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Voting Restrictions Facilitated Jim Crow Segregation and Exacerbated Extralegal Violence

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Gilded Age constitutional voting restrictions created by southern Redeemer governments following Reconstruction virtually eliminated the black right to vote in those states, part of a three-pronged strategy to reimpose racial control that included restricting voting, segregating public accommodations, and reimposing a version of slavery through the convict-lease system. Those voting restrictions were the most significant of the three, as they made Jim Crow segregation laws possible by eliminating the principal voting bloc against them and offered no compensatory benefits, such as a reprieve from racist violence. Electioneering efforts were actually intended to mitigate the need for racist violence, but instead encouraged its proliferation. Black southerners, however, were still able to fight through such restrictions to both vote and serve in public office.

Restricting African American Voting

During Reconstruction, after the adoption of the Reconstruction Acts of 1867 and the subsequent Fifteenth Amendment to the U.S. Constitution three years later—which outlawed voting restrictions on the basis of race, color, or previous condition of servitude—as many as 1,500 black public officials served in federal, state, and local offices in and from states of the former Confederacy. After the Compromise of 1877 ended Reconstruction, white leaders sought to purge their governments and voting rolls of the black political presence. The violence of independent mobs and more organized groups like the Ku Klux Klan helped mitigate that presence while Reconstruction progressed, but after its conclusion the most important item on the white southern agenda was to get around the Fifteenth Amendment without having to resort to violence. Violence would always be a part of southern elections, of course, but whites wanted to ensure that they could minimize if not completely eliminate the black right to vote by exploiting legal loopholes rather than resorting to extralegal means, which had prompted a series of Enforcement Acts in 1870 and 1871 designed to extend federal jurisdiction to police southern violence and erode the region's sainted belief in state's rights.[1]

Their methods were multifold, but they all occurred, unlike Jim Crow segregation statutes, through clauses or amendments in state constitutions, following a model outlined in Mississippi in 1875 and enacted throughout the South over the following two decades. The Mississippi Plan, as it became known, intended such amendments to serve as the bedrock of all the additional Jim Crow legislation that would follow. In Mississippi's constitutional convention of 1890, wherein the state enshrined such restrictions, convention president S. S. Calhoun announced to the delegates, "We came here to exclude the Negro" from the political process. In Louisiana's constitutional convention of 1898, convention president E. B. Kruttschnitt opened the 1898 proceedings by reminding delegates that "this convention has been called together by the people of the State to eliminate from the electorate the mass of corrupt and illiterate voters who have during the last quarter of a century degraded a politics." In closing the convention, he praised delegates for perpetuating "the supremacy of the Anglo-Saxon race in Louisiana." [2]

Perhaps the most common of these methods was the literacy test, requiring in various ways that potential voters be able to read and pass a series of complicated tests to prove it. South Carolina, for example, passed the Eight Box Law in 1882. It required voters to deposit separate ballots for separate election races in the proper ballot box. Illiterate voters couldn't identify the boxes without white election officials helping them. And of course those officials were only really willing to help the illiterate white voters. Other states had other methods for voters to demonstrate "literacy," arguing disingenuously that good governance stemmed from an educated electorate. Such tests would have a substantial impact on a population that was, according to Martin J. Kousser, between 40% and 60% illiterate, as opposed to a white population that was less than 20% illiterate. They were laws designed to disfranchise, to take black citizens' political power to remove roadblocks to other forms of social control.[3]

Another common method of constitutional voting restriction was the property qualification, a restriction that dated to the

earliest colonial legislatures and the first state constitutions following the American Revolution and that was defended by the argument that only those with a landed stake in the success of the state should be allowed to shape its future. Louisiana required at least \$300 of property to register. Mississippi's property qualification clause, combined with other elements of a comprehensive voting restriction strategy, made only 9,000 black voting-age citizens, out of a total of 147,000, eligible to register. The case for property qualifications drew on the long history of the mandate and the claim that those who owned land had a greater vested interest in the success of the state, but the rarity of black property owners—as demonstrated by the sparse numbers in Mississippi (a state with a black majority)—demonstrated that the real intent of such qualifications was to take the vote, and thus the ability for political self defense, from black citizens.[4]

The other dominant constitutional voting restriction was the poll tax, requiring a fee for the privilege of voting. First passed by the Georgia legislature in 1877, proof of payment would become requisite prior to registering to vote in every former Confederate state under the pretext of generating revenue for governments without comprehensive taxation policies. With money scarce in an economically devastated region whose economy had yet to recover from its total overhaul after the end of slavery, Kousser estimates that the poll tax in Georgia reduced voter turnout in the state by as much as 28% and black turnout by as much as 50%. Such was precisely what the tax was designed to accomplish, the claim of needed state revenue belied by the fact that neither Georgia nor any of its former Confederate counterparts prosecuted a single case for failure to pay the tax.[5]

Such constitutional provisions were insidious and ensured that black voters would be disenfranchised, and none of them ever mentioned "race, color, or previous condition of servitude," following the mandate of the Fifteenth Amendment. That being the case, the biggest problem with such electioneering laws was that there were millions of poor white southerners who didn't own property, who couldn't afford a poll tax, and who couldn't read. While Georgia's poll tax, for example, eliminated half of the state's black voting turnout, it also eliminated between 16% and 28% of white turnout. Some states, like Georgia, chose to accept the disenfranchisement of white voters, fearing the power of the white working class over and against the wealthy who created such laws.[6] Other white leaders chose to see poor white voters as their allies, creating provisions to exempt white voters from various disenfranchisement laws. Alabama, for example, exempted "all who are of good character and understand the duties and obligations of citizenship," which generally left registration decisions up to local white registrars. Louisiana passed a grandfather clause in 1898 that stipulated that only men who had been eligible to vote before 1867, or whose father or grandfather had been eligible before 1867, would be qualified to register. The law combined with other restrictions to help disenfranchise black citizens and protect poor, illiterate white voters. In the 1896 election in Louisiana, for example, 130,000 black men voted. In 1904, after the state's grandfather clause and other voting restrictions became law, 1,342 voted.[7]

And these laws would be codified by the Supreme Court. In 1898, in *Williams v. Mississippi*, the Court upheld state constitutional disenfranchisement clauses, arguing they did not discriminate "on their face" against blacks, that they did technically adhere to the limited dictates of the Fifteenth Amendment.[8]

Buoyed by that validation, in 1902 Mississippi would create an additional method of restricting black voting—the white primary—and its fellow southern states would soon follow suit. While public elections fell under the auspices of the Fifteenth Amendment, political parties were private entities and could restrict participation in their events to whomever they chose. And since southern states were dominated by the Democratic Party in an age of restrictions like poll taxes and literacy tests, the winner of the all-white Democratic primary was virtually assured of winning the general election, thus adding a further layer of white supremacist control to southern elections.[9]

Jim Crow Laws

The systematic elimination of the black right to vote in the South following Reconstruction, then, facilitated further outgrowths of white supremacy. It was also during these years, for example, that states began passing "Jim Crow" laws, mandating segregation in almost all public facilities. They were a rehabilitation of the states' earlier Black Codes that appeared at the immediate end of the Civil War, both efforts a systematic attempt to control black lives and bodies. That imperative for segregation would take over every facet of Southern life, but it began on railroads. Tennessee mandated segregation on railroad cars in 1881, and Florida in 1887. Louisiana took its turn in 1891, when it required segregated trains within the state with the Separate Car Act, a law that mandated separate train cars for white and black passengers. The law did mention that the cars had to be "equal but separate." [10]

The following year, a group of concerned Creole business leaders in New Orleans formed a citizens' committee and planned a

test case to challenge the law's constitutionality. To make the challenge, they chose Homer Plessy, a mixed race Creole who presented as white but who the state classified as an octoroon and thus unworthy of riding on white train cars. The test case proceeded on June 7, 1892, when Plessy was arrested in a planned breach of the Separate Car Act, ultimately making its way through the courts. This led to the Supreme Court's *Plessy v. Ferguson* (1896) decision, wherein the same Court that decided *Williams* validated segregation laws, Henry Billings Brown arguing, "Legislation is powerless to eradicate racial instincts or to abolish distinctions based on physical differences, and the attempt to do so can only result in accentuating the differences of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them on the same plane." [11]

With the sanction of the Supreme Court, southern states began segregating all aspects of public life, a phenomenon enabled by the state constitutional voting restrictions that kept white supremacists in power. That said, black citizens fought against those restrictions in the same way that they fought against segregation laws. In 1890, for example, there remained 14 black representatives in the Louisiana legislature, and they each made eloquent addresses condemning the Separate Car Act. They did so to no avail, but their continued service in the state legislature demonstrated that the black voting bloc remained substantial in Louisiana despite white retrenchment. (As mentioned above, the full elimination of black voting in Louisiana would not take place until 1898.) In Florida, more black public officials served in the quarter-century after the Compromise of 1877 than did during Reconstruction. Such realities demonstrate that while the disenfranchisement of the black population did allow for a resumption of white supremacist control and facilitated the creation of Jim Crow segregation, it was not monolithic, and black voters pushed back where possible to retain a measure of their dwindling citizenship. [12]

Racist Violence

The legal restriction of black voting originally seemed to mitigate the need for extralegal restrictions that dominated during Reconstruction—and thus the need for the federal presence in response to such violence—but it did not. In 1886, in Washington County, Texas, for example, masked Democrats tried to steal ballot boxes in a Republican precinct. Armed black men resisted and shot one of the white men, leading to eight black arrests and three retributive lynchings. The white assailants were acquitted, but the black man charged with firing the shotgun was sentenced to 25 years in prison. [13] In Phoenix, South Carolina in 1898, a white Republican candidate for Congress tried to convince black voters to fill out affidavits claiming they were denied the right to vote. White Democrats responded violently, shooting the candidate, then going on a rampage, killing an uncertain number of black men. [14] In the short period from April to October 1868, 1,081 political murders were committed in Louisiana alone, almost all of the victims former slaves. Such incidents then gave way to more formalized terrorism in the creation of paramilitary groups like the White League (founded in 1874) and the Red Shirts (founded in 1875), both active throughout the late 19th century. [15]

Meanwhile, in Wilmington, North Carolina, Alfred Moore Wadell, a former Confederate and U.S. congressman, vowed in a speech to "choke the Cape Fear [river] with carcasses." Alex Manly, the editor of the local black newspaper, the *Daily Record*, responded by writing an editorial condemning white men for the sexual exploitation of black women, while also suggesting that black men had sexual liaisons with white women. "Poor white men are careless in the matter of protecting their women, especially on the farms," he wrote. "Tell your men that it is no worse for a black man to be intimate with a white woman than for a white man to be intimate with a colored woman. . . Don't think ever that your women will remain pure while you are debauching ours." A white mob destroyed Manly's newspaper office. At least a dozen black men were murdered. Some 1,500 Wilmington residents fled. White residents then purchased vacated black homes and property at bargain rates to price them out of an ability to return. Wadell became Wilmington's new mayor. [16]

Political violence in the form of riots, however, paled in comparison to individual lynchings, the dominant form of white political terrorism in the South. Between 1889 and 1932, at least 3,745 people were lynched, an average of between two and three every week. In the 1890s alone there was an average of more than 180 lynchings per year. If legislators defended legal voting restrictions, in part, as a method of reducing the violence that came with extralegal efforts at voter suppression during Reconstruction (and the attendant federal control that came with such efforts), that defense proved invalid. [17]

While black southerners would continue to push for the removal of state constitutional voting restrictions throughout the late 19th and early 20th centuries, their success would be limited, allowing Jim Crow segregation to continue to flourish. They would, however, find success in the 20th century after decades of organization and effort. In 1915, the Supreme Court ruled against the constitutionality of grandfather clauses in *Guinn v. United States* (1915). It ruled against the white primary in 1944 in *Smith v. Allwright* (1944) and against poll taxes in 1966 in *Harper v. Virginia Board of Elections* (1966). The principal check

against such restrictions came the year prior to *Harper* when Lyndon Johnson signed the Voting Rights Act of 1965, which mandated federal oversight of elections in the South and outlawed all of those state constitutional imperatives that had been placed in southern constitutions in the post-Reconstruction period.[18]

For those who suffered the indignities of poll taxes, property qualifications, and literacy tests in the generations prior to the Voting Rights Act, such laws were not solely problems in and of themselves, but they also served to purge the voting rolls and help facilitate the imposition of Jim Crow segregation laws. Meanwhile, as the ability of black citizens to vote diminished, the danger to them from extralegal political violence counterintuitively increased. It was a dangerous and disheartening period after the promise of Reconstruction, but efforts in Louisiana, Florida, South Carolina, and North Carolina demonstrated that black voters were not passive victims, their efforts paving the way for decisions like *Guinn*, *Smith*, and *Harper*, culminating in the Voting Rights Act of 1965.

Notes:

[1] For more on Reconstruction and black participation in politics during the postwar period, there are several classic comprehensive studies. See W. E. B. DuBois, *Black Reconstruction in America, 1860–1880* (New York: The Free Press, 1935); John Hope Franklin, *Reconstruction* (Chicago: University of Chicago Press, 1961); and Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (New York: Harper & Row, 1988). There are also important studies specifically related to black political power during Reconstruction, perhaps the most influential being Thomas Holt, *White Over Black: Negro Political Leadership in South Carolina During Reconstruction* (Urbana: University of Illinois Press, 1977).

[2] Neil R. McMillen, *Dark Journey: Black Mississippians in the Age of Jim Crow* (Urbana: University of Illinois Press, 1990), 41; Thomas Aiello, *Jim Crow's Last Stand: Nonunanimous Criminal Jury Verdicts in Louisiana* (Baton Rouge: Louisiana State University Press, 2015), 23.

[3] Richard H. Pildes, "Democracy, Anti-Democracy, and the Canon," *Constitutional Commentary* 17 (Summer 2000): 295–320; and J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880–1910* (New Haven, CT: Yale University Press, 1974), 209–244.

[4] Thomas G. West, *Vindicating the Founders: Race, Sex, Class, and Justice in the Origins of America* (Lanham, MD: Rowman and Littlefield, 1997), 114–115; and Loren Schweninger, *Black Property Owners In the South, 1790–1915* (Urbana: University of Illinois Press, 1997), 143–184. For more on property qualifications in Louisiana, Mississippi, and elsewhere in the South, see Edward L. Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992) and note 2 above, McMillen.

[5] Kimberly Johnson, *Reforming Jim Crow: Southern Politics and State in the Age Before Brown* (New York: Oxford University Press, 2015), 91–96; and note 3 above, Kousser, 67–68. See also V. O. Key, *Southern Politics in State and Nation* (New York: Alfred A. Knopf, 1949).

[6] See note 3 above, Kousser, 67–68.

[7] Lee Hargrave, *The Louisiana State Constitution, A Reference Guide* (Westport, CT: Greenwood Press, 1991), 11–12; Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004) 67–71; and R. Volney Riser, "Disfranchisement, the U.S. Constitution, and the Federal Courts: Alabama's 1901 Constitutional Convention Debates the Grandfather Clause," *American Journal of Legal History* 48 (July 2006): 237–279.

[8] *Williams v. Mississippi*, 170 US 213 (1898).

[9] L. P. Beth, "The White Primary and the Judicial Function in the United States," *Political Quarterly* 29 (October 1958): 366–377; Leo Alilunas, "Legal Restrictions on the Negro in Politics: A Review of Negro Suffrage Policies Prior to 1915," *Journal of Negro History* 25 (April 1940): 153–160.

[10] Marouf Hasian Jr., "Revisiting the Case of Plessy v. Ferguson," in *Brown V. Board of Education at Fifty: A Rhetorical Retrospective*, ed. Clarke Rountree (Lanham, MD: Lexington Books, 2006), 3–12.

[11] *Plessy v. Ferguson*, 163 US 537 (1896).

[12] See Harvey Fireside, *Separate and Unequal: Homer Plessy and the Supreme Court Decision that Legalized Racism* (New York: Carol and Graf, 2004); and Canter Brown, Jr., *Florida's Black Public Officials, 1867–1924* (Tuscaloosa: University of Alabama Press, 1998). For seminal works on the Jim Crow era and Redeemer politics in the South, see C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1955); C. Vann Woodward, *Origins of the New South, 1877–1913* (Baton Rouge: Louisiana State University Press, 1951); Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888–1908* (Chapel Hill: University of North Carolina Press, 2000); Edward L. Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992); Glenda Elizabeth Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896–1920* (Chapel Hill: University of North Carolina Press, 1996); and

see note 2 above, McMillen.

[13] Donald G. Nieman, "African Americans and the Meaning of Freedom: Washington County, Texas as a Case Study, 1865-1886," *Chicago-Kent Law Review* 70 (December 1994): 541-582.

[14] Tom Henderson Wells, "The Phoenix Election Riot," *Phylon* 31 (1st Qtr. 1970): 58-69.

[15] Charles Lane, *The Day Freedom Died: The Colfax Massacre, the Supreme Court, and the Betrayal of Reconstruction* (New York: Henry Holt, 2009), 18-19; H. Leon Prather, "The Red Shirt Movement in North Carolina 1898-1900," *Journal of Negro History* 62, no. 2 (1977): 174-184; and George C. Rable, C., *But There Was No Peace: The Role of Violence in the Politics of Reconstruction* (Athens: University of Georgia Press, 1984), 132.

[16] See David S. Cecelski, *Democracy Betrayed: The Wilmington Riot of 1898 and Its Legacy* (Chapel Hill: The University of North Carolina Press, 1998).

[17] For more on lynching in this period, see Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880-1930* (Urbana: University of Illinois Press, 1993); Fitzhugh Brundage, ed., *Under Sentence of Death: Lynching in the South* (Chapel Hill: University of North Carolina Press, 1997); Stewart E. Tolnay and E. M. Beck, *A Festival of Violence: An Analysis of Southern Lynchings, 1882-1930* (Urbana: University of Illinois Press, 1995); Christopher Waldrep, *The Many Faces of Judge Lynch: Extralegal Violence and Punishment in America* (New York: Palgrave, 2004); Amy Louise Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940* (Chapel Hill: University of North Carolina Press, 2009).

[18] *Guinn v. United States*, 238 US 347 (1915); *Smith v. Allwright*, 321 US 649 (1944); and *Harper v. Virginia Board of Elections*, 383 US 663 (1966). See also Thurgood Marshall, "The Rise and Collapse of the 'White Democratic Primary,'" *Journal of Negro Education* 26 (Summer 1957): 249-254. For more on the Voting Rights Act of 1965, see David J. Garrow, *Protest at Selma: Martin Luther King, Jr., and the Voting Rights Act of 1965* (New Haven, CT: Yale University Press, 1978); Keith M. Finley, *Delaying the Dream: Southern Senators and the Fight Against Civil Rights, 1938-1965* (Baton Rouge: Louisiana State University Press, 2008); and Chandler Davidson, *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton: Princeton University Press, 1994).

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