UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, EDGAR CAGE, DOROTHY NAIRNE, EDWIN RENE SOULE, ALICE WASHINGTON, CLEE EARNEST LOWE, DAVANTE LEWIS, MARTHA DAVIS, AMBROSE SIMS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ("NAACP") LOUISIANA STATE CONFERENCE, AND POWER COALITION FOR EQUITY AND JUSTICE, *Plaintiffs*, v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana. *Defendant*.	Civil Action No. 3:22-cv-00211-SDD-RLB
EDWARD GALMON, SR., CIARA HART, NORRIS HENDERSON, TRAMELLE HOWARD, *Plaintiffs*, v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana. *Defendant*.	Civil Action No. 3:22-cv-00214-SDD-RLB

Preliminary Expert Report of Dr. R. Blakeslee Gilpin

Hearing Exhibit
PR-13
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Credentials, Purpose

I am an Associate Professor of History and the Director of Graduate Studies at Tulane University in New Orleans, Louisiana. I earned my Ph.D. in 2009 from Yale University, my M.Phil from Cambridge University (2003) and a combined BA/MA from Yale University (2001). I study the history of the American South with a particular focus on the legacies of slavery and the Civil War. My first book, *John Brown Still Lives!: America's Long Reckoning with Violence, Equality, and Change*, was published by the University of North Carolina Press after winning the C. Vann Woodward Prize for the best dissertation by the Southern Historical Association in 2010.

I have worked extensively in the editorial realm as a historian. I co-edited *The Selected Letters of William Styron*, published in 2012, a *New York Times* Editor's Pick and nominated by Random House for the Pulitzer Prize. I have recently finished another editorial project as the historian paired with a literary scholar for the 2020 Norton Critical Edition of Frederick Douglass's *My Bondage My Freedom*. By far the most completely notated and thoroughly contextualized edition of this landmark text, this project is the most thorough historical treatment of Douglass's second autobiography.

My scholarship has been published and appreciated widely in academic and popular publications. My article on New Orleans' Hansen's Sno-Bliz was a finalist for the James Beard Award for best magazine writing of 2019. I have published chapters on the Reconstruction era in two prominent volumes: *Reconstruction* (Kent State University, 2016) and *Routledge History of Terrorism* (2016). My essays have appeared in the scholarly journals *Slavery & Abolition* and *Early American Literature*. My work has also appeared in *The Paris Review*, *The Boston Globe*, and *The New York Times* "Disunion." Other scholarship has appeared in *The American Scholar*, *The Journal of Mississippi History*, and *Biography: An Interdisciplinary Quarterly*. I have reviewed books for *The Journal of American History*, *Journal of Southern History*, *Slavery & Abolition*, *The New England Quarterly*, and *The Journal of American Studies*.

I include with this report a complete CV with my academic qualifications, academic positions, publications, fellowships and prizes, invited lectures, media appearances, and presentations. I am compensated at the rate of $300 per hour for my work in preparing this the report. This compensation is not dependent upon my findings, and my opinions herein do not represent the sum total of my opinions in this matter, which are subject to change upon further research or revelations. I have not testified as an expert in any litigation in the past four years.

I have been asked by plaintiffs to examine any relevant historical evidence and determine if there are sociohistorical factors relevant to Louisiana's election laws that might affect the ability of Black voters in Louisiana to participate in the political process and elect candidates of their choice. My analysis adheres to the common standards of the historical profession, but I am also guided by the "totality of circumstances" test, as applied using the "Senate Factors," to evaluate whether the election laws in question do and will prevent Black voters in the state from equitably exercising their right to vote.

I. Introduction

The state of Louisiana's long history of racial discrimination is without dispute. Since before Louisiana was admitted to the Union on April 30, 1812, the main consideration in determining a person's legal and political rights were the countless color gradations created by whites in power ("black," "creole," "quadroon," "octaroon," etc). Until Louisiana's Constitution of 1864 abolished slavery, the defining character of the state was the ownership and control of Black bodies. "Efforts to restrict black participation in the governmental process," explains the definitive history of voting rights in the south, "have been a permanent feature of Louisiana's political environment."[1] When Black Louisianans gained the right to vote following the ratification of the Fourteenth and Fifteenth Amendments in 1868 and 1870, the state's racial discrimination actually intensified even as opportunities to exercise the vote reached their historical peak. Overall, the story of Black suffrage in Louisiana is the story of "freedom-seeking former slaves and status-preserving masters."[2] Disenfranchising efforts after 1868 were now fueled by a special desire to exclude a burgeoning electorate likely hostile to white supremacist policies that had so long dominated the state. Hand in hand with foundational societal beliefs and customs built to reinforce white supremacy, Louisiana's laws and lifeways were explicitly designed to exclude non-whites from the political, social, educational, and economic rights enjoyed by white citizens. These discriminatory practices have been extensively documented by historians and plainly admitted to by Louisiana's lawmakers across its 210-year statehood. Even with so much evidence of and open hostility to Black political participation, contesting the tools of white supremacy has taken many forms across the past 150 plus years, including in state and federal courts. Louisiana overwhelmingly and consistently designed policies that could protect white voters while disenfranchising Black voters.

I summarize that history here for the Court, beginning with a brief account of antebellum racial attitudes, the laws and strategies deployed for racial control during that period, and the tools used for racial suppression before 1865. It is important to note that the strategies developed during slavery's legality were central to white Louisianans' conception of the "appropriate" level of white political control, a level they have consistently attempted to maintain since slavery was outlawed in 1865. From there, I look at efforts at disenfranchisement stretching from 1868 to the present day.

II. The History of Racial Discrimination and Control in Louisiana

From the Code Noir to the End of Spanish Rule, 1724-1803

In the context of 21st century voter disenfranchisement, early Louisiana laws and racial practices demonstrate the incredible depth and longevity of white anxieties about race and control.

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[1] Richard L. Engstrom, Stanley A. Halpin, Jr., Jean A. Hill, and Victoria M. Caridas-Butterworth, "Louisiana," in Chandler Davidson and Bernard Grofman, eds., *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton: Princeton University Press, 1994), 103.

[2] Marek D. Stedman, Jim Crow Citizenship: Liberalism and the Southern Defense of Racial Hierarchy (New York: Routledge, 2012), 53.

The story of Louisianan laws governing Black people is fundamentally a story of the area's fluid racial categories colliding with the encroaching realities of racial slavery and the official implementation of slave laws. That collision began with 1724's Code Noir, "borrowed with only slight modifications from Saint-Domingue's 1685 slave code." Louisiana made miscegenation illegal and introduced "restrictions against owners keeping slave concubines." All these measures were simply "a transparent attempt to widen racial divisions by fostering feelings of white superiority." Most notably in this regard, Louisiana's Code Noir strengthened the penalties for Black people guilty of the same crimes committed by whites. Indeed, most of the legal apparatus of the 18th century was dedicated to policing racial boundaries, particularly lines that were hard to visually discern. From attempts to control interracial socializing in "gambling dens and cabarets" and policing Black sartorial choices, "these boundary-fixing measures revealed…a nascent governing class still unsure of its grip on power, still uncertain of its identity and status."[3]

Indeed, the consolidation and maintenance of white supremacy was a constant act of improvisation. Planters worked on their own, collectively, and with the state to try to control enslaved people determined, whatever the cost, to practice agency, individuality, and basic humanity. Early laws in French Louisiana reveal the steady move to fortify and define white power. A 1744 regulation was introduced to stop slaves from carrying weapons without permits and a 1751 regulation requiring passes for slaves to travel both speak to white anxieties and white efforts to exercise control. Slave owners were urged to police their own slaves more vigilantly and there were suggestions of imposing lockdowns at night.

The revision of Spanish law in 1789 was perhaps more responsible than any other factor in securing New Orleans' and Louisiana's future, though not intentionally. Although the 1789 law controversially opened the slave trade, the new code also inserted the state in the "personal and moral lives of slaves," establishing guidelines for work, cohabitation, and leisure.[4] Slave owners were deeply unhappy with this new arrangement, bristling "at the crown's reassertion of authority over areas that masters considered their inviolable prerogative." Indeed elites' hostility to these revisions emphasized how slave owners hoped to preserve "the private-state sovereignty of their plantations."[5]

The preeminent historian of New Orleans captured this dynamic when he explained that "no matter how resolutely the city's masters cracked down on the slaves' customary rights and enjoyment privileges, they always found themselves backtracking, yielding to the necessity of allowing their bondspeople the creative scope to remake themselves after models not always of their owners' making."[6]

White elites were also living in the atmosphere of repression and fear that characterized American slavery. The Pointe Coupée region was particularly problematic in this regard and "insurrection panics and reports of maltreatment seemed to sprout like forest mushrooms after a hard rain."[7] At this moment, planters were not aligned with the Spanish crown, particularly the

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[3] Larry Powell, *The Accidental City: Improvising New Orleans* (Cambridge: Harvard, 2013), 73, 117.
[4] Ibid., 274.
[5] Ibid., 275-6.
[6] Ibid., 276.
[7] Powell, 253.

laws they interpreted as "slave-friendly." The 1795 discovery of a massive slave plot to revolt, the so-called Pointe Coupée conspiracy, proved to white elites that their fears of their slaves were justified.[8]

It was in this atmosphere of fear and repression, and of a deep desire by white elites to command "unfettered power over race policy," that Louisiana would soon enter the United States.[9]

American Louisiana, 1804-1861

The Louisiana Purchase extended the frontiers of the United States and enabled the explosive expansion of the young republic's slave-based sugar and cotton kingdoms and a new birth of unfreedom. Antebellum Louisiana consisted mainly of large plantations under the armed guard of mounted overseers, spaces whose explosive economic success and very survival depended upon uniting all sectors of white society under the banner of uncompromising white supremacy as a deterrent against slave insurrection. Understanding this deliberate cultivation of state power to control and marginalize Black people is essential to understanding later white strategies of disenfranchisement.

Slavery and Race

Just as French and Spanish Louisiana did through its early laws, American Louisiana reinforced white anxieties over black control and the complexities of racial categories. Louisiana's uniquely large population of free Black people prompted the first formal citizenship promises to Black people, but the profound growth of slavery reinforced the fraught power dynamic so fundamental to latter day Louisiana.

As one celebrated historian of antebellum Louisiana has explained, American Louisiana was, by every real measure, the exemplary center of North American slavery.[10] And yet, the Louisiana the United States purchased was more complex than any other slaveholding society in the United States. "Situated at a variety of indeterminate points between masters and slaves were Louisiana's free people of color, numbering almost 19,000 in 1860," writes Rebecca Scott.[11] The 1803 Treaty of Cession actually "recognized a formal claim to citizenship by this community, but President Thomas Jefferson quickly backed off on that promise."[12] Jefferson's sidestepping

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8 Ibid., 253.

9 Ibid., 309.

10 As Walter Johnson explained, New Orleans "is, in no small measure, the story of antebellum slavery." *See* Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge: Harvard, 1999), 3. Johnson also explains that New Orleans, was "the commercial emporium of the Midwest, the principal channel through which Southern cotton flowed to the global economy and foreign capital came in to the United States, the largest slave market in North America, and the central artery of the continent's white overseers' flirtation with the perverse attractions of global racial domination."

11 Rebecca Scott, *Degrees of Freedom: Louisiana and Cuba After Slavery* (Cambridge: Harvard, 2005), 14. Scott explains that "Many of these families were descended from early French, Spanish, and African settlers, augmented by exiles and migrants from Haiti and Cuba, and by newly manumitted slaves."

12 Scott, 14.

this citizenship issue is not the earliest example of the state restricting non-white freedoms but does mark the earliest concrete instance of the state restricting non-white political rights.

Following the successful crystallization of American sugar in New Orleans, Louisiana and the entire Mississippi River Valley were rapidly consumed by a tightly managed, interlocking commercial enterprise of slave-grown cash crops, enormous slave-labored plantations, and the most thriving slave market in the history of the western hemisphere.[13]

For four decades, sugar was the unparalleled driver of New Orleans' exponential population growth and unremitting economic ascendence.[14] Between 1803 and 1810, New Orleans' population doubled and did so every decade until 1840, when the city became the third largest in the United States.[15] At that same moment, New Orleans reached its all-time historical peak as the fourth-largest port in the world. Slavery defined every aspect of antebellum Louisiana; "slavery was the pivot around which everything revolved."[16] Sugar created a massive capitalist engine and an insatiable demand for enslaved labor. Not only did American sugar fuel one final explosion of transatlantic slave trading before that avenue legally closed in 1808, Louisiana sugar was the point of origin for the devastating internal slave trade in the United States, the so-called Second Middle Passage, and the true eruption of the institution of American slavery itself.[17]

Connecticut-born Amos Stoddard (who would become the Commandant of the military district of Upper Louisiana after the Louisiana Purchase) attributed this financial boon to the massive increase in the importation of enslaved individuals, primarily the invigorated domestic slave trade originating in the Upper South. "The number of slaves has increased," Stoddard explained, so that "sugar estates are cultivated on a more extensive scale, and the number of them greatly multiplied."[18] Stoddard estimated "each good slave will annually earn his master from four hundred, to four hundred and fifty dollars" per year.[19]

Stoddard carefully tied this transformation to the developing Second Middle Passage. "Some considerable slave holders, who now find it difficult to subsist," Stoddard explained, "would soon with the same means accumulate fortunes on the Lower Mississippi. In no other part of the United States can each good slave yield his master from two hundred and fifty to three

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13 Ibid., 3.

14 It took more than a few decades for cotton production in Louisiana and Mississippi to start rivaling and outstripping the historically dominant growers in Georgia and South Carolina. Sven Beckert, *Empire of Cotton*, 103.

15 Richard Campanella, *Bienville's Dilemma: A Historical Geography of New Orleans* (Lafayette, LA: Center for Louisiana Studies, University of Louisiana at Lafayette, 2008), 149.

16 Scott, 15.

17 This massive forced migration transported slaves from the upper South – particularly increasingly unprofitable tobacco plantations across the South to the bloody fields of sugar and cotton of the Deep South, destroying families and enslaved communities across America. *See* Ira Berlin, "Coming to Terms with Slavery in Twenty-First-Century America," 16.

18 Major Amos Stoddard, *Sketches, Historical and Descriptive of Louisiana*. (Philadelphia, PA: Matthew Carey 1812), 161

19 Ibid., 181.

hundred dollars annual profit; and the expense of removing families to that quarter by way of the rivers would be inconsiderable."[20]

White Fear and Black Repression

White fear of Black agency was the most important aspect of the antebellum Louisianan mind-set. Those fears were most deeply focused on perceived manifestations of Black freedom and the possibility of violent Black revenge.

It was through slavery that Louisiana began to change under American rule. "Most of the white constables in the streets of New Orleans" had been reared in St. Domingue, regulating Haitian slavery, before the 1789 Haitian Revolution on that island, which began as a slave revolt, forced them to take refuge in Louisiana. Experts from the brutal sugar plantations of Haiti poured into Louisiana for the same reason, helping to jumpstart the United States' first successful sugar cultivation and fueling Louisiana's commercial explosion. In turn, "a little Saint-Domingue" grew on the Mississippi River's so-called "German Coast," dominated by the Haitian-inspired plantations, many of them manned by slaves who had been carried across the Caribbean with their masters.

These refugees from Haiti also brought concrete reminders of the slave owner's greatest fear: violent and bloody slave rebellion. Indeed, as Black bodies laid the cornerstones of a new nation's physical edifice and Black labor built a world-conquering capitalist economy, a concomitant fear of blackness anchored the country's imagination. The country's rapid ascension to heretofore unseen achievements of democratic governance and economic success depended upon racial fears. The historian Alan Taylor's brilliant research into fear in antebellum Virginia has explored the complex zero-sum game that early Americans thought governed the benefits and costs of freedom and slavery. "Slavery enslaved blacks," Taylor explains, "but it also imprisoned whites in a web of distortions and deceptions of their own making."[21]

Life under American slavery was, in the words of Taylor, an "ongoing cold war," an arrangement always on the verge of "erupt[ing] into bloody retribution." Events like the Haitian Revolution reaffirmed and encouraged both delusions: "powerful dread" at an "internal enemy" and a corresponding obsession with white "safety and prosperity." The illusions of control – slave patrols, restrictive laws, physical punishment, even the idea of genetic superiority – were evidence of white America's perpetual "war against the black enemy within."[22]

Louisianans were particularly fearful of the explosive potential of the humans they subjected to bondage. Writing to Thomas Jefferson, Governor William Claiborne decried what he saw as "a general spirit of Insubordination" in the slaves of Louisiana. New Orleans' mayor John Wilkins agreed that "the negroes are in a shameful state of Idleness, and want of

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[20] Ibid, 266.
[21] Alan Taylor, *The Internal Enemy*, 81.
[22] Taylor, 86, 8.

subordination. They are suffered to wander about at night without passports, stealing, drinking and rioting."[23]

Leading slaveholders became particularly concerned about maroonage, where enslaved people absconded with their own bodies. "The danger is growing more and more," agreed New Orleans' Conseil de Ville in 1805, noting, "the larger part of the population of the Colony appears to be alarmed over its symptoms." Louisiana sought advice and examples from their Caribbean counterparts. When we consider the long march from racial fluidity of French Louisiana to the desperate disenfranchisement of the 20th century, the 1805 maroonage crisis was a signal moment in transferring "some coercive powers from slaveholder to state," the legitimization of white supremacist discipline and control.[24] Borrowing legal inventions and tools of oppression from previous stops in the world school of slavery, from São Tomé to Barbados to Saint-Domingue, Louisianans established themselves as the world's singular practitioner of racial slavery.

When the sugar boom consumed Louisiana, the plantations around New Orleans produced fortunes unimaginable to earlier generations. Gross exports in 1804 were nearly $5 million, four times that figure in 1895. "Eager Americans flocked to the region," explains the Louisiana historian John Bardes, "foreseeing the imminent accumulation of vast fortunes – all dependent on increasing the territory's labor supply."[25] The years 1800-1804 witnessed "an usually rapid and large influx of overwhelmingly male and overwhelmingly African-born slaves" as well as a "'daily influx' of refugees from Saint- Domingue, many of whom appeared tainted by the rebels' 'revolutionary principles.'"[26]

American slave owners had proven their commitment to innovative repression early on. Outflanking their own British laws by devising matrilineal slavery to sustain the enslaved population was the defining transformation of American slavery. From this legal creation, further concoctions covered every possible means of dehumanizing and controlling human property. Unfortunately, each innovation also stoked pervasive white fears ever hotter.

"One cannot pause but shudder," the Crescent City's Conseil de Ville warned, "at the thought that these men with their hands still reddened with the blood of our unfortunate fellow countrymen are arriving daily in great number in our midst and that perhaps tomorrow their smoking torches will be lighted again to set fire to our peaceful homes." The Conseil recommended that the state help ameliorate white fears; the city simultaneously created a standardized penal system and replaced the city's watch with one of the first professional police forces in the United States.[27]

These were viewed as necessary steps given the stakes. Louisianan slavery had become a specter of devastation for enslaved people elsewhere in the United States. For 100 miles upriver of New Orleans, slavery generated heretofore unseen economic rewards along with what one

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[23] John Bardes, "Mass incarceration in the age of slavery and emancipation," Unpublished Dissertation, Tulane University, 43.
[24] Bardes, 43.
[25] Ibid., 44.
[26] Ibid., 46.
[27] Ibid., 49.

contemporary observer called slavery's typical "scenes of misery and distress."[28] These qualities worsened year upon year as sugar masters demanded ever-increasing production and profit.

Slave Uprising

The brutality of Louisiana's slave economy soon generated the 1811 slave revolt 25 miles upriver New Orleans, the largest slave uprising in the history of the United States, dwarfing the better-known and more-deadly revolt in Virginia in August 1831. The barbarity of the resulting suppression underscores the violent lengths otherwise civilized men would go to protect their investments and control over their property. Indeed, the slave uprising on the German Coast on January 5, 1811, was a defining moment for the future of Louisiana's race relations as well as its political identity. There is perhaps no event in early Louisiana more symbolic, not just because the enslaved rebels so specifically targeted sugar, but because the revolt confirmed planters' paranoid fantasies about the violent potential of their slaves. It was at these moments when the state's planter elite truly revealed the worldview that would be expanded upon for another 200 years.

As the definitive history of the Crescent City explains "it took no time at all for the full force of federal and slaveholder power to be brought to bear." The rebels were stopped near the present-day suburb of Kenner where a militia of planters led by one whose son had been killed by the rebels "routed them completely." Sixty-six slaves "were mutilated and beheaded on the spot" followed by an improvised "tribunal of planters [who] ordered the shooting and beheading of eighteen additional slaves." A further 21 slaves were decapitated by the New Orleans City Court, "hung upon the levee within the Parish of Orleans" and others "exposed at one of the lower gates of this city."[29] The decapitated heads of the enslaved were mounted on poles "to decorate our Levee, all the way up the coast." This was the kind of justice meted out by Louisiana's Slave Code of 1806 and Mississippi River air was dominated by the stench of rotting flesh for weeks.[30]

State Control of Black Louisianans

Meanwhile, the racialized penal system and public executions of slaves show the increasing involvement of the state in policing and controlling Black Louisianans.

The violent terror, constant discipline, and elaborate mechanisms of control to keep Black majority populations at bay were defining characteristic of Louisianan slavery. Louisianans became pioneers in the emerging science of penology. In 1822, Edward Livingston, a Louisiana statesman and sugar planter, published his "plans for the total redesign of Louisiana's criminal laws, punishments, and penal institutions."[31] Livingston imagined an integrated system of

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[28] Edward Baptist, The Half Has Never Been Told: Slavery and the Making of American Capitalism (New York: Basic, 2014), 51.

[29] Ibid., Case No. 188.

[30] Powell, The Accidental City, 345.

[31] Livingston came from an illustrious background. His older brother had served in the Continental Congress and on the five-person drafting committee of the Declaration of Independence. After a term in Congress and mayor of New York City, Livingston was forced to resign in scandal and fled to New Orleans in 1804. Livingston quickly embedded himself in the planter elite, purchasing two sugar plantations and dozens of slaves. *See* Bardes, 106.

"workhouses, penitentiaries, prisons, lock-ups, public school, and juvenile reformatories – a totalizing system, bent on reform rather than retribution, molding and upholding disciplined republican citizens from cradle to grave."[32]

Livingston's "cradle to grave" dream underscores Louisianans' historic commitment to racial control. Livingston's insistence that "each institution would scientifically classify offender" exposed Louisianans' obsession with racial categories (among others). These were the cornerstones of a regime that would eventually embrace voter discrimination and disenfranchisement, the bedrock of the cultural and eventually legalized racism that would come to define Louisiana.

Perhaps the most crucial element of Livingston's proposed innovations to Louisianan law and order was the author's insistence that the state distinguish its laws and punishments by making "absolute distinctions" between the races. Livingston's theories reveal much about white perceptions of laws and punishment, but particularly about policing the lines between enslaved and white Louisianans by using the state to create and enforce racial differences. "Efforts to reify racial difference were integral to this rapid transformation of Louisiana's penal infrastructure. Whereas cells in the old state prison had often been integrated, the new facilities were either entirely restricted to one race or boasted separate wards for whites, slaves, and free people of color."[33]

The enthusiastic use of the state to help police race and control the populace was a harbinger of postbellum Louisiana. Such practices would be essential to white supremacist interactions with Black citizens after 1865.

Hand in hand with white control over voting was a concomitant embrace of public displays of state violence like the spiked heads following the German Coast uprising. Public slave executions were a regular feature of antebellum Louisiana justice and culture. Indeed, historian John Bardes has called these brutal displays "carnivalesque affairs – 'a sort of cheap amusement for the people,' according to the *Daily Picayune*, 'jovial and jocose.'"[34]

Like chain gangs, that most publicized public display of the state's control of unruly slaves, "public slave executions were also intended as deterrents and tools of racial terrorism." The terror-inducing aspect of slave executions, the central design of most slave "justice," also involved the compulsory attendance of "an estimated two to three thousand slaves…in the *Place d'Armes* to view the mangled corpse of a prominent maroon and accused murder[er]" in 1837. In this case, authorities specifically explained that the gruesome scene was "for the sake of example," designed to "have a salutary effect [upon the slaves] to let them gaze upon the outlaw and murderer as he lay bleeding and weltering in his gore."[35]

One such spectacle execution in 1846, of an enslaved woman who had struck her mistress, drew nearly 5,000 onlookers. "Witnesses described streets 'thronged' with 'men and boys, and women, too, with infants in arms... carriages filled with female spectators... all were

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[32] Bardes, 107.
[33] Ibid., 102.
[34] Ibid., 127.
[35] Ibid., 127.

stretching their necks, standing on tip-toe, pushing and jostling each other that they might get a good sight.'" Interestingly, this massive public execution was likely New Orleans' last public and officially sanctioned mutilation of an enslaved person's corpse.[36]

But even as the state gave up the most extreme form of racial terrorism, the strength and intensity of its policing kept increasing in scale and frequency. Arrest rates in New Orleans during the 1850s were more than five times the next-highest city in the United States. Much of this was due to the Crescent City's commercial engagement with the world and the constant exchange of sailors, international travelers, immigrants, and refugees. These populations, with their varying identifying markers, threw the color classifications so central to law and order in New Orleans and Louisiana into disarray. Indeed, authorities had great trouble trying to discern between free and enslaved. Papers and passes, so easily forged, were essentially meaningless. Free Black sailors were regularly arrested and imprisoned. In several instances, these free Black sailors were sold into slavery by the state of Louisiana.[37]

Experiments with Voter Control

The 1840s and 1850s saw the state's first experiments with voter disenfranchisement in the history of Louisiana, initially designed to deal with populations that white elites found undesirable. These practices, from taxpaying and residency requirements, would be sharpened as tools of disenfranchisement when Black Louisianans gained the right to vote.

While Black voting was being hammered into a logical and legal impossibility, the targets of antebellum voter disenfranchisement were immigrants. During the 1830s and 1840s, white Louisianans practiced their methods on these other groups. In 1845, leaders in the southern parishes of Orleans, St. Bernard, Jefferson, Lafourche, Saint Tammany, and Plaquemines, afraid that a perceived flood of immigrants would shift the political status quo, "succeeded in doubling the state residency requirement from one year to two, while demanding a full year's residence in the parish. Residency also would be voided by an absence of ninety days or longer."[38] These were the exact methods (refashioned for Black voters) Louisianan leaders would revisit and revive two decades later when the fearsome potential of Black voting power threatened white political control. White Louisianans practiced this two-front battle on perceived political threats by creating hurdles for undesirable voters while "eliminating taxpaying requirements" to expand desirable white votes, the "mortar solidifying the edifice of white supremacy."[39]

White authorities were soon confronted with the regular seasonal arrival of immigrants – influxes that coincided with the cotton harvest. Ships arriving to carry cotton also represented "the period of peak international immigration because the same ships that arrived to collect cotton had little cargo to deposit and thus offered exceptionally inexpensive passenger fares," explains historian John Bardes. Some of the ships made a second round-trip and carried a "second, smaller wave of immigrants in May."[40]

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[36] Bardes, 160-70.
[37] Ibid., 160-170
[38] Ibid., 160-170
[39] Alexander Keyssar, *The Right to Vote*, 77.
[40] Bardes, 227.

Since the repressive and disciplinary tools against the enslaved and Black population had been so refined, this influx of immigrants was an additional population white elites were eager to control. "We are losing a valuable, manageable, and healthy population for one, in every sense the reverse," cautioned the *Southern Quarterly Review* in 1853 – "the submissive, acclimated, non-voting negro pushed aside by the turbulent, feverish, naturalized foreigner."[41] This writer's specificity, particularly in the odd construction of "non-voting negro," was both revealing and prescient – the paramount priority of the white elite.[42]

Eliminating Free People of Color

Up until the 1840s, one of the defining characteristics of Louisiana, and particularly New Orleans, was the presence of a significant population of free people of color. To understand the recalcitrant and repressive state of postbellum Louisiana, it is crucial to understand how white Louisianans cracked down on the racial fluidity that had been so common in earlier times.

So while the state was attempting to exact greater control over enslaved people and reject any attempts by white immigrants to vote, the heaviest brunt of the racial backlash fell on the francophone free people of color, who were increasingly regarded as a fifth column threat to white supremacy and solidarity. Self-help societies were dissolved and free people of color were forbidden to hold meetings without the presence of a white person.[43] Louisiana quickly banned the possibility of slaveholders emancipating their slaves (manumission) and free people of color were invited by the state to find themselves masters.

"In the decades that preceded the Civil War, Louisiana's legislators systematically tightened the constraints on people of African descent, slave and free, rural and urban" and this change became visible in the form of everyday harassment from the police and other white authorities. Creoles "chafed at the humiliations imposed on them," but in every way this population was even more of an anomaly in the 1850s than they had been on the eve of American rule. "In 1860 Ascension Parish held 7376 slaves, but counted only 168 free people of color. In Lafourche Parish the figures were 6395 slaves, 149 free."[44] There were fewer and fewer opportunities to be emancipated by one's master, to "live in free union with a white man" or "own property in [one's] own name."[45]

"The free population of color in New Orleans fell in size between 1840 and 1850, and in 1857 the Louisiana legislature prohibited all future manumissions."[46] This was part of a series of laws within Louisiana designed to further marginalize the civic existence of free Blacks in a slave state. "The squeezing out of free people of color translated into isolation and diminished hopes for those held as slaves…By 1860 Louisiana law was implacable in its hostility to the very existence of free persons of color, and fierce with regard to fugitives. Although individual

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41 Ibid., 227.
42 Ibid., 200.
43 Scott, 15. Also note the similarity to white registrars in the 1950s and 1960s demanding potential black voters have a white person to prove their legitimacy.
44 Ibid., 15.
45 Ibid., 12.
46 Ibid., 16.

masters still found ways to free occasional favored slaves, the freedom thus gained was hemmed about with dangers."[47]

The "bedrock reliance on a coercive labor system marked by brutality" was matched by the extreme hostility to living alongside Black people with any legal status at all.[48] "Some slaves in rural Louisiana," writes Rebecca Scott, "would live their whole lives without ever seeing a Black man or woman who was legally free."[49]

From Baton Rouge in the 1850s came a steady stream of "further restraints on manumission and heightened control of slaves." "In Louisiana, what legal rights had once been accorded to slaves had been aggressively rolled back in both city and country, and even the master's own right to free his slave would be almost entirely blocked after 1857. A slave in Louisiana was not only a "person with a price" but a being whose very right to have rights had been squeezed almost to the vanishing point. A customary privilege to cultivate a garden, perhaps and sometimes. But rights, almost never."[50]

The Civil War, 1861-1865

The American Civil War represented one principle moment when white fears of Black freedom began to materialize. Louisiana saw wartime emancipation advance faster and extend further than anywhere else in the Confederacy. On the very eve of Black political rights, white Louisianans demonstrated the dogged resistance that would take many forms in the years that followed.

The 1860 census recorded 331,726 slaves, a staggering 46.8% of the state's population. Indeed, this interest, in Black people held as slaves, was the very reason Louisiana had ultimately tilted towards seceding from the Union. On December 10, 1860, Governor John Moore warned his state that "the election of Mr. Lincoln by the Northern people…shews[sic] that the Northern mind is poisoned against us, and that it no longer respects our rights…as a slaveholding State."[51] Louisiana seceded from the Union on January 26, 1861. Shortly after, the St. Bernard sugar planter P.G.T. Beauregard ordered his artillery to fire upon federal troops stationed at Fort Sumter in Charleston, the shots that began America's bloodiest conflict.

Louisiana was unique among the states that seceded from the Union in being largely defeated militarily and occupied by federal troops by 1862. The capture of New Orleans in April of that year (followed by the occupation of Baton Rouge on May 9) had Louisianan Confederates relocate their capital first to Opelousas and subsequently to Shreveport.

The early occupation of New Orleans signaled a real permissiveness with slave owners' autonomy. Union troops participated in the policing and protection of slavery while rebellious soldiers risked discharge to aid fugitive Black people. "Local and Federal officials initially

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47 Ibid., 16.
48 Ibid., 27.
49 Ibid., 27.
50 Ibid., 27-28.
51 Charles B. Dew, "Who Won the Secession Election in Louisiana?" *The Journal of Southern History* Vol. 36, No. 1 (Feb., 1970), 20.

worked together to maintain the city's preexisting infrastructure for capturing, disciplining, and returning fugitive slaves," writes John Bardes, but enslaved people refused to "to remain static [and] demolished slavery's foundation."[52] "As slavery collapsed, local and Federal officials transformed the city's antebellum infrastructure for policing and containing fugitive slaves into postbellum infrastructure for policing and containing" Black people.[53]

New Orleans witnessed the arrival of 30,000 Black Louisianans over the 1860s. Some of the fugitive slaves "sought *de facto* emancipation, safety from white violence, escape from white surveillance, and the possibly of reassembling divided family; later, the higher earning potential, and opportunity for cultural engagements, that urban life provided. Many had been expelled or abandoned by owners who had fled westward. They traveled by foot, horse, mule, plantation cart, and skiff. Some migrated with all of their belongings: clothing, food, 'boxes, bedding, and luggage of all sorts.' Others came in 'scarred, wounded, and some with iron collars round their necks,' as one officer later recalled – virtually naked, starving, and carrying nothing at all."[54]

Even before the Black population swelled, New Orleans was experiencing the consequences of the heady arrival of some kind of freedom. The "seemingly innocuous presence of unattended African Americans in New Orleans streets sowed frustration and fear" in both white Louisianans and Union soldiers. "The conduct of the negroes in New-Orleans is intolerable to their owners," wrote one Union solider: "they laugh and talk and walk together up the streets in the most disgusting style, showing very little indications to make way on the banquette for ladies or gentlemen... a more idle, filthy, lazy, degraded looking set of wretches never were seen." "The Negroes will commit all kind of depredations... and [be] totally spoiled for the future whatever his condition may be," William Mithoff, President of the Jefferson Parish Police Jury, predicted: "free or slave... [the negro] must be controlled."[55]

In this sense, white Louisianans and Union troops agreed that the collective solution could not be to let Blacks determine their own fates. Some runaway slaves were declared contraband. Others were returned to owners who had "maintained loyalty" to the Union. But reports continued to flood the Union lines. "Darkies come flocking in here," Col. E.F. Jones, commander of Forts St. Philip and Jackson, reported in June.[56] "[T]hey have heard all sorts of stories... all tending to implant the notion that if they can only get to the forts they are free."[57]

"In July of 1862 Welman Pugh, the son of the owner of Woodlawn plantation, had reported 'a perfect stampede of the negroes' on several plantations," writes Rebecca Scott, "and

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52 Bardes, 258-9.

53 Ibid., 258-9. Bardes writes that "As the nation debated the meaning and future of Black freedom," "daily struggles in the streets of New Orleans – between police, jailors, local authorities, Federal officials, planters, free people of color, and fugitive enslaved people themselves – would have lasting repercussions on the reconstruction of Black punishment, the design of postbellum criminal justice, and white Southerners' theories of African American deviance and criminality."

54 Ibid., 262.

55 Ibid., 264.

56 Ibid., 261.

57 Ibid., 261.

Union officers near New Orleans reported the arrival of thousands of 'contrabands,' a term used by Butler for the slaves of disloyal southerners."[58]

"The jails have become full, and I have no means of feeding them," came a report from St. Bernard Parish.[59] As the Union army liberated more territory, the problem only grew. "What shall I do about the negroes?" complained General Godfry Weitzel in Lafourche river region, "I have no rations to issue to them. I have a great many more negroes in my camp now than I have whites. These negroes are a perfect nuisance."[60]

"Hoping to control" the massive influx of fugitive slaves to both Union lines and New Orleans, "Butler ordered that they be impressed as military laborers, turned over to Unionist slaveholders, or expelled from Union lines" "to save them," Butler argued, "from idle and vicious habits."[61]

By January of 1864 elites began to acknowledge that the laws and provisions of the state constitution pertaining to slavery were now "inoperative and void," but those same elites continued to seize any opportunities to salvage elements of white supremacist rule.[62] Police in New Orleans began to ignore the antebellum distinctions between free Blacks and possibly fugitive slaves, efforts that simply radicalized the Afro-Creole population and allied them (tenuously at first) with the enslaved population.[63]

Efforts by white elites to control some now-generalized Black population backfired in this immediate context. Arrests of Afro-Creole people and the obliteration of those clearly honored antebellum color distinctions suggested to "the city's freeborn people of color…that their security was now firmly bound to the security of the formerly enslaved."[64]

"This transformation was to have profound consequence for local and national politics during Reconstruction," writes John Bardes, and "white Unionists' pervasive racism during the 1864 Louisiana constitutional convention, the failure of all efforts to win suffrage rights, and the legislature's rejection of the 'Quadroon Bill' which would have given the vote to free men of color possessing three-fourths white ancestry" all helped radicalize this population.[65] "Yet no single factor more forcibly demonstrated to New Orleans' free people of color the new racial reality that they now faced than the repeated experience of having members of their community physically locked in cells with former slaves, and the realization that their traditional right to walk New Orleans' streets unimpeded, without the law presuming their maroonage, was forever lost.[66]

This interclass alliance of Black Louisianans would face formidable challenges before the war was over. Lincoln's 10% plan allowed Louisiana to establish a new Constitution in 1864

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58 Scott, 31.
59 Bardes, 261.
60 Ibid., 261.
61 Ibid., 264.
62 Scott, 35.
63 Bardes, 328.
64 Ibid., 287.
65 Bardes, 288.
66 Ibid., 288.

using just 10% of the 1860 census taking a loyalty oath to the United States. That Constitution abolished slavery a year before the 13th Amendment but intentionally made no provision for the right of Black people to vote.

After the assassination of Abraham Lincoln in April of 1865, President Andrew Johnson met with Louisiana's new Governor Wells and it became clear that there was more than hope for white supremacy's fortunes in Louisiana. Johnson shared elite Louisianans' distaste for any increase of Black civil and political rights and had no problem with extending military occupation of the South. Johnson reassured white elites and "proclaimed the return of suffrage rights to virtually all former Confederate soldiers and officials. Louisiana, one contemporary noted, was now controlled by 'the disloyal and proslavery element.'"[67]

Planters simply refused to allow former slaves to rent or purchase land, which served a dual purpose of distancing them from political rights. There was the "immediate hardship" as well as a separation of the population which would make organizing against white supremacy even more difficult.[68] "Class position thus continued to map closely onto color categories," writes Rebecca Scott, "'sugar worker' was associated with black-ness and former slave status, 'farmer' with whiteness and a birthright to freedom."[69]

Scott explains further that the creation of a postbellum labor system was directly guided by white fears of and priorities for "the definition and prerogatives of citizenship."[70] Black political organizations even ran candidates "alongside the lily-white official elections" as a symbolic act, despite their candidates having no possibility of actually being elected to or holding office.[71]

Louisiana Black Codes and the New Orleans Massacre

Black Codes are the earliest example of white efforts to maintain the level of control they enjoyed during slavery. While these attempts at a legal failsafe ultimately failed, the Black Codes established the guidelines for white Louisianans' violence, beginning with racial massacres like the New Orleans Massacre of 1866.

Black Codes, designed explicitly to control Black citizens, began to be written and passed as soon as the Civil War ended and furthered these same ends. In late 1865, Mississippi and South Carolina led the charge, followed quickly by Louisiana's code on December 21, 1865.[72] Louisiana's Black Code was slightly modified by individual parishes but the template was nearly identical. All the codes sought to establish *de facto* slavery by restricting the right of Black Louisianans to travel within parishes "without special permits" or be fined and forced to work a chain gang.[73] Drunkenness in the parish also drew a fine or work on the chain gang. Blacks were not "permitted" to rent homes, preach, sell goods, "carry fire-arms, or any kind of

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67 Bardes, 318.
68 Scott, 39.
69 Ibid., 39.
70 Ibid., 39.
71 Ibid., 39.
72 *See* Appendix 2.
73 Ibid.

weapons."[74] "Every negro is required to be in the regular service of some white person" the Code delineated, and "no public meetings or congregations of negroes shall be allowed."[75] "It shall be the duty of every" white Louisianan to "act as a police officer for the detection of offences and the apprehension of offenders."[76]

The Louisiana Democratic party platform, authored by many of the same white elites responsible for the Black Code, explicitly set out that "we hold this to be a Government of white people, made and to be perpetuated for the exclusive benefit of the white race" and "people of African descent cannot be considered as citizens of the United States, and that there can, in no event, nor under any circumstances, be any equality between the white and other races."[77] The fight by white Louisianans in the following 150 years to preserve this power dynamic would take many forms but the most persistent was the dogged effort to disenfranchise.[78]

The New Orleans Massacre of 1866 was a direct response to the Black Codes. Angered by the state legislature's refusal to extend voting rights to Black men, a peaceful demonstration was being held by mostly Black freedmen outside the Republican Constitutional Convention. What followed was a harbinger of the extreme efforts white supremacists would make to control Black freedom. On July 30, 1866, a mob of ex-Confederate soldiers attacked the Black demonstrators.

"The whites stomped, kicked, and clubbed the black marchers mercilessly," author Ron Chernow describes, while "policemen smashed the institute's windows and fired into it indiscriminately until the floor grew slick with blood. They emptied their revolvers on the convention delegates, who desperately sought to escape. Some leaped from windows and were shot dead when they landed. Those lying wounded on the ground were stabbed repeatedly, their skulls bashed in with brickbats. The sadism was so wanton that men who kneeled and prayed for mercy were killed instantly, while dead bodies were stabbed and mutilated."[79]

Federal troops were required to suppress the riot, jailing many of the white insurgents and New Orleans remained under martial law until August 3. Though the exact figure is unknown, nearly 200 people were killed, almost all Black Louisianans. On the national level, the New Orleans Massacre allowed radical Republicans to gain a supermajority and overturn vetoes by President Johnson, who opposed voting rights for Black people.

While most historians consider the major transition in Louisiana's history to be from the antebellum period (up to 1865) to the postbellum period (after 1865), it was the transition to Black citizenship and Black suffrage that defines the primary shift in the state's history. Until Black Louisianans gained the right to vote, the practice of white supremacy was based in racial slavery, driven by fear and focused on control and punishment. Indeed, the culminating act of pre-suffrage, the New Orleans Massacre, underscores the overall story of Louisiana before and after the Black vote. That story, developed until 1866 and doggedly followed since 1868, is one

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[74] Ibid.
[75] Ibid.
[76] Scott, 39.
[77] Walter Lynwood Fleming, ed., *Documentary History of Reconstruction*, 2 vols. (Cleveland: 1906-7), I, 229.
[78] Fleming, 229.
[79] Ron Chernow, *Grant* (New York: Penguin, 2017), 574-75.

of tightening control over Black Louisianans and the relentless efforts to preserve power relations established in the antebellum era.

III. The History of Black Voting in Louisiana

The Dawn of Black Voting and the Height of White Supremacist Violence, 1868-1877

The century following the passage of the Fourteenth and Fifteenth amendments were defined by utter intransigence in voting equality. In broad strokes, that century was defined first by white terrorism designed to intimidate Black voters and eventually legislation intended to disenfranchise Black voters. The most outrageous terrorist violence in American history defined this 12-year period in Louisiana, a ferocious blowback to the legislative advancements in Black peoples' rights.

While the passage of the Fourteenth and Fifteenth Amendments to the Constitution guaranteed citizens the right to vote free of discrimination, the defining experience of the 150 plus years since their passage has been "a history of efforts to render the guarantee meaningless."[80] Those efforts have taken many forms over the years but once power had been taken away from white Southern governments in the five military districts of Reconstruction, the white South's answer was overwhelmingly highly targeted violence designed to intimidate or physically prevent Black Louisianans from exercising their right to vote.

In the first such elections in the fall of 1868, U.S. Congressional testimony on Louisiana established that "over 2000 persons were killed, wounded and otherwise injured in Louisiana within a few weeks prior to the presidential election; that half the state was overrun by violence; midnight raids, secret murders, and open riot that kept the people in constant terror until the Republicans surrendered all claims, and the election was carried by the (white) democracy."[81]

Political terrorism and violence in service of white supremacy became defining features of Reconstruction Louisiana, perpetrated by the Ku Klux Klan and its many imitators. It was the violent threat of the antebellum slave patrol that guided white supremacist violence in Louisiana, aimed specifically at voter intimidation and disenfranchisement. The Klan organized across many states and eventually similar groups were founded under many different names: the White Line, the White Caps, and others revived antebellum methods meant to keep first slaves, then freed Blacks in whatever whites defined as "order." Louisiana's most popular white terror group, the Knights of the White Camelia, was organized in May 1867 and grew so famous that the organization crossed into "the western Alabama Black Belt by 1868, the year of its maximum growth."[82] Each of these organizations functioned to derail Black civil rights, but most specifically Black suffrage – always considered by white Louisianans the most outrageous expression of racial equality. In Louisiana, the Knights of the White Camelia were "bands of postwar regulators and vigilantes" using violence to roll back postbellum Black advancements,

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[80] Louisiana Advisory Committee for the United States Commission on Civil Rights, "Barriers to Voting in Louisiana" (June 2018).

[81] Report of the Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States, Rep. No. 41, 42nd Congress, 2nd Session, pt. 1, at 21-22 (1872).

[82] Allen W. Trelease, White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction (Baton Rouge, LA: LSU, 1995), 126.

particularly in the political sphere, white men trying to restore some semblance of the antebellum racial order.[83]

In 1868, one St. Martinville newspaper reported on white Louisianan regulators murdering a Republican judge and sheriff in a neighboring parish. The judge and sheriff, reasoned the paper, were pushing "advanced political ideas, and of progressive social reforms [and]we are compelled to own that they have met the fate they deserved."[84] "We people of the South, who have suffered wrongs beyond endurance," the writer maintained, "radicalism and negroism, which in the South are one and the same thing" have forced responsible Louisianans to "use such harsh means, but we have not the courage to blame them."[85]

The open embrace of murder and violence to halt the advance of Black suffrage in the former Confederacy became the lever by which Southerners decided to reclaim their region. Outrages during election times got so terrible – murders, riots, and blatant political fraud – that the federal government was eventually forced, despite great reluctance, to get involved.[86] The result, in the words of the first historian to study white supremacist violence during Reconstruction, was "open white paramilitary organization and wholesale intimidation backed up on occasion by mob violence and more or less inspired rioting."[87] Indeed, in his history of racial terrorism, the historian Allen Trelease established beyond any doubt that white supremacist organizations like the Klan served deliberately as the paramilitary wing of the Democratic Party.[88]

Federal response to white terrorist violence temporarily drove the Ku Klux Klan as an individual organization underground but its imitators fought on, especially at election time. One of the most notable ways that white Louisianans organized against Black suffrage were so called "Race riots," interracial collisions organized and planned by white supremacist groups to antagonize and intimidate Black voters. "Many of the so-called riots came close to being massacres," most notably the July 30, 1866, New Orleans Riot. This premediated act of political intimidation injured more than 200 Blacks and killed 34 when "former Confederate soldiers and police officers shot unarmed Blacks attending Louisiana's constitutional convention." The riot killed four white Louisianans and injured 10, men who came to the convention to prevent Blacks from helping to shape Reconstruction policies and decide whether Black men would gain the right to vote.[89]

It was only the Republican Party's overwhelming success in the midterm elections of 1866 which gave new hope to the suffrage issue. The Reconstruction Acts placed Louisiana in the Fifth Military District. Beginning in late spring of 1867, the fifth district commander was tasked with supervising voter registration to prepare for delegate elections to a state

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83 Trelease, 126.

84 *Courier of the Teche* (St. Martinville), Oct. 30, 1868, quoted in House Miscellaneous Documents, 41st Congress, 2d sess., No. 154, pt. 2, p. 320.

85 Ibid.

86 Trelease, 472.

87 Ibid., 472.

88 Ibid., 472.

89 Trelease, xliv. Gloria J. Browne-Marshall, *The Voting Rights War: The NAACP and the Ongoing Struggle for Justice* (New York: Rowman & Littlefield, 2017), 138.

Constitutional Convention. Although a congressional order allowed registration without restriction to color, disloyalty to the Union was a disqualifying condition. As countless contemporaries and historians have commented, loyalty oaths were a ridiculously slippery notion. In the end, treasonous Confederates voted en masse, the central obstacle to racial equality in the democratic process. But enthusiasm was infectious for these first elections and Black Union veterans seized on suffrage as a validating and empowering measure. Republicans were elected in early every district to draw a new Constitution and "roughly half of the ninety-eight seats went to candidates of some African ancestry."[90]

But this explosion of Black political participation came with real human cost. White Louisianans reacted with outrage at this new behavior by a population who just a few years earlier had been, in theory, an endless source of labor and obedience. Across 1866 and 1867, voter intimidation took the form of violent attacks and murders of freedmen. In February of 1867, "210 cases of whipping, beating, and stabbing" were reported in Louisiana, "almost all of them unpunished."[91] Moreover, 70 Black Louisianans were murdered but "the actual total…might have been twice that number" if the victims were not so fearful of even reporting the violence.[92]

Legislating Equal Rights

The foundation of Black voting rights were the Fourteenth and Fifteenth Amendments along with a new state Constitution. These early experiments with using the law to aid Black voting were met with tremendous violence and Black Louisianans were keenly aware of the precariousness of their newly gained rights.

Truly marking the beginning of an era, the draft Louisiana Constitution was both a fulfillment of the promises of the founding of the nation to Black Louisianans and a promise that would remain mostly unfulfilled for another century.

"Louisiana's new Bill of Rights held that all citizens of the state should enjoy 'the same civil, political and public rights and privileges, and be subject to the same pains and penalties,'" writes Rebecca Scott.[93] Along with "the bold claim of civil and political rights" the Louisiana Constitution "clarified an explicit prohibition of racial discrimination on public conveyances and in places of 'public resort,' or what we would now term public accommodations. This document became a touchstone of political commitment for activists, fusing their claim to political voice with an insistence on public respect."[94]

Article 13 is powerfully important to the rest of Louisiana's legal history and its deep patterns of voter disenfranchisement because it explicitly reclaimed the public space denied to the enslaved and free people of color before the Civil War. Article 13 also set the stage for the *Plessy v. Ferguson* case and the dire experiences of Jim Crown that followed. As Article 13 explained, "all persons shall enjoy equal rights and privileges upon any conveyance of a public

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[90] Scott, 40-1.
[91] Trelease, xliii.
[92] Ibid., xliii.
[93] Scott, 42.
[94] Ibid, 42.

character; and all places of business, or of public resort, or for which a license is required by either State, parish or municipal authority, shall be deemed places of a public character, and shall be opened to the accommodation and patronage of all persons, without distinction or discrimination on account of race or color."[95]

As Rebecca Scott explains, the insistence of delegates on spelling out these rights about "public character" "had its roots in a keen recognition of the shaming intent of separate streetcars, alongside a memory of the multiple humiliations heaped on free people of color in the years prior to the Civil War."[96]

But even further, the draft state constitution anticipated the eventual strategies of white supremacist disenfranchising legislation like 1898's grandfather clause. The document "granted suffrage to all men who had been resident in the state for a year, and in the parish for ten days, except for those explicitly disenfranchised for crime or sedition by the constitution itself." "Broad suffrage" was not just a bedrock priority of the postbellum Republic Party, it also spoke "to the need of former slaves in the countryside for political voice to counteract the reassertion of mastery by their former owners."[97]

With a knowing prescience, "Representative P. F. Valfroit, a propertyless Black schoolteacher from Terrebonne, proposed unsuccessfully that the convention resolve that no legislative body be able to amend the constitution or call another convention for a period of seventy years."[98] It was a strategy hedging against the white supremacists Blacks and Republicans saw whetting their blades. "Planters and other anxious defenders of racial hierarchy" reacted typically to the 1868 Constitution.[99] "The ratification elections of April 1868 were a wild, freewheeling battle that conservatives characterized as white versus black," recounts Rebecca Scott, "Laborers left the fields to cast their votes, and in the end the constitution carried the day, 66,152 to 48,739. The constitution thus went into effect, functioning as the state's fundamental document for the next eleven years."[100]

Black Louisianans held the 1868 Constitution in almost holy regard, "a shining beacon of what was and could be again."[101] For the first time in the state, the massive Black population had expressed their democratic voice, voting for universal suffrage, interracial marriage, civil and political rights of citizens without regard to color or previous condition. "In other words, they enlarged the scope of civil privileges of all races, instead of restricting it." Despite their inability to maintain a political majority, the authors of the document had written a text whose vision of public rights would inform the initiatives of several generations of Louisiana activists.[102]

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95 Ibid., 42.
96 Ibid., 45.
97 Ibid., 45.
98 Ibid., 45.
99 Ibid., 45.
100 Ibid., 46.
101 Ibid., 46.
102 Ibid., 46.

That hope was counterbalanced by violence aimed squarely at undoing Black suffrage. One former slave, John J. Moore, "returned to St. Mary Parish after the war and took up work hoeing cane on George Cleveland's plantation [and] organizing Republican clubs on various plantations." Historian Rebecca Scott recounts that "it did not take long for a group of white men to come to the Cleveland plantation" to threaten violence and a concealed Moore "heard them try to coax information on his whereabouts from one of his fellow Republicans." Moore later testified about the incident for a Congressional Committee, recalling that "the white gang told Moore's friend that 'there is but one way that you niggers can live here with us, and that is to let politics die. Leave them alone; you cannot live with us, and live and work and vote against our interests. All that you get and all that you have comes from us and by us; and now if you do not let politics alone you will get killed here. It is white peoples' business; the business of negroes is to go into the fields and work, and we will pay you.'" Moore decided that even though this visit gave him only "'a very poor chance' he continued organizing: The 'civil, political and public rights' asserted in the new state constitution were costly to exercise, but activists like Moore responded with defiance rather than with deference."[103]

The Belligerence of White Political Terror

Violence aimed at intimidating Black voters was a plague on Reconstruction Louisiana. At no other time or place in American history has there been more sustained and varied acts of political terrorism designed to disenfranchise Black voters.

White Louisianans continued to respond with belligerence, violence, and a relentless determination to roll back Black suffrage. "We proclaim that we are opposed to negro suffrage under any circumstances, and stand ready to use all legitimate means to prevent its present and future exercise," plainly explained one St. Martinville newspaper in 1868, speaking on behalf of "an overwhelming majority of the enlightened and liberal white people of the State." "The Caucasian needs not to kneel to any other race," the paper reasoned, and Black suffrage was "pregnant with future disaster and disgrace."[104]

Even in this environment so hostile to Black suffrage, the power of the Black vote was immediately apparent. Plantation records in November of 1870 recorded "No work today. All hands gone to vote…Cutting cane today and hauling wood. The Rads carried the Parish by about 415 votes!" Despite electing many Black representatives, including the fearless John Moore, the overall story was one of increasing power of white supremacists. "Organization and voting by black fieldhands remained dangerous, and the physical security of those who undertook these projects depended to a considerable extent on Republican rule of the state, backed up by the presence of federal troops," write Rebecca Scott, and the problem was the proliferation of "white-supremacist leagues, clubs, and 'rifle companies.'" These groups portrayed "themselves as the legitimate representatives of the people" and violently antiblack groups like the Knights of the White Camelia" began to thrive. The White Line was eerily reminiscent of Louisiana's policing in the 1850s, obsessed with "forbidding blacks to beat drums and cutting the drums up" at political rallies or election times. "This is a white man's country, and we don't allow that," Black republicans were informed before they were beaten with sticks and pistols. "On election

[103] Scott, 47-48.
[104] *Courier of the Teche* (St. Martinville), Sept. 19, 1868.

day…White Liners dragged a [twenty-four-pound cannon] to the polling place and then began beating potential black voters." The votes told the story of racial terrorism in the South: Republican votes plummeted from 1400 in 1873 to 90 in 1875.[105] The story was the same across the former Confederacy.

Those plummeting numbers were not accidental, it was the very design of white terrorism in Louisiana and elsewhere. That terrorism, intended to disenfranchise Black voters and their Republican allies, reached its apotheosis on Easter Sunday of 1873, striking the tone for nearly a century of white supremacist domination of the state of Louisiana, a period where Black political rights were under relentless attack. On April 13, 1873, white terrorists perpetrated what became best known as the Colfax Massacre, an event that would influence Louisiana far beyond the 1870s. An outgrowth of the disputed electoral results of 1872, dueling governments converged on a courthouse in Colfax, a town on the Red River 220 miles north of New Orleans. Tension between Democrats and Republicans had simmered and boiled over into violence several times before hundreds of local Blacks, including women, children, and armed men gathered at the Colfax courthouse to show their support for the Republican candidates they had voted for. At least 150 local whites, armed with a cannon and mounted riders forced the Black attendees into the courthouse and set fire to it. Shots were fired, and one of the white leaders, James Hadnot, a principle in the Knights of the White Camelia, was killed along with another white man. The white force began firing into the crowd and over the course of the day, somewhere between 60 and 250 of the Blacks strategizing to defend the election results were murdered.[106]

One day later, the Supreme Court handed down the decision in the Slaughterhouse Case. This case grew out of the Reconstruction government in Louisiana creating a single slaughterhouse downstream from New Orleans which replaced several operating within the city. The law required the entirely white population of butchers to bring cattle and hogs to this new facility. The case arose because Blacks were also allowed to use the new slaughterhouse, entering a closed white occupation without starting their own businesses. The reason this case would have such importance in Louisiana and elsewhere (one newspaper called it "one of the most significant decisions that has ever emanated" from the Supreme Court) because the white butchers sued claiming the Fourteenth Amendment should protect them. Their lead attorney, John A. Campbell, was a former Supreme Court justice who had served as the Confederate secretary of war who had voted affirmatively in the Dred Scott decision when the Supreme Court ruled in 1857 that no Black person could ever be a citizen of the United States. Campbell specifically sought "to undermine the legitimacy" of Black political participation.[107]

Campbell and his clients did not convince the Court of the unconstitutionality of the new slaughterhouse, but the Supreme Court effectively crippled the Fourteenth Amendment in the Slaughterhouse ruling. "To fetter and degrade the state governments by subjecting them to the control of Congress" was not the amendment's intent, according to the majority opinion, and the Supreme Court would not serve as a "perpetual censor" of state laws. "The decision eviscerated

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[105] Michael Fellman, *In the Name of God and Country: Reconsidering Terrorism in American History* (New Haven: Yale University Press, 2010).

[106] Eric Foner, The Second Founding: How the Civil War and Reconstruction Remade the Constitution (New York: Norton, 2019), 335. See also LeeAnna Keith, The Colfax Massacre: The Untold Story of Black Power, White Terror, and the Death of Reconstruction (New York: Oxford University Press, 2008).

[107] Foner, The Second Founding, 310.

the Privileges and Immunities Clause so effectively" explains the most revered historian of the period, that it "ceased to have constitutional meaning." Thereafter, Black Louisianans "were deprived of a potential constitutional avenue for asserting claims for expanded rights."[108]

To see the effect that the Slaughterhouse ruling would have on Black political rights in Louisiana is to observe the realpolitik that white violence would wreak when it operated hand in hand with a deferential federal government. August and September of 1874 witnessed two of the most significant acts of violence aimed at Black disenfranchisement in the history of the state. A small bit of geography helps explain the first of these outrages against Black voters. "The valleys of the Red River and the Mississippi River form a huge topographical Y that cuts through the heart of Louisiana. Radical Reconstruction was the program of the Republican Party, and Republican rule in the state rested on African American votes, which were concentrated in the alluvial bottomlands of the Y. The smaller and weaker arm of the Y was the Red River Valley, hence the importance of Red River Parish."[109]

During Reconstruction, the upper Red River Valley had come under the purview of a Vermont carpetbagger named Marshall H. Twitchell, a former Captain of Black troops in the Union Army and a ready symbol to white Louisianans of the frightening future of Black suffrage and Republican rule. Although white supremacists had initially joined the KKK or the Knights of the White Camelia to disenfranchise Blacks and intimidate white Republicans, federal legislation had succeeded somewhat in driving those organizations underground. In their place, the White League came to dominate the Red River Valley. The White League was "less secret, better organized, and more explicitly political in its aims," argues the writer Nicholas Lemann, and "its purpose was to use extralegal violence to remove the Republican party from power, and then to disenfranchise black people."[110]

"We have been preserving the ascendancy of white people by revolutionary methods. In other words we have been stuffing ballot boxes, committing perjury, and here and there in the state carrying the elections by fraud and violence," explained one verbose fellow traveler. [111] Quite simply, the White League "tried to drive the Republican officeholders out of power, to disrupt Republican campaign activities, and to prevent Negroes from voting – all aims that were to be accomplished by any means necessary."[112]

Political Massacres and Coup D'Etats

Beyond the intense political terrorism of the 1860s and 1870s, Louisiana witnessed two racial massacres – Coushatta and Colfax – where significant numbers of Black Louisianans were murdered to disenfranchise Black voters. Along with the crushing legal decisions in Slaughterhouse and Cruikshank, Louisiana proved to be on the cutting edge of schemes to eliminate Black voters from the body politic.

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108 Slaughterhouse Cases, 83 U.S. 36 (1872); Foner, 310-11. 312.
109 https://64parishes.org/entry/coushatta-massacre.
110 Nicholas Lemann, *Redemption: The Last Battle of the Civil War* (New York: FSG, 2006), 25.
111 Judge Chrisman, quoted in James G. Hollandsworth, *Portrait of a Scientific Racist: Alfred Holt Stone of Mississippi* (Baton Rouge, LA: LSU, 2008), 57.
112 Lemann, 25.

In Louisiana, where some of the most brutal terrorist violence in American history took place, white planters defended the violent tactics of white citizens. For B.W. Marston, white Republicans, particularly carpetbaggers, were simply trying "to organize the freedmen element against the interests of the white people." With such "incendiary purposes" in mind, Marston explained to Congress that Blacks and whites who supported the Republican party would be dealt with "promptly." Marston was referring, however obliquely, to the Coushatta Massacre, where the local White League assassinated six white Republicans and as many as 20 Blacks who witnessed the killings.[113] Coushatta was the most significant community in that Y described above and one where aggrieved whites were particularly outraged by the alliance of carpetbagging Yankees and local Blacks. The local White League decided a project of "extermination" was in order and these political vigilantes began by murdering a Black Republican in the Brownsville community. The next day several prominent white Republicans, including two of Twitchell's family members, were arrested "on the pretext that they were plotting a murderous Negro rebellion."[114]

The invocation, recalling the German Coast uprising so well known to white Louisianans, "drew heavily armed whites from neighboring parishes" who "thronged the streets" of Coushatta "swearing, drinking, and demanding blood." Sham trials were conducted, all the accused white Republicans murdered before White Leaguers seized a black leader named Levin Allen, broke his arms and legs, and burned him alive. Two more Black voters were subsequently hanged by the White League. The so-called Coushatta Massacre was nothing more than a coup d'etat, indeed "the officialdom of an entire parish—and white men at that—had been virtually decapitated in a single murderous act." The Massacre was a stunning revelation to Black and white Republicans alike about the future of Louisiana. White terrorists in service of the Democratic party had removed and executed the Republican leadership of the parish and murdered them "with impunity (none of the lynch mob would ever be brought to justice)." Republican safety, let alone government, was shown to be a hollow shell.[115]

The illusion of Republican political control and even control over public safety took place just two weeks later in New Orleans. There came a long-sought confrontation between white supremacists and the Metropolitan police force. Indeed, far from a spontaneous eruption of hostility between the Republican-run police force and the White League of New Orleans, the conflict that erupted had been in planning for quite some time, a concerted effort to intimidate Blacks and Republicans and regain control of New Orleans and the state.

The city's White League had first called for volunteers on July 5, 1874, raising 1,500 men under Frederick Nash Ogden, a Confederate officer and prominent local Democrat and president of the Crescent City White League. Highly directed political violence was Ogden's design (he had had led the failed Cabildo raid in March 1873) and the 1874 White League "represented political militarism on a scale that had never before been seen in the city nor has been seen since." Throughout the summer, "dozens of companies of White League volunteers drilled in private club rooms and ward meeting halls across the city" while Ogden and other

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[113] *Testimony of B.W. Marston Re: The Coushatta Affair*. House Reports, 44th Congress, 1st Session, No. 816, 645-727.

[114] Ibid.

[115] Ibid.

League leaders procured decommissioned Civil War weaponry cheaply available "from merchants in the North."[116]

In addition to the secret military drills, the White League, deliberately invoking the slave patrols of the antebellum era, made torch-lit marches through the city throughout the summer of 1874. With an arms shipment arriving on September 14, an enormous rally of 5,000 white Democrats were whipped into an anti-Republic frenzy, barricades built, and battle lines set on Canal Street. Alongside the Metropolitan Police, Black troops were the only federal forces still in uniform, under the command of former Confederate General James Longstreet.

What followed was an intense military battle with the White League routing the Republican authorities and controlling the city of New Orleans within hours. The Black state militia was "forcibly disarmed and disbanded." However, Ogden was careful not to commit murderous outrages because of the public opinion fiasco of the Colfax Massacre. Indeed, Colfax soon wheeled back into the center of Louisianan politics.

The bloodiest act of terrorism during Reconstruction produced one other rarity – a trial of nine white men, charged not with murder but with depriving murdered Black Louisianans of their civil rights. After a mistrial, four of the nine were convicted, including a participant in the massacre named William B. Cruikshank. Cruikshank's conviction was appealed and the case ended up before the same Supreme Court that had crippled the Fourteenth and Fifteenth Amendments in the Slaughterhouse ruling. On March 27, 1876, Cruikshank and his three compatriots had their convictions overturned by the Supreme Court. Chief Justice Waite cited the Slaughterhouse Case in affirming state authority over its citizens and denied the Fourteenth Amendment's ability to take such authority away from Louisiana. "Sovereignty, for the protection of the rights of life and personal liberty within the respective States," Waite wrote, "rests alone with the States." The Fourteenth Amendment "prohibits a State from depriving any person of life, liberty, or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws, but it adds nothing to the rights of one citizen as against another… The duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the Amendment guarantees, but no more. The power of the National Government is limited to the enforcement of this guaranty."[117]

James R. Beckwith, U.S Attorney for the District of the Circuit Court of Louisiana, wrote to the U.S. Attorney General that following the Cruikshank ruling, white terrorist organizations had actually proliferated, "sprung to life and grown influential precisely because of this decision." As one historian explains, the state of Louisiana had, contrary to the Supreme Court's ruling, "defaulted in their duty to protect citizens, so the federal government had to step in." But the crucial distinction in the Court's ruling in Cruikshank was that the federal government could only defend Black rights if the state itself was the violator. "The Cruikshank decision

[116] https://64parishes.org/entry/the-battle-of-liberty-place.
[117] *United States v. Cruikshank*, 92 U.S. 542 (1875).

therefore gave a green light to acts of terror wherever local officials either could not or would not enforce the law."[118]

Endlessly trotted out as a relatively clear-headed observer of the horrors of Redemption, Adelbert Ames, the carpetbagger governor of Mississippi, captured the flavor of post Cruikshank Louisiana quite well. "Through the terror caused by murders and threats, the colored people are thoroughly intimidated," Ames explained. They "are disenfranchised [and] are to be returned to a condition of serfdom – an era of second slavery."[119]

And yet, even these concerted efforts to intimidate and disenfranchise went through almost two decades of sustained failure. By 1888, the voter rolls in Louisiana read like a nightmare to white elites: 128,150 Black voters and 125,407 white voters. Given the bald intimidation so common in Louisiana during this period, these numbers cannot be taken completely at face value since Black votes were routinely "stolen by Democratic election officials, as was the general practice in the black-majority districts."[120] At the time, it was more important to steal Black (and immigrant) votes than to deny them because representation at the state level was based on parish totals.

Legislating Resistance to Black Voting, 1877-1896

This period witnessed a shift from white supremacist violence to the legislative voter disenfranchisement that would define 20th century Louisiana. The introduction of poll taxes, grandfather clauses, and literacy tests would combine with the *Plessy* ruling to introduce nearly seven decades of extreme voter disenfranchisement.

Despite waves of white supremacist violence specifically aimed at intimidating Black voters, the period from 1868-1896 represents the high-tide mark of Black voting in the state of Louisiana. In 1896, Black citizens made up 45% of the state's registered voters, a number that has never been equaled since.

In other words, white Louisianans had tried terrorist violence and while it had succeeded in voter intimidation and in specific elections, Blacks were still voting and increasingly so. In the 1870s and 1880s, southern newspapers, as well as agricultural and political journals, were filled with discussions of how to get rid of Black voters. Indeed, by the late 1880s, efforts proceeded across the states in the former Confederacy to consolidate power in the white democratic minority. In 1889, Florida passed a poll tax law to prevent Blacks from voting. In 1890, Mississippi passed the Mississippi Plan, laws adding poll taxes and literacy tests to prevent Blacks and poor Whites from voting. South Carolina, Louisiana, North Carolina, Alabama, Virginia, Georgia, and Oklahoma passed laws adding poll taxes, grandfather clauses, and literacy tests to voting registration requirements, based on the Mississippi Plan.

In May of 1894, a constitutional commission in Louisiana drafted a suffrage amendment which established a series of qualifications designed to disenfranchise Black voters, including a

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118 https://64parishes.org/entry/cruikshank-case.

119 Stephen Budiansky, *The Bloody Shirt: Terror After Appomattox* (New York: Viking, 2008), 207.

120 Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888-1908* (Chapel Hill: University of North Carolina Press, 2001), 127.

residency requirement, a poll tax, and either a literacy test or a high bar of property ownership. The state legislature was simultaneously considering a secret ballot proposal. Indeed, white supremacist Democrats in the state had not yet figured out the delicate construction of literacy tests and other tools that would allow them to retain the immigrant voters they needed while getting rid of the Black voters they feared.

The 1896 election witnessed voter fraud unprecedented in Louisiana history, where the white supremacist gubernatorial candidate, Murphy Foster, obliterated his opponents in the 25 black-majority parishes. As the formal protest to these results explained, the results were "so false [and] so infamous" it was going to require a complete audit of the ballot.[121] The premier historian of voter disenfranchisement across the South explains that "as the ink on the forged ballots was still drying, the *Picayune* announced the lesson to be derived from the recent scurrilous election: 'The illiterate and shiftless population, chiefly, but not wholly, made up of the negro element, should be expunged from the political conditions.'"[122]

But it was the dire political crisis the grew out of the fraudulent 1896 election that caused Louisiana's Democratic leadership to specifically get rid of the Black vote. J. C. Pugh, Ernest B. Kruttschnitt, and Robert S. Landry published "Address to the White Democracy" in which they described just three possibilities for Louisiana: "amalgamation, negro domination, or WHITE SUPREMACY."[123]

"The Democracy is pledged to a limitation upon suffrage which will eliminate the Senegambian from politics as far as can be under the Constitution of the United States," Louisiana's Democratic Party leaders explained, "Mississippi and South Carolina have set us the example."[124]

On the rippling effects of Louisiana's streetcar segregation case *Plessy v. Ferguson*, the history of the fight over voting rights explains that after *Plessy*, "segregation took hold of American culture, then spread blood deep into every crevice. Terrorism followed, giving rise to murder with impunity by civilians as well as law enforcement officials. *Plessy v. Ferguson* heralded a disastrous period for all those who believed in American democracy."[125]

Voting and civil rights activists were well aware of the laws white supremacists were passing and their ultimate design. Albion Tourgée, the crusading Reconstruction lawyer and activist, was particularly incensed by the aggressive shift against Civil Rights that characterized the 1890s. Tourgée had become particularly impassioned and outspoken by the time Louisiana passed its Separate Car Act in 1891. One column helped galvanize "a committee of prominent mixed-race Creoles and several black allies in New Orleans, which was already bent on mounting a legal challenge to the law."[126] Homer Plessy identified as a Black man, but was classified as Creole by Louisiana custom and could pass for white. Accordingly, Homer Plessy

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121 *The New Orleans Daily Picayune* reported the revised official results on May 15, 1896.
122 Perman, 133.
123 Democratic Central Committee, ''Address to the White Democracy,'' May 4, 1896.
124 Ibid.
125 Browne-Marshall, 215.
126 Steve Luxenberg, Separate: The Story of Plessy V. Ferguson and America's Journey from Slavery to Segrgation (New York: Norton, 2019), 14.

bought a first-class ticket on the East Louisiana Railway line on June 7, 1892, taking his seat in the railroad car designated for Whites.

Now the enforcement mechanism of these segregated trains is very informative about the ingenious penetrative power of white supremacist laws and the necessity of enlisting as many white accomplices as possible. Under the terms of the 1890 law, conductors on the trains (who were all white) were required to remove violators or risk jail and a fine themselves.

On June 7, Plessy was asked to move to the "Negro-only" car. Upon refusing to, Plessy was removed by police, arrested, and locked up in the Orleans Parish jail. As with test cases that would follow (*Brown v. Board* being the most prominent), Plessy intended to be arrested and also planned on appealing that charge as high up the judicial chain as he could go. The case was appealed to the Supreme Court, where the staunch segregationist Justice Henry Billings Brown wrote the majority opinion, denying Plessy's claims of discrimination and dismissing the notion that "a badge of inferiority would be placed on Blacks segregated from the general population."[127]

"If one race be inferior to the other socially," Judge Brown wrote, "the Constitution of the United States cannot put them upon the same plane." Brown's reasoning was the bedrock of white supremacy before and after Black suffrage, affirming the invented differences of race and the inability of the law to promote actual equality. "A law which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races," the decision explained, "The object of the [Fourteenth Amendment] was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either."[128]

"Every aspect of American life was affected by this ruling," writes Gloria Browne-Marshall in her history of the battle over voting rights, "the states were given the power to legislate social interaction between the races. The *Plessy v. Ferguson* opinion instituted the 'separate but equal' doctrine, which imposed on the country an Americanized version of apartheid."[129] The dissenting opinion blasted both the logic of the majority and the effects the decision would certainly produce. Justice John Marshall Harlan wrote that "the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott case."[130]

Indeed, the high tide of Black voting in Louisiana was marked the same year as the *Plessy* decision: 1896, when Black voters made up nearly 45% of registered voters in the state of Louisiana.

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[127] Browne-Marshall, 211.
[128] 163 US 537 (1896).
[129] Browne-Marshall, 213.
[130] Browne-Marshall, 213, and 163 US 537 (1896).

Nadir of Black Voting, 1898-1954

From Louisiana pioneering the grandfather clause to all manner of disenfranchising strategies, 1898-1954 witnessed the lowest numbers of Black voter registration and political participation since Blacks were enslaved.

Although the 30 years following Black enfranchisement in Louisiana were replete with violence and struggle, Black voter registration reached its highest point in 1896. The following 70 years would represent the effective creation of legislative white supremacy, a system of economic, social, and political discrimination that effectively removed Black voters from the body politic. Indeed, from 1898-1944, when the Supreme Court voided all-white primaries as unconstitutional, Louisiana's record on disenfranchising Black voters followed a standard pattern. "When one form of voting discrimination was identified and prohibited," one Congressional report explained, "another sprang up in its place."[131]

Black voting numbers plummeted after the *Plessy* ruling, from 130,334 to fewer than 5,320 just two years later. Researchers have been unsuccessful in locating a single Black Louisianan elected to office until the 1940s. The Louisiana legislature quickly amended its constitution to exclude Black voters. In 1898, when approximately 44% of all the registered voters in the state were Black, a policy was put in place denying them the right to vote based on race. The Black vote never reached more than 1%. From the grandfather clause to literacy tests to White-only primaries, for 80 years Louisiana schemed to exclude Black voters.[132]

It was not so much how the *Plessy* ruling applied to voting rights specifically, but how the case seemed to provide a broad mandate for states like Louisiana to develop sophisticated and persistent methods to disenfranchise Black voters. The next few decades showed Louisiana's "unremitting and ingenious" methods of ensuring that its African-American citizens would have no effect on the political process.[133] Just two years later, Louisiana pioneered the Grandfather Clause, imposing byzantine education and property requirements on any citizens whose fathers or grandfathers were not registered voters before January 1, 1867. As a direct result of the Grandfather Clause, Black voters plummeted from 45% to just 4% in two years.

Ernest B. Kruttschnitt, the President of the 1898 Constitutional Convention, explained this as the very design of the Grandfather Clause. "We know that this convention has been called together" Kruttschnitt explained, "to eliminate from the electorate the mass of corrupt and illiterate voters who have during the last quarter of a century degraded our politics." "Doesn't it let the white man vote," he continued, "and doesn't it stop the negro from voting, and isn't that what we came here for?"[134]

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[131] Louisiana Advisory Committee for the United States Commission on Civil Rights, "Barriers to Voting in Louisiana," June 2018.

[132] Browne-Marshall, 390.

[133] Depo P. Adegbile, "Voting Rights in Louisiana, 1982-2006," *Review of Law and Social Justice* [Volume 17:2, 2008], 417.

[134] Ernest B. Kruttschnitt, "February 1898 speech," *New Orleans Daily Picayune*, February 9, 1898.

Indeed, contemporary observers understood that white politicians were attempting to "perpetrate one big steal" in Louisiana so there would be no need for "more fraudulent work to do hereafter."[135]

In response to the baldness of the disenfranchising effort in Louisiana, the U.S. Supreme Court struck down the Grandfather Clause in 1915 in *Guinn v. United States*, but Louisiana was quite creative in searching out alternative means to follow Kruttschnitt's statement of the obvious purpose: to "stop the negro from voting." Laws were written "prohibiting elected officials from helping illiterates" and "potential voters were required to count the number of jelly beans in a large jar just by looking at it."[136] Poll taxes, literacy tests, so-called "understanding" clauses were all deployed to prevent Black voting.[137] None of these methods were transparent to the potential Black voter, never graded in plain sight or in front of the applicant attempting to register, and nor were answers shared with the applicant.[138]

Louisiana's 1921 constitutional convention was the first that had the potential of including Black women. The NAACP recognized that a permanent lobby was going to be necessary "to prevent…adverse legislation framed for the purchase of disfranchising the Negro."[139]

The massive purging of Black voters was incredibly difficult to counteract. Very few Black voters could navigate the numerous "discriminatory hurdles" designed to keep them from exercising their democratic rights.[140] To complement these devices, Louisiana "authorized an all-white Democratic primary which functioned to deny blacks access to the determinative elections." The all-white primary completely excluded African-Americans in Louisiana from the political process between its creation in 1923 and the Supreme Court's condemnation of the practice in 1944.[141]

Understanding requirements, poll taxes, and registration purges gave way to even more sophisticated strategies to disenfranchise Black voters. Citizenship tests and bans on single-shot voting (which allowed Black voters to aggregate votes behind one candidate) were additional discriminatory techniques developed by Louisiana. As has been extensively quantified and documented, these methods were staggeringly effective "in achieving their discriminatory objectives."

"From 1910 until 1948, less than 1% of Louisiana's voting age African-American population was able to register to vote. In 1948, that proportion rose to 5%." Even as the Federal government became more involved from 1952 until 1964, "the proportion rose only from 20% to 32%, reaching 32% only in October 1964."

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135 *Southwestern Christian Advocate* (New Orleans), editorial, February 24, 1898.
136 Browne-Marshall, 406.
137 *See* Exhibit A.
138 See Appendix 3 for a contemporary map of the Black population in the Louisiana Parishes.
139 Lee Satain, Invisible Activists: Women of the Louisiana NAACP and the Struggle for Civil Rights, 1915-1945 (Baton Rouge: LSU, 2007), 49.
140 *Major v. Treen*, 574 F. Supp. 325, 340 (1983).
141 Adegbile, 417.

White voting registrars had enormous power, which bolstered the discriminatory effect of the myriad laws meant to disenfranchise Black voters. The registrar's "complete discretion" allowed them to reject 64% of Black registrants (as opposed to 2% of white registrants) between 1956 and 1962. Indeed, "the consistency of Louisiana and other states' abilities to develop techniques and devices to maintain white supremacy in the political process, even as the Supreme Court condemned one disenfranchising practice after another" prompted the search for more effective legislation and Federal oversight of these sustained and innovative attacks on the democratic process.[142]

Civil rights groups began conducting voter education classes on the Constitution and freedom schools taught classes on the state and federal constitutions to try and outwit the tactics of disenfranchisement. The numbers tell how effective these efforts were. From 1910 until 1948, less than 1% of eligible Black voters were able to register. By 1948, the percentage had crept up only to 5%. Those fighting for civil rights and the Black vote came up with the ingenious strategy of turning the *Plessy* ruling on its head, demanding quantifiably equal treatment as they battled *Plessy* and other offenses in the courts. That legal crusade culminated in the *Brown v. Board* ruling of 1954, which found segregation in public schools unconstitutional but only ordered desegregation to take place "with all deliberate speed."[143]

The Civil Rights Era, 1954-1965

The intensification of legal efforts to fight for Black voting rights was met by a well-practiced and inventive white elite absolutely determined to prevent Black Louisianans from gaining political power. As legal decisions began to go against Louisianan practices, whites became increasingly concerned about how to continue a 200-year tradition of white supremacy.

The realities of Black voting in 1950s Louisiana were grim. After massive voter registration efforts by the NAACP and the YWCA in New Orleans, for instance, only 25% (25,524) of the Black population was registered. Suits were filed against the registrar of Rapide Parish in April of 1954 after efforts to register were denied several times. As in earlier eras, Black voters in Rapide were being denied because the registrar rejected applications on the grounds that the Black voters could not answer questions about the state and federal constitution to his satisfaction. The U.S. District Court for the Western District of Louisiana found no fault with the disenfranchising effects of these literacy tests.[144] The ruling explained that "we do not see how we could decide that the administration of the laws…penalized Negroes more than it did other citizens."[145]

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142 Ibid., 417-18.

143 349 U.S. 294, 301 (1955).

144 Some examples from the literacy tests used in the 1950s explained that Applicant must correctly answer any four of the following six questions so as to evidence an elemental knowledge of the Constitution and Government, an attachment thereto, and a simple understanding of the obligations of citizenship under a republican form of government. Questions include 1. The church that we attend is chosen, a. by the National Government; b. by ourselves; c. by the Congress. 2. The President must be at least, a. twenty-five years old; b. thirty years old; c. thirty-five years old. 3. It is important for every voter, a. to vote as others tell him to vote; b. to vote for the most popular candidates; c. to vote for the best qualified candidates.

145 Shannon Frystak, Our Minds on Freedom: Women and the Struggle for Black Equality in Louisiana, 1924-1967 (Baton Rouge: LSU, 2009), 72 and Adegbile, 419.

Efforts elsewhere in Louisiana met with similar obstinance from white authorities. Caddo Parish's white registrar refused to accept identification from a Black voter without a registered white voter to prove her identity. When the voter produced "a white store owner as well as a white notary" the "registrar rejected both as sufficient to establish identity."[146]

Therefore, the importance of the Brown ruling was not so much how it applied to Black suffrage but the overall treatment of Black people in Louisiana and more specifically that it reinvigorated efforts by white Louisianans to try and prevent Black suffrage through any means necessary. It was ultimately this intransigence that would prompt greater federal oversight, just as the violent outrages of the 1860s and 1870s against Black voters had done. The Southern Manifesto was crafted by Southern politicians in 1956 as a means of urging Southerners to use any "lawful means" to resist desegregation.[147] Indeed, the resistance on the ground in Louisiana was violent, venomous, and dramatic.

Piecemeal legislation to move desegregation forward, particularly in the political realm, proved inadequate to firmly entrenched white supremacist policies. The Civil Rights Act of 1957, which gave the attorney general power to prosecute those who obstructed voting in federal elections, could not change extra-legal practices. Indeed, Howard Smith, chairman of the House Rules committee and author of the southern Manifesto, remarked on that legislation that "the Southern people have never accepted the colored race as a race of people who had equal intelligence and education and social attainments as the whole people of the South."[148] Sharecroppers continued to be evicted from their land when they tried to register to vote.[149] In 1960, the Civil Rights Act of 1960 made the collection of state voter records mandatory and authorized the U.S. Justice Department to investigate and access voter data and history in all states so that Civil Rights legislation could be enforced. In 1962, just 150,000 Black voters, a mere 31% of eligible voters, were registered in Louisiana.[150] The year 1964 saw the ratification of the 24th Amendment which outlawed poll taxes nationwide. And finally, the penultimate legislation of this era, the Civil rights Act of 1964 made discrimination on the basis of race, national origin, gender, or religion in voting illegal.

Notwithstanding all this legislation, from 1956 to 1965, the high-tide mark of Civil Rights legislation in all of American history, Black voters in Louisiana rose just .1%, from 31.7% to 31.8% of eligible voters.[151] These stalled numbers spoke to the reality: every discriminatory and disenfranchising technique developed by Louisiana remained in practice, except for the few specifically condemned by the Supreme Court, until Congress banned them expressly or made them subject to meaningful legal review through the passage of the Voting Rights Act of 1965 ("VRA").

"Race was a factor in every aspect of voting" writes Gloria Marshall in her account of the path to the Voting Rights Act. This well-known discrimination was also the basis of a Louisiana

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146 Frystak, 73-4.

147 https://history.house.gov/Historical-Highlights/1951-2000/The-Southern-Manifesto-of-1956/.

148 *The Congressional Record: Proceedings and Debates of the 87th Congress*, Vol. 107, Part 2, 1498.

149 Gary May, *Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy* (Durham, NC: Duke University Press, 2014), 28.

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151 Browne-Marshall, 461.

lawsuit handed down just before the VRA's passage, one that really captured the dire need for federal oversight to ensure Black suffrage. *Louisiana v. United States* was brought by the U.S. Attorney General's office against the state of Louisiana for "beginning with the adoption of the Louisiana Constitution of 1898" putting into "effect a successful policy of denying Negro citizens the right to vote because of their race."[152] The Supreme Court found that the Louisiana Legislature had formed a "Segregation Committee" which cooperated with white supremacist Citizens Councils to instruct registrars to purge Black voters from the voter rolls and promote white political control.[153]

Justice Hugo Black, a former member of the Ku Klux Klan himself, explained that "at least 21 parishes in the mid-1950s began applying the interpretation test, to which was added in 1960 a comprehension requirement, applicable to all persons, which the State Registration Board ordered rigidly enforced.[154] The Court found that "under the State's statutes and constitutional provisions" voter registrars, "without any objective standard to guide them," had full discretion to enforce interpretation tests and "the manner in which the interpretation [was]s to be given, whether it is to be oral or written, the length and complexity of the sections of the State or Federal Constitution to be understood and interpreted, and what interpretation is to be considered correct."[155] The Supreme Court "held that test, on its face and as applied, invalid under the Fourteenth and Fifteenth Amendments and 42 U.S.C. § 1971(a) and enjoined its future use in the State."[156]

In *Anderson v. Martin* (1964), Black residents of East Baton Rouge brought a lawsuit successfully challenging a Louisiana law that required ballots to specify the race of the candidates running for office. Louisiana defended its measure as necessary information for the electorate; moreover, "the labeling applie[d] equally to Negro and white."[157] A unanimous court recognized that this labeling was a violation of the Fourteenth Amendment and that it encourage[] its citizens to vote for a candidate solely on account of race."[158] The only reason to include race on a ballot was for discriminatory purposes, "so that people can react to it."[159]

As the VRA gained traction, Louisiana legislators spoke openly of their opposition to Black enfranchisement. Louisiana's Allen J. Ellender declared of the VRA that he would "talk against it as long as God gives me breath" and once bragged, "I have always voted for white supremacy."[160]

Louisiana's Joe D. Waggoner disagreed, arguing that there "were no problems in his home state [and] Blacks could vote just like anyone else." Waggoner's denials of the basic facts of Louisiana's discriminatory practices made compelled fellow Louisianan Congressman Hale Boggs to contradict this distorted account.

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[152] *Louisiana v. United States*, 380 U.S. 145 (1965)
[153] *Id.* at 149-50.
[154] Ibid.
[155] Ibid, 150.
[156] Ibid., 150.
[157] *Anderson v. Martin*, 375 U.S. 399 (1964).
[158] Id. At 404.
[159] Browne-Marshall, 431.
[160] May, 406.

"I wish I could stand here as a man who loves his state, born and reared in the South…and say there has not been discrimination," Boggs declared, "but unfortunately it is not so."[161] In his own district, he said, there lived more than 3,000 Blacks, but less than 100 were registered. "Can we say there has been no discrimination? Can we honestly say that from our hearts? I shall support this bill because I believe the fundamental right to vote must be a part of this great experiment in human progress under freedom which America is."[162]

On July 6, Congress nevertheless passed the Voting Rights Act, 333 to 85. The country's need for racial justice, Johnson explained in the speech in the Capitol Rotunda on August 6, 1965, announcing the VRA's passage, was necessary because racial equality had been intentionally obstructed at every turn.[163]

IV. The Battle Over the Voting Rights Act in Louisiana

The Voting Rights Act Era Begins, 1965-1982

While it is true that the Voting Rights Act transformed the century-long battle over Black voter participation, that transformation was not in changing the hearts and minds of Louisianans, who were just as dogged in their efforts to disenfranchise Black voters after 1965. Rather, the VRA's supervision of state practices provided a permanent threat of action to combat the continued effort to mute Black Louisianans' political power. The most crucial objections under Section 5 have allowed the federal government to prevent "the state from implementing racially discriminatory districting plans for the state legislature."[164]

As the most comprehensive study of the effect of the Voting Rights Act has explained, "discriminatory election laws…continue to be a serious problem in Louisiana."[165] From 1965-1989, the Attorney General had to issue 66 objection letters (11 to the state and 55 to local governments) nullifying over 200 changes. So while overall the VRA has changed the nature of voter discrimination in Louisiana, most commonly leaving white lawmakers to resort to vote dilution, it is only the "interference" of the VRA that has allowed to progress towards "a more open electoral process."[166]

As one account explains, the "passage of the Voting Rights Act in 1965 eliminated literacy tests and other legal mechanisms that had been used to prevent black southerners from

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161 Robert A. Pratt, *Selma's Bloody Sunday: Protest, Voting Rights, and the Struggle for Racial Equality* (Baltimore, Johns Hopkins, 2017), 108.

162. Pratt, 108.

163 Lyndon B. Johnson, "Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act," August 6, 1965. *See* https://www.presidency.ucsb.edu/documents/remarks-the-capitol-rotunda-the-signing-the-voting-rights-act. "The heart of the act is plain," Johnson went on, "Wherever, by clear and objective standards, states and counties are using regulations, or laws, or tests to deny the right to vote, then they will be struck down. If it is clear that state officials still intend to discriminate, then federal examiners will be sent in to register all eligible voters . . . And under this act, if any county anywhere in this nation does not want federal intervention it need only open its polling places to all of its people."

164 Engstrom et al., "Louisiana," 111.

165 Ibid., 111.

166 Engstrom et al., "Louisiana," 103, 110-11.

registering."[167] But it was the Section 5 supervision that precluded those in Louisiana from "simply substituting a new discriminatory trap for its invalidated literacy test." Louisiana's preclearance requirement was renewed in 1970, 1975, and again in 1982. "Across Louisiana, local blacks began to vote for the first time," but the VRA's strides were consistently compromised by those who "have remained steadfast in their efforts to minimize African-American voting power."[168]

Indeed the VRA began in Louisiana mainly as a story of white resistance, particularly by the historic stopgap of disenfranchising whites, the registrar. When Orleans Parish Black voters swelled by 13,000 applicants, registrars used every tactic of delay, keeping thousands "waiting patiently under a blazing sun or in drizzling rain."[169] Registrars in Shreveport rejected 337 Black applicants for inadequate identification in the first weeks following the VRA's passage.[170] Five parishes in Louisiana had received more federal examiners and had particularly abysmal registration rates even compared to their counterparts. Morehouse and West Carroll actually saw declines in their Black voters. Across Louisiana, registrars refused Black ballots because of party affiliation or illiteracy; "good character" tests also began in the 1960s. After the threat of statewide federal intervention seemed imminent, Governor John McKeithen "prodded recalcitrant parish authorities to mend their ways."[171]

And yet, instead of mending anything, white Louisianans simply seemed to abandon the registrar as their tool for Black disenfranchisement. In the first 17 years of its implementation, the Department of Justice made 50 formal objections to "attempts by state and local authorities to implement voting changes that would have diluted African-American voting strength."[172] From 1982-2006, that number ballooned to 96 objections. In other words, white Louisianans efforts to lessen the impact of Black voters have only increased since the VRA was enacted.[173]

The patterns so entrenched in Louisianan history – of Black citizenship gains followed by white backlash – are as clearly visible in the battle over the Black vote as they were in the German Coast Uprising of 1811. Black Louisianans have been intentionally denied the most fundamental democratic act: voting, by the state of Louisiana. "The violations that affect various public offices, including judicial, aldermanic, councilmanic and school boards" are the defining experience of Black voters in the state.[174] This dynamic has been most pronounced in the Voting Rights Act era stretching from the passage of the VRA in 1965 to the gutting of the VRA's core provisions in the 2013 Supreme Court case of *Shelby County v. Holder*.[175]

Louisianans outrage over gains by Black voters are clearly identified because those gains always precipitate "rejection of readily available non-discriminatory alternatives, inconsistent

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[167] Michael S. Martin, *Louisiana Beyond Black and White: New Interpretations of Twentieth-Century Race and Race Relations* (Lafayette, LA: University of Louisiana at Lafayette Press, 2011), 148.
[168] Frystak, *Our Minds on Freedom*, 229 and Adegbile, 419.
[169] Adam Fairclough, *Race and Democracy: The Civil Rights Struggle in Louisiana, 1915-1972* (Athens: University of Georgia Press, 1995), 388.
[170] Fairclough, 388.
[171] Ibid., 388.
[172] Adegbile, 419.
[173] Ibid., 419.
[174] Ibid., 460.
[175] Ibid., 460.

application of standards [and] drastic voting changes" designed to minimize Black voting strength.[176] Thus, it is crucial to contextualize the very real successes of the VRA by understanding the intransigence of white efforts to roll back those advances in voting equality. The overall story of the VRA era is that legislation designed to break down prejudice has in some ways created a smaller but more greatly impassioned and resistant population in Louisiana, more deeply "committed to perpetrating voting discrimination" and dramatically "more sophisticated at concealing their objectives."[177] As one report on this era has explained, "the consistent efforts to diminish African-American voting power in Louisiana are not inconsequential remnants of the distant past that can be ignored."[178]

In Louisiana, more than 350,000 Black residents registered in 1969. But the test of Black voting power was not simply registration but also electing Black leaders. "In the first big test of black voting" after the passage of the VRA, "all twenty-four black candidates lost…the requirement to gain an outright majority…proved the bane of black candidates, who invariably led in the first primary only to lose in the runoff."[179] As Adam Fairclough, the preeminent historian of the history of Black voting in Louisiana, has explained, "even a coherent black vote…could not guarantee the election of black candidates, for strenuous mobilization for blacks often led to equally vigorous countermobilization on the part of whites."[180] Fairclough could have easily been describing Leander Perez, "the racist boss of Louisiana's Plaquemine Parish," who did not simply capitulate to what he and many Louisianan leaders saw as an unlawful and unconstitutional attempt to bring them to heel.[181] When officials visited Clinton, Louisiana, local businessmen complained about a second Reconstruction. "The Feds are fixing it so the Negroes can take over," the district attorney complained to *The Wall Street Journal*. Indeed, the 57 years since the passage of the VRA of 1965 have been plagued by the same racism and resistance that so characterized the Jim Crow era.

Indeed this new legislation met a seemingly intractable force: resistance by those who had fought for centuries against any measurable power for Black Louisianans. President Johnson had mentioned this possibility in the speech celebrating the VRA's passage, explaining that "there is always room for understanding toward those who see the old ways crumbling. And to them I say simply this: it must come. It is right that it should come. And when it has, you will find that a burden has been lifted from your shoulders, too."[182]

But Louisiana's experience of the VRA showed that Johnson's rhetoric was no match for efforts to disenfranchise Black voters. In the first five years that followed the legislation, Black Louisianans made up an absolutely "miniscule proportion of the state's elected officials, fewer than 1 percent."[183]

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176 Ibid., 434.
177 Ibid., 434.
178 Ibid., 435
179 Fairclough, 394.
180 Ibid., 394.
181 May, 464.
182 Lyndon B. Johnson, "Remarks," August 6, 1965.
183 Fairclough, 394.

Tensas Parish in Northeastern Louisiana was the last parish in the state to allow Black Louisianans to register to vote. Before the VRA, in 1964, only 15 Black voters were on the rolls when at least 6,000 Black people called Tensas home. By 1967, 34% of the Black population had been registered, a huge leap forward, "but not a single black ran for office."[184] In other words, progress in involving Black voters was never instantaneous. The Voter Education Project ("VEP") worked doggedly to register more of Tensas' black population, adding 310 Black voters in just 10 days that year.[185] It was only through these efforts and the legal oversight of the VRA that produced astonishing voting and electoral results. In the next election cycle, all five city council seats were contested by black candidates for the first time. Still, fewer than half the eligible black voters actually cast votes.

Tensas' early post VRA elections highlighted the myriad subaltern strategies to preserve white supremacy in Louisiana. "Whites told their black employees, most of them maids or farmworkers, that 'there is no use wasting time voting,' and they would lose their food stamps if they did." In Waterproof, a Tensas community near the Mississippi, the town's only doctor, a white man, warned "his black patients that he would leave" the town if blacks succeeded in town elections.[186]

By 1971, when the population of the Parish dipped to 9,400, with a Black population of roughly 5,600 (60% of the population), Black people still represented just 46% of registered voters.[187] Despite the slow progress, by 1975, Black voters had at least shown success in the town of Waterproof, which now had a Black mayor, five councilmen, and a Black chief of police.[188]

After Louisiana's Section 5 renewal in 1970, both the House and Senate plans adopted by the legislature contained a mixture of single and multimember districts that clearly disadvantaged Black voters. These plans utilized both of the most common strategies used to limit Black voters' political strength in Louisiana: over-concentrating Blacks into fewer districts ("packing") or breaking up the Black population and spreading them out across white majority districts ("cracking"). "The dilutive consequences of the legislature's schemes were so blatant that a federal district judge stated in 1971 that if the Attorney General had not objected to their implementation, he would have found them to be unconstitutional for, among other reason[s], 'employing gerrymandering their grossest form.'"[189]

New Orleans' second effort at councilmanic redistricting in the 1970s became the basis of a significant Supreme Court decision involving Section 5 preclearance criteria. A unanimous three-judge panel found that the city's councilmanic districts had a discriminatory effect, specifically by cracking and diluting Black voting power. But when the city council did not accept the Attorney General's decision, it sought preclearance from the federal judiciary which

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[184] Ari Berman, Give Us The Ballot: The Modern Struggle for Voting Rights in America (New York: FSG, 2015).

[185] Eight hundred Voters were registered as a result of the VEP efforts, so many "that the white registrar closed his office to process the 'paper work.'" *See* Berman, 103.

[186] Berman, 103.

[187] Berman, 102; https://fred.stlouisfed.org/series/LATENS7POP.

[188] Berman, 103.

[189] Engstrom et al., "Louisiana," 111.

eventually found that the districts were not retrogressive.[190] *Beer v. United States* (1976) was the first decision restricting the ground upon which the Attorney General could deny preclearance and a frightening sign of the limitations of federal oversight when white intransigence was sufficiently dogged. The Supreme Court's ruling in Beers established, before it was superseded by statute, that Section 5 preclearance applies only to change in election procedures not to dilutive structures like at-large elections, in place before November 1, 1964.

Fortunately, the extension and amendment of the VRA in 1982 made the retrogression standard slightly less impactful. Indeed, the 1982 amendments to Section 2 were even more vital as white resistance to Black voting power in Louisiana was just as stubborn after 1982 as it had been before. During the debates over the VRA's renewal, Louisiana Republican W. Henson Moore chafed at the continuing oversight under Section 5. Moore denounced his "sanctimonious brethren" in Congress for promoting laws that, he claimed, only hurt his constituents. "We want to be treated like everybody else," Moore argued.[191]

And yet, just months later, when new Congressional maps were proposed in Louisiana, Moore's position was revealed to be yet another strategy to preserve white power. In these maps, a new Black majority congressional district had been created in New Orleans, not unthinkable for a Black-majority city in a state where Black people made up 29% of the population but held exactly zero statewide elected positions.[192] White political leaders reacted to the potential of a Black Louisiana congressperson with barely suppressed outrage. Louisiana's governor, David Treen, explained simply that "any bill in that form is unacceptable and without question will be vetoed."[193] Treen's passion on this front was not unexpected; he had begun his political career in the extreme segregationist States' Rights Party of Louisiana and had run several unsuccessful campaigns opposing civil rights in voting, education, and housing. Once elected, Treen voted "against nearly every piece of civil rights legislation, including the VRA extension of 1975."[194]

Treen's commitment to vetoing any such map led a "small group of legislators and state officials" to convene "in the subbasement of the state capitol to draft a new congressional map without a majority black district."[195] Needless to say, no Black officials participated in this secret meeting. Representative Peppi Bruneau, the chairman of the redistricting subcommittee, told Lawrence Chehardy, the Jefferson Parish tax assessor, that "we already have a nigger mayor, and we don't need another nigger bigshot."[196]

The men concocted absurd maps that distributed Black New Orleanians into absurdly drawn districts in order to dilute the power of potential Black voters. Not only was Governor Treen "aware of the racial consequences" of the deliberate effort to mute Black wards, "racial considerations formed the basis" of the Governor's logic. In the litigation over Treen's attempts, "the court accepted the plaintiffs' expert's testimony, showing racially polarized voting and that

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190 *Beer v. United States*, 425 U.S. 130 (1976).
191 May, *Bending Towards Justice*, 577.
192 Berman, 162.
193 May, 577.
194 Ibid., 577.
195 Ibid., 577.
196 Ibid., 577.

such voting played a significant role in the electoral process. It also found that 'Louisiana's history of racial discrimination, both *de jure* and *de facto*, *continue[d]* to have an adverse effect on the ability of its black residents to participate fully in the electoral process.'"[197]

The result of rejecting Treen's racist redistricting of Orleans Parish was the election of Louisiana's first Black Congressman since the 1870s. The most notable aspect of the Treen case is not just the bald racism nor staggering absence of Black representatives up until that point, but the fact that none of these facts would likely have been known without the oversight of Section 5 of the VRA.

"By any measure, attempts to dilute African-American voting strength in Louisiana have been widespread," wrote one expert on voting in the state, "thirty-three—more than half—of Louisiana's sixty-four parishes and thirteen of its cities and towns have proposed discriminatory voting changes since 1982, many more than once."[198] These efforts were so persistent and diverse that collectively Louisianan attempts to disenfranchise Black voters highlight a state utterly determined to not simply resist the laws of the nation but to reinforce the control over Black people that have defined the state since the 1800s.

Voting Rights in Louisiana, 1982-2013

Much like the immediate post-VRA period, 1982-2013 experienced a similar flood of attempts by Louisiana to dilute Black voting strength. If the long history of Black disenfranchisement has shown anything, Louisianans will continue to attempt any combination of strategies to deny equal voting rights to Black residents of the state. This section explores both Section 5 and Section 2 responses to voter disenfranchisement to show how persistent resistance to voting equality has been since the 1982 renewal of the VRA. The time between the 1982 amendments to the VRA and the Supreme Court ruling in *Shelby County v. Holder* are considered below in two separate but interrelated sections. First, the various cases and violations under Section 2 of the VRA will be discussed, and following, the cases and violations under Section 5.

Section 2

Discussed at the end of the previous section when the case began in 1980, in *Major v. Treen* (1983), a federal court found that the state's Congressional redistricting plans cracked Black voters in a "racially selective manner." "If the maps had been allowed to stand, the power of Black voters would be unfairly and illegally minimized."[199]

The Supreme Court's ruling in *Thornburg v. Gingles* (1986), a case on multimember legislative districts in North Carolina, had a deep impact on efforts to invalidate electoral "systems that dilute through submergence." Indeed, the first post-*Gingles* decision by the Fifth Circuit Court of Appeals involved the West Bank of New Orleans municipality of Gretna.

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[197] Adegbile, 430.
[198] Ibid., 430.
[199] Ibid, 118.

There, aldermanic elections – for mayor and aldermanic board – were the root of almost all political power in the town. No Black candidate had managed to be elected to any municipal office in the town since its incorporation in 1913 despite representing 30% of the population. In Gretna's case, an informal slating process drawn from the reigning mayor and the father-and-son Chiefs of Police excluded Black voters from "meaningful participation in the political process." Despite white defendants claiming that if any Blacks supported winning white candidates, then Blacks voters' inability to elect Black candidates was "legally inconsequential," the court found that the at-large electoral system "effectively barred African-American citizens from any meaningful role in the city's government."[200]

In *Citizens for a Better Gretna*, the court observed the "history of black citizens' attempts, in Louisiana since Reconstruction, to participate effectively in the political process and the white majority's resistance to those efforts is one characterized by both *de jure* and *de facto* discrimination. Indeed, it would take a multi-volumed treatise to properly describe the persistent, and often violent, intimidation visited by white citizens upon black efforts to participate in Louisiana's political process."[201]

The combined precedents of *Gingles* and *Gretna* represented an important development in the fight against voter disenfranchisement in Louisiana. The Supreme Court ruling in *Gingles* that "plaintiffs need show only the existence of [racial] divisions" in voting, "not the reasons for them." The consistent arguments by disenfranchising entities was "that as long as blacks were often on the winning side in white-on-white elections, they had no valid claim of dilution."[202] As one analysis explains, "this argument was especially pernicious in light of the chilling effects that dilutive arrangements often have on black candidacies."[203]

Fortunately, the Fifth Circuit's decision in *Gretna* essentially eliminated this rationale in Louisiana. Demonstrating the widespread attempts to persist in disenfranchising and diluting schemes, Jefferson Parish authorities attempted to use this invalidated defense in *East Jefferson Coalition for Leadership and Development v. Parish of Jefferson* (1988).[204] A federal district court later found that the parish council plan had a dilutive result and therefore violated Section 2.[205]

These rulings did not stop efforts to use "multimember districts to elect judges" which also served to dilute Black voting strength.[206] Accordingly, the Louisiana judiciary was particularly ripe for legal intervention. In a series of cases under the *Clark v. Roemer* label, plaintiffs tried to stop these multimember elections. Research for the case showed that "of 156 district court judgeships in Louisiana outside of Orleans Parish, only two African-Americans had *ever* been elected in the state's history."[207] Perhaps even more shocking was that across the 20th century in Orleans Parish where there had been periods of Black majorities as high as 65%, only

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200 *Citizens for a Better Gretna v. City of Gretna*, 834 F.2d 496 (5th Cir. 1987).
201 *Citizens for a Better Gretna*, 636 F. Supp. 1113, at 1116 (E.D. La 1986).
202 Ibid.
203 Engstrom et al., "Louisiana," 121.
204 *East Jefferson Coal. For Leadership & Dev. v. Parish of Jefferson*, 703 F.Supp. 28 (1989).
205 *East Jefferson Coal. For Leadership & Dev. v. Parish of Jefferson*, 926 F.2d 487 (1991).
206 Adegbile, 461.
207 Ibid., 461.

one Black attorney "had ever served on the criminal district court and only three had been elected to serve on the civil district court. Of the forty-eight court of appeal judgeships in the state, only one judge was African-American. No African-American citizen had ever been elected to any statewide office, to the U.S. Congress or to the Louisiana Supreme Court."[208]

Similar appeals formed the basis of the *Chisom v. Roemer* cases, where five Black voters in Orleans Parish filed a class action suit on behalf of all Black voters registered in the parish. The case revolved around the system of electing two at-large supreme court justices from Orleans, St. Bernard, Plaquemines, and Jefferson parishes. The plaintiffs argued that this design violated the "VRA, the Fourteenth and Fifteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983 by impermissibly diluting, minimizing and canceling the voting strength" of Black voters.[209]

Chisom v. Roemer sat on a fault-line between Louisiana's two most prominent disenfranchising strategies: at-large voting and redistricting. Louisiana's First Supreme court district had 1,102,253 residents, 63.4% white, 34.4% Black and 515,103 registered voters, 68% white, 31.6% Black. The First Supreme Court District, "encompassing only Orleans Parish, would then have an African-American population and voter registration comprising another district, comprised of Jefferson, Plaquemines and St. Bernard Parishes, would be majority white." The *Chisom* case, settled in 1992, had a profound effect on future efforts to dilute Black voting strength and spurred efforts to legislate against the gains made in the settlement.

Section 5

Section 5 violations continued to occur after the VRA was renewed in 1982 and the DOJ was forced to respond to "thirty-three parish school board redistricting and expansion plans proposed by twenty-three parishes and one city, thirty-one parish police jury redistricting and reduction plans proposed by twenty parishes, seven parish council redistricting and reduction plans proposed by six parishes, eleven city and town council redistricting plans proposed by ten cities and towns, two board of alderman redistricting plans proposed by two cities and six annexations proposed by the city of Shreveport alone."[210]

"In a stark illustration of the persistence of the hostility to equal African-American participation in Louisiana's political process with statewide consequences, in *every* decade since the VRA was passed in 1965, the proposed Louisiana State House of Representatives redistricting plan was met with a DOJ objection."[211]

Packing and cracking black voters remained common strategies for the dilution of black voting power. These efforts are particularly common after Black voters make significant

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[208] Adegbile, 461. *See Clark v. Roemer* series of cases (*Clark v. Roemer* (*Clark-2 III*), 750 F. Supp. 200 (M.D. La. 1990); *Clark v. Roemer* (*Clark-2 II*), 777 F. Supp. 445 (M.D. La. 1990); *Clark v. Edwards* (*Clark-2 I*), 725 F. Supp. 285 (M.D. La. 1988).

[209] Ibid., 463. *See Chisom v. Roemer* series of cases (*Chisom V*), 501 U.S. 380 (1991); *Chisom v. Roemer* (*Chisom IV*), No. 86-4057, 1989 WL 106485 (E.D. La. 1989); *Chisom v. Edwards* (*Chisom III*), 839 F.2d 1056 (5th Cir. 1988); *Chisom v. Edwards* (*Chisom II*), 690 F. Supp. 1524 (E.D. La. 1988); *Chisom v. Edwards* (*Chi- som I*), 659 F. Supp. 183 (E.D. La. 1987).

[210] Ibid., 434.

[211] Ibid., 434.

showings in an election cycle. "In 1988, Louisiana attempted to adopt anti-single-shot devices in circuit court elections and add more at-large judges to the circuit courts. Both efforts drew Section 5 objections but exposed the myriad strategies being used in concert to disenfranchise Black voters in the state. Information requests about these changes were ignored by the State and Louisiana attempted to add at-large or multimember judicial seats again in 1989, twice in 1990, 1991, and 1994, and again adopted anti-single-shot devices in 1990. In its 1991 objection letter, the DOJ noted blatant noncompliance with Section 5. As the objection letter noted, the state had gone ahead and held at-large elections for un-precleared judgeships from its last two submissions, and that white judges were now sitting in these seats. These facts manifest a willful disregard for the VRA mandates."[212] Annexing white suburbs was another common strategy used to dilute Black voting power. The city of Monroe attempted to annex their white suburbs in 1990, and Shreveport tried six times to shift the balance of power from 54% Black to 45% Black. Numerous efforts, in Washington Parish, Franklin Parish, and Concordia Parish, among others, continued these attempts to dilute or eliminate majority Black districts. Local officials were remarkably consistent and persistent in their efforts to eliminate or minimize the influence of majority African-American districts and, at times, remove African-American elected officials from office, without resort to the familiar "packing" or "cracking" associated with discriminatory redistricting techniques.

The year 1994 presented the beginning of another era of disenfranchisement strategy, very much in the century-long tradition of grandfather clause, poll taxes, and the like. Louisiana attempted to require photo identification "as a prerequisite for first-time voters who register by mail," a requirement the DOJ concluded had both discriminatory purpose and discriminatory effect. Louisiana distinguished itself with voter identification laws, even among recalcitrant states trying to undo the VRA's influence. Indeed, Louisiana consistently demonstrated a real dedication to what one scholar has deftly termed "adaptive discriminatory voting changes."[213]

At-large voting, which the DOJ objected to for the first time on June 26, 1969, has been the most consistently deployed strategy for disenfranchisement in Louisiana. Attempted time and time again, particularly in voting for boards of aldermen, judges, and school boards, at-large voting has been clearly established to dilute minority votes. School boards have been a particularly rich arena for Louisianan voter disenfranchisement through at-large voting schemes. St. Bernard Parish, as one example, altered their school board structure in 2001 with this goal in mind.

Between 1982 and 2003, many parishes (DeSoto, Morehouse, East Carroll, Madison, East Baton Rouge, West Feliciana, St. Landry, Webster, Richland, Lafayette, and Washington) were "repeat offenders" in submitting discriminatory redistricting plan and 13 times the DOJ noted that local authorities were merely resubmitting objected-to proposals with cosmetic or no changes. Municipalities played the same game (Shreveport, Monroe, St. Martinsville, Ville Platte, and Minden) leading one expert to comment on the remarkable "tenacity of local resistance to compliance."[214]

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[212] Adegbile, 441.
[213] Ibid., 440.
[214] Ibid., 463-5

Pointe Coupée Parish attempted to alter school board and police jury districts in 1983, 1992, and 2002 – all efforts to dilute Black voting by packing as much of the Black population into single districts. Jefferson Parish used a novel (at that point) strategy of actually resisting redistricting plans that would increase Black voting power. In other words, whatever position or strategy would best provide the outcome of diluting Black voting, whether that was claiming redistricting was necessary or that redistricting was an affront to logic, would be utilized. The state of Louisiana demonstrated the same hypocrisy and naked desire to disenfranchise Black voters in Orleans Parish in 2002, arguing that white voters in the state were entitled to proportional representation in the Parish despite never arguing that Black voters were entitled to the same across the state.

Two points on these efforts in Orleans Parish are very instructive about the character of voter discrimination in the state. The only reason voters in Louisiana learned about these subversions of the law was because of Section 5 Reviews under the VRA. Throughout the 1990s, St Landry Parish, East Carroll Parish, Morehouse Parish, and DeSoto Parish all tried to dilute the Black vote until the DOJ stepped in. Furthermore, Louisianan officials pathologically resisted DOJ requests for any information about changes to voting laws in the state. "In 1993, when Morehouse Parish attempted to reduce the number of its elected justices of the peace, the DOJ noted that the parish's initial submission 'contained virtually none of the information required'; that the parish ignored a request for more information for over a year; and that the response, when finally received, still contained no population data by race and included maps of such poor quality" they were illegible.[215] "The DOJ noted similar efforts by Louisiana officials to withhold information in the city of Cottonport in 1987, Jackson Parish in 1991, Evangeline Parish in 1993 and Richland Parish in 2003."[216]

Secondly, Louisianan legislators were engaged in a constant effort to rewrite laws even before Congress had any opportunity to reevaluate renewing Section 5 of the VRA. In other words, the desire to disenfranchise Black voters was so intense that the state constantly had plans prepared in advance, ready to try and roll back advances in Black voting power made since 1965.

All of these efforts reflect a deep hostility to the intent of the VRA – the pursuit of voting equality for Black Americans. Louisiana's record since 1965 showed local elections have been even more prejudicial than state elections. Analysis has definitively shown that "for 27.5% of the districts created for district court judges and 40% of the districts for circuit court judges the State ignored its preclearance obligations. Given Louisiana's African-American population of about 1,299,281 following the 1990 Census, the failure to obtain preclearance as required for district court election districts potentially affected the voting rights of hundreds of thousands of African-Americans, while the failure to obtain preclearance for circuit court election districts potentially adversely affected several hundred thousand African-American citizens of the state."[217]

Voting discrimination in the state persists and attempts to dilute Black votes remain commonplace while "many white officials remain intransigent, refusing to provide basic information required under Section 5." From 1982-2005, "African-Americans have been

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[215] Adegbile, 450.
[216] Ibid., 450.
[217] Ibid., 452-53.

excluded from local decision-making processes, and African-American officials who advocate for non-discriminatory voting changes have confronted retaliation…[a] record [that] includes examples of discriminatory effects and intentionally discriminatory acts."[218]

The 1990 census came wheeling back into voter litigation because of efforts in Bossier Parish to create 12 single-member districts without any Black-majority districts. This case prompted the *Reno v. Bossier* Parish School Board lawsuit and two separate Supreme Court decisions. The DOJ found that the school board's plan violated the Section 2 results test as well as Section 5. This case was significant because it showed that retrogression did not provide a high enough standard when Black political power remained at zero between redistricting plans. Bossier II (2000) clarified the deep power of the VRA's Section 5 in states like Louisiana that continued to fight so doggedly to disenfranchise Black voters. The Justice Department's power "to stop a state or locality from even provisionally implementing districting and other decisions…shifts the burden of proof, normally on plaintiffs to the defendant jurisdictions." Those jurisdictions must convince the attorney general that any proposed changes are not discriminatory.[219]

In Louisiana since 1965, that stop-gap against Black disenfranchisement has been utterly necessary. And yet, Justice Scalia, in trying to weaken the protections of the heavily relied-upon Section 5 emphasized that Section 2 and the Fourteenth Amendment do provide legal recourse, but shift the burden to plaintiffs "for proving their charge of purposeful discrimination in a federal court" because "they could not prevail on the basis of suspected illegality alone." In Louisiana, much like earlier moments where the doggedness of whites to disenfranchise Blacks had worn down federal mechanisms to insure voting equality, Bossier was an encouraging sign to opponents of Black political power.[220]

Barack Obama's first presidential campaign revealed how divisive race still was for Louisianan voters and how unfamiliar it was to vote for a Black man even in 2008. Had the VRA produced lasting effects, especially in terms of transforming racist attitudes, Obama should have done much better across many different metrics. Among the states singled out by the original VRA, Louisiana was third from the bottom and only 14% of white Louisianans voted for Obama. The gulf separating southern white and minority voters was greater than ever before. A similar gulf existed between white voters in the covered and noncovered states. In the latter Obama received 47% of the white vote, a bit better than Kerry had in 2004, but more than 20% greater than in the covered states of the South. Although Obama's showing among white voters outside the South is encouraging, he won a majority of their vote only in 18 states and the District of Columbia.[221] Without an increase in minority turnout and decline in white participation (both of which characterized the 2008 election), Obama probably would have lost even though the conditions – an unpopular incumbent, a sinking economy, high unemployment, and two wars – favored his candidacy.

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[218] Ibid., 405.
[219] Abigail Thernstrom, *Voting Rights – And Wrongs: The Elusive Quest for Racially Fair Elections* (Washington, D.C.: AEI Press, 2009), 64-65.
[220] Ibid., 66.
[221] May, 622.

Voting Rights in Louisiana after* Shelby County, *2013-2022

Given the 50-year history of relentless resistance to Black voting equality under the VRA, the last nine years have been an experiment in how difficult the post-preclearance period would be for Black voters seeking fair treatment. Indeed, the loss of preclearance oversight has meant that white efforts to disenfranchisement are allowed to proceed until plaintiffs can gather evidence and file suit.

In *Shelby County v. Holder*, the Supreme Court declared that the preclearance formula used to protect Black voters in Louisiana was outdated. Curiously, Chief Justice Roberts wrote in his majority opinion that "voting discrimination still exists; no one doubts that."[222] Of course, the practical effect of this ruling was crippling Section 5 of the VRA, in particular the preclearance protections that have so clearly been the last line of defense against Louisianan efforts to disenfranchise Black voters were defeated. "Without the protections of Section 5, Louisiana voters must wait until they are aggrieved before seeking judicial intervention," reported one Congressional subcommittee, "Lawsuits prompted by voting restrictions, once handled administratively by the Justice Department, must now be addressed through more expensive and less efficient litigation." That report cited a recent case in Terrebonne Parrish, Louisiana, protesting the most frequent Louisianan violation of the VRA: at-large voting. On August 17, 2017, a federal court ruled that Louisiana's use of at-large voting for electing five members to the 32nd Judicial District Court violated the Voting Rights Act of 1965 and the U.S. Constitution. Despite comprising 20% of the parish electorate, no Black candidate had ever been elected in the face of opposition in the district under the at-large system. The District Court held the at-large voting system had discriminatory or dilutive effect, in violation of the VRA.

Across states formerly under Section 5 preclearance supervision, there has been a pronounced shift to 21st century versions of the jelly-bean counting, poll taxes, and literacy tests of the 1910s and 1920s. Voter suppression laws now focused on identification requirements and registration-drive bans, but have expanded to other strategies to disenfranchise black voters. In Louisiana, restricting access to polling places, early voting, and electoral information have all emerged in the 2010s as strategies for those seeking to disenfranchise Black voters.

The hotly contested election of 2016 was seen as the first major test of the new iteration of the VRA. The state legislature had already used the opening provided by *Shelby County* to push voter restrictions tied to concerns about supposed voter fraud. As *The Times Picayune* explained "the federal courts have agreed with increasing frequency that those new laws were improperly based on race." The changes to the VRA in the wake of Shelby County meant that states were no longer under the burden of proving their laws to be nondiscriminatory. Voters were now responsible for proving discrimination under Section 2 of the VRA.[223]

Angie Rogers, the Commissioner of Elections for the state of Louisiana, testified on December 6, 2017, that state "law requires that every precinct is assigned a polling place" but with 3,904 precincts, Louisiana only had 2,068 polling locations or about one polling place for every two precincts. The Louisiana Parish Board of Supervisors had eliminated 103 polling

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222 *Shelby County v. Holder*, 570 U.S. 2 (2013).

223 Richard Rainey, "As New Voter Restrictions Crash and Burn," *The New Orleans Time-Picayune*, August 11, 2016.

places since 2012, requiring greater travel which overwhelmingly impacts Black voters. Furthermore, the consistent patterns of subterfuge and intransigence and even willful ignorance were evident in testimony by Kyle Ardoin (then-First Assistant to Secretary of State Tom Schedler) on behalf of Louisiana. Ardoin either intentionally misled or betrayed a total misunderstanding of what authorities could close or move polling locations when he attributed any such changes to local Orleans Parish elected officials. Schedler explained that "information was provided to the Commission that Louisiana's polling locations were distributed disproportionally using race and/or income as the determining factor." Indeed, contrary to Ardoin's testimony that Orleans Parish elected officials voluntarily shut down polling places, "the number of polling locations per 1,000 registered voters in a census tract is negatively related to the number of black residents in that census tract."[224] Budgetary shortfalls were the proximate explanation of the real dearth of early voting locations and opportunities but widening access to voting, particularly for Black voters, is not only something the state does not prioritize but something the state actively works against.

These priorities can be seen in Louisiana's ongoing resistance to compliance with the National Voter Registration Act because citizens were not given information about registration when applying for public benefits. "[T]housands and thousands of African American voters were not being provided with access to this information [which is] a barrier to access to voting."[225]

Testimony before the June 2018 Louisiana Advisory Committee identified several ways in which Louisiana's voter identification requirements create barriers to voting. First, Carol DeVille of the League of Women Voters of Lafayette, noted that her organization received a number of complaints that voters were being turned away when they did not present a photo identification and were never offered the affidavit as an alternative method of identification. The disenfranchisement of Black voters is complex, but the authority given to election officials and poll workers has the ultimate effect of reinforcing patterns from the 20th century where registrars could deny Black voters for essentially infinite reasons. Even in 2018, testimony established that poll workers continue to believe (to the explicit consequence of disenfranchising Black voters) that contrary to state law they have discretion to deny the vote to people without identification. Voter identification requirements "present unique barriers to certain groups of people" and "dissuades many people, particularly the poor and African Americans, from even attempting to vote." Low participation rate of voters in poor and African American communities has been strongly tied to the increase and intensity of voter identification requirements.[226]

Finally, an issue facing many states, especially those in the former Confederacy and under Section 5 preclearance, is that of felons. Dr. Joshua Stockley of the University of Louisiana at Monroe testified "that approximately 80% of the parolees/probationers currently ineligible to vote are African American, compared with about 32% of the population of the state."[227] Indeed, Stockley helped explain how the racial impact of incarceration in the state is so radically disproportionate and had a disenfranchising consequence, influencing even the "concept of proportional representation. If many members of a community are unable to vote,

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[224] "Barriers to Voting in Louisiana," 11, 12.
[225] Ibid., 14.
[226] Ibid., 14.
[227] Ibid., 24.

they are denied the opportunity to be governed by people who might best serve their interests."[228]

Act 636 was passed in 2018 to address the more-than 40,000 voters disenfranchised because of felony convictions, again overwhelmingly Black voters in Louisiana. Mack Terrance, a formerly incarcerated New Orleanian has spoken extensively on the importance of voting but that state had made registration burdensome and difficult for former felons. Allegations continue to crop up about inappropriate voter purges and state officials "imposing unnecessary and onerous requirements on former incarcerated people attempting to register to vote."[229]

Louisiana's Recent History of Discriminatory Voting Changes, 2021-2022

April of 2021 saw a settlement between the Justice Department and the City of West Monroe over VRA violations. Not entirely surprisingly, West Monroe's Board of Alderman was resorting to the at-large system proven again and again to disenfranchise Black voters. As the consent decree explained, "Black residents comprise nearly 30% of the electorate" and yet "no Black candidate has ever been elected to the West Monroe Board of Aldermen." West Monroe agreed in the settlement to "discontinue use of its current at-large method of electing the five members of its Board of Aldermen."[230]

Most recently, the 2022 case of *Harding v. Edwards* demonstrated the recalcitrance of the state of Louisiana to expand the franchise even in the midst of a worldwide pandemic that fell most acutely on the state's Black residents. Although *Harding v. Edwards* is a case involving restrictions on absentee voting during the COVID-19 pandemic, the case is highly to the state of Louisiana's sustained efforts to disenfranchise Black voters. In that case, a federal court found evidence of the undue burdens regularly placed on voters, but particularly those disproportionate burdens facing Black Louisianans, exacerbated by the pandemic. The court in *Harding v. Edwards* provided limited injunctive relief for early voting.[231]

Taken as a whole, the two halves of the history of Louisiana underscore a profound and sustained hostility to the freedoms of Black people. In the pre-suffrage era, most of which involved legalized slavery, controlling Black freedoms was the primary cog in the economy, society, and function of the state. After suffrage, these efforts to restrict Black freedom focused mainly on restricting Black voting. As previous studies of voter disenfranchisement in Louisiana have noted, "any careful study of the experience of minority voters in Louisiana reveals that much of the progress that has been achieved in the state is a direct result of the protections of the VRA generally…the role of the VRA both as a remedy for, and as a deterrent to, voting discrimination is unmistakable."[232] Since the *Shelby County* ruling in 2013, Louisiana has continued in the path established after 1898, "having one of the most severe, adaptive, and

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228 Ibid., 24.

229 https://www.prnewswire.com/news-releases/civil-rights-group-demands-action-by-state-of-louisiana-to-remedy-violations-of-federal-voting-rights-law-301158988.html.

230 https://www.justice.gov/opa/pr/justice-department-reaches-agreement-city-west-monroe-louisiana-under-voting-rights-act-0.

231 487 F. Supp. 3d 498 (M.D. La. 2020).

232 Adegbile, 472-3.

violent histories of discrimination in voting."[233] As this report should make clear, that history stretches back even before Black suffrage, when white Louisianans sought to control Black bodies and actions. Because of this deep history and sustained practice of Black disenfranchisement, Louisianans' efforts to continue in this manner must be recognized and in whatever cases it is possible, stopped.

[233] Ibid., 472-3.

Appendices

Appendix 1 is my curriculum vita.

Appendix 2 is an excerpt of Louisiana Code from December 21, 1865.

Appendix 3 is a contemporary map of the Black population in the Louisiana Parishes.

Per 28 U.S. Code 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 14, 2022.

R. Blakeslee Gilpin, Ph.D.

APPENDIX 1

R. Blakeslee Gilpin
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New Orleans, LA 70118
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504-654-9376

EDUCATION

- Ph.D. in History (with distinction), Yale University, May, 2009
  - *John Brown Still Lives!: America's Long Reckoning with Violence, Equality, and Change*
  - Winner, 2010 C. Vann Woodward Dissertation Prize, Southern Historical Association
  - David W. Blight, Director. Glenda Gilmore and John Mack Faragher, Dissertation Committee.
- M.Phil in History, Yale University, 2005.
- M.Phil in British History, Cambridge University, 2002.
- B.A., M.A. in History (with distinction), *Magna Cum Laude*, Phi Beta Kappa, Yale University, 2001.

ACADEMIC POSITIONS

- Director of Graduate Studies, 2017-18, 2020-present; Associate Professor, 2018-present; Assistant Professor, 2013-present, Tulane University.
  - Courses: American Race War; US History and the Law; Stars and Bars; Slavery, Banjos and Moonshine; The Southern Imagination; Memory and History; Civil War and Reconstruction; Utopia-Dystopia.
- Gilder Lehrman Institute of American History, Summer Teacher Institute, "Southern Fictions," 2014.
- Assistant Professor, University of South Carolina, 2011-2013.
  - Courses: Southern Intellectual and Cultural History; Readings in Nineteenth-Century U.S. History; Southern Memory and the Civil War; Civil War and Reconstruction; America to 1877.
- Postdoctoral Fellow, United States Studies Centre, University of Sydney, 2010.
- Postdoctoral Fellow, Center for the Study of the American South, University of North Carolina, 2009.

PUBLICATIONS & BOOK PROJECTS

- Editor, with Nicholas Bromell, Frederick Douglass, *My Bondage My Freedom. A Norton Critical Edition* (W.W. Norton, October 2020).
- Editor, with Rose Styron, *The Selected Letters of William Styron* (Random House, 2012).
- 2013 Pulitzer Prize Nominee in Non-Fiction; *The New York Times* Editor's Choice.
- *John Brown Still Lives!: America's Long Reckoning with Violence, Equality, and Change* (University of North Carolina Press, 2011).

- Finalist, 2012 Frederick Douglass Prize, Gilder Lehrman Center, Yale University.

ARTICLES & BOOK CHAPTERS

- "The Family Dynasty," *Gastro Obscura*, August 2019. Finalist for James Beard Award.
- "The Other Side of the World: Battling the Exceptional South," *Early American Literature*, June 2017.
- "Essential and Pure: Imagining Old-Time North Carolina," *Scalawag Magazine*, Spring 2015.
- "Reconstruction: Emancipation and Race," in Smith, ed., *Reconstruction* (Kent State University, 2016).
- "Crimes of a Guilty Land: Racial Terrorism," in *Routledge History of Terrorism* (Routledge, 2016).
- "Love Letters to Black America: Charles White's Art for the People," *Slavery and Abolition*, Sept 2013.
- "John Brown, Religion, and Violent Abolition," *The Huffington Post*, January 22, 2013.
- "Book Bag: The Best Letter Collections," *The Daily Beast*, December 18, 2012.
- "William Styron Letters," *The Paris Review*, December 2012.
- "William Styron to Norman Mailer: Two Letters," *The New York Review of Books*, October 25, 2012.
- "To the Last Pike," *The New York Times*, Disunion, March 2, 2012.
- "Birthday of a Nation," *The New York Times*, Disunion, December 19, 2011.
- "The Battle Hymn of John Brown," *The New York Times*, Disunion, November 25, 2011.
- "The War Not For Abolition," *The New York Times*, Disunion, October 20, 2011.
- "Why they sang about John Brown," *The Boston Globe*, August 14, 2011.
- "*The Afterlife of John Brown*," *Biography: An Interdisciplinary Quarterly*, Winter, 2007.
- "The Fugitive Imagination: Robert Penn Warren's *John Brown*," chapter in *Memory and Myth: The Civil War in Fiction and Film* (Purdue University Press), 2007.
- "Hopping Freights," *The American Scholar*, July 2003.
- "The Way It Ought To Sound: Mississippi John Hurt and The Blues Of The Mississippi Delta," *Journal of Mississippi History*, July 2000.

BOOK REVIEWS

- Aston Gonzalez, *Visualizing Equality*, *Journal of American History*, December 2021.
- Scott Matthews, *Capturing The South*, *Journal of American History*, December 2019.
- Stephen Lubet, *The "Colored Hero," American Historical Review*, December 2016.
- Jeff Forret, *Slave Against Slave*, Civil War Book Review, Fall 2016.
- W. Brent Morris, *Oberlin: Hotbed of Abolitionism*, *Journal of American Studies*, Fall 2015.
- C. Friend and L. Glover, eds., *Death and the American South*, *Journal of American History*, Fall 2015.
- Minrose Gwin, *Remembering Medgar Evers*, *Journal of Southern History*, August 2014.
- Gregory Smithers, *Slave Breeding*, *Journal of American History*, December 2013.
- Jonathan Kahrl, *The Land Was Ours*, *Florida Historical Quarterly*, Spring 2013.
- Stephen Lubet, *John Brown's Spy*, *Civil War History*, Spring 2013.

- Anne Valk and Leslie Brown, eds., *Living With Jim Crow*, *Journal of Southern History*, Spring 2011.
- John McGlone, *John Brown's War Against Slavery*, *Slavery and Abolition*, Winter 2010.
- Bruce Ronda, *Reading the Old Man*, *New England Quarterly*, Summer 2010.
- Elizabeth Varon, *Disunion!*, *Journal of American Studies*, 2009.

FELLOWSHIPS & HONORS

- Inaugural Rosenthal Fellow, New Orleans Center for the Gulf South Food Studies Program, 2019-20.
- Lurcy Fellowship, Tulane University, 2016.
- Heyburn Lecturer, Milton Academy, 2014.
- Monroe Fellowship, New Orleans Center for the Gulf South, 2014.
- Finalist, Frederick Douglass Prize, Gilder Lehrman Center, Yale University, 2012.
- C. Vann Woodward Dissertation Prize, Southern Historical Association, 2010.
- Hutchins Lecturer, University of North Carolina - Chapel Hill, 2010.
- Gilder Lehrman Research Fellowship, Gilder Lehrman Center, 2008.
- Beinecke Rare Book Library Research Fellowship, 2007.
- John Hope Franklin Grant, Duke University, 2007.
- Lamar Scholar, Howard R. Lamar Center for the Study of Frontiers and Borders, Yale University, 2007.
- Gilder Lehrman Fellow, Gilder Lehrman Institute of American History, 2006.
- Joan Nordell Fellow, Houghton Library, Harvard University, 2006.
- W.M. Keck Foundation Fellow, Huntington Library, 2006.
- John F. Enders Grant, Yale University, 2006.
- Paul Francis Speaker Series, Yale University, Spring 2005.
- Beinecke Rare Book Library Graduate Pre-Prospectus Fellowship, 2004.
- Graduate Fellow, Calhoun College, Yale University, 2004-2006.
- Paul Mellon Fellow, Clare College, Cambridge, 2001-2003.
- Class of 1955 Fellowship, 2000.
- Alanne Linck Fellowship, 2000.

INVITED LECTURES

- "Horace Pippin and John Brown," The Artist's Institute, Hunter College, November 9, 2021.
- "Imagining History and Finding John Brown," Milton Academy, Milton, MA, December 3, 2014.
- "John Brown in Antebellum Life," Peninsula Foundation, Peninsula, OH, September 21, 2013.
- "Letters and Life of William Styron," Martha's Vineyard Book Festival, Chilmark, MA, August 2, 2013.
- "William Styron: Tell About the South," University of North Carolina, February 14, 2013.
- "William Styron: A Discussion," Perkins Library, Duke University, February 13, 2013.
- "William Styron: Life and Letters," Jimmy Carter Presidential Library and Museum, January 14, 2013.

- "Meteor of War: John Brown, Slavery, and the Civil War," Northwestern University, January 9, 2012.
- "The Chains of Slavery: The Literature of John Brown," Brown University, April 18, 2011.

MEDIA APPEARANCES

- Greater Boston, WGBH, July 6, 2015.
- *American Experience: Abolitionists*, PBS, January 2013.
- National Book Tour, *Letters of William Styron*, December 2012-February 2013.
- *Walter Edgar's Journal,* South Carolina Public Radio, April 10, 2012, April 8, 2013, April 12, 2013
- *Southern Belle*, 2011.
- "The Letters of William Styron," *Book World*, ABC Radio National, January 28, 2011.
- "The Long Legacy of American Slavery," *Saturday Extra*, ABC Radio National, November 27, 2010

PRESENTATIONS & CONFERENCE PAPERS, SELECTED

- Organizer and Speaker, "Making History Come Alive," Organization of American Historians Annual Meeting, April 8, 2017.
- Organizer and Speaker, "Trailblazing Abolition," Organization of American Historians Annual Meeting, April 8, 2016.
- "From Dissertation to Book: Testimonials from Three Woodward Prize Winners," Southern Historical Association, November 2, 2012.
- "A Kiss for the Negro's Child: Painting an Abolitionist Martyr," University of Melbourne, November, 2010.
- "The Slave Rebel and Black Power: Nat Turner and the 1960s," University of Sydney, October 2010.
- "John Brown's Place in American Art: 1860-2010," Ackland Art Museum, May 5, 2010.
- "John Brown: Old Testament Avenger or Peaceful Patriarch?," University United Methodist Church, Chapel Hill, NC, May 2, 2010.
- "Legend, Myth, and Jacob Lawrence's Harlem," Gallery Talk, Ackland Art Museum, April 14, 2010.
- "The Mad Hero: John Brown Through the Prism of Paint," Organization of American Historians Annual Meeting, April 10, 2010.
- "The Dogged Pursuit of Destiny: W.E.B. Du Bois and John Brown," University of North Carolina – Chapel Hill, February 9, 2009.
- Organizer and Speaker, "John Brown, Slavery, and the Legacies of Revolutionary Violence," Gilder Lehrman Center 11th Annual International Conference, October 29-31, 2009.
- "John Brown Remembered: 150th Anniversary of the Raid on Harpers Ferry," Harpers Ferry
- National Historical Park in Harpers Ferry, West Virginia, October 14-17, 2009.
- "The Fugitive Imagination," University of North Carolina – Chapel Hill, October 8, 2009.
- "Words and Action: Franklin Sanborn and a John Brown for the Gilded Age," American Historical Association Annual Meeting, Atlanta, GA, January 6, 2007.
- Panelist, "Race and the Americas," Gilder-Lehrman Center for the Study of Slavery and Abolition, November 5, 2005.

APPENDIX 2

AN ORDINANCE relative to the police of negroes recently emancipated within the parish of St. Landry.

Whereas it was formerly made the duty of the police jury to make suitable regulations for the police of slaves within the limits of the parish; and whereas slaves have become emancipated by the action of the ruling powers; and whereas it is necessary for public order, as well as for the comfort and correct deportment of said freedmen, that suitable regulations should be established for their government in their changed condition, the following ordinances are adopted, with the approval of the United States military authorities commanding in said parish, viz:

SECTION 1. *Be it ordained by the police jury of the parish of St. Landry*, That no negro shall be allowed to pass within the limits of said parish without a special permit in writing from his employer. Whoever shall violate this provision shall pay a fine of two dollars and fifty cents, or in default thereof shall be forced to work four days on the public road, or suffer corporeal punishment as provided hereinafter.

SECTION 2. *Be it further ordained*, That every negro who shall be found absent from the residence of his employer after 10 o'clock at night, without a written permit from his employer, shall pay a fine of five dollars, or in default thereof, shall be compelled to work five days on the public road, or suffer corporeal punishment as hereinafter provided.

SECTION 3. *Be it further ordained*, That no negro shall be permitted to rent or keep a house within said parish. Any negro violating this provision shall be immediately ejected and compelled to find an employer; and any person who shall rent, or give the use of any house to any negro, in violation of this section, shall pay a fine of five dollars for each offence.

SECTION 4. *Be it further ordained*, That every negro is required to be in the regular service of some white person, or former owner, who shall be held responsible for the conduct of said negro. But said employer or former owner may permit said negro to hire his own time by special permission in writing, which permission shall not extend over seven days at any one time. Any negro violating the provisions of this section shall be fined five dollars for each offence, or in default of the payment thereof shall be forced to work five days on the public road, or suffer corporeal punishment as hereinafter provided.

SECTION 5. *Be it further ordained*, That no public meetings or congregations of negroes shall be allowed within said parish after sunset; but such public meetings and congregations may be held between the hours of sunrise and sunset, by the special permission in writing of the captain of patrol, within whose beat such meetings shall take place. This prohibition, however, is not intended to prevent negroes from attending the usual church services, conducted by white ministers and priests. Every negro violating the provisions of this section shall pay a fine of five dollars, or in default thereof shall be compelled to work five days on the public road, or suffer corporeal punishment as hereinafter provided.

SECTION 6. *Be it further ordained*, That no negro shall be permitted to preach, exhort, or otherwise declaim to congregations of colored people, without a special permission in writing from the president of the police jury. Any negro violating the provisions of this section shall pay a fine of ten dollars, or in default thereof shall be forced to work ten days on the public road, or suffer corporeal punishment as hereinafter provided.

SECTION 7. *Be it further ordained*, That no negro who is not in the military service shall be allowed to carry fire-arms, or any kind of weapons, within the parish, without the special written permission of his employers, approved and indorsed by the nearest or most convenient chief of patrol. Any one violating the provisions of this section shall forfeit his weapons and pay a fine of five dollars, or in default of the payment of said fine, shall be forced to work five days on the public road, or suffer corporeal punishment as hereinafter provided.

SECTION 8. *Be it further ordained*, That no negro shall sell, barter, or exchange any articles of merchandise or traffic within said parish without the special written permission of his employer, specifying the articles of sale, barter or traffic. Any one thus offending shall pay a fine of one dollar for each offence, and suffer the forfeiture of said articles, or in default of the payment of said fine shall work one day on the public road, or suffer corporeal punishment as hereinafter provided.

SECTION 9. *Be it further ordained*, That any negro found drunk within the said parish shall pay a fine of five dollars, or in default thereof shall work five days on the public road, or suffer corporeal punishment as hereinafter provided.

SECTION 10. *Be it further ordained*, That all the foregoing provisions shall apply to negroes of both sexes.

SECTION 11. *Be it further ordained*, That it shall be the duty of every citizen to act as a police officer for the detection of offences and the apprehension of offenders, who shall be immediately handed over to the proper captain or chief of patrol.

SECTION 12. *Be it further ordained*, That the aforesaid penalties shall be summarily enforced, and that it shall be the duty of the captains and chiefs of patrol to see that the aforesaid ordinances are promptly executed.

SECTION 13. *Be it further ordained*, That all sums collected from the aforesaid fines shall be immediately handed over to the parish treasurer.

SECTION 14. *Be it further ordained*, That the corporeal punishment provided for in the foregoing sections shall consist in confining the body of the offender within a barrel placed over his or her shoulders, in the manner practiced in the army, such confinement not to continue longer than twelve hours, and for such time within the aforesaid limit as shall be fixed by the captain or chief of patrol who inflicts the penalty.

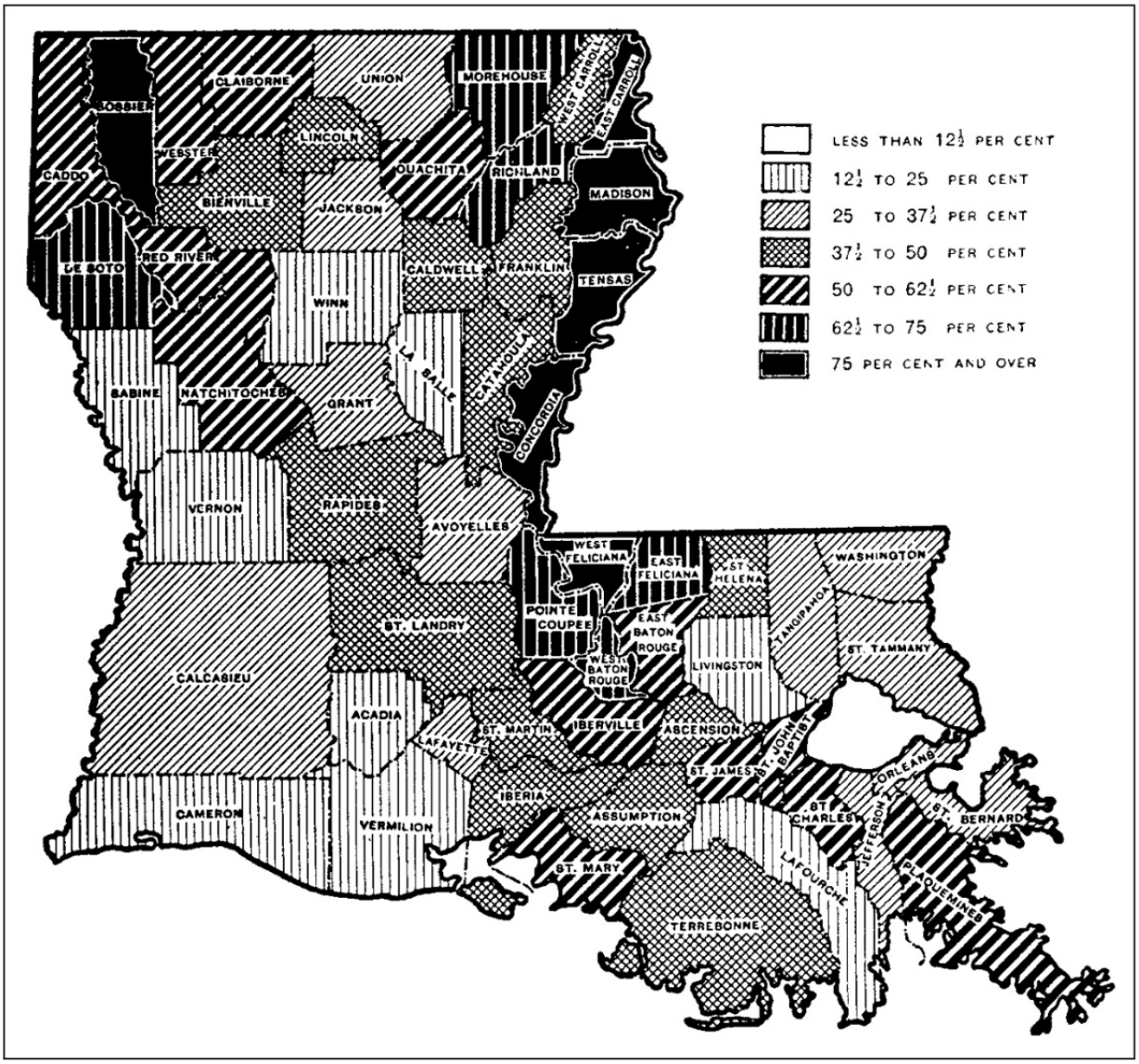
SECTION 15. *Be it further ordained*, That these ordinances shall not interfere with any municipal or military regulations inconsistent with them within the limits of said parish.

SECTION 16. *Be it further ordained*, That these ordinances shall take effect five days after their publication in the Opelousas Courier.

Official copy:

J. LOVELL,
Captain and Assistant Adjutant General.

APPENDIX 3



Map 5. Percentage of African Americans in Total Population of Louisiana, by Parishes, 1910