

The Jim Crow South

Paving the Way for the Modern Civil Rights Movement



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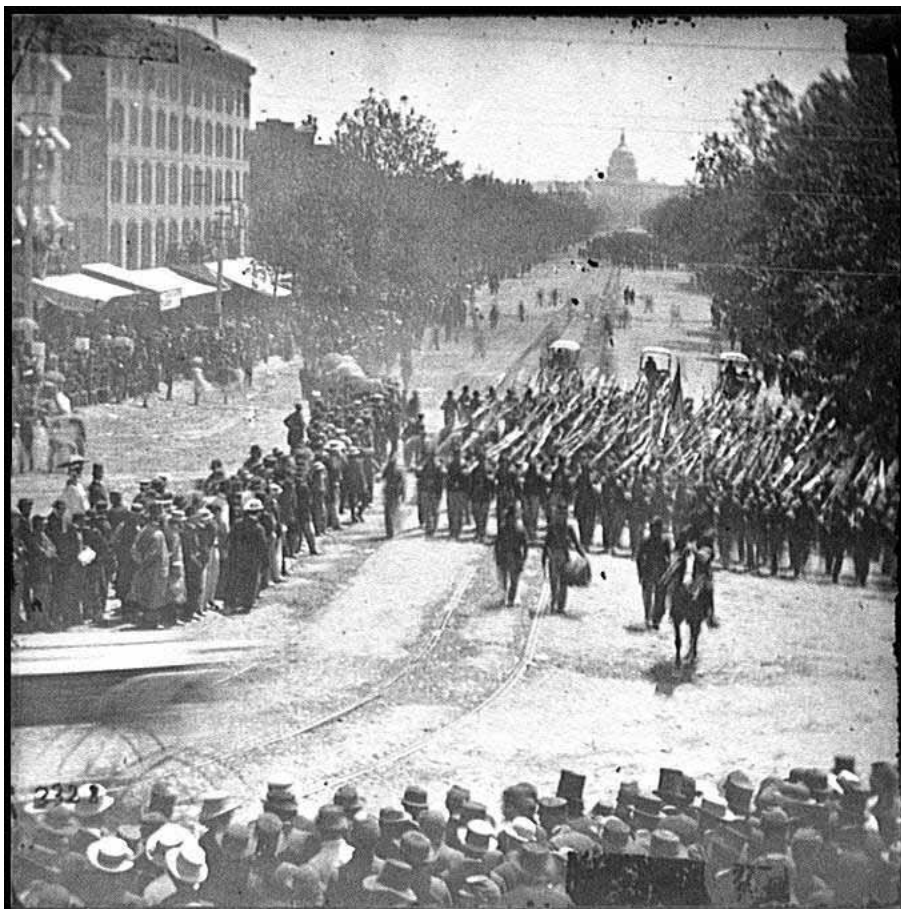
The Jim Crow South Paving The Way for The Modern Civil Rights Movement

In the Spring of 1865, the Civil War finally ended. The North (or Union, as the United States forces were known) defeated the South (or Confederates, as the Confederate States forces were known). The war had lasted four years. Thousands had died.

Much of the South lay in ruins from the many battles, large and small, that took place over the previous years. The South's economy was devastated, and the Confederate dollar was worthless. Because the South's economy was based predominantly on the institution of slavery, the freeing of the slaves meant destruction of the South's economic lifeblood.

The South was defeated, both physically and emotionally. Once proud and prominent southern cities like Charleston, Columbia and Richmond were reduced to rubble, and their populations reduced to despondency, poverty, and anger.

More importantly, our country was still very much divided. You will recall that many of the southern states seceded from the United States and joined together to form the Confederate States of America. Once the war ended, the challenge for the North was how to bring the southern states back into the Union.



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Parade down Pennsylvania Avenue, May 1865, celebrates the end of the Civil War.

ABOUT THE AUTHOR

Daniel J. Crooks III was a Spring 2012 Fellow with the Marshall-Brennan Constitutional Literacy Project. Daniel graduated with the B.A. in History from the College of Charleston in 2006; with a J.D., cum laude, from the Charleston School of Law in May 2011; and with a LL.M. in Law and Government from the American University Washington College of Law in August 2012. Daniel studied at the Washington College

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Daniel owes his love of American history, especially the Civil War and Reconstruction periods, to his father Danny Crooks. A native of Charleston, S.C., Daniel moved to D.C. in August 2011 shortly after sitting for the South Carolina Bar Exam. Daniel is a licensed attorney admitted

to practice in South Carolina. Currently, Daniel works at the law firm of Cohen & Cohen, P.C.

ABOUT THE COVER

The room in McLean house at Appomattox Court House where Gen. Robert E. Lee (seated left) surrendered to Gen. Ulysses S. Grant. Colonel Charles Marshall, Lee's aide-de-camp, was the only Confederate officer present to witness the surrender meeting.

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1865 to 1867

The End of the Civil War and the Beginning of Reconstruction



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President Andrew Johnson, a former senator from Tennessee and a supporter of states' rights, remained loyal to the Union during the Civil War. With the assassination of Abraham Lincoln, Johnson oversaw reconstruction.

Even before the war's end, President Abraham Lincoln was planning on how best to bring the country back together. But, on April 15, 1865 — just six days after General Robert E. Lee surrendered to General Ulysses S. Grant at the Appomattox Courthouse — President Lincoln died as a result of a gunshot wound to the head. On that same day, Vice President Andrew Johnson took the oath of office and became president. The goal of President Johnson and Congress was to reconstruct the country.

Once the South surrendered, the four million southern slaves not yet freed by the Emancipation Proclamation finally gained their freedom for the first time. Overnight, these millions of African Americans went from being considered personal property (or chattel) to being free citizens, able to exercise the same rights as their white counterparts.

From April 1865 until July 1867, President Johnson oversaw what has since come to be known as “Presidential Reconstruction.” During this time, President Johnson bypassed Congress and issued numerous presidential proclamations. These proclamations ordered new elections in the former Confederate states, pardoned high-ranking former Confederate officers and politicians, and failed to protect the rights — especially the right to vote — of the millions of now-freed African Americans.

During this same time period, every former Confederate state passed laws that became known as the Black Codes. These laws were passed in direct response to the Thirteenth Amendment

(adopted on December 6, 1865) that once and for all ended slavery in the United States. Fearing that these freed men and women would gain rights and try to assert their status as free Americans, the southern states sought to restrict the new-found freedoms of the freed slaves. The Black Codes greatly restricted where freed slaves could travel, mandated that they work for little pay, and essentially ensured that they were treated no better than they were while they were slaves.

The former slaves' new-found freedom frightened white southerners. You see, white southerners were accustomed to a society in which whites and blacks were separated legally. Whites were considered by law to be the superior race, and blacks were considered to be inferior to whites. Most southern white men and women did not want a world where black Americans shared the same rights and privileges as they did.

The belief that one group of people is superior to another simply by virtue of the color of their skin is known as racism. Racism is a form of prejudice, and it is caused by fear and a lack of understanding of the hated group.

It is true that racism existed in the North both before and after the Civil War. However, the unique history of the South, its deeply rooted institution of slavery, and the enormous population of newly freed African Americans in the southern states led the former Confederate states to quickly pass laws ensuring that whites remained the supreme authority and dominant race in the South.

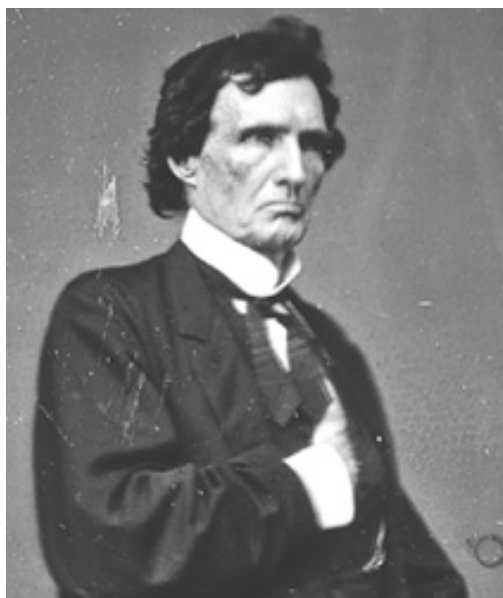
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1867 to 1877: The Reconstruction Era – A Response to the Black Codes and an Unrepentant South



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U.S. Senator Charles Sumner, Mass.



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U.S. Representative Thaddeus Stevens, Pa.

Many in the North became angry at President Johnson's soft-hand approach to Reconstruction. To many in the North, the Black Codes were nothing more than a poorly disguised attempt to retain the institution of slavery in a different way. Under these restrictive laws, African Americans could not vote, freely travel from place to place, or enjoy many of the other freedoms that their white counterparts enjoyed.

This anger from the North prompted a shift in power at the national level. A group of northern Republicans, known as Radical Republicans, gained a majority of congressional seats in the mid-term elections of 1866. As a result, in 1867 these men ushered in a new era of Reconstruction, known as Radical Reconstruction. Its proponents sought to ensure the protection and enfranchisement (that is, the granting of the right to vote) of African Americans.

The most prominent Radical Republicans were U.S. Representative Thaddeus Stevens (from Pennsylvania) and U.S. Senator Charles Sumner (from Massachusetts). Both men strongly supported giving African Americans the right to vote, and both men strongly opposed the South's attempts to restrict the civil rights of African Americans.

During Radical Reconstruction, African Americans in the South were protected by federal troops. From 1867 until 1877, the U.S. Army occupied most

of the former Confederate states. Their presence was necessary to protect the rights of African Americans, especially after the Fifteenth Amendment (ratified in 1870) guaranteed that the right to vote could not be taken away on account of someone's race.

For the first time in history, African Americans in many southern states held office in southern state legislatures, voted, and enjoyed many of the same privileges as their white counterparts. Over the 10-year period of Radical Reconstruction, approximately 1,500 African Americans held public office in southern states.

It was during this time that the last two of three Reconstruction Amendments (Thirteenth, Fourteenth, and Fifteenth Amendments) were passed. It was also during this time that Congress passed the Civil Rights Acts of 1866 and 1875. The Civil Rights Act of 1866, passed just a year after the war's end, was intended to immediately protect the rights of African Americans prior to the passage of the Reconstruction Amendments. The Civil Rights Act of 1875, however, was a more progressive law that protected African Americans from discrimination in certain public places such as hotels, movie theaters and public parks.

During these ten years, great strides were made in the realm of African American civil rights. Unfortunately, the gains were temporary.

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One Step *Forward*, Two Steps Back

The first African American to serve in the U.S. Congress, Hiram Rhodes Revels was a freedman his entire life. A pastor, Revels filled a vacant seat in the United States Senate in 1870.



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A slave who became a successful plantation owner, Blanche Kelso Bruce was the second African American to serve in the United States Senate and the first to be elected to a full term.



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Throughout the Reconstruction period, frustration and resentment among southerners was fierce. Southerners resented the presence of African American soldiers and the election of African American politicians. They also resented the presence of the 20,000 federal troops that kept a watchful eye over the South during the Reconstruction period. The Republican Party struggled with internal division, and southern Democrats continued to draw attention to the corruption of the presidency of Ulysses S. Grant.

The country remained as divided as ever. During the 1870s, white Democrats began to retake control of the state legislatures through coercion and targeted violence toward African Americans, in an attempt to frighten them away from voting. Militias, consisting of armed and organized white men, wreaked havoc throughout the South, frightening African Americans into submission and forcing some to flee the South. A combination of political success and fear mongering, along with the prolonged stay of federal troops in southern states, slowly ate away at northern attempts to maintain the progress that had been made up to that point.

The 1876 presidential race was one of the most contested in U.S. history. There was serious doubt that Rutherford B. Hayes won. In exchange for Hayes's promise to remove all remaining federal troops from the South, southern Democrats agreed not to contest the election and to, instead, recognize him as the new president. Republicans and Democrats agreed to this compromise and, in March of 1877, the remaining federal troops left.

With the federal troops gone and southern Democrats back in full control of their state legislatures, white southerners were free to legally restrict the rights of African Americans. And they did just that.

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1883

Jim Crow Takes Precedence in the South

In 1883, in *The Civil Rights Cases*, the Supreme Court dealt a severe blow to the African American Civil Rights movement. In these cases the Supreme Court held that Congress did not have the power to use the Fourteenth Amendment to pass the Civil Rights Act of 1875, which prohibited racial discrimination by private organizations and individuals. Instead, the Court held that the Fourteenth Amendment restricts only a state — not private parties unaffiliated with a state — from engaging in racial discrimination. This decision struck down the most important piece of federal civil rights legislation to come out of Radical Reconstruction.

Beginning in 1890 and lasting until 1908, ten of the eleven former Confederate states rewrote their constitutions to ensure that African Americans lost their voting rights and became second-class citizens. Along

with these constitutional changes, the various southern state legislatures passed multiple laws designed to keep African Americans and whites separate socially.

These laws became known as “Jim Crow” laws. The origin of the term “Jim Crow” is most likely traceable to a 19th Century “song-

FOR
WHITE PASSENGERS

SMITHSONIAN INSTITUTION

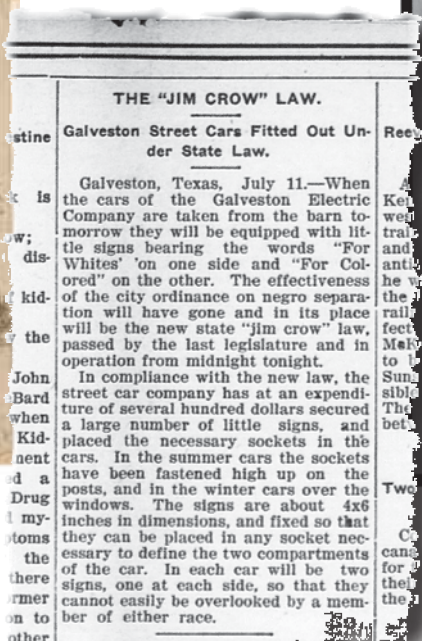
FOR
RENT
TO COLORED.

and-dance” cartoon that mocked and stereotyped African Americans. This type of cartoon representation that makes fun of a person or group of people is known as a caricature. “Jim Crow” laws soon became identified with all laws directed at keeping whites and African Americans separate in public and private life.



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Depiction of the Jim Crow character from minstrel shows



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Above, a drinking fountain at Bethlehem-Fairfield shipyards in Baltimore, 1943

Left, the July 12, 1907, *Palestine (Texas) Daily Herald* reports the change to “For Whites” and “For Colored” street cars.

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1892

Plessy v. Ferguson and the “Separate But Equal” Doctrine

One example of a Jim Crow law, passed in Louisiana in 1890, is known as the “Separate Car Act.” This law required that private railroad companies have cars for both “Whites” and “Coloreds” (as African Americans were pejoratively referred to).

On June 7, 1892, Mr. Homer Plessy purchased a train ticket and boarded a car designated for “whites only.” Light in complexion, Mr. Plessy did not appear to be an African American. That’s because he was $\frac{7}{8}$ Caucasian — and only $\frac{1}{8}$ part African American. However, under most southern states’ laws at the time, anyone who had $\frac{1}{8}$ or more African American blood in him was considered African American.

When he entered the car for whites only, Plessy was told to leave or be forcibly removed and arrested for violating Louisiana law. He refused, was arrested, and was sent to jail. The judge who convicted him of violating the state-imposed racial segregation law was Judge John H. Ferguson. When Plessy decided to challenge the constitutionality of the law, he sued Judge Ferguson and asked the Supreme Court of Louisiana to overrule Judge Ferguson’s decision

based on the fact that the law was unconstitutional. The Supreme Court of Louisiana agreed with Judge Ferguson and upheld his conviction.

So, Plessy asked the United States Supreme Court to overturn his conviction due to the Louisiana law’s unconstitutionality.

In 1896, the Supreme Court handed down its decision and decided that Louisiana’s law, which provided separate and equally equipped railroad cars for the races, did not violate the U.S. Constitution.

The decision is important for the lasting influence of both the majority and dissenting opinions. The majority opinion upheld Louisiana’s law on the grounds that it is proper for the races to be separated in social situations. In other words, the Supreme Court said that separating whites and blacks is perfectly legal, at least in this case, because the cars for both races were of equal quality. The only physical difference between the cars was that each race had to remain separate from the other. Separation of the two races for social reasons was not unconstitutional.

Not all of the Justices agreed, however. In a passionate dissent, Justice John Marshall Harlan had this to say:



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Justice
John Marshall Harlan

[I]n view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved ... If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow-citizens, our equals before the law. The thin disguise of ‘equal’ accommodations for passengers in railroad coaches will not mislead any one, nor atone for the wrong this day done.

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At the bus station in Durham, North Carolina, May 1940

**Front page of judgment,
*Plessy v. Ferguson***

As you can see from this eloquent dissent, Justice Harlan believed that the very separation of the races — regardless of whether the rail cars were equal in quality — was the thing that caused harm. He argued that making African Americans stay away from whites in public places only reinforced the view that African Americans are inferior to their white counterparts.

Southern states considered the *Plessy* decision supported efforts to maintain the separation of the races under the so-called “separate but equal” doctrine. From the time *Plessy* was

decided (1896) until the famous case of *Brown v. Board of Education* (1954), the rule of “separate but equal” was the law of the land. That rule meant the following: As long as public facilities (e.g., streetcars, buses, trains, theaters, bathrooms, playgrounds) for African Americans were equal in quality to those for whites, then it was perfectly legal to have separate facilities for African Americans and Caucasians.

In 1954, the Supreme Court in *Brown v. Board of Education* reversed course and decided that separate is never equal.



ALBERT ROSENTHAL, THE COLLECTION OF THE SUPREME COURT OF THE UNITED STATES

**Chief Justice
Melville W. Fuller**

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Voting Rights

Remember that during most of Reconstruction, most southern African American men were allowed to vote. Remember, also, that this right was short-lived. Once the federal troops left the South, there was no longer anyone to make sure that African Americans' rights were being respected. As a result, when many of the southern states started re-making their constitutions (beginning in 1890), they made sure to include restrictions on the right to vote.

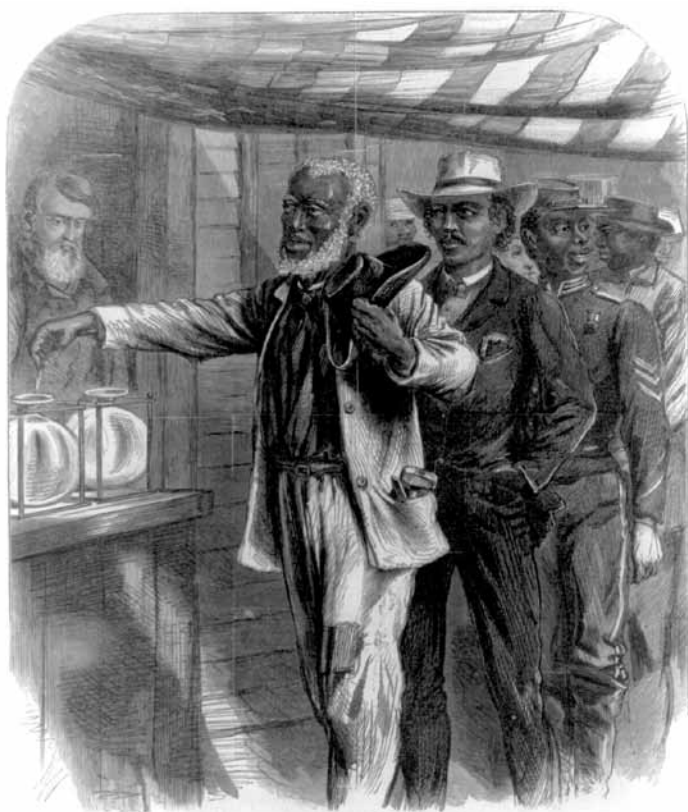
Because of the Fifteenth Amendment to the U.S. Constitution, the southern states could not outright prevent African American men from voting. However, nothing prevented them from enacting laws that tried to put limits on the right to vote.

The two most infamous of these voting requirements were (1) poll taxes and (2) literacy tests. The first requirement that people pay a tax to vote was deliberately designed to disenfranchise (that is, to prevent from voting) African American men, most of whom did not have enough money to pay the tax. The second requirement of literacy tests also targeted African American men, most of whom were illit-

erate and could not possibly have been able to pass the tests. As a result of both of these restrictions, most African American men were not allowed to vote because either they could not afford the tax or because they failed the literacy tests.

Challenges to the literacy test requirement and other restrictions were brought before the Supreme Court on a number of occasions. One such challenge happened in the case of *Williams v. Mississippi* (1898). In *Williams*, a man convicted of murder and sentenced to be hanged by an all-white jury appealed his conviction on the grounds that Mississippi's voting eligibility laws made it impossible for an African American man to be on a jury. In Mississippi, and in other states, the right to sit on a jury is related to the right to vote. If African American men cannot vote, then they cannot sit on a jury. And if they cannot sit on a jury, then an African American person charged with a crime will never have a fair and impartial jury of his peers (because all of the jurors are white).

The Supreme Court disagreed with Williams and found that Mississippi's constitutional provisions relating to the right to vote do not violate the U.S. Constitution because they apply equally to both whites and African Americans. The Court did not care about how the law was actually being applied; instead, it cared only about the fact that, in theory, the law restricts the right to vote for both whites and African Americans.



"THE FIRST VOTE."—Drawn by A. R. Wald.—(See also Page 3.)

ALFRED R. WALD, HARPER'S WEEKLY

"The First Vote"

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STUDENT ACTIVITY

What Do You Think?

Voter Identification

There has been a lot of discussion lately over whether voter identification laws discriminate against African Americans and other minorities, young adults and senior citizens. Voter identification laws (or, “voter ID” laws for short) have been passed in 30 states. The laws in some states require individuals to produce a government-issued photo ID in order to be permitted to vote. Others allow a current utility bill or bank statement. Historically, producing a photo ID has not been required.

Some citizens and politicians support the idea because they believe it will decrease the amount of voter fraud (that is, a person being allowed to vote who is not otherwise permitted to do so). On the other side, others, including advocates for many poor individuals and African Americans, say that the purpose of the law is to make it more difficult for minorities — African Americans in particular — to vote.

Their argument goes something like this: It costs time and money for someone to get a photo ID made, and certain minority groups do not have the time or money to get these IDs. Some older adults have no documentation of their birth. Because getting these photo IDs really burdens minority groups more than whites (who, the argument goes, have time and money to get photo IDs), then voter ID laws really just discriminate against low income and minority groups. In other words, the opponents (that is, those who do not want voter ID laws) believe that the voter ID laws are similar to poll taxes and literacy tests in that they may seem to apply to everyone equally, but they really only affect certain groups of people.

Background

Federal law requires first-time voters who register by mail to present a photo ID or copy of a current bill or bank statement. Some states generally advise voters to bring some form of photo ID. In 2006, Indiana became the first state to enact a law requiring photo ID as a condition for voting. The Supreme Court in 2008 upheld this law.

- Do you think having to show a government-issued photo ID in order to vote should be required?
- Do you think being asked to provide a utility bill or bank statement is an imposition? Do all eligible voters receive utility bills (renters, for example) or have bank accounts?
- What are some pros and cons of making sure that the persons voting are, in fact, who they say they are?
- Do you think that poor members of certain minority groups will not vote if they know they have to pay money and take time to get an official photo ID made? Is a requirement to buy a photo ID similar to the poll taxes that were common during the Jim Crow era?

In the Know

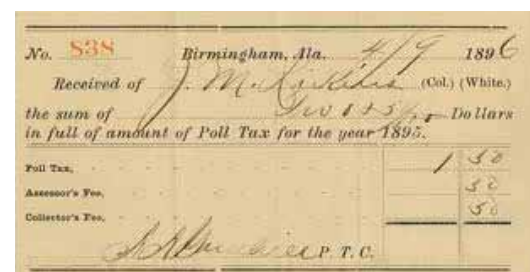
Black Code Laws passed in former Confederate states during the presidency of Andrew Johnson to restrict rights of freed slaves

Enfranchisement The right to vote

Jim Crow The set of post-Reconstruction segregation laws, social codes, and customs that required separation of whites and Blacks in public accommodations throughout the South

Literacy test More than a reading test, state-wide voter registration procedures were crafted to deny Black citizens (and in some western states, Native American and Latino voters) their rights

Poll tax Fee imposed to restrict voter registration to nonwhites



SMITHSONIAN INSTITUTION

Receipt for payment of poll tax

Racism Belief that one group of people is superior to another by virtue of the color of their skin

Reconstruction Era Period from 1865 to 1877, when the North aided the South in rebuilding their cities and reconstructing their governments in the aftermath of the devastation caused by the Civil War

Presidential Reconstruction Period from 1865 to 1867, when President Andrew Johnson took a more moderate approach to Reconstruction by pardoning thousands of former Confederate leaders, allowing white southerners to reconstruct their own governments, and failing to protect the civil rights of the newly freed slaves

What Do You Think?

Early Voting

What if it were a fact that:

In **State A**, 50% of African Americans working from 7 a.m. until 7 p.m. on Election Day are not able to get time off to vote, but only 20% of whites working during the same hours are unable to get that time off of work. That means that 30% more whites than Blacks are able to get time off from work to vote on Election Day.

In **State B**, all of its citizens have the ability to vote early, beginning a month before Election Day. This way, everyone who wants to can vote. **State A** does not have this option.

- Do you think that State A's laws discriminate against African Americans?
- Does it matter that the laws apply equally to everyone? Or, should we consider the actual facts (that is, the fact that 50% of African Americans — as opposed to only 20% of whites — cannot get time off of work on Election Day to vote)?

What Have Others Experienced?

Go home and ask older relatives or family friends if they remember what life was like during the “Jim Crow” era. Plan questions to ask. These would include:

- Were you aware of Jim Crow “separate but equal” restrictions when you were growing up?
- How did you feel about “Jim Crow” restrictions and actions?
- What did “separate, but equal” mean to them?
- Do you know about the case of *Plessy v. Ferguson*?
If your interviewees don't know the case, you'll look smart when you tell them about it, since you now know all about it!

In the Know, *continued*

Radical Reconstruction Period from 1867 until 1877, when the so-called “Radical” Republicans in Congress took a more heavy-handed approach to Reconstruction by deploying 20,000 federal troops to the former Confederate states, supporting the civil rights of the millions of newly freed slaves, and introducing two of the most important Amendments to the Constitution—the Fourteenth and Fifteenth Amendments

Separate, but Equal A phrase that became popular after the Supreme Court, in *Plessy v. Ferguson*, decided that states could legally separate whites and Blacks in public places so long as the accommodations for Blacks were equal in quality to those for whites