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Thursday, April 30, 2020

White Male Aristocracy

Guest Blogger

For the Symposium on Gerald Leonard and Saul Cornell, [The Partisan Republic: Democracy, Exclusion, and the Fall of the Founders' Constitution, 1780s-1830s](#) (Cambridge University Press, 2019).

Mary Sarah Bilder

Gerry Leonard and Saul Cornell's fascinating book, *The Partisan Republic: Democracy, Exclusion, and the Fall of the Founders' Constitution, 1780-1830s* tells the story, as I put in in a blurb, "of the unsettling transformation of aristocratic-tinged constitutional republic into a partisan white male democracy."

In this year where we recall the Nineteenth Amendment's re-enfranchisement of women, the Leonard/Cornell book demands that we reevaluate the way we describe the early nineteenth-century constitutional state.

In short, why do we continue to use the word *democracy*?

Although the first word in the subtitle is *Democracy*, the second is *Exclusion*. And the authors focus on *exclusion* as an essential element in the rise of the early nineteenth-century Democratic Party. This period—often skipped over in accounts of the American constitutional order—proves here to be a birthplace of American constitutional exclusion. They explain:

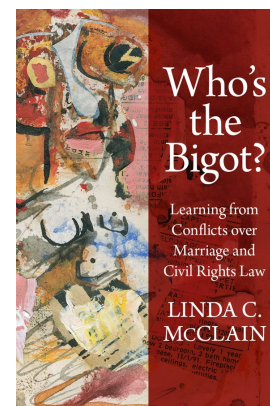
The new Democratic Party [of the late 1830s] had gained ascendancy by reading the Constitution as a fundamentally democratic, not republican, document, which belonged to the people rather than the courts. ... Yet this party of 'the democracy'—so understood because its avowed purpose was to defend a populist constitutional order against a reinvented 'aristocracy' of special interests—explicitly excluded all but white men from civic participation. If the white males of the founding generation had varied and fluid views of how women, blacks, and Indians might fit into a republican hierarchy, the white male 'democrats' of the 1830s starkly excluded all of these groups from their otherwise antihierarchical Constitution." (p. 3)

This argument about exclusionary transformation draws on prior scholarship, including the pathbreaking and quietly influential book by Rosemarie Zagari, *Revolutionary Backlash: Women and Politics in the Early American Republic* (2007).

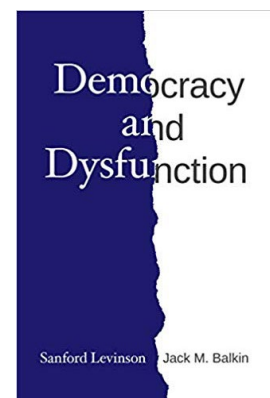
Exclusion becomes the focus of the second chapter on *The Federalist Constitution*. In the 1790s, "nonelite white men increasingly tested their constitutional voices in public." The authors comment, "But it remained clear that these stirrings of democracy were intended to reach *only* white men."

Leonard/Cornell are careful to acknowledge that the starting point was not explicit absolute exclusion. As they emphasize, "some free blacks" and "a limited number of women in New Jersey" voted. "As unpropertied white men chipped away at exclusions of class, however, whiteness and masculinity became ever firmer requirements for constitutional participation, despite proto-feminist ferment and persistent flashes of resistance by black Americans, both free and enslaved."

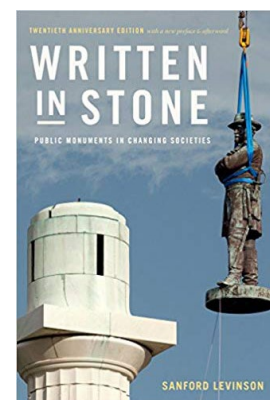
Two sections on "Constitutional Outsiders" (pp. 60-71) summarize an extensive, and at times slightly inconsistent, body of scholarship (alluded to in the bibliography) on the relationship between gender and race and the emerging constitutional state. Although slavery and race reappear in subsequent chapters,

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[Linda C. McClain, Who's the Bigot?: Learning from Conflicts over Marriage and Civil Rights Law \(Oxford University Press, 2020\)](#)



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somewhat sadly for folks like myself, women disappear from the narrative for some time.

But in chapter 5, “The White Democracy,” the authors return to this theme with Martin Van Buren. Here they tell a story of Democrats who “cared only about the ascendancy of the white man, freed from all political inequalities rooted in station and class.” (p. 165) These new Democrats “ascribed separate and constitutionally subordinate places to blacks, as well as women and Indians, who would undermine democracy itself if admitted to public life.” (p. 166) As Leonard/Cornell point out, “the ascendancy of democratic ideology and the expansion of political rights among white men in the Jacksonian period rested on an explicitly racist [and we might add sexist] understanding of civic capacity, not on a truly universalist egalitarianism.” (p. 167). The Conclusion reiterates this argument. “Van Buren and the Democratic Party also understood the Founders to have founded a specifically white, male democracy, and in power the party never hesitated to act on that principle.” (p. 220).

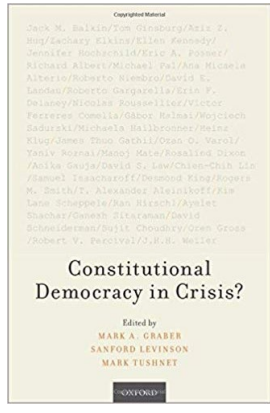
The importance of the Leonard/Cornell book lies in this crucial decision to characterize this transformation as exclusion rather than evolution and expansion. The older, traditional historical narrative told of progressive democratic expansion from the founding period: the fall of restrictions based on property; the fall of restrictions based on race; the fall of restrictions based on gender. This version goes something like this: in the beginning, only wealthy white men of property are permitted to participate in the constitutional state, but, the rise of democracy inserts an inherently evolutionary expansion into the system ... all white men, then all men, then women. This story presumed a starting point in the 1780s in which there is widespread conscious recognition that women and people of color cannot participate in constitutional politics.

But the Constitution of the 1780s was a more fluid space. Here I am drawing on research for my forthcoming book, *The Lady and George Washington: Female Genesis in the Age of the Constitution*. Throughout the 1770s and 1780s, the transatlantic world was rife with claims that the constitution required greater representation in government. The period began with constitutions that excluded most people, including most white men, from voting or holding office. Justifications for political participation remained tethered to owning property, more specifically, landed property, and usually rather considerable quantities. Explicit exclusions from political participation in the constitutional state existed, but they focused largely on religion and religious belief. By the mid-18th century, grossly simplified, what reformers of the constitution shared was the belief that government was itself a delegated power from the people—and therefore should be more representative of the people and operating more on behalf of the people. But the dimensions of suffrage and participation remained open and ambiguous.

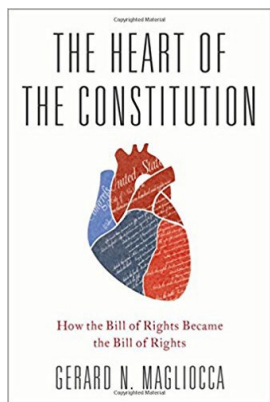
For women and people of color, constitutional reform presented the possibility of altering Western intellectual traditions based on ideologies of inferiority. Education was political—the opportunity to prove that all the people were equal to white men. Implicitly the only possible substantive argument against constitutional participation was an absence of education; the potential barrier for participation was not an explicit constitutional text. In the 1780s, increasing educational opportunities became a critical step. Not surprisingly, the two greatest female political thinkers in England, Mary Wollstonecraft and Catharine Macaulay, authored educational treatises. In the United States, educational opportunities for women, and to a far lesser extent, for free people of color, began to expand. In this world where *constitution* continued to mean a frame or system of government, expanding equal education appeared to be part of the constitutional state.

In January 1790, the *Massachusetts Centinel* ran a short paragraph arguing for female equality and political participation. The anonymous author declared that women are “equals of the Males.” The alleged age of liberality contrasted with the “present custom” of “excluding women from any share in Legislation.” Exclusion violated representative political theory. Women should not be “obliged to submit to laws they had no share of making.” Exclusion was “unjust and detrimental.” For evidence of female equality and capacity to participate in legislation, the author referred to numerous female rulers. The paragraph spread across newspapers and over the next month appeared in Boston, Worcester, Providence, New York, Philadelphia, and Baltimore.

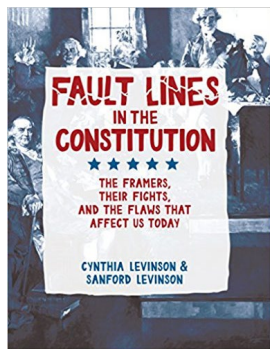
[Changing Societies \(Duke University Press 2018\)](#)



[Mark A. Graber, Sanford Levinson, and Mark Tushnet, eds., Constitutional Democracy in Crisis? \(Oxford University Press 2018\)](#)



[Gerard Magliocca, The Heart of the Constitution: How the Bill of Rights became the Bill of Rights \(Oxford University Press, 2018\)](#)



[Cynthia Levinson and Sanford Levinson, Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws that Affect Us Today \(Peachtree Publishers, 2017\)](#)

Scholarship reconceptualizing New Jersey's suffrage, led in large part by the late Jan Ellen Lewis, now establishes that exclusion was not a necessary or universal starting part of the new constitutional state. As historian Alexander Keyssar noted, "the experience of New Jersey, where women participated in elections for more than a decade, suggests that the enfranchisement of women was neither unthinkable nor catastrophically disruptive of the political order." Famously, as a New Jersey newspaper editorial in 1800 stated, "Our Constitution gives this right to maids or widows, black or white."

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And yet the rise of American constitutionalism would create a powerful tool in favor of exclusion. Notice that, for the *Massachusetts Centinel* author, exclusion was a "custom," not a legally required bar. The rise of nineteenth-century constitutional practice—the slow and gradual insistence on the constitution as text—transformed exclusion from custom to constitutionalism.

In 1792, Kentucky broadened suffrage for white men. I believe it was the first western state to permit men to vote without property or taxpaying requirements—but it did so by describing voters as "free male citizens." By 1802, the Kentucky model proved dominant. New Jersey disenfranchised women and people of color in 1807 with a new law permitting only the "free white male citizen" to vote. And I think every state admitted to the Union between 1802 and 1876 defined suffrage by constitutional exclusion.

These exclusions began with an adjective: free or white (and after 1820, almost always white). They ended with a description: person, inhabitant, citizen. But what never varied was the word MALE.

By the nineteenth century, greater participation of a sort had occurred—according to a common statistic, by 1840, more than 90% of white men could vote—but at a great cost. Like people of color, women found themselves constitutionally excluded because they were not white males.

Was this *democracy*? In what sense was a constitutional system that explicitly excluded over half the adult population a *democracy*? Indeed, why shouldn't we as constitutional historians describe this period as the rise of white male *aristocracy*?

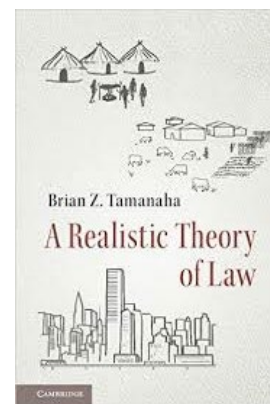
Here are the four definitions in the on-line Merriam Webster dictionary for *aristocracy*:

- 1: government by the best individuals or by a small privileged class
- 2: a government in which power is vested in a minority consisting of those believed to be best qualified
- 3: a governing body or upper class usually made up of a hereditary nobility
- 4: a class or group of people believed to be superior (as in rank, wealth, or intellect)

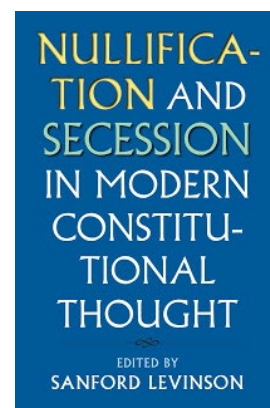
Each of these definitions fits the system of constitutional exclusion created in the early nineteenth century. White men as a group were a privileged class, believed by themselves to be the best qualified and superior, and they inherited this power by virtue of their birth as white men.

Understood this way, the story of the partisan republic is perhaps the story of the rise of a white male aristocracy disguised with the rhetoric of democracy. By carefully unmasking this pseudo-democracy, Leonard and Cornell help us begin to confront the retained legacy of this white male aristocracy in our constitutional histories.

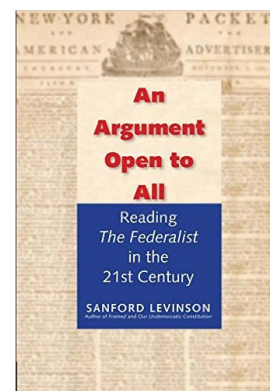
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[Brian Z. Tamanaha, *A Realistic Theory of Law* \(Cambridge University Press 2017\)](#)



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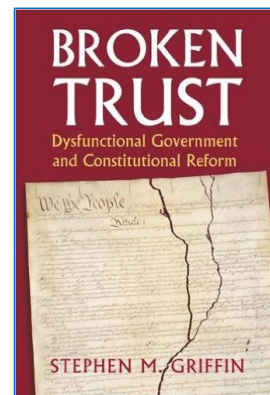
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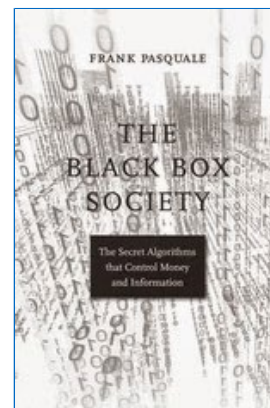
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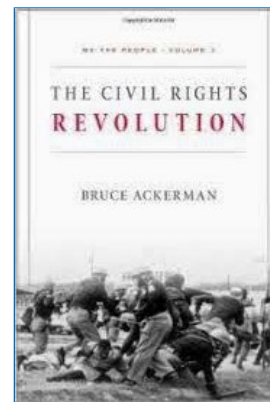
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