



BLACK SUFFRAGE: THE CONTINUED STRUGGLE

by *Danielle Kinney*

“We hold these truths to be self-evident, that all men are created equal.”⁽¹⁾ These words, penned by Thomas Jefferson in America’s famed Declaration of Independence, are widely known to all, and are thought by many to be at the heart of what it means to be American – *to be equals*. But in many regards, and speaking in a historical context, this equality has been much more difficult to achieve than it was so simply, and aptly, stated in 1776. Though the issue of equality, or historic lack thereof, can be viewed through the lens of nearly any fundamental and constitutional right, the issue can be seen perhaps at its clearest when applied to suffrage: the right to vote. “One person, one vote”⁽²⁾ upon the nation’s founding did not apply to *all* citizens and was, in fact, a privilege reserved only to the nation’s landholding elite—white, hereditarily wealthy males. Women and the black population, by contrast, had to work tirelessly to achieve this level of equality.

While the path to women’s suffrage was without a doubt a struggle, no single demographic faced more of an arduous uphill climb towards that self-evident truth that “all men are created equal” than America’s black population. From being held in the bondage of slavery, to becoming free yet still unequal, to finally having voting equality constitutionally protected only but a half-century ago, the path to voter equality—and equality in general—has been one met with constant challenge. For centuries, laws have been enacted that have directly or indirectly made it unduly difficult, if not impossible, for African Americans to exercise this most basic right to vote. Though it is undeniable that progress has been made since the nation’s founding, it is becoming increasingly evident with the new emergence of voter identification laws, redistricting laws and laws disallowing voting rights to former felons, that African Americans are *still* facing barriers that make “one person, one vote” something that continues to be just out of reach.

The first document that comes to mind when one thinks on the subject of racial equality, in the general sense of the term, is very easily President Abraham Lincoln’s famed Emancipation Proclamation of 1863. While inarguably this was the first of many steps towards racial equality, and thus equal suffrage

¹ Thomas Jefferson, “The Declaration of Independence,” *Historic American Documents*, Lit2Go Edition (1776). Accessed December 6, 2016, <<http://etc.usf.edu/lit2go/133/historic-american-documents/4957/the-declaration-of-independence/>>.

² “One Person, One Vote.” The Constitution Project. 2014. Accessed December 6, 2016. <<http://www.theconstitutionproject.com/portfolio/one-person-one-vote/>>.

rights, it is just that—a *step*. Nowhere at all in that historic speech is voting mentioned as a guaranteed right to these newly freed slaves, nor did this radical proclamation free all slaves (something finally achieved two years later with the passing of the Constitution’s Thirteenth Amendment). This, as a pertinent topic, is not brought up until Lincoln’s last speech, made on the White House balcony in the spring of 1865, two full years after his history-making address. In this final speech, he makes it known to his listeners that he supported suffrage for “the very intelligent” African American men, likely those who have had the benefit of a formal education, and/or those who owned land, and “those who serve our cause as soldiers.”⁽³⁾ Despite his being the first president to even imply extending voting rights once exclusive to landowning men to the once enslaved population, it is not under his administration when these suffrage rights first come to fruition.

The period following the Civil War and readmittance of former Confederate states back into the Union under the subsequent administrations of Andrew Johnson and Ulysses S. Grant was the time that finally ushered in the constitutional changes that Lincoln could only hopefully allude to. First, in 1867, came the Military Reconstruction Act, which in part required former Confederate states to be readmitted into the Union on the condition they adapt new state constitutions that make permissible universal male suffrage, which, in turn, included both white *and* black males.⁽⁴⁾ Immediately following this is the Fourteenth Amendment to the Constitution, ratified a year later and overriding President Johnson’s veto, which offers equal protection to all male citizens under the Constitution.⁽⁵⁾ Lockean natural rights of “life, liberty, and property,” it boasts, can be denied to no male citizen by any state without “due process of law.”⁽⁶⁾ It is still two years later that the issue of suffrage is finally addressed in the Fifteenth Amendment, guaranteeing the right to vote to all male citizens; and for Congress to be able to enforce this right, giving it the power to override the state’s power, given the very real possibility it attempts in any way to disenfranchise the black vote.⁽⁷⁾ But, as ever, former slave states found ways to work underhandedly around these reconstruction amendments to do just that.

The latter part of the 1800s, and all the way through the mid-1900s, saw the rise of states finding ways to successfully stifle the black vote, effectively invalidating the provisions and protections “guaranteed” in the Constitution on a state level. Mississippi was the first of many states to make any attempt at

³ Richard M. Valeyly. “The Two Reconstructions: The Struggle for Black Enfranchisement.” *American Politics and Political Economy*, October 2009. Accessed December 6, 2016. <DOI:10.7208/Chicago/9780226845272.003.0001>.

⁴ “Introduction To Federal Voting Rights Laws.” Introduction To Federal Voting Rights Laws | CRT | Department of Justice. August 6, 2015. Accessed December 6, 2016. <<https://www.justice.gov/crt/introduction-federal-voting-rights-laws>>.

⁵ Tara M. Darling. “Who Should Be Afforded More Protection in Voting – the People or the States? The States, According to the Supreme Court in *Shelby County v. Holder*.” *Touro Law Review*: Vol. 31, No. 4, Article 16 (2015): 943. Accessed December 8, 2016. <http://digitalcommons.tourolaw.edu/lawreview/vol31/iss4/16>>.

⁶ Ibid.

⁷ Ibid.

disenfranchisement of African American voters. While it *is* true that they could not directly prevent African Americans from entering the voting booths, there was no mention made in the Constitution of the protection of the process of registration, which quickly became the target of the various methods commonly used to indirectly induce black voter suppression.⁽⁸⁾

It was through the use of literacy tests, one of a variety of black codes,⁽⁹⁾ that Mississippi was able to invalidate what the Constitution claimed to protect. "Literacy" was a word that was left intentionally vague and, thus, up to the interpretation of the registrars themselves, which naturally allowed for flagrant discriminatory abuse. The language used in the Constitution itself allowed for any man who showed an understanding of the privileges and nature of American citizenship to register to vote.⁽¹⁰⁾ What appealed to the registrars was the very simple fact that nearly half of the adult male African Americans who were of the former Confederacy and who otherwise ought to have been considered eligible to vote were illiterate.⁽¹¹⁾ And while "assistance" was offered to the illiterate, as seen in Mississippi's example, this too was used against the African American population. Thievery found its way to the registrars, as "assistants" bought and sold the black men's ballots, marking them as per the highest bidder's instruction.⁽¹²⁾ But these intentionally vague tests used against the favor of black voters were not the only methods used to undercut their vote.

Grandfather clauses and poll taxes were also aimed towards the disenfranchisement of the black vote in several southern states, all doing so successfully through the early to mid-twentieth century. The former mentioned existed alongside the aforementioned literacy tests, its purpose being that the clauses mandated that those seeking to register to vote who did *not* have fathers or grandfathers who were able to vote prior to the year 1867 were to take a literacy test or to pay a tax before they could vote. This, of course, precisely targeted black voters, whose fathers and grandfathers were still held in the bondage of slavery in the year 1866 and, thus, could not possibly have voted. It was not until the year 1915 when such restrictions were finally declared unconstitutional, only to be replaced shortly thereafter with poll taxes.⁽¹³⁾

Poll taxes, unlike grandfather clauses, were not so flagrant in opposition to the voting rights guaranteed in the Fifteenth Amendment, and were applied evenly to all eligible male citizens regardless of race. The problem remained, however, as it proved to be far more of a burden on African American men to pay the same tax as a white man. As a prerequisite to casting a vote, eligible

⁸ Court Carney, "Defying Disfranchisement: Black Voting Rights Activism in the Jim Crow South, 1890-1908 (review)." *Southwestern Historical Quarterly* Vol 115, No. 1 (July 2011), at 13. Accessed December 8, 2016. <<https://muse.jhu.edu/article/445452>>.

⁹ "Introduction To Federal Voting Rights Laws," *supra* note 4.

¹⁰ Carney, *supra* note 8, at 15.

¹¹ Vallery, "The Two Reconstructions: The Struggle for Black Enfranchisement," *supra* note 3, at 127.

¹² Carney, *supra* note 8, at 15.

¹³ Darling, "Who Should Be Afforded More Protection in Voting – the People or the States? The States, According to the Supreme Court in *Shelby County v. Holder*," *supra* note 5, at 945, 947.

citizens were required to pay an annual tax of \$1-\$2, an amount that may not appear to be extortionate today but was, in fact, for the black laborer in the beginning of the twentieth century. That one dollar equaled a half of a percentage of their entire annual income—the equivalent of well over \$100 in modern currency.⁽¹⁴⁾ Many potential black voters did not bother to pay at all, knowing beforehand that it was all too likely that even if they did pay, their name would not even be put on the state’s voting registries. For those who did attempt to vote, they were often barred by state officials who would either withhold their tax-exemption certificate or refuse to accept their payments altogether.⁽¹⁵⁾ These unfairly administered taxes were not declared unconstitutional until 1966, upon the passing of the Voting Rights Act.⁽¹⁶⁾

The 1960s, as a whole, came to black voters as a *second reconstruction*—the second period since the time immediately following the Civil War in which their rights not only as voters, but as equal American citizens, became a national focus. But just as it was in the preceding century, the first few years of this changing decade saw unabashed discrimination against African Americans, most notably through the use of government-enforced “separate-but-equal” segregation (made legal in the famed *Plessy v Ferguson* case).⁽¹⁷⁾ However, unlike the preceding century, that racism did not go untested.

The formation of the National Association for the Advancement of Colored People (NAACP) in the early 1900s provided for African Americans a unified identity that they lacked before—an organization that existed not only to provide necessary aid to the people it supported during times of crisis, but to serve as a lobbying voice and a representative of a once-ignored cause: equal rights for black Americans.⁽¹⁸⁾ African Americans, seeing the successes this organization was able to achieve mid-century, found strength and a voice engaging in nonviolent acts of protests as a means to achieve an end—an effective method of civil disobedience encouraged, championed and exemplified by inarguably the most famous face of the 1960s civil rights movement, Martin Luther King, Jr. Students in schools and on campuses partook in sit-ins; riders on segregated busses and trains engaged in boycotts, effectively shutting bus companies down while also making a loud vocal statement; groups of people, black and white, peacefully marched in demonstrations that garnered national attention; and countless other nationally-visible demonstrations all caught the eyes and ears of the nation. New laws were enacted in reflection of these nationally changing values, some of the most pertinent being the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Twenty-Fourth Amendment to the Constitution.

¹⁴ Vallery, “The Two Reconstructions: The Struggle for Black Enfranchisement,” *supra* note 3, at 125.

¹⁵ Darling, *supra* note 5, at 947-948.

¹⁶ *Ibid.*

¹⁷ *Plessy v Ferguson*, 163 U.S. 537 (1896). Justia Law. Accessed December 9, 2016. <<https://supreme.justia.com/cases/federal/us/163/537/case.html>>.

¹⁸ NAACP. “NAACP | Oldest and Boldest.” NAACP. Accessed December 9, 2016. <<http://www.naacp.org/oldest-and-boldest/>>.

The Civil Rights Act (CRA) was one conceived during President John F. Kennedy's administration, and brought to fruition by his successor, vice president turned president, Lyndon B. Johnson. It, as the times demanded, called for an immediate prohibition of discrimination in public places, required the immediate integration of schools, and made illegal employment discrimination. In terms of voting, it, too, in its first title barred the unequal application of voter registration requirements that disenfranchised the black vote for nearly a century.⁽¹⁹⁾ However, it fell short in eliminating such practices as literacy tests and poll taxes altogether. It was the Twenty-Fourth Amendment to the Constitution that finally eliminated the latter, stating that "the right of United States citizens to vote in a primary or other election shall not be denied by the United States or any state by reason of failure to pay poll tax."⁽²⁰⁾ The far more sweeping law that passed a year later finally addressed the literacy tests.

What the CRA was unable to achieve in breadth became realized upon the Voting Rights Act (VRA) passing. It was determined by Congress and President Johnson alike that the existing anti-discrimination laws were ineffective at overcoming or resolving public racism, discrimination and disenfranchisement, and thus ineffective in their enforcement of the Constitution's Fifteenth Amendment. Taking on a broader scope, the VRA prohibited the use of literacy tests that had been used to bar the black vote, while also containing special provisions that targeted areas thought to be most prone to potential discrimination.⁽²¹⁾ This, perhaps, was one of the most controversial aspects of the already sweeping law—its treatment of the states. As it had been seen that southern states especially took every liberty possible to enact restrictions that ended up focusing solely on race, the VRA, in its sections 4 and 5, called for far more Congressional oversight, especially in areas with the most potential for discrimination and the use of related tests. Additionally, under the VRA, states were required to preclearance review; that is, obtain prior federal approval before implementing any voting changes,⁽²²⁾ a part of the law that would in recent years be overturned.

While it is undeniable that progress *has* been made in terms of black suffrage since the beginning of the reconstruction era, onwards towards the more recent civil rights era, recently it has come to light that there is progress *yet* that has to be made if unchallenged, universal suffrage rights are to be achieved. Although it is not through the use of literacy tests or poll taxes, time-relevant methods of suppression are now being employed, most commonly new pieces of voter ID legislation. These are pieces of legislation that require a person to have a state-issued photo ID to be eligible to vote at a polling

¹⁹ *The Civil Rights Act of 1964*, United States Equal Employment Opportunity Commission. Accessed December 9, 2016. <<https://www.eeoc.gov/laws/statutes/titlevii.cfm>>.

²⁰ U.S. Const. amend. XXIV, § 1.

²¹ "History Of Federal Voting Rights Laws." History Of Federal Voting Rights Laws | CRT | Department of Justice. Accessed December 9, 2016. <<https://www.justice.gov/crt/history-federal-voting-rights-laws>>.

²² Darling, "Who Should Be Afforded More Protection in Voting – the People or the States? The States, According to the Supreme Court in *Shelby County v. Holder*," *supra* note 5, at 952-954.

venue, or in some cases to even be able to register to vote.⁽²³⁾ Originally, these laws have origins in attempting to prevent voter fraud, but in truth are doing far more harm than good. The fact comes to light that although the larger portion of the United States population that is otherwise eligible to vote do, in fact, have in their possession a valid form of photo-ID; 25% of the African American population, especially young voters under the age of 30, do not.⁽²⁴⁾ Obtaining a valid ID—a practice which varies state to state in which they are required—is an extra and, for some, arduous step, as doing so requires money, transportation and other valid identification documentation, which often are resources the minorities, including African Americans, may not have. As of 2016, eight states have enacted strict photo identification requirements, while many others either require a less-strict, more easily attainable form of identification. A few require no form of ID to vote at all.⁽²⁵⁾

Between voter ID laws and other back-handed methods of “bleaching” representation, such as restricting early voting and the more heinous voter intimidation,⁽²⁶⁾ it is becoming increasingly evident that universal suffrage is something that the United States has failed thus far to achieve. Our country is still falling short, despite the progress made in the 1960s and during periods of reconstruction with laws and Constitutional amendments that aimed towards the ultimate goal of suffrage for all American citizens. Making difficult what one might assume ought to be a simple and morally correct solution is, as ever, the states of the Old South, which continue to erect the highest barriers. These barriers are reminiscent of ones erected in both the distant and recent past, over which minorities like the African American population cannot scale, making something as simple as voting difficult if not an impossibility.⁽²⁷⁾ This, as history has shown, serves as all the more reason to not only actively work towards changing the conservative, anti-equality mindset of the nation, as was done during the civil rights era, but to also push for legislation that will put a definitive end to archaic suppression tactics. As Barbara Arnwine, president and executive director of the Lawyers Committee for Civil Rights Under Law stated, “They [African Americans] are voting because they want to make sure that no one denies them the right to vote. It means that they are more determined to vote.”⁽²⁸⁾ Over a century and a half has passed since the ratification of the Fourteenth and Fifteenth Amendments, and basic constitutional rights for black Americans are still at risk of being wrongly taken away.

²³ Kristal B. Zoosk. “Destroying Your Vote.” *Essence*, August 2012, 106-09. *Canadian Reference Centre, EBSCOhost*. Accessed December 9, 2016. <<http://eds.a.ebscohost.com.library.genesee.edu/>>.

²⁴ *Ibid.*

²⁵ Jasmine C. Lee. “How States Moved Towards Stricter Voter ID Laws.” *The New York Times*, November 3, 2016. Accessed December 10, 2016. <<https://www.nytimes.com/interactive/2016/11/03/us/elections/how-states-moved-toward-stricter-voter-id-laws.html>>.

²⁶ “Nation’s Top Civil Rights Lawyers Say Discriminatory Jim Crow Voting Laws Abound.” *Legal Monitor Worldwide*, August 7, 2014. Accessed December 10, 2016. <<http://go.galegroup.com.gate.lib.buffalo.edu/>>.

²⁷ *Ibid.*

²⁸ *Ibid.*

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