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**Civics 101**

**Ep 103: Fifteenth Amendment**

**Virginia Prescott:** [00:00:23] I'm Virginia Prescott and this is Civics 101, the podcast refresher course on the basics of how our democracy works. We're finishing up our series on the Reconstruction Amendments. These are landmark amendments made after the Civil War the 13th 14th and now the 15th. This one meant to ensure the vote to citizens regardless of color or race. Khalilah Brown-Dean is Associate Professor of Political Science at Quinnipiac University and she's here to help us learn more. So what does the 15th Amendment actually say?

**Khalilah Brown-Dean:** [00:01:01] So at its core the 15th Amendment says that the right to vote cannot be denied on the basis of race or condition of previous servitude. And so we like to say that the 15th Amendment gave everyone the right to vote but at its core it only applied to black males. And so the 15th is the first time we see the word mail inserted in the Constitution.

**Virginia Prescott:** [00:01:25] So can you quickly just review the 13th was to abolish slavery 14th to grant citizenship to the freed slaves. Correct.

**Khalilah Brown-Dean:** [00:01:33] It did. So the 13th Amendment abolished slavery except for crimes and other punishments and the 14th Amendment really gave that teeth to say it's not just enough to allow people to now be free. What are the privileges that come with that freedom and for all Americans the 14th Amendment gave us equal protection under law as well as the due process clause. So the natural extension then was to have the 15th amendment that extended the franchise to black men.

**Virginia Prescott:** [00:02:06] This amendment was passed by Congress 1869 ratified 1870. What was the reaction to the amendment. It must not have gone over well in southern states.

**Khalilah Brown-Dean:** [00:02:19] It was a very divided nation of course but even across the south there was this tension this idea that Congress this national entity was going to force states to recognize not just the citizenship but access to the ballot of black men became very contentious. And so in response we start seeing these state constitutional conventions across the south. The 15th Amendment says we have to allow black men to vote. What can we do at the state level to really undermine that. And so you see 13 states within the next year year and a half having these conventions. How do we uphold the Constitution in theory while still limiting who has access to the ballot.

**Virginia Prescott:** [00:03:08] So what are some of the tactics that those states in their constitutions used to disenfranchise black voters?

**Khalilah Brown-Dean:** [00:03:16] Well there are strategies that were mostly familiar with things like the literacy test; so being asked to read a particular passage. Things like a poll tax; so having to pay fifty dollars in order to pursue registration. But it also meant that states started doing things like changing their criminal disenfranchisement laws are what we now commonly called felon disenfranchisement. So it meant in a state like Alabama if you beat your wife you would lose the ability to vote but if you kill your wife you could keep access to voting. And why was that? It was because state legislators thought there was a racial difference in who was going to commit those crimes. So things like breaking a water pipe, stealing edible meat became a felony offense that meant that black men could never vote in those states.

**Virginia Prescott:** [00:04:11] So we have these states setting up a lot of barriers to allow black men to vote. How about courts. Were any of those provisions challenged in the courts.

**Khalilah Brown-Dean:** [00:04:23] One of the real beauties I would say of democracy in this country is this concept of federalism. This division between what states can do, what courts can do and what the federal government can compel. And so you had black plaintiffs suing for their rights arguing that states were undermining their ability to vote. So you have cases saying look this state did not allow me to register because I am black. And even when it made it to the courts the courts would often get back to the states. And that's because the Constitution allows states to set the time place and manner of elections so for a very long time courts were indifferent to these claims of black plaintiffs and said even if we have a disproportionate or disparate impact on blacks being rejected from voting you cannot say the system itself is discriminatory because in theory it applies to whites as well.

**Virginia Prescott:** [00:05:29] But the second part of the amendment the 15th Amendment says Congress shall have the power to enforce this article by appropriate legislation. Still the states have more power than the federal government in this way?

**Khalilah Brown-Dean:** [00:05:42] States had more power then when it comes to voting and they still have more power. And the reason for that is because there is no affirmative constitutional right to vote in the United States. We talk about a right to vote but there is no language that says there is an undeniable constitutional right to vote. It's why we can deny the ballot to 16-year olds. It's why there are over 5 million people in the United States who are permanently barred from voting because of a past conviction. So allowing states to set those terms limits the scope of what Congress can do. And it means that Congress and citizens of the U.S. are at the mercy of the states.

**Virginia Prescott:** [00:06:28] How much did that fight for the right to vote even to register to vote have to do with starting their civil rights movement.

**Khalilah Brown-Dean:** [00:06:37] I want us to think about what it meant for a group of people coming out of brutal chattel slavery to say to assert our citizenship we want to be a part of this country and the way we believe we do that is to vote and to participate in the democratic process. That understanding that there was a gap between the principle and the practice of democracy was something that rested deeply in the souls of blacks and others at the time as well because many of the strategies that were targeting African-Americans also limited a number of white voters particularly poor whites living in the rural South. And so understanding that disconnect seeing the fact that people were literally being killed and threatened and maimed for simply trying to vote sparked what we now know as the civil rights movement. When you have a group of children marching in Birmingham, Alabama to affirm the importance of American democracy and they are met with violence. It sparked this movement that started with African-Americans but really connected with the American conscience across the country.

**Virginia Prescott:** [00:07:57] And these are some of the mass movement that led to the Voting Rights Act of 1965. This has been called the nation's most successful civil rights legislation. What did it do?

**Khalilah Brown-Dean:** [00:08:08] So the Voting Rights Act of 1965 came as really a culmination of multiple efforts of people saying let's have a grassroots movement let's use the tactics of non-violence of citizens to dramatize what's going on here in the south. Let's pursue the courts to do this. Let's push Congress to do this. And so eventually President Lyndon Johnson signs the Voting Rights Act of 1965 into law which essentially accomplish three key things. One, it struck down those restrictive strategies that were used in the south. But the important point is that those tactics in the south like the poll tax, the grandfather clause, originated in the north to keep white ethnic immigrants from voting and so the South borrowed from that the Voting Rights Act of 1965 struck down those provisions. The second key thing that it did is that it looked at rates of voter registration and turnout prior to 1965. And so for jurisdictions that had very low levels it meant that now the federal government would have oversight over those jurisdictions meaning that they could not make any change to their voting laws and requirements without having federal review and approval. Third removed having citizens being at the mercy of their state to plead their case. So states still now control the time place and manner of elections but the Voting Rights Act of 1965 was meant to put teeth in the enforcement of what the 15th Amendment promised.

**Virginia Prescott:** [00:09:58] So what were the results of this legislation in 1965 this historic bill; where more African-Americans voting and getting into office?

**Khalilah Brown-Dean:** [00:10:09] The Voting Rights Act of 1965 single-handedly transformed America's political landscape. We saw record numbers of African-Americans registering to vote of actually voting in elections and not just presidential elections but at the local and state level as well. So it meant that now blacks had a base and a foundation to be able to pressure political response and demand political change. It encouraged other groups to see voting as a means to express themselves as well. So we've seen increases in Latino voting. The Latinx community holding elected office. For Native American communities where many of the languages are oral languages that now is not a barrier for people to be able to vote. It encouraged Asian Americans because it protected ballot access for them as well. And so certainly we've seen differing rates in terms of how much voter participation has increased for certain groups over others. But the real question is about policy response. What do people get in return for their loyalty and their political participation. The Voting Rights Act of 1965 couldn't address that piece but it certainly forced politicians and political parties to reconsider their approach.

**Virginia Prescott:** [00:11:38] How about now. Over the last decade there have been a number of cases and practices that strip key parts of the Voting Rights Act. One of these cases Shelby County vs. Holder. Now this is in 2013. Why is this considered such an important case?

**Khalilah Brown-Dean:** [00:11:55] So Shelby County v. Holder comes out of Shelby County Alabama which was the site of the Bloody Sunday march in Selma Alabama in 1965 that saw a young student named John Lewis being beaten to the ground by a state trooper and suffering permanent brain damage. It really was what forced LBJ to take seriously the cause for voting rights. And so to have that county in Alabama pushed this to the U.S. Supreme Court against then Attorney General Eric Holder. The decision in 2013 essentially gutted the Voting Rights Act of 1965. It said that yes some racial tension may still exist in the country. Yes race may be a deciding factor for why some areas decide to change their voting laws but how do you prove it and how do you know it. And it's not just about impact according to this case it's about showing intent. So it struck down the pre-clearance requirement. That meant that counties like Harris County in Texas could not change their laws without getting federal approval by striking down the formula by striking down the impact of that. It dramatically weakened the Voting Rights Act of 1965. And so the 2016 presidential election was our first national election since the Voting Rights Act was gutted and we saw the electoral consequences of not having those protections in place not just for black voters but for all voters.

**Virginia Prescott:** [00:13:39] What would you say is the state of the 15th amendment today.

**Khalilah Brown-Dean:** [00:13:44] I would say that the state of the 15th Amendment is compromised and it's compromised for this very basic reason that we don't have an affirmative right to vote. We build so much of our view of American democracy. We fight to demand democracy in other parts of the world because we say that the vote is so central and essential. But if we truly believe that if that is to be more than American folklore then we need to have that constitutional right to vote that reinforces the 15th Amendment that allows people to know that their race, where they live in this country, their age, their political affiliation, their zip code, does not determine their access to democracy and to democracy's promise. So that's something that Congress needs to address but it's also something that states are grappling with everyday. There are major court cases right now about whether the state of Ohio can kick people off the voting rolls because they haven't voted in two years. And it makes it clear that democracy doesn't require us to participate, it creates the opportunity and the choice for us to do so.

**Virginia Prescott:** [00:15:05] Khalilah Brown-Dean thank you so much for speaking with us.

**Khalilah Brown-Dean:** [00:15:09] Thank you.

**Virginia Prescott:** [00:15:10] Khalilah Brown-Dean, Associate Professor of Political Science at Quinnipiac University and co-author of 50 years of the Voting Rights Act: The state of race and politics.