

## Defining the Political Community of the Nineteenth Amendment

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According to John Locke, men are free in a state of nature, but this freedom is divested when man consents to become part of a political community, governed by the consent of the majority, in exchange for the peace and security of their property. In turn, the legislative power of the community includes the authority to use the coercive power of the state to protect it from incursions by outsiders. For Locke, the right to exclude—and in doing so protect the property interests and rights of the insiders—is, by definition, part and parcel of the commonwealth's coercive authority.

The question of who should be entitled to vote as a bona fide member of this political community is intimately connected to identifying the “majority” empowered to deploy the coercive authority of the state. The Founders, through our governing documents, created the political community of “We the People,” the sovereign entity that holds political power translated through the medium of representative government, built on Lockean views about the role and purpose of political community. As voting rights became more inclusive over time, however, the march towards universal white male suffrage represented a full-on assault on the Founders' communitarian based view that initially justified the exclusion of various groups from this community. While the civic republicanism at the heart of the Revolution would survive the Civil War, Reconstruction is an important chapter in how republicanism, citizenship and voting emerged redefined for a new era.

Section 2 of Fourteenth Amendment, in particular, allows Congress to reduce a state's delegation in the House by removing male citizens over twenty-one years of age from the basis of population used to determine apportionment of representatives if their right to vote is abridged or denied. This provision formerly recognized the political existence of African-Americans, a group denied such recognition even with the abolition of slavery. Once black men were deemed part of the political community entitled to vote in both state and federal elections, states could not abridge or deny their right to vote without creating a government that was non-republican in form, triggering the penalty of reduced representation. Unfortunately, Section 2's explicit refusal to penalize states for disenfranchising similarly situated women illustrated that “We the People” would not reach its full potential in the post-Civil War political order.

While the Supreme Court considered women to be citizens despite their disenfranchisement, the Nineteenth Amendment brought them within the political community defined by Section 2 of the Fourteenth Amendment – a community that conferred upon them a political identity, thereby entitling them to be a holder of rights. The Nineteenth Amendment erased the word “male” from the text of Section 2, a change that was actually more consistent with Lockean notions of political community than the biracial, but still male dominated, political regime that emerged out of the ashes of the Civil War. The eradication of gender distinctions also altered the scope of laws that could “abridge or deny” the right to vote, triggering both Section 2's penalty and Congress's remedial authority under Section 5 of the Fourteenth Amendment. This framework made it difficult to maintain the distance between citizenship and voting that had been integral to maintaining a narrowly defined electorate during the Antebellum era.

Nevertheless, the continued disenfranchisement of some white women and virtually all African-American women post-Nineteenth Amendment, through both legal and extra-legal means, significantly complicated this narrative. The Nineteenth Amendment, despite its text, did not fully reject antebellum notions of citizenship and community, which were based primarily on the community's right to exclude. These failures, both in conception and in enforcement, created conflict with Section 2, which sought to protect republican government by limiting the community's ability to exclude those entitled to exercise political power. The ratification of the Nineteenth Amendment is an important tributary in the story of voting rights in America because it brought America closer to a more pure version of "We the People." But, when considered in light of Section 2 of the Fourteenth Amendment, its ratification also required Americans to create an affirmative vision of the political community that the Nineteenth Amendment would require (rather than simply identifying what it prohibits), an oversight that impacts modern conceptions of voting, representation, and federalism.