

The History of Illiberalism in America

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[00:00:00.8] Jeffrey Rosen: Hello, friends. I'm Jeffrey Rosen, President and CEO of the National Constitution Center, and welcome to We the People, a weekly show of constitutional debate. The National Constitution Center is a nonpartisan nonprofit chartered by Congress to increase awareness and understanding of the Constitution among the American people.

[00:00:20.4] Jeffrey Rosen: In this episode of We the People, I am excited to share a conversation about illiberalism in American history with two great historians; Steven Hahn, author of *Illiberal America: A History*, and Manisha Sinha, author of *The Rise and Fall of the Second American Republic, Reconstruction, 1860 to 1920*. It's moderated by the NCC's Chief Content Officer, Tom Donnelly. Enjoy the conversation.

[00:00:38.2] Thomas Donnelly: Hello, everyone, and welcome to the National Constitution Center and to today's convening of America's Town Hall. My name is Tom Donnelly, and I am the Chief Content Officer at the National Constitution Center, and I'm so delighted to have you here for what should really be an illuminating conversation about the history of illiberalism in America. But before we get to the conversation itself, first want to introduce our magnificent panelists here. First, we have Steven Hahn, who is a professor of history at NYU and a Pulitzer Prize winning historian who studies American political and social movements.

[00:01:12.2] Thomas Donnelly: His acclaimed works include "A Nation Under Our Feet" and "A Nation Without Borders". His most recent book, which we'll be discussing today, is "Illiberal America, A History". And then Manisha Sinha is the Draper Chair in American History at the University of Connecticut and the 2024 President-elect of the Society for Historians of the Early American Republic. She's a leading authority on the history of slavery and abolition in Civil War and Reconstruction, and the Civil War and Reconstruction, and has written numerous books on these topics, including "The Slave's Cause," which is, no exaggeration, perhaps the best book that I've ever written, I've ever read, rather, on the history of slavery and abolition. So her most recent book, which we will be discussing today, is "The Rise and Fall of the Second American Republic, Reconstruction, 1860 to 1920". So thank you for joining us, Steve Hahn and Manisha Sinha.

[00:02:06.3] Steven Hahn: Thank you.

[00:02:07.5] Manisha Sinha: Thank you Tom.

[00:02:07.9] Thomas Donnelly: Yeah, so absolutely. So the first question to you, Manisha Sinha, is you've written a magnificent new book on Reconstruction. And as I said, it's called "The Rise and Fall of the Second Republic". And so that's such an interesting frame referring to the Second Republic there. Can you talk a little bit about your choice of using that frame and also some of the key themes that we see America trying to put in place as we moved into a second republic.

[00:02:32.9] Manisha Sinha: Yes. So when I was writing this book on Reconstruction I realized that a lot of historians had talked about this period as the Second American Revolution, the second founding. And in fact, even contemporaries use those terms. But I thought it would be interesting to use the term Second American Republic. I was really inspired more by the history of French republicanism, where republics came and went and they had many different constitutions. So it's not an exact match, but I think it was an important idea to think about American republicanism as a contested project. We have had so many histories that have actually challenged older notions of American exceptionalism and the myth of kind of a linear, untroubled progress of American democracy.

[00:03:24.3] Manisha Sinha: But what I wanted to show was this contestation. And the way to do that was to use this idea of a second American republic, also because we have foundational constitutional change that takes place during this period with the 13th, 14th and 15th amendments and the sort of untried project of trying to establish equal citizenship for people, regardless of race or previous condition of servitude. So all those ideas, I thought were encapsulated in this idea of the Second American Republic, and not to see the American Republic as either all one or the other, which has also become fairly fashionable now that everything was a racist reaction or that everything was always authoritarian, that the project is tainted from the start. I wanted to show more contestation and present a more nuanced history of American republicanism during Reconstruction.

[00:04:23.4] Thomas Donnelly: Absolutely. And it certainly comes through in your book. And I can't wait to drill down into so many of the episodes that you cover. Turning to you, Steve Hahn your fascinating new book, it's a meditation on strains of illiberalism throughout American history. And again, I want to get through a lot of the historical episodes you talk about. But first, it might be useful to place on the table just basic definitions. I guess when you talk about liberalism and illiberalism, how would you define them? And what are the key contrasts that we should have in mind?

[00:04:53.8] Steven Hahn: Well, that's a very good question. Yeah, I should say that I got interested in writing this book as I listened to all sorts of observers talk about how Trump, beginning in 2015 and 2016, violated liberal democratic norms. And I was not entirely clear what those norms were. And as a historian looking way back, but even in the more recent past. And I was, I recognized the comfort that a lot of people took in the idea that this was a sort of weird and distinctive variation that could soon be removed. And I began thinking about illiberalism as a way of conceptualizing an important current that was capacious enough that would include lots of different forms and also flexible enough so that you could see a change over time. So very briefly I think in general about illiberalism as involving the inequality.

[00:06:04.7] Steven Hahn: Assigned hierarchies of say race or nationalism or gender. The idea of the importance of cultural or religious homogeneity, of limited or particularist rights, of the marking of internal or external enemies and the use of exclusions or expulsions in order to rid a society of them. The acceptance of political violence as a way to attain or maintain power, and also the will of the community as opposed to the rule of law. I think this is something we see in a lot of different ways. Manisha raises a very good point about the dangers of continuity and seeing things so deeply laid in the past that they really don't change over time. And I tried very hard in this book to suggest that while illiberalism in many episodes shows certain shared features, it changes in many important ways.

[00:07:21.4] Thomas Donnelly: Absolutely. That certainly comes through in the book. Back to you Manish Sinha, one of the interesting features of your book is its breadth. And so, I mean, you begin your story in 1860 with the election of President Lincoln. You go all the way to the ratification of the 19th Amendment in 1920. Can you talk a little bit about your choice there of periodization, why you've chosen to elongate the period we traditionally think of as Reconstruction? Where the traditional narrative is sort of it ends or it collapses with the compromise of 1877, give or take. Can you talk a little bit about what we gained by that broader lens?

[00:07:57.6] Manisha Sinha: Yes. So one of the reasons I wrote this book was because I think when we look at the period of Reconstruction, and then usually in American history textbooks, it always sort of begins in 1865 with the end of the Civil War, and as you said, ends with the Compromise. So-called Compromise of 1877 with the fall of the last Reconstruction governments in the South. And I think it's one of the reasons that we don't pay enough attention to Reconstruction. It seems like this brief moment that is quickly done away with, and you immediately get to the Gilded Age, to the rise of Jim Crow. And I thought in order to really understand Reconstruction as a significant episode in US history and to think about its legacies for our own times, I wanted to stretch the chronological boundaries.

[00:08:50.5] Manisha Sinha: I begin with 1860 with the election of Abraham Lincoln and the refusal of some deep South states to accept the results of that presidential election and to basically secede from the union. That's when the first American republic in my opinion, falls. And you can see the germs of the rise of the New Republic. I see Lincoln as the Reconstruction president, mainly because of the expansion of the federal government under him during the Civil War. I see him as a wartime Reconstruction president, and I see presidential Reconstruction as more identified with Lincoln and with the 13th Amendment and the establishment of the Freedmen's Bureau than with Andrew Johnson as it is traditionally seen. I see Johnson as lying outside that process. And the reason I ended it, right up to 1900 and then onto 1920 with the 19th Amendment, is because we all tell the story of the brief triumph of Reconstruction and its sudden demise.

[00:09:51.7] Manisha Sinha: And I think what's really important to understand is the gradual unwinding of Reconstruction in the latter half of the 19th century and its influence on other events, both national and transnational. And so I was very interested in looking at, not just the fall of those last Reconstruction governments, but the establishment of legal disfranchisement in the 1890s and Jim Crow, which is green led by Plessy versus Ferguson in 1896, and connected to

other events like the complete collapse of native sovereignty in the West, the rise of a formal American overseas empire with the 1898 Spanish American Cuban War. And I could have just ended there with Chinese exclusion, conquest of the West, rise of American imperialism. But I did want to end the book in a high note. And I think suffrage, women's suffrage is a really important issue that gets jumpstarted during Reconstruction.

[00:10:53.7] Manisha Sinha: The movement divides over the issue of race, actually, but comes back together in the 1890s. And then if you look at the 19th Amendment, its wording is exactly the same as the 15th Amendment that gave black men the right to vote. So I don't see it just as a progressive era reform. I also see it as a Reconstruction Amendment. I call it the Last Reconstruction Amendment. And I really wanted to trace feminist ideas about democracy. And you can see that with the rises of the social feminists in the early 20th century. You can certainly see that with black feminists who are waging a multi-pronged struggle against racial violence and lynching and Jim Crow racial segregation. And in order to include that story, I end in 1920. I end with the Reconstruction Amendment. And I think that gives us a better appreciation of some of the main controversies over democracy, citizenship governance, and progressive constitutionalism that really starts during Reconstruction.

[00:12:02.1] Thomas Donnelly: That's great. And yet the, especially the back half of your book, talking about that slow unwinding of Reconstruction is such a fascinating and tragic story that hopefully we'll get into as our discussion proceeds here. But back to you Steve Hahn. Your story spans from the American colonies to neoliberalism in the late 20th and early 21st century. And one interesting feature of your book is that, as you acknowledge, your intention in this book is not to paint a dark and damning picture of the United States past and present. So you do have elements of the liberal tradition acknowledging the many achievements of America over time, along those dimensions, while also unearthing parts of our past that are illiberal. Some of them well-known, some of them less well-known. Can you just talk a little bit about, as you are approaching this book, how do you think about balancing the strands of liberalism and illiberalism in such a way that you can tell a complete story of America?

[00:13:03.5] Steven Hahn: Right. I think that's a very good question. One of the things I was interested in doing was in effect decentering liberalism, because one way or another, one of the things that's always struck me is that whether you look at its advocates or whether you look at its adversaries, of which there were many, liberalism is kind of at the center of their thinking that this is sort of the through line. And it seemed to me that one of the things that would be important in appreciating actually the multiplicity of political currents across American history, across the Atlantic and across our own country, was in just seeing liberalism as one of a number. Certainly Manisha's book, reminds us of the really important democratic impulses that emerged during unexpectedly, during the Civil War era. I mean, I begin the book with a chapter called The Invention of the Liberal Tradition, because one of the points I wanna make is that although we'd like to talk about the liberal tradition as if it is deeply rooted in our past, that in fact historians didn't write about it at all until the post World War II and Cold War era.

[00:14:28.9] Steven Hahn: Some of them exalted in it, others like Hofstadter and Louis Harts were actually critical. But nonetheless, they argued that it was part of a consensus view of American history. And then I go back to the 17th century and as you say, come up to the near

present. And what I wanted to do is not to pick out the darkest periods in US history, which or American history even before the United States, but pick out those moments in the past that we tend to associate with the liberal tradition and interrogate them, in ways that I don't think they have adequately been interrogated and suggest the ways in which illiberalism coincided, predated, entangled, liberalism at many sort, at many points. And whether you're looking at the American Revolution Constitutional period, or whether, as you said, we're looking at neoliberals and illiberalism of the 1980s, '90s and, early parts of the 2000 or, the last chapter, which is on specters of race, war and replacement, that they involved characters that we would not ordinarily imagine as illiberal.

[00:15:49.6] Thomas Donnelly: Absolutely. Back to you, Manisha Sinha, we actually have a question from the audience here, an anonymous attendee who asked a methodological question and sort of said like, "In your research for the 'Rise and Fall of the Second Republic,' what primary sources or historical evidence did you find most compelling or surprising in shaping your understanding of this pivotal period in American history?"

[00:16:11.7] Manisha Sinha: That's a great question. I have taught this period of Reconstruction for a long time. I've taught many books on Reconstruction, including Steve's brilliant book, "A Nation Under Our Feet". And what struck me, and this is where I think our work overlaps a little bit here, is the presence of reactionary authoritarianism in American political history. And you can see this in Reconstruction because it's such a contested project right from the start. I mean, what Steve calls illiberalism, I call reactionary authoritarianism, in the South. And the sources that really struck out to me, the ones that I think are most compelling and that I'm familiar with, and most historians are of course the Freedmen's Bureau records, especially the records of outrages as they were known as that time.

[00:17:07.2] Manisha Sinha: And then of course, the 13 Volume Joint Committee of Congress that was investigating instances of domestic terrorism in the South. Those two, I think a lot of people refer to it, they refer to certain incidents, but I don't know whether we even mined them sufficiently. There have been many books just on these issues, starting with Ellen Trellis and recently with Kidada Williams. But, there's so much to be seen there. What shocked me was the utter barbarism of that kind of political violence. We are not talking about just assassinating people, which happened with African-Americans and white Republican allies, but really instances of torture, which led Robert Elliot, the congressman from South Carolina to say, "Pray who is the barbarian here." And I think as Steve defines illiberalism as the use of political violence to sort of get your will, and you can really see that as a very apt case study when you look at Reconstruction in the South and the way it's brutally overthrown.

[00:18:19.4] Thomas Donnelly: Absolutely. And I mean, I'm gonna skew our conversation now, squarely into the Second American Republic and both its rise and especially its fall. I wanna unwind it. It sort of to tee up that transition though, Steve, you have these wonderful chapters that are on sort of the founding and into Jacksonian America. And I wonder if there are any strands that you'd wanna pull out that help sort of feed into the conversation we're gonna have about the Second American Republic? Any key strands of illiberalism that you think are important to contextualize that conversation?

[00:18:56.0] Steven Hahn: Well, let me just mention a number of things. One of the things I think we overlook in terms of American political cultures anti-Catholicism, which was very, very powerful and was very much part of the kind of republicanism, that was embraced. Along with that is not only an attachment to monarchy and other forms of hierarchical authority. I was very interested in reading, not only the federalists, but the anti-federalists. Who were oftentimes seen as advocates of local democracy, which in part they were, and they rejected the Constitution because of their fears about the centralization of power. But in fact, in many cases, they were interested in maintaining local power and the local hierarchies that that power involved.

[00:19:54.1] Steven Hahn: And so in some ways these, deeply rooted ideas of cultural homogeneity and certain kind and anti-Catholicism work were. I would say one of the things about the Jacksonian period, which I think links up very well with what Manisha was talking about, is I call it Chapter Tocqueville Lincoln and the Expulsive 1830s.

[00:20:21.1] Steven Hahn: And to remind, readers that Jacksonian democracy wasn't accompanied by and reinforced by the expulsions not simply of native people, which is best known and which was horrific, but expulsions of Catholics, of Mormons, of abolitionists, of black people and black communities, as kind of celebration of these expulsions, in many, many different contexts.

[00:20:55.9] Steven Hahn: This was also a period where not only Lincoln warned about the threat of mob violence overtaking the rule of law. But when Tocqueville warned about the dissent to tyranny, that he saw even in the midst of what he described as a pretty robust democratic culture, and his worries about how the associational, components of democratic life could easily veer. He said he'd never been in a country where there was less independence of mind than there was in the United States of this period. And politics in general was marked by especially in cities, but not only was marked by election day violence, by military cadences and the campaigns leading up to it.

[00:21:51.3] Steven Hahn: We know that state legislatures and Congress, often saw weapons being brandished, duals being challenges. So the kind of violence that erupts even, especially horrifically during Reconstruction is embedded, in American politics and political culture quite deeply.

[00:22:16.8] Thomas Donnelly: Thank you so much for that. Steven Hahn, and one thing for the audience here is one of the things, Steve's talking about there is Lincoln's Lyceum address, which if you wanna read a good excerpt of it, you could check it out at the National Constitution Center's Founder's Library, which it remains just an amazing meditation on the politics of the Jacksonian Era. Pivoting back to Manisha Sinha, one of the most fascinating parts of your book is the back half talking about the collapse of Reconstruction and the slow unwinding of it. But you also do in the front half capture the power, the transformational power of the height of Reconstruction as well. And in particular the central role that African-Americans play in that part of the story. You say in your book that the aspirations of the enslaved were foundational to the emancipation amendment, so the 13th Amendment, and the broader revision of the Constitution that began in 1865. Can you just talk a little bit more about the role of African-Americans in this

moment of constitutional creation of landmark statutes, and then also how that feeds very practically into our first real massive experiment in multiracial democracy in America?

[00:23:28.6] Manisha Sinha: Yes. So, I have an entire section called Grassroots Reconstruction, where I really wanted to see how freed people on the ground are influencing Reconstruction. We normally think of Reconstruction as these amendments and laws that are passed in Washington, which of course it was, but we need to see some of the impetus coming from freed people themselves. So one the first petitions to impeach Andrew Johnson comes from a group of freed people in Savannah, Georgia, in 1865. And this is even before Congress, is passing the Civil Rights Act and the Freedmen's Bureau trying to renew the Freedmen's Bureau Act, and having Johnson veto those two. So freed people are pretty astute in terms of recognizing the lay of the land and understanding that with despite all its flaws, an agency like the Freedmen's Bureau can also be remade by them.

[00:24:27.0] Manisha Sinha: In the sense of it's not just an agency that is a kind of a representation of northern visions of Reconstruction, but it is also, of course, a representation of what freed people are demanding their freedom claims, their insistence on reporting all the terror that is being meted out against them. That was not initially the charge of the Freedmen's Bureau, which was gonna just look at, oversee the transition from slavery to freedom. And so for me, it was important to look at those actions, even the experiments in land redistribution, which is often portrayed as one of the failures of Reconstruction.

[00:25:11.7] Manisha Sinha: The fact that Stevens and other radical Republicans vision of breaking up the plantation economy in the South doesn't come to pass. But if you look during the Civil War, there are all these experiments with land redistribution through the Freedmen's Bureau, whether it's abandoned or confiscated lands. Now, of course, Johnson reverses quite a bit of those, but I think it was still important for me to look at the vision that Southern black people had of democracy, not just in terms of personal rights or civil rights and political rights, or even land redistribution, but also their vision of social democracy.

[00:25:51.8] Manisha Sinha: Their notion that the government is responsible for the welfare of its most vulnerable citizens, especially those who had already proved their loyalty to the union, unlike their former enslavers. So just tracing that process out on the grassroots, even in the question of women's rights where we do not look at freed women at all, or their struggles, or at the constitutional conventions, Reconstruction, constitutional conventions where many issues of women's rights pop up, that's another source I would recommend. Just it's makes for tedious reading, but just reading the minutes of all those state constitutional conventions can sometimes yield surprising results.

[00:26:33.4] Manisha Sinha: And that is the reason why I wanted to think of Reconstruction as a two-way process. It's not just as we think of emancipation, as not just, a gift handed to black people, but we look at the ways in which African Americans enacted their own freedom and push the process for abolition and later on for black rights forward. And the reason why this is so important, of course, is it's pushing at the boundaries of American democracy and what was understood as the basic precepts of American republicanism.

[00:27:09.0] Manisha Sinha: So there's no gain saying the fact that, that moment of achievement is something that we do need to look at. There's a lot of work recently that has said that this radical Reconstruction was not that radical that it operated within certain parameters. But from the perspective of freed people, they were conducting their own grassroots experiments in Reconstruction that I think it's important for us to look at because a lot of those ideas come back up with the populace, with the Knights of Labor, the American Socialists during the progressive era, New Deal.

[00:27:47.4] Manisha Sinha: These don't die out. So Reconstruction and its discontent is an important idea, I think, for us to think about in terms of its political legacies. One of your questions was asking about Grant and the Enforcement Acts in South Carolina to stamp down the Ku Klux Klan. And yes, the Department of Justice is formed in 1870. The Enforcement Acts, which are now being evoked against political violence were passed at that point. And I think it's important to trace some of those political legacies, how anti-big government rhetoric, or what we call today political conservatism that is born during Reconstruction, more expansive notions of government's role in society and economy in terms of correcting disparities. Those ideas are being debated during Reconstruction, and we still live with some of those ideas in terms of our political traditions.

[00:28:49.5] Steven Hahn: Well I would just add to that it seems to me that the Reconstruction story reminds us that over the course of American history those people who have been committed to the most expansive ideas about rights and about democracy have been those who historically have been denied them. And in some ways we need to recognize that insofar as we do value the idea of widespread civil and political rights and the aspiration for democracy, they're the ones we have to thank 'cause they have fought for it, not only in the middle of the 19th century and help bring about our great revolution, but continue and continue to fight for it to the present day.

[00:29:44.9] Thomas Donnelly: Thank you for that addition there, Steve. That was a great expansion on what Manisha was saying. And Manisha, thank you so much for bringing in Carol Patterson's question in your response there. It was a great one about Grant and Enforcement. Back to you Steve Hahn. We've talked a bit now about the achievements of the Second Republic and the height of Reconstruction, but of course, you explore currents of illiberalism in post-Civil War America in your book, one of them being if one of the great achievements of Reconstruction is the 13th amendment and emancipation, you offer some thoughts on the exceptions clause to the 13th Amendment and its importance. So can you talk a little bit about that?

[00:30:21.7] Steven Hahn: Yeah I can thank you for the question. There's been a lot of interest in what we call the exception clause in the 13th Amendment, which did not get very much notice until fairly recently owing to the issue of mass incarceration, which is neither slavery nor involuntary servitude, comma, except as a punishment for crime or if the party shall be duly convicted, and so on. And there's been a lot of focus on this as part of the rollout for what becomes the convict lease system in the post Civil War period. But I think it's important to recognize that convict labor was widespread in penitentiaries in the northeast and middle Atlantic and Midwest well before the Civil War. And among the architects of the penitentiary and its use of convict labor and acceptance of corporal punishment were people who were

abolitionists and in the anti-slavery movement. And that their concerns about disorder were such that even in the post emancipation period, they were advocates of vagrancy laws.

[00:31:40.3] Steven Hahn: Not in the South, but in cities of the North as the wage labor population grew. One of the things that really interested me and that I teach is Benjamin Rush. Benjamin Rush was an important politician, scientist, physician in the revolutionary and constitutional period. And he wrote very powerful essays against slavery where he called slave keeping and against the death penalty, against more traditional forms of punishment. But he also was one of the architects of the penitentiary system. And one of the things you can see is that when he wrote his critique of slave keeping, he talked about the need for gradual emancipation, which became the way forward before the Civil War and could well have been the way in which slavery was abolished had the Civil War ended up any differently.

[00:32:46.1] Steven Hahn: But he was clearly concerned, although he did not regard African-Americans as inferior to white people as Thomas Jefferson did. Nonetheless, he thought that the stains of slavery would create disorder when emancipation took place. And so he wanted enslaved people to remain in the condition of enslavement. He wanted their children to be gradually transitioned to a status of freedom. And it, I think, helps us understand why on the one hand, this kind of humanitarian orientation that marked the advent of penitentiaries, it was rehabilitation, not simply corporal punishment, nonetheless, didn't have a very good way of answering what happens when disorder ensues, what happens when rehabilitation is not accomplished. So I did wanna talk about, again, how people we associate with the liberal and humanitarian threads and impulses of the period also were very vulnerable to the illiberal entanglements that came along with them.

[00:34:06.5] Manisha Sinha: I would add to that, Steve's absolutely right. There were many antislavery reformers who wanted to do away with what they saw as medieval forms of punishment and torture. It's a reason why we have in our Constitution the injunction against cruel and unusual punishment, which was briefly used against the death penalty until it was overturned. And there were a lot of antislavery reformers who went to orphans, asylums, prisons, thinking of it as socially rational ways of dealing with societal problems. Interestingly, the Reconstruction governments in the South are the first ones to actually have these institutions in the South in a wide scale.

[00:34:48.7] Steven Hahn: And convict lease.

[00:34:50.3] Manisha Sinha: And exactly, they have social, orphans, orphanages, asylums, schools. The South does not have a public school system before that. But of course, there were radical abolitionists who were rather critical of this too. I mean, Garrison is kind of interesting 'cause he's always seen as so sort of way to the left, but he was not only critical of the death penalty and its differential application against black people in the North, but he talked about, he said, "Why are the prisons in Massachusetts overwhelmingly black when their population is so little in our state?" So he's already raising those questions in the antebellum period in the North, which I thought was interesting. And the system that Steve referred to, the convict lease labor system, and I think this is where I would pay more emphasis to our present-day problems of mass incarceration, is the massive criminalization of black freedom by many of these Southern

states that take these incipient systems, but you did have convict lease labor in Kentucky and some other states before the Civil War, but they expanded greatly. It becomes this awful, people have written about it, worse than slavery, slavery by another name, etcetera. And it's not as if the criminal exception in the 13th Amendment was somehow conspiratorially put in by the people who wrote it, like Lyman Trumbull, etcetera.

[00:36:20.4] Manisha Sinha: They were just using the common criminal exception in giving up rights that was there in the Northwest Ordinance and in other English common law. But of course, Southerners take this and they weaponize it, and you have this massive explosion of the convict lease labor system. But what's more important, I think, is what people have been talking about recently, which is when you criminalize black freedom, right, it's easy to get around the 13th Amendment and emancipation by incarcerating people in large numbers for either imaginary or slight crimes.

[00:36:58.8] Manisha Sinha: And that differential in law enforcement, of course, you know, we are still hounded by it. You can see this also in the Fugitive Slave Laws that were passed, federal Fugitive Slave Laws that basically criminalized black freedom, that any free black man in the North was a suspected fugitive.

[00:37:20.3] Steven Hahn: I would say that it's important for us to see mass incarceration of the late 20th century as a distinctive phenomenon. Nonetheless, everywhere you look before the Civil War in the Northern states, penitentiaries were dominated by the forced labor of inmates, usually organized by private concerns. They generally brought their equipment inside the penitentiary and was worked there. And as Manisha said the inmate population was disproportionately black and disproportionately immigrant and poor, which again helps us understand.

[00:38:10.0] Steven Hahn: But later on, it's not insignificant that as mass incarceration was dramatically expanding, it was liberals like Bill Clinton who signed his crime bill, signed his welfare reform bill, and regarded mass incarceration, or I would see it as a form of expulsion, as a way to deal with the disorder that was taking place. So again Reconstruction's in the middle of this, and it shows both the enormous, incredible possibilities. That existed and where the impulses for those possibilities are coming from, as well as, I think, as Manisha puts it we're wrong to think about the failure of Reconstruction. It's more important to recognize the repression of what Reconstruction represented.

[00:39:12.7] Thomas Donnelly: Thank you for that, Steve and Manisha. And Manisha, returning to you, I'd like to at least talk a bit about what you describe as the complex and multifaceted collapse of Reconstruction. You describe it, you use the descriptor the American Thermidor, to describe this and you date it as early as 1870, its beginning. So that's the year we're ratifying the 15th Amendment, trying to end racial discrimination in voting. You're saying the Thermidor begins there and extends all the way into the 1890s. Can you just talk a little bit about sort of that slow unwinding, some of the either the big themes or sort of the key milestones we see along that path?

[00:39:54.6] Manisha Sinha: Yes, one of the reasons why I begin the American Thermidor part in 1870 is because the first Reconstruction government in the South falls in 1870 in Alabama. And then gradually many fall and by 1876, you only have Louisiana, Florida and South Carolina with their Reconstruction governments. So we have to look at the period even before 1877 and to really understand how brief and contested Reconstruction was. I mean, if you think about it, the Reconstruction Acts are only passed in 1867, 1868. And then suddenly by 1870 already there's this massive reaction. And it's a full fledged political reaction that employs both domestic terror in terms of the KKK.

[00:40:47.7] Manisha Sinha: The red shirts, the white league, the white liners that act as the militant wing of the Democratic Party at that time. And you also have political maneuvers, right? Taxpayers conventions, the charge of corruption simply because this anti-big government rhetoric, there's a political reaction. So the legitimacy of these Reconstruction governments are being challenged the moment they are being born. Who is a voter? Who gets to be a citizen? Who gets to hold office? Even at the height of black office holding, you have all these things being tested. And it's not as if African-Americans and their white allies are not fighting back. They are. And the 1870s, for me, is kind of an interesting period, because this is also the industrial takeoff of the United States. And between 1870, 1920, this massive immigration, immigrant labor, not only from Southern and Eastern Europe, but also from Asia, from Mexico, from Latin America. We normally don't look at those areas, but you have the rights of contract labor, other kinds of unfree labor in the West. So we are really getting a moment where even emancipation is being contested and Congress has to pass new peonage laws.

[00:42:04.8] Manisha Sinha: There are those who are designated as peons or contract labor who are suing for their freedom. So Reconstruction is being felt all over the country. And the panic of 1873 and the second administration, the second term of Grant's administration, is really the moment when all this starts unraveling. And the threat comes not just from white Democrats who are completely against the project of Reconstruction from the moment go, but also from Republicans. There's a group, a breakaway group called the Liberal Republicans, not liberal as we understand it today, modern liberalism or social democracy. They're liberals in the classical set, laissez-faire liberals. They're against government in any form.

[00:42:53.4] Manisha Sinha: Intervening during Reconstruction, they're against government intervening in the North in terms of regulating the economy, child labor, etcetera. And so these people, they actually join up with the Democrats to oppose Grant for his second election. And even though they lose and they cease to exist as a party, they come to take over the Republican Party completely. So by the time you get to William McKinley, this project of, we are no longer the party of anti-slavery. We are the party of big business. The 14th Amendment's protections for freed people being used to protect railroad corporations. That idea becomes dominant in the Republican Party. So the retreat from Reconstruction is multifaceted. It's not just over the issue of black rights, which is seen as horrific and unimaginable to a lot of people who simply cannot accept the results of the Civil War.

[00:43:50.3] Manisha Sinha: And that is why I find any statues that commemorate Confederate generals highly objectionable, or schools named after them. One of your questions had asked that. And why I see this period, starting from the 1877, but going on, especially to the 1890s, the

height of lynching, convict lease labor, racial terror, massacres, etcetera as the nadir in American democracy. This is not a period where the United States is so much a shining city on a hill because you could see racial apartheid and its brutality in the South sort of inspiring right-wing forces including fascists in Europe who are looking at genocidal warfare against Native Americans of the West who are looking at this very strict system of racial segregation in the South seeing it as the way to go.

[00:44:44.3] Steven Hahn: Well, can I just jump in for a minute? One of the things it is nonetheless important to recognize, and I think Manisha's insistence on a kind of different chronology is important, is that the democratic projects that we associate with Reconstruction did not end all end in the 1870s. In many parts of the South, especially in areas where there was not a robust Reconstruction, Texas, Virginia, there is a real important pulses of democratic activity in the 1870s and into the 1880s. We also have to remind ourselves that labor radicalism of the 1880s and populism in the 1890s, tried to take that democratic project further. And that in some ways we have a better idea of understanding the way in which northern and southern elites kind of joined hands in a the task of repression, precisely because the labor question was staring all of them in the face and the prospect of a different kind of political economy, a different kind of democracy, a form of social democracy endures.

[00:46:13.4] Steven Hahn: And if you think about white southerners, they often think about the end of Reconstruction coming with disfranchisement in the late 1890s and the early first decade of the 20th century. So again it, raises the question of what is a good chronology of Reconstruction? I think Manisha takes it further, and that should be part of our discussion and debate too. But we need to remind ourselves that there's a pretty long a sort of thread, of democratic struggle that is going on even past what we ordinarily see as the period of Reconstruction.

[00:47:00.1] Manisha Sinha: Yeah, I would like to reiterate that point because, Steve is absolutely right. In Virginia and in North Carolina particularly, you have these fusion governments with white populace and black Republicans in the 1890s, even in Tennessee and sometimes even in the deep South states at the local level, the populace are presenting a real challenge to reviving some of those notions of state activism. They even want the recollections of the president, which was a good idea. And that sub treasury plan, which is a plan that where the government would basically give credit directly to farmers to bypass middlemen, especially bankers and railroads. And I think there was, again, if you look at the way white elites in the South react, it's through sheer terror and violence. So look at the Wilmington Massacre of 1898. I mean, it replicates so, because they see it as a real threat because these guys politically are really, and I'm thinking back to Steve's first book.

[00:48:05.9] Steven Hahn: I end "Illiberal America" with a really dramatic local case in a county in Texas where a more than two decade experience of biracial politics that managed to endure all sorts of efforts to undermine them even when they were populous at one point, even when the Populist party went down to defeat nationally and even in the state of Texas they endured and it only ended when the White Man's Union was organized in 1900, and they gunned down the whole Populous leadership beginning with the black leaders. So I think it goes with

Manisha's idea about the fall of the Second Republic, and it was a fall and it was a crushing and that's important for us to recognize.

[00:49:00.1] Thomas Donnelly: Thank you so much for that, Steve and Manisha. One thing I do wanna make sure that we bring in before the end here Manisha Sinha is your fascinating chapter on The Conquest of the West and how that part of the story fits in to the broader story of Reconstruction you're telling from 1860 to 1920. Can you talk a little bit about that and the relationship between what we're, what we find in the slow collapse of Southern Reconstruction and sort of the rise of, I mean, whatever you wanna call, a Reconstruction of the West or however you wanna characterize it, or conquest of the West as you do.

[00:49:36.4] Manisha Sinha: Yes. Just as I say that reconstruction history is women's history. We can't afford to ignore Native American and western history while talking about the history of Reconstruction. And Western historians have come up with this notion of the greater Reconstruction where they talk about the expansion of the nation state, the Reconstruction of the South, and the Reconstruction of the West as similar processes, a consolidation of the nation state. And they want to go right back to the Mexican war and end in 1877 in this sort of greater Reconstruction of the West. I disagree a little bit with that thesis. I think it's important to look at that, but I argue in my book that if you look at dispossession, then you would have to begin with the founding of the First American Republic, which is pretty much founded on the dispossession of Native Americans.

[00:50:27.2] Manisha Sinha: That can't be the criteria. What I was really interested in is looking at the Indian wars in the West, and what struck me, especially with my own education growing up in India, is how much they smacked of colonial warfare. This was no Lincoln's code, no inquiries into massacres, etcetera, that happened during the Civil War. This is brutal warfare against even the civilian population, very much like colonial warfare. So there are historians who see the Indian wars as merely an extension of the Civil War. I say these are very different political projects and I look at the conquest of the West more in the sense of the unwinding of southern Reconstruction. Because it is true that the very same Union Army regiments, the 7th Cavalry, for instance, being used to re-enforce black rights in the South, are precisely the ones that are being sent first to fire at strikers, but also to fight these Indian wars. And that it's really in the late 19th century, not just with the Dawes Act which subdivides Indian land into homesteads and results in a massive dispossession, but also just in terms of the violence against these Indian nations, the warfare against Indians.

[00:51:49.8] Manisha Sinha: That dispossession actually, increases rapidly, well after 1877, it's really in the 1890s, or even if you look at something as iconic as the Wounded Knee Massacre, I talk of many other massacres. And what struck me was this kind of colonial project of not just conquering these lands, and dispossessing Native Americans, but also a forcible assimilation, which was very common by European colonial paths in Asia and Africa at the same time, this is the height of European imperialism, the scramble for Africa. So I saw it more through those lands. And I also saw it as a sort of stepping off point for American warfare, in the Pacific, with the 1898 Spanish Cuban American War with the acquisition or the annexation of Hawaii and Puerto Rico, the colonization of the Philippines. What struck me were not the Civil War generals who are not there much.

[00:52:49.8] Manisha Sinha: Though Sherman does go to England to learn rules of colonial warfare before he comes back to head the Department of Missouri. But Sherman and Sheridan interested me less. There are others like Nelson Miles, etcetera, who see warfare in the West and who earn their spurs there. Then they're the ones who end up in Puerto Rico, in Philippines, in Cuba, because they're adept at this kind of colonial warfare. And the fact that the United States Supreme Court then actually issues these insular decisions that says, "These conquered territories are outside the purview of the 14th Amendment, outside the citizenship rights of the 14th Amendment" was important for me too. Because suddenly you have this colonial relationship where the plenary powers of the federal government unrestrained by the US Constitution are then being exercised in these areas.

[00:53:47.8] Steven Hahn: Well, one of the things I would say as somebody who is a little more sympathetic to looking at the West and South as a part of a larger Reconstruction project, is to remember that the South, the post Civil War South was oftentimes viewed as a kind of economic colony of the Northeast. There was clearly an idea. There was martial law, that was imposed the expansion of federal power there and in the West in different ways. But I think Manisha is right. I think, looking at the West in this period is a colonial project, and in many ways, so is the south, and it is a springboard, because the soldiers who were in fighting Indian wars in the west end up in the Philippines with people like Nelson Miles, who also spend time putting down labor unrest in the early 1890s, in the United States.

[00:54:49.7] Thomas Donnelly: Excellent. And Steve, one other, part of the western story that both you and Manisha focus on, is also just, and it connects to your story of Illiberalism, is this strain of anti-Chinese sentiment throughout so many states, especially out West. You too talk a bit about the policies that emerge from that sentiment and also just the violence that we see during this period.

[00:55:11.8] Steven Hahn: Right. Well, I mean, this is again, part of the story of this, the 19th century going back into the early period, the marking of Chinese men mostly, but women to some extent. As over the borderline of humanity and decency, and therefore subject to whatever sort of retribution might be meted out to them. Anti-Chinese violence is just horrific in the latter half of the 19th century, both before and after the Chinese Exclusion Act of the early 1880s. And this is, it's important for us to recognize that anti-Chinese sentiment and violence it has a bipartisan character to it. And even, it crosses over people like Henry George who, in other ways, is an important exponent of the anti-monopoly, tradition and of labor radicalism was himself an advocate of Chinese exclusion and hostility. So I think that's really an important thread that runs through a lot of US history. I mean, Chinese were not Christian. They were not white people. They were from a area of the world that was not known, in so many ways they kind of fit into the cross hairs of illiberalism both at the grassroots and at the top.

[00:56:51.8] Manisha Sinha: Yeah, that's one of the tragedies of the labor movement in the West is how much they buy the Workingman's party, right. That buys into a lot of this anti-Chinese sentiment, and it's under the guise of Coolie labor undermining the wages of "Native American labor."

[00:57:07.6] Steven Hahn: Right. It's using anti-slavery rhetoric.

[00:57:09.9] Manisha Sinha: Exactly. I mean, it begins as kind of a democratic project in California, but is quickly co-opted by the Republicans. And you get the Chinese Exclusion Act. But I see this all as part of this sort of imperial framework of seeing the Chinese as so foreign and unassimilable that, there was even the progressives of that time found it difficult. And I think that's one of the tragedies of the fall of Reconstruction. You see it in the suffrage movement. You see it in the labor movement. You see it in the progressive movement itself, is that once that project of the interracial democracy is gone, the language that even progressives are sometimes using are racially exclusionary and loaded. And that I think is one of the biggest tragedies of the overthrow of American Reconstruction.

[00:58:00.4] Thomas Donnelly: Thank you for that, Manisha. Maybe one final question, to you, Manisha Sinha, and to end on, the same note you end your book on, which is the idea of the 19th Amendment as the last Reconstruction Amendment. Can you talk a little bit about your choice there and why, that's where you decided to end the story of the rise and then fall of the Second American Republic?

[00:58:22.2] Manisha Sinha: Yes, I wanted to explore this idea of progressive constitutionalism. There are a number of questions that you've gotten from your audience about the constitution, the role of the constitution, and we are all worried today about, what are some of the fixes that we can put that would prevent, for instance, the tyranny of a minority. You had a strong constitutional thought going right back to Calhoun that talked about citizenship as an exclusionary idea.

[00:58:51.0] Manisha Sinha: And what's interesting about Reconstruction is this notion that you can amend the constitution. Of course, it was easy to do that because much of the southern states were not part of the union when the 13th, 14th, and 15th Amendments are passed. In fact, the 14th Amendment is a condition of their readmission into the union. And I think it's one of the reasons why a lot of conservatives still today question the constitutionality, believe it or not, of the 14th Amendment. So I think this idea of progressive constitutionalism was an important legacy of Reconstruction is what the suffragists ran with.

[00:59:26.5] Manisha Sinha: Initially, the idea was to have a 16th Amendment that would give women the right to vote. Unfortunately, the suffrage movement does divide over the issue of the 15th Amendment. A lot of suffragists, especially Stanton and Antony in a more expedient way, are pretty elitist. And Stanton clearly says, "why should I, not an educated daughter of the Republic, have the right to vote when you're giving the right to vote to Sambo, which is freed people, Young Tung, by which she means Chinese immigrant men, Patrick, by which she means Irish immigrant men, and Hans, German immigrant men. These men who are not educated in the traditions of American republicanism are getting the right to vote, and I am not." And that elitism like feeds into kind of a racism within the suffrage movement, especially when Southern white women start joining them, and they started having segregated conventions, and they start sidelining black suffragists and their concerns about racial violence.

[01:00:30.2] Manisha Sinha: And this is a tragedy for American feminism, that the old intersectional vision of the American abolitionist feminists, who always interconnected black and women's rights, is kind of gone until the social feminists like Jane Addams, etcetera, bring it up. And so I wanted to tell that story because it's a story about American democracy and constitutionalism stemming from Reconstruction, but also thinking about feminist notions of the state, notions of gender democracy. Those things are also important for us today. Also, the controversy over introducing the word male into the US Constitution with the 14th Amendment, that suffragists like Stanton said that, "once you have that, it's not gonna go away for another hundred years." And that is an important part of the story of American democracy. It's not usually told I think in a way that combines all these trains.

[01:01:33.9] Manisha Sinha: You have all these wonderful books on women's history and the 19th Amendment, its achievements and its shortfalls, 'cause of course it excludes black women who've been disfranchised along with black men until the Voting Rights Act of 1965. But it's still an important stepping stone, in the expansion of American democracy. And I try to tell that complicated story with the 19th Amendment. It somehow seemed like a fitting way to end the book.

[01:02:02.3] Thomas Donnelly: Thank you so much for that. And sadly, we are at the end of our time. I feel like we've only just gotten into so much of the rich content in both of your books. But Manisha Sinha, Steve Hahn, thank you so much for this illuminating discussion.

[01:02:16.2] Steven Hahn: Thank you, Tom.

[01:02:17.4] Manisha Sinha: Thank you.

[01:02:28.6] Jeffrey Rosen: Today's episode was produced by Lana Ulrich, Tanayer Tauber, Samson Mostashari, and Bill Pollock. It was engineered by Greg Sheckler and Bill Pollock. Research was provided by Samson Mostashari, Cooper Smith, and Yara Daraiseh.

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[01:03:21.7] Jeffrey Rosen: Hope everyone's having a good summer. And on behalf of the National Constitution Center, I'm Jeffrey Rosen.