally, and I'm not a Black or brown person. And, like, I just can't even imagine what it would have been like, you know, at the beginning of the when the 15th Amendment was first put in place and the Voting Rights Act in 1965 and fighting for that in the same way, I mean that now there's a majority who's fighting to address those issues and a vocal majority at that, um, but I just can't even imagine what the people who fought for the right to vote have been through down that path.

I also think it's ironic that President Trump pardons Susan B. Anthony, much to the dismay of the museum and everybody, you know, that has academic awareness of what she was about because everybody knows that it would be the exact opposite of what she wanted. She wanted to get arrested. She wanted to be in that situation to demonstrate the power of the right to vote.

**Byron:** Yes, she was a little iffy on the brothers voting. The 15th Amendment is watered down not just because of the Southerners, who really weren't empowered at the time, but because the idea of Black people voting did not appeal in the border states or the North.

The reason they couldn't make this stronger is because there was really little appetite for having Black people in your area in your state vote. Again, these three amendments come pretty close to each other. If one of them is written weaker, it's because they couldn't get the votes to write it stronger. The federal government has been involved in voter suppression ever since. I mean, in effect, the Ku Klux Klan was allowed to operate, you know, by the time you get to Woodrow Wilson's administration, it's almost like a Qanon on sort of thing, only with much more federal support and the Supreme Court saying, yeah, that's not a state organization, if they want to terrorize, that's perfectly legal under the Constitution and abridges no one's rights. So effectively, they're supported by the state clandestinely. By the federal government as well. But aren't a, you know, an overt actor. And so the federal government is fairly well involved in suppressing Black people through violence.

The difference is, as I'm learning history, I'm taught that this is basically a representative democracy. But we'd had some trouble in the South with slavery. But most of the country really felt that that was too bad, you know, that that just wasn't okay.

And then the natural progress of things all of this would go away. Now go back. Look at where the presidents of the country came from. They came from the slave owning states early on and really throughout our entire history, especially if you go to the places that are involved with foreign policy. If you understand how the Navy is actually built on why the Navy is actually built and that it's you know, once Haiti revolts and the slaves have taken over, all of a sudden, Wow, we need to build a navy, and that's all because, while I'm brought up to think this is a representative democracy with a few problems, there are people who are brought up to control the states and are told how the game is played. And it's a reputation game. And you have to do what you're told and what your grandfather did, and what your great grandfather did. And they're playing a life and death struggle for control. Meanwhile, I'm looking at them as people who should be nice and kind, and so I don't know the stories about how my federal government has been suppressing the vote of Black people since the 15th Amendment was passed.

Like I don't know how my state has been doing it. I don't know all of the collusion going on. I mean, my goodness, in New York, in Maine, you know, in Minnesota and Illinois. We have this history of suppressing people from voting. It is our entire history from our entire nation. It is federal, it is state, it is local. It is the whole thing. It is incredibly effective. At any time, those good people that we would look back to could have simply passed the suggestions that you recommend -- voting is mandatory or you get some tax break from it.

However you want to do it, you know. But you have to. You have to do it. States are not allowed to abridge. You know, if a place has a higher voting percentage and higher wait times, then you have to put more resources there and here are the funds for those resources. This could have been done at any time in this country's history. If we don't see this here now, why? Because both sides don't want it now. One side. It's life or death. For us, this is just style.

We just want to believe our country is a better place. They're playing a life and death game. You know, we're playing niceties and shame.

**Genevieve:** Given that it's important that we not take that right to vote for granted that we not give it up and that we continue the fight that John Lewis started all those years ago and is trying to restore even with the John Lewis Voting Rights Act.

**Byron:** Yeah, I think that that's right, Andi. I also want to say that John Lewis knew the stories of suppression. They were available to be known.

It's just a lot of us had the privilege not to know it like we've woken up since 2016 to voter suppression. But these, you know, Shelby wasn't hidden. It was all right there. How many of you all heard of Shelby before Trump was in office before Stacey Abrams started saying, Hey, these things have been going on, you know. And what really has happened is that and you kind of touched on it before, right? It's so overt, but it's not that it's overt. It's so overt that some of us who weren't attuned to it all of a sudden are attuned to it like it is surprising and shocking and all of these things.

But that just says what we didn't have to see before and what we're seeing now, the game remains the same. John Lewis knew the game like if he was on the podcast and you said, When has the federal government ever done this? He would be. Let me tell you about some people, right? And they wouldn't be the bad names necessarily. I mean, they could be like Woodrow Wilson, who was unbelievable. But you know, in some ways, Truman certainly FDR and the New Deal right. That New Deal did not deal voting rights at all. Right?

And he could have passed anything he wanted and he didn't. And so now, so what? Maybe the eighth try would be a new civil rights act and most of what it does, it says we want the Voting Rights Act of 1965 brought back. As I understand that John Lewis act, it's like, Yeah, no, they're still trying. But this time, what we're gonna do is we're going to do all states. If you find this, this or this, we're just going to assume that you're trying to suppress the vote and we're going to come in and take a strong look at it.

I don't know if they used the phrase strict scrutiny in there or not, but effectively, That's what they're saying.

**Genevieve:** Yeah, it's appalling to hear the white leaders in Congress saying they don't see any issues with Black voter turnout and the ability of Blacks to vote. It's just appalling to think that those people have control. Which, of course, is another reason why it's important to vote more Black people into office.

**Byron:** Completely agree. I mean, one of the people saying that is Lindsey Graham, who's in a neck and neck race. He can't be for representative democracy. He can't be for more voting. The governor of Georgia has no shot, no shot of winning an election

against Stacey Abrams without voter suppression. There's just no way that that happens at all.

Let me just say one other thing. All of these voting rights acts, including 65, including the one up for grabs right now. Actually, if you think about it, even the heroes act in \$3.6 billion for electoral support to pay for elections to happen, right? We're still asking for the 15th Amendment from 1865. All of this work we're gonna have to do in this election, all of it still trying to fight and get back 1865. If you want to know just how effective our opponents have been, we're still trying to get 1865.

**Genevieve:** Well, thank you for adding your perspective to the discussion and for anybody listening, don't take your voting rights for granted. It is a slim line between being able to vote and not being able to vote, and we're seeing the attacks on that every single day.

**Byron:** And thank you for working at a polling station.

**Genevieve:** It is tough work for very little pay, but I encourage everybody to do it because it's important. Especially now that the older populations who typically are the ones staffing those polling populations, they're going to be at higher risk. So if anyone is young and healthy, I highly encourage you to go out and sign up to work those polling places. It is incredibly rewarding and important work. Thank you.

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