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The Importance of Black Suffrage at the Turn of the Twentieth Century in Relation to the Jury System in the Southern States

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Introduction

This article will discuss the importance of the right to vote being guaranteed to African Americans in the South at the turn of the twentieth century, with a focus on the absence of Black jurors in the courtroom and its accompanying problems. During this period, the majority of African Americans and many lower-class whites in Southern states were legally disfranchised through amendments to state constitutions or statutes. Because of the widely held view at the time that suffrage was a privilege granted only to those who met certain criteria rather than a natural right for all, disfranchisement tended to be perceived as a progressive reform. Crucially, however, the loss of suffrage in the criminal justice system, where jury qualifications in jury trials were often tied to the retention of suffrage, meant the complete absence of Black jurors. When comparing trials involving Black and white defendants, all-white juries tended to work to the great disadvantage of the former, resulting in Black defendants being over-punished or white defendants being acquitted despite clear criminal conduct. When equality before the law was not exercised in the courts, African Americans were often forced into coercive, hazardous, or brutally violent situations, such as prison labor, peonage, and, ultimately, lynchings. One of the main causes was that the absence of Black jurors was facilitated by disfranchisement. The purpose of this article is to provide clues as to why African Americans appealed for the guarantee of the right to vote despite the contemporary perception of it as a privilege.

This article aims to provide a historical interpretation of the pivotal role that the right to vote has played for African Americans, with a focus on Southern history and legal and judicial history.

The following sections discuss how the absence of Black jurors was connected to disfranchisement and whether this could be seen as a serious, life-threatening

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problem for African Americans. In the first section, I will review and relate previous studies on jury discrimination and disfranchisement. The second and third sections will examine the general perception of suffrage and participation of juries at the turn of the twentieth century. In the fourth section, I will address the mechanisms through which African Americans were excluded from jury service in relation to disfranchisement. The fifth section will focus on specific disadvantages suffered by African Americans due to all-white juries: prison labor, peonage, and lynching. Finally, I will show how the absence of Black jurors was connected to disfranchisement and whether retaining the right to vote was a life-threatening matter for African Americans in the South when considering the consequences of jury discrimination.

I: Historiography of Disfranchisement and Jury Discrimination

In the latter decades of the nineteenth century and into the beginning of the twentieth century, Southern states legally disfranchised most African American male voters. In classic studies of disfranchisement, V. O. Key, C. Vann Woodward, and J. Morgan Kousser examined the disfranchisement movement against African Americans and proposed which group was behind it. In *Southern Politics in State and Nation* (1949), Key concluded the white, conservative Democratic leadership (called Bourbon) led the wave of disfranchisement in the South while noting Georgia and South Carolina as exceptions where white farmers led efforts at Black disfranchisement to challenge the political domination of the established Democrats.[1] Woodward and Kousser agreed with Key's general conclusion; in line with his analysis, they stated that in most Southern states, white Democrats in the Black Belt led the disfranchisement movement.[2] More recently, Michael Perman attempts to show different patterns of which group led the disfranchisement movement by dividing Southern states into five groups.[3]

Legal disfranchisement studies also focus on how the disfranchisement process was developed. Key's *fait accompli* thesis, for example, emphasizes continuity in that the development of laws for disfranchisement merely reinforced the existing political domination of the Democratic Party. According to Key, disfranchisement consisted of two phases: in the first phase of the 1880s, violence and fraud were employed by Democrats to oppress voters against the dominant party, and in the

1. V. O. Key, *Southern Politics in State and Nation* (New York: Alfred A. Knopf, 1949).

2. C. Vann Woodward, *Origins of the New South, 1877–1913* (Baton Rouge, LA: Louisiana State University Press, 1971); Joseph Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South* (New Haven, CT: Yale University Press, 1974).

3. Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888–1908* (Chapel Hill, NC: University of North Carolina Press, 2001), 6, 323.

second phase of the 1890s, legal disfranchisement was developed as a natural consequence of the existing political situation. On the other hand, Kousser suggests that legal disfranchisement had already been implemented through election laws and voter register acts in the 1880s. That is, from the beginning of the disfranchising process, legal methods were used along with violence and fraud, and such oppression continued afterward. Kousser's view is supported by Perman, who also believes legal disfranchisement was already employed in the 1880s, but Perman goes a step further by emphasizing the difference between disfranchisement by state statutes and constitutions, which seem similar in that both legally limit the exercise of suffrage. Perman contends that while state statutes promulgated disfranchisement and manipulated votes so that a dominant political party could obtain favorable election results, disfranchisement by state constitution was employed not to control but to eliminate unwanted voters.[4]

It is also important to note that disfranchisement was a significant issue among African American leaders during the period of racial segregation known as Jim Crow, whereas most of the research and analysis tends to emphasize racial segregation on public transportation and in public facilities. In the 1905 Declaration of Principle of the Niagara Movement, the securing of suffrage appears to be a priority as it is listed as the second of the principles following progress in the first. In addition, the section on duty at the conclusion of the Declaration identified the duty to vote as a primary responsibility.[5] Another example is Booker T. Washington; though his 1895 Atlanta "compromise" speech was denounced as a renunciation of African American political rights, he also stressed the importance of impartial voting procedures. As demonstrated by R. Volney Riser's research, Washington participated in anti-disfranchisement campaigns in Louisiana and Alabama covertly and provided financial support for the related legal challenges.[6] By examining the disadvantages associated with the inability to exercise the right to vote, we can gain insights into the significance of this right for African Americans. It is my hope that this analysis will contribute to a deeper understanding of African American history.

Studies arguing jury discrimination in major court cases often mention the issue of the absence of Black jurors or all-white juries. Though many of the studies tend to focus on the periods from the beginning of the twentieth century to the twenty-first century, this also implies that the problem of all-white juries has

4. Key, *Southern Politics*, 533−39; Kousser, *Shaping of Southern Politics*, 3−5; Perman, *Struggle for Mastery*, 5−6, 10−11.

5. "Niagara Movement Declaration of Principles," 1905, in W. E. B. Du Bois Papers (MS 312), Special Collections and University Archives, University of Massachusetts Amherst Libraries, http://credo.library.umass.edu/view/full/mums312-b004-i092 (accessed August 25, 2024).

6. R. Volney Riser, *Defying Disfranchisement: Black Voting Rights Activism in the Jim Crow South, 1890−1908* (Baton Rouge, LA: Louisiana State University Press, 2010).

been one of the major issues in the American criminal justice system. Michael Klarman, in his book *From Jim Crow to Civil Rights*, shows how African Americans came to be excluded from the jury box in the South at the end of the nineteenth century.[7] Studies focusing on issues of all-white juries are also found in other academic fields like law and psychology. Douglas Colbert argues how the Thirteenth Amendment has been offering protection against disqualification of African American jurors since its passage.[8] Samuel Sommers's study shows diverse jurors tend to submit fairer verdicts, while Ellsworth finds that a defendant from a minority group is more likely to receive a harsher verdict when there is no juror with a minority background.[9]

Jury system problems can be roughly categorized into three groups according to the intentional juror elimination and selection process: (1) making jury lists or rolls for all persons eligible for jury service, (2) selecting a jury pool or venire to determine those actually summoned in court as jurors, and (3) immunizing disqualified jurors from the jury pool.[10] From the end of the nineteenth to the early twentieth century (the period examined here) the problem was that African American citizens were eliminated from the jury lists.

In examining the potential disadvantages of an absence of Black juries, Douglas A. Blackmon's study offers valuable insights by exploring the context of prison labor and peonage during this period. All-white juries rarely sided with African American defendants, and when convicted, defendants were often sentenced to forced labor in the form of convict leasing or chain gangs for local companies and landlords. In particular, it is important to note, as Blackmon mentions, that these unjust sentences and subsequent brutal punishments were somewhat justified because the African American defendants were regarded as criminals to be punished rather than victims to be saved. Though this unfair assumption that Black individuals are more likely to engage in criminal activities was initially made toward freed slaves and their descendants, there appears to be a

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7. Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004), ch. 1; see also David Cole, *No Equal Justice: Race and Class in the American Criminal Justice System* (New York: New Press, 1999), ch. 3; Randall Kennedy, *Race, Crime, and The Law* (New York: Pantheon Books, 1997), chs. 5−7; and Neil Vidmar and Valerie P. Hans, *American Juries: The Verdict* (Amherst: Prometheus Books, 2007), chs. 3−4.

8. Douglas Colbert, "Challenging the Challenge: The Thirteenth Amendment as a Prohibition Against the Racial Use of Peremptory Challenges," *Cornell Law Review,* vol. 76, no. 1 (1990).

9. Samuel R. Sommers, "On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations," *Journal of Personality and Social Psychology*, vol. 90, no. 4 (2006): 597−612; Phoebe C. Ellsworth, "Are Twelve Heads Better Than One?," *Law & Contemporary Problems* 52, no. 4 (1989): 205−24.

10. Cole, *No Equal Justice*, 104−5.

similar assumption underlying the issue of mass incarceration in the twentieth and twenty-first centuries.[11] The absence of due process of law resulted in the dehumanization and victimization of Black individuals, who were subjected to lynching at its worst. In his book *Lynching in America*, Christopher Waldrep focuses on individual lynching incidents and notes that white individuals who perpetrated lynchings were frequently not prosecuted or, if they were prosecuted, were acquitted or received light sentences.[12]

Regarding the connection between disfranchisement and jury discrimination, Waldrep insists that previous studies emphasize disfranchisement rather than jury discrimination and suggests that jury system problems need more attention from scholars.[13] Moreover, Michael Klarman contends that white Southerners resisted the presence of African Americans in the jury box and schools stronger than exercising the right to vote.[14] While these scholars encourage us to focus on the problems of the jury system more than those of disfranchisement, I propose that jury discrimination and disfranchisement should be considered together—especially when examining the period from the end of the nineteenth century to the beginning of the twentieth. During this period, the selection process of jurors often depended on one's eligibility as a voter. As I aim to show in the following chapters, the problem of jury discrimination and that of disfranchisement are closely interrelated.

II: General Perception of Suffrage at the Turn of the Twentieth Century

The prevailing view in both the North and South was that the right to vote should be limited to only a certain class of people. After the Civil War, the ratification of the Fifteenth Amendment realized universal male suffrage in

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11. Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2009), 5−9. Michelle Alexander points out that even after legal segregation was abolished in the 1960s, African Americans continued to be disfranchised and denied the right to vote and serve on juries because of their incarceration as criminals, and the situation persists today. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010). See also Elizabeth Hinton's study, which modifies Alexander's interpretation about the origin of modern mass incarceration: Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge, MA: Harvard University Press, 2017).

12. Christopher Waldrep, *Lynching in America: A History in Documents* (New York and London: New York University Press, 2006), 15, 151−54.

13. Christopher Waldrep, *Jury Discrimination: The Supreme Court, Public Opinion, and a Grassroots Fight for Racial Equality in Mississippi*, Studies in the Legal History of the South (Athens and London: University of Georgia Press, 2010), 4.

14. Klarman, *From Jim Crow to Civil Rights*, 456.

America, and more than a million freedmen were enfranchised.[15] However, decades later, progressive reformers saw the vote of African Americans in the South and that of immigrants in the North as obstacles to good government. The reformers throughout the country put aside the ideal of universal suffrage and decided to remove unwanted voters from the electorate.[16]

Northern cities were then witnessing the rapid growth of an immigrant working class. Southern and eastern Europeans who did not speak English and had alien cultures came into cities, and by 1910, immigrants or the children of immigrants dominated the urban population. Since these newcomers were not only foreign to American culture but mostly poor and uneducated, longer-settled American residents were afraid that the presence of these voters, whom they saw as ignorant, would lead to political corruption. In 1903, former diplomat William Scruggs lamented that "universal suffrage is but another name for a licensed mobocracy."[17] In the South, support for universal suffrage was similarly waning. The *New Orleans Daily Picayune* saw universal suffrage as "absolutely unnatural, unreasonable, and unsanctioned by any proper principle," and the *Dallas Morning News* insisted on the disfranchisement of illiterate people, regardless of their color or intelligence.[18] Some white and Black leaders, including Thomas Nelson Page and Booker T. Washington, suggested that qualifications for voting should be applied equally to whites and Blacks if they could meet certain criteria, but overtly racial language was also heard.[19] The Chairman of the Alabama Constitutional Convention of 1901, John B. Knox, declared the purpose of the convention was "to establish white supremacy in this State" and refused the idea of universal suffrage, stating that "the right of suffrage is not a natural right, because it exists where it is allowed to be exercised only for the good of the State."[20]

Although disfranchising attempts that began in the South at the end of the nineteenth century varied from state to state in terms of political situation, suffrage requirements, and the availability of loopholes for whites who could not meet the requirements, the goal of those leading this movement was consistent: eliminating African Americans from the process of state politics. As long as African

15. Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, Kindle, 2000), 2565.

16. Kousser, *Shaping of Southern Politics*, 252.

17. Keyssar, *The Right to Vote*, 2910−28; William L. Scruggs, "Citizenship and Suffrage," *North American Review* 177, no. 565 (December 1903): 844−45.

18. *New Orleans Daily Picayune*, December 4, 1897; *Dallas Morning News*, February 15, 1901; Kousser, *Shaping of Southern Politics*, 254.

19. Ibid., 253; "From Booker T. Washington to Thomas Coleman, June 4 and July 22, 1901," in *Booker T. Washington Papers*, vol. 6: 143, 179−80.

20. *Journal of the Proceedings of the Constitutional Convention of the State of Alabama, Held in the City of Montgomery, Commencing May 21st, 1901* (Montgomery, AL: Brown Printing Company, 1901): 15−16.

Americans retained their votes, they kept casting their ballots for Republican candidates or others from a third party and usually against the dominant Democratic Party. When the leading Southern Democrats felt that the manipulation of votes through violence, intimidation, and election fraud was no longer effective in achieving their ends, they moved to eliminate unfavorable voters by changing the requirements of suffrage. As Perman argues, this elimination was conducted by the registrars assigned to each municipality rather than election officials. These voter registrars—generally white Democrats—helped to sustain the Solid South at the grassroots level by preventing dissidents from registering as voters. Moreover, lawmakers employed constitutional revision rather than legislative statutes to ensure the effect of the disfranchisement.[21]

Regarding how many were disfranchised, Kent Redding and David James found that by 1912, Black voter turnout in presidential elections fell to below 3% across eleven Southern states, while the rate among whites ranged from 26% to 43%. More specifically, Mississippi revised its constitution in 1890, and the change to voter turnout in this state after its ratification was significant: in 1800, the voter turnout of Blacks and whites was a fairly even 45% and 56%, but in 1892 was 1% and 41% respectively. The new constitution effectively barred African Americans from voting. As another example, after the ratification of Alabama's new state constitution of 1901, Black voter turnout dropped from 21% in 1900 to 2% in 1912, while white voter turnout declined from 60% to 39%. While more white voters remained—and Black voters retained barely any enfranchisement—both groups lost their votes at nearly similar rates during this period.[22]

Progressive reformers in the North and South reacted to the disfranchisement movement positively, which Klarman describes as "an enlightened response to election violence and fraud."[23] Similarly, in the *New York Times*, an essayist insisted that the Grandfather Clause—a loophole for illiterate or poor whites to register—was among the "peaceful" methods to ensure white rule without relying on terrorism.[24] As noted above, skepticism about universal suffrage was widespread in the North, where fears abounded that the influx of white immigrants from southern and eastern Europe might cause rampant electoral fraud. Given the contemporary trend toward imperialism, the question of how to treat people of color in overseas territories was also raised. As with the adoption of limited suffrage in the Territory of Hawaii, the North or the U.S. federal government

21. Perman, *Struggle for Mastery*, 322, 327.

22. Kent Redding and David R. James, "Estimating Levels and Modeling Determinants of Black and White Voter Turnout in the South, 1880 to 1912," *Historical Methods* vol. 34, no. 4 (Fall 2001): 141−58.

23. Klarman, *From Jim Crow to Civil Rights*, 38.

24. Ibid., 38; *New York Times*, June 23, 1915: 10.

arguably did not condemn the race-based disfranchisement practiced by the South but rather implicitly endorsed it by choosing the same path.[25]

Ray Stannard Baker, a white journalist from the North who traveled to the South to report, similarly assessed that the restrictions on voting rights in these states were somewhat reasonable. In his opinion, since the majority of African Americans, newly arrived immigrants, and lower-class whites did not understand their civic duty due to ignorance, they would need to wait to participate in elections until they became capable of casting their ballots. While he supported disfranchisement, he also insisted that disfranchisement should be accompanied by an educational policy for those disfranchised to become eligible voters in the future. However, electoral reforms in the South were not accompanied by educational policies that would increase the number of future qualified voters—even Blacks who met the eligibility requirements (e.g., literacy tests and poll taxes) were prevented from registering as voters by local white registrars.[26] The Southern electoral reform clearly discriminated against voters based on race and it lacked the legitimacy that Baker favored.

III: Jury Participation

The jury system is enshrined in the United States Constitution and the Bill of Rights Amendments. The right to have a jury trial was originally included to counter unjust oppression from colonial governments during the founding period. By writing specific human rights provisions in the supreme law of the land, people sought to prevent power from being abused against them.[27] In this regard, the Fifth Amendment states, "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger." The Sixth Amendment states, "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." Finally, the Seventh Amendment extends the right to a jury trial in civil suits: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."[28]

The right to a jury trial in the U.S. is realized through petit and grand juries. A petit jury makes factual determinations on the guilt or innocence of the indicted defendant. In federal courts, a petit jury usually consists of twelve members and

25. Klarman, *From Jim Crow to Civil Rights*, 38.

26. Ray Stannard Baker, *Following the Color Line: American Negro Citizenship in the Progressive Era* (New York: Doubleday, Page, 1908), 246, 303.

27. Vidmar and Hans, *American Juries*, 18; Waldrep, *Jury Discrimination*, 20−21, 30.

28. U.S. Constitution, Amendments V, VI, and VII.

must reach a unanimous verdict. While states have different jury models, they are basically required to render a unanimous verdict as federal cases. For felony prosecutions, a number of jurisdictions require a grand jury indictment. A grand jury usually consists of twenty-three jurors who decide whether to indict a suspect. A suspect will be indicted for a crime if a majority of the grand jury members believe that the evidence is sufficient to support an indictment; although the number of grand jury members and affirmative votes required for an indictment vary from state to state, all share the requirement that the vote need not be unanimous, unlike petit juries.[29]

Only after the Civil War did Congress recognize that the right to participate in juries should be reserved for freed African Americans. Emancipation from slavery did not translate to white Southerners changing their violent treatment of Black people. During the Reconstruction period, in which Congress acted to protect the lives of freed Black Americans, the Civil Rights Act of 1866 was passed to guarantee the benefits of due process to Black and white citizens. At the end of Reconstruction, in 1875, Congress also indicated that the selection of impartial juries was a civil right of Black criminal defendants and linked the jury system to the Fourteenth Amendment, which guaranteed civil rights. To objections from Democrats that the Fourteenth Amendment does not involve the guarantee of political rights, Republicans responded that the selection of impartial juries is a civil right of Black criminal defendants.[30] Passed to reflect this position, the Civil Rights Act of 1875 is generally referred to as a law guaranteeing opportunities to use public facilities and transportation without regard to race, including participation in juries.[31] Section 4 of the Act was inserted to protect the right of African Americans to serve as jurors in state court proceedings. It states, "No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as [a] grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude."[32]

The first of the most important court decisions up to the twentieth century that involved the jury system was the case of *Strauder v. West Virginia* (1880). In this trial, Black defendant Taylor Strauder sought to have his conviction overturned by claiming that both the grand and petit juries he received were composed entirely of white men, leading to his wrongful conviction. Although the Fourteenth Amendment "not only gave citizenship and the privileges of citizenship to persons

29. Randolph N. Jonakalt, *The American Jury System* (New Haven, CT: Yale University Press, 2003), 3, 88, 94−96.

30. Klarman, *From Jim Crow to Civil Rights*, 40.

31. Gilbert Thomas Stephenson, *Race Distinction in American Law* (New York: Association Press, 1911), 10.

32. Colbert, "Challenging the Challenge," 62−63; Civil Rights Act of 1875, § 4.

of color but denied to any State the power to withhold from them the equal protection of the laws," West Virginia state law at the time restricted jury qualification to "white" males only. It was declared that "[t]he statute of West Virginia which, in effect, singles out and denies to colored citizens the right and privilege of participating in the administration of the law as jurors because of their color, though qualified in all other respects, is, practically, a brand upon them, and a discrimination against them which is forbidden by the amendment." The defendant's suit was allowed, and from this point forward, racially discriminatory language could no longer be employed in jury qualifications. However, despite this landmark ruling, African Americans were still largely barred from participating in juries.[33]

The reason for this can be seen in another case that was handed down on the same day as *Strauder v. West Virginia*. As with this trial, the grand jury and petit jury of Lee Reynolds, the Black defendant in *Virginia v. Rives* (1880), were all white. However, unlike in West Virginia, Virginia state law allowed all "men" to serve on juries. Although the Black defendants were able to have their convictions overturned, the judge in charge said in his opinion that "[a] mixed jury in a particular case is not essential to the equal protection of the laws" secured in the Fourteenth Amendment; that is, the jury's all-white composition was insufficient evidence for racial discrimination.[34] This set a precedent in arguing that the lack of a single African American juror in the history of the U.S. is insufficient evidence of racial discrimination. As late as 1900, the courts had not yet articulated a standard for proving the existence of racially discriminatory administrative conduct in jury selection and other processes.[35] State officials who had excluded Black jurors were thus freed from the fear of being subject to federal prosecution under Section 4 of the Civil Rights Act of 1875.[36]

On the one hand, for many white citizens, having a Black person sitting on a jury was seen as intolerable, especially in trials involving Black and white plaintiffs and defendants. Rather than basing verdicts on the evidence, all-white juries often made decisions with racial factors in mind, convicting Black defendants and acquitting the few white defendants who had been charged with crimes against Black people.[37] On the other hand, from the Reconstruction period to the end of the nineteenth century, African Americans remained steadfast in stating that Black participation in juries was necessary to secure their rights under the law. A formerly enslaved man in Tennessee, J. W. Bailey, sent a letter to the

33. *Strauder v. West Virginia*, 100 U.S. 303 (1880); Vidmar and Hans, *American Juries*, 71.

34. *Virginia v. Rives*, 100 U.S. 314 (1880).

35. Klarman, *From Jim Crow to Civil Rights*, 41.

36. Colbert, "Challenging the Challenge," 68.

37. Orville Vernon Burton and Armand Derfner, *Justice Deferred: Race and the Supreme Court* (Cambridge and London: Belknap Press, 2021), 73.

governor saying that Black rights under the law are protected only through their participation in juries. Booker T. Washington lamented there would be no fair chance for a Black man against a white lawyer and a white jury. A member of the National Association for the Advancement of Colored People (NAACP) also mentioned to the governor of Tennessee that the exclusion of African Americans from juries was the main reason for the failure of justice in the trials of Black defendants accused of crimes in the South.[38] So long as juries were all white, justice could not be served to African Americans in the courts.

IV: Mechanism to Exclude African American Juries

In the antebellum (i.e., pre-Civil War) period, African Americans were generally not allowed to serve on juries, and this changed only following the Civil War and Reconstruction era, at which point the vote was extended to Black men.[39] The Military Reconstruction Act of 1867 divided the South into five military districts governed by five generals, each of whom (except for the general of the first military district in Virginia) generated their jury candidate lists from voter registration rolls alone or in combination with lists of taxpayers. Each state judge was likely not to select a Black person for jury service or to limit Black jurors to a small number, but the Reconstruction Act opened the door for African Americans to participate in jury service. In the same year, *The New York Times* reported that African American men were selected for juries in Wilmington, North Carolina, and New Orleans, Louisiana, and as early as 1870, integrated juries became more common in some parts of the South.[40] In the later years of the Reconstruction, more African American men served on juries, especially in majority-Black counties, although state law prohibited Black jurors in Maryland, Kentucky, and West Virginia.[41] With the strong support of the Department of Justice—newly established in 1870—Republican juries and justices of the peace properly handled the testimony of African Americans and prosecuted white perpetrators who violated the civil and political rights of Black plaintiffs.[42]

This trend was halted, however, with the end of Reconstruction and the return of the Democratic Party to power after the withdrawal of federal troops from

38. J. W. Bailey to Tennessee Governor Dewitt Senter, May 15, 1869, quoted in Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863−1877* (New York: Harper Collins, 1988), 421; Booker T. Washington, "Is the Negro Having a Fair Chance?," *Century*, 1912; George W. Crawford, "Niagara Movement Department of Civil Rights, department letter no. 1, April 5, 1907," in W. E. B. Du Bois Papers (MS 312).

39. Klarman, *From Jim Crow to Civil Rights*, 39.

40. *New York Times*, August 9 and October 20, 1867; Douglas Colbert, "Challenging the Challenge," 49−50, 50 nn. 234, 236; Foner, *Reconstruction*, 366, 372.

41. Klarman, *From Jim Crow to Civil Rights*, 39.

42. Colbert, "Challenging the Challenge," 55; Foner, *Reconstruction*, 537.

Louisiana and South Carolina in 1877. Jury seats in the South were once again occupied by whites only. As federal support weakened and budgets were cut, the Justice Department found it difficult to bring white perpetrators to court as it had done before and was forced to drop charges or grant pardons. Prosecution of terrorist acts against African Americans stalled.[43]

From the end of Reconstruction to the turn of the twentieth century, Southern states redefined jury qualifications in their state constitutions or statutes. Texas, Arkansas, Louisiana, Mississippi, Virginia, and South Carolina made possession of the right to vote a requirement. Tennessee, Alabama, Virginia, North Carolina, Georgia, and Florida imposed requirements like property ownership and selection by jury commissioners or taxpayers. Court judges or jury commissioners also selected juries in Tennessee, Alabama, Virginia, and Georgia. These judges and commissioners were nominated by the state governor or elected by popular vote, and they were generally always Democrats. It is thus safe to assume that Democrats in power could keep dissidents from participating in the jury candidate selection process.[44] Qualifications based on a person's character and reputation for "good intelligence, sound judgment, and impartial character" were also found throughout the South. This implied that prospective jurors could be selected by the will of those responsible for making jury lists. Indeed, the use of a person's character as a qualification was later found in provisions for disfranchisement. By the late 1880s, African Americans were gradually removed from jury seats, and in the 1890s, African American jurors virtually disappeared in the South.[45] Throughout most of the twentieth century, most southern states continued to exclude African Americans from jury service without using explicit racial language in their laws.[46]

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43. Colbert, "Challenging the Challenge," 55.

44. *Vernon's McLiwaine's Pocket Digest of Texas Laws Annotated 1912* (Kansas City, KS: Vernon Law Book Co., 1912), 667; *Acts of the General Assembly of the State of Arkansas* (Little Rock, AK: Estate of Geo. Woodruff, state printer, 1883), 92; *Revised Laws of Louisiana: Containing the Revised Statutes of the State* (New Orleans, LA: F. F. Hansell, 1897), 507−8; John Garland Pollard, *Supplement to the Code of Virginia* (Richmond, VA: J. L. Hill Printing Co., 1898), 397−98; *Code of Virginia As Amended to Adjournment of General Assembly, 1904* (St. Paul, VA: West Pub. Co., 1904), § 3975−77; *The Code of North Carolina: Enacted March 2, 1883; Prepared Under Chapters 145 And 315 of the Laws of 1881, and Under Chapter 191 of the Laws of 1883* (New York: Banks, 1883), 656; Thomas Jerome, *North Carolina Criminal Code and Digest* (Raleigh, NC: Edwards & Broughton Print. Co., 1908), 422; South Carolina Constitution of 1895, Article V, § 22; Georgia Constitution of 1877, Article I Section XVII, Par. II; *The Code of Georgia,* 4th ed. (Atlanta, GA: Jas. P. Harrison & Co., 1882), 1019−20; *The General Statutes of the State of Florida* (St. Augustine, FL: The Record Company, 1906), 636−37.

45. Klarman, *From Jim Crow to Civil Rights*, 40−41.

46. Vernon and Derfner, *Justice Deferred*, 74.

What mechanisms drove this elimination of Black jurors? During this period, African American men experienced obstructions to their ability to exercise their right to vote and outright deprivations of this right. Violence, electoral fraud, and ultimately the denial of the right to vote led to a situation in which African Americans were inhibited in both their right to hold public office and their right to elect those who would hold public office. Local public officeholders, from sheriffs to justices of the peace, and police officers, became limited to white people who supported Democrats, usually those hostile to Blacks. Filling local public offices with white supremacists worked to the severe disadvantage of African Americans since these officeholders were involved in the jury selection process. The difficulty of proving to judges that the growing disfranchisement in the South was racially discriminatory was also cited when the absence of Black jurors needed to be justified. States that selected jurors from voter registration rolls could say that the absence of Black jurors was simply because there were no African American men who met the eligibility requirements for the right to vote.[47] Thus, jury qualification and voting rights possession, combined with the implementation of state constitutions and state laws that left room for discretionary jury selection, were interrelated and led to the effective elimination of the participation of Black citizens in the administration of justice.[48]

V: The Disadvantages Suffered by Blacks Due to All-White Juries

As mentioned above, it was not uncommon for all-white juries to make decisions based on racial factors when convicting black defendants. What made the African American situation even worse was the contemporary stance of the U.S. Supreme Court, which did not overturn a single conviction of an African American defendant in the twenty years from 1890 to 1910.[49]

During the nineteenth and twentieth centuries, the convict lease system, whereby prisoners were rented out to private companies, shifted to the chain gang system, wherein the state directly supervised prison labor. In both cases, state governments could profit from the "prison business" of convict labor in road construction sites, factories, farms, or coal mines, which thus became a valuable source of state revenue. To keep labor costs down, those managing prisons forced prisoners to work in poor conditions, and the torture and death of prisoners was not uncommon. Due to these conditions, prison labor was termed the "new slavery" for Black Americans.[50] A report of the Board of Inspectors of Convicts in

47. Klarman, *From Jim Crow to Civil Rights*, 32−33, 40−42.

48. Colbert, "Challenging the Challenge," 77.

49. Vernon and Derfner, *Justice Deferred*, 73, 107.

50. Benno C. Schmidt, Jr., "Principle and Prejudice: The Supreme Court and Race in the Progressive Era. Part 2: The 'Peonage Cases,'" *Columbia Law Review*, May 1982, vol. 82, no.

Alabama shows how profitable the business was: from 1906 to 1910, the amount paid to the State Treasurer was approximately 3,442,791 dollars, which includes 2,720,045 dollars received from convict hire.[51]

The economic incentive to make more money with more prisoners soon led to the mass arrest of petty criminals, the vast majority of whom were African Americans. Various laws were passed to arrest Black people on petty charges and trap them into forced labor. For example, vagrant laws of the time defined a person without a job or means of support as a criminal. Being suspected of harassing women, obscene language and behavior, adultery, gambling, and riding without pay could lead to convictions and then forced labor as a penalty. Those trapped in the system often had to work longer than the period ordered by the court to cover the cost of their trial.[52] In Shelby County, Alabama, in 1908, two African American men arrested and convicted due to vagrancy were sentenced to three months of hard labor for Tennessee Coal, Iron and Railroad Company. Shelby County made a contract with the company under which the county would receive twelve dollars per month for each man during their sentence. This was not only forced labor, but the probate judge also ordered each to pay fees of over thirty dollars to the sheriff, judge, and other local officers. With no money to pay the costs, these two men ended up working extra months: an extra two months and twenty days for one, and three months and six days for the other.[53]

Even in counties with a Black majority, people involved in law enforcement—sheriffs, justices of the peace, police officers, lawyers, and jurors—were almost always white.[54] As Blackmon depicts, the detection of Black misdemeanor offenders was a community-wide effort. Through playing a part in arresting, convicting, and transporting prisoners, not only courts charging the fees but the sheriff, court clerk, town solicitor, jury members, and witnesses were rewarded with part of the fees and warrants in exchange for the prisoner's labor in the form of fines.[55]

When tried and convicted, African American defendants could choose either to be fined or face forced labor or imprisonment. Many Black defendants who feared harsh prison labor chose to be fined, but here, there was also a trap: peonage. Debt peonage—another form of coerced labor—arises from criminal surety statutes that ensured African American convicts who could not pay court

4 (May 1982): 654; Blackmon, *Slavery by Another Name*, 112.

51. *Quadrennial Report of the Board of Inspectors of Convicts, From Sep. 1st, 1906, to Aug. 31st, 1910* (Montgomery, AL: Brows Printing, 1910), 20, 25. https://babel.hathitrust.org/cgi/pt?id=uc1.b3026041&seq=5 (accessed June 30, 2024).

52. Schmidt, Jr., "Principle and Prejudice," 649−50; Blackmon, *Slavery by Another Name*, 112.

53. Ibid., 301−2.

54. Schmidt, Jr., "Principle and Prejudice," 50.

55. Blackmon, *Slavery by Another Name*, 305−6.

costs or fines ended up with labor contracts (i.e., debts) to white employers.[56]

A peonage investigation ordered by Federal Judge Thomas G. Jones in 1903 revealed that in Coosa and Tallapoosa Counties, Alabama, African Americans under such labor contracts were subjected to working conditions like those of convict labor. In the case of a Black-majority community, the U.S. Attorney working with Jones reported that a Black peon who accepted an offer to work on a local plantation in lieu of a fine was placed in solitary confinement, had to work long hours under supervision without adequate food, and was sometimes subjected to whipping. It was also revealed that the justice of the peace, planters, and factory owners communicated with each other to create a network of forced labor for African Americans. Fortunately, and very rare, this investigation led to the indictment of eighteen men for enslaving ninety-nine men and the declaration by Judge Jones of unconstitutionality of Alabama's contract labor law.[57]

What was more likely was no prosecution or, if the case did go to trial, an acquittal or a reduced sentence. One reason for this is that in federal court cases brought against white employers and sheriffs, white jurors were more likely to choose acquittals or lenient measures, even when there was clear evidence of guilt.[58] Another reason was fear of retaliation for testifying in court. In the peonage investigation in Alabama, it was reported that local influential white people including the sheriff and the prominent landholder family were complicit in peonage in Lowndes County. However, this was never brought to court. None of the Black peons were willing to testify to the grand jury for fear of being injured or killed.[59] And this was not an unfounded fear; a Black witness who was called before the grand jury to testify about peonage in Shelby County was kidnapped after delivering his testimony.[60] Living under peonage was already a risk to their lives, but they had to go further to get justice and freedom.

In discussing the harms to Black Americans from all-white juries, lynchings cannot go unmentioned, as these exorbitant public executions often ended up with unfair jury trials in which no one was convicted. Lynchings were rampant by the end of the nineteenth century, with a peak of 230 victims in 1892. Although lynchings were initially scattered, occurring in areas outside the South and with some white victims, by the end of the nineteenth century a majority of lynching victims were African American men in the South.[61]

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56. Schmidt, Jr., "Principle and Prejudice," 649−50.

57. Robert J. Norrell, *Up from History: The Life of Booker T. Washington* (Cambridge, MA: Harvard University Press, 2009), 299.

58. Klarman, *From Jim Crow to Civil Rights*, 88.

59. Blackmon, *Slavery by Another Name*, 271.

60. Brent J. Aucoin, *Thomas Goode Jones: Race, Politics, and Justice in the New South* (Tuscaloosa, AL: University of Alabama Press, 2016), 121.

61. Martha Gruening, Helen Boardman, John R. Shillady, and the National Association for the Advancement of Colored People (NAACP), *30 Years of Lynching in The United States*

While some lynchings drew thousands of spectators, it was extremely rare nationwide for the participants to be prosecuted, let alone convicted. Sources vary regarding the exact rarity of prosecution and conviction for lynching (one source states that only forty convictions were obtained for the 5,150 lynching victims between 1882 and 1940; another states that from 1900 to 1935, only 0.8 percent of approximately two thousand victims were convicted), but given that 44 percent of trials resulted in convictions for murder throughout these years, it is apparent that obtaining convictions for lynching was uniquely difficult within the U.S. justice system. The failure to prosecute and convict lynching participants was facilitated by the indifference of local medical examiners, prosecutors, and grand juries to investigate crimes of violence against African Americans, which hardly ever translated into indictments, and even if a prosecution were to lead to a trial, witnesses would generally refuse to testify out of fear of retaliation from the community or white jurors would vote to acquit.[62] In response, Ida B. Wells-Barnett, a Black investigative journalist, criticized the constitutionally enshrined "trial by jury" as a sham for Black men. She also suggested that since African Americans did not have the votes to punish lynch mobs and the judicial officials who followed them, the mobs could indulge their brutal instincts through racial prejudice and lynchings, thus emphasizing that the disfranchisement of African American men was behind these rampant lynchings.[63]

When considering the situation of African Americans in the South, one could assume that Blacks would prioritize suffrage and unite in securing that right, as protecting that right would help in securing other rights through politics. However, according to Klarman, Southern whites resisted Black juries and the racial integration of schools more strongly than they did Black suffrage. The granting of the right to vote for African Americans did not shake the political dominance of whites in the Southern states. For juries that were required to reach a unanimous decision to convict, a single Black juror on a criminal jury might have prevented the conviction of a Black defendant for a crime against whites. While whites sought to avoid such circumstances, African Americans desperately resisted disfranchisement in equal or greater measure. For whites, it was more

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1889–1918 (New York: National Association for the Advancement of Colored People National Office, 1919), 8, 30.

62. Michael R. Belknap, *Federal Law and Southern Order: Racial Violence and Constitutional Conflict in the Post-Brown South* (Athens and London: University of Georgia Press, 1987), 9. According to James Chabourn, the conviction rate for lynching by some Southern states was as follows: Alabama, 4%; Georgia, 0.8%; Virginia, 4%; and Texas, 0.7%. James H. Chabourn, *Lynching and the Law* (Clark, NJ: Lawbook Exchange, 2008), 12–13; Colbert, "Challenging the Challenge," 79.

63. Ida B. Wells-Barnett, "How Enfranchisement Stops Lynching," *Original Rights Magazine*, vol. I, no. 4 (June 1910): 43–44.

important to keep African Americans out of the jury box than the voting booth.[64]

Conclusion

At the turn of the twentieth century, the right to vote was widely recognized in the United States not as a natural right but as a privilege granted to those who met certain requirements. Although positions diverged regarding how far this privilege should be extended, Black and immigrant suffrage was viewed negatively in both the North and South due to the perception that it was a breeding ground for electoral fraud. Disfranchisement in the South mainly targeted African Americans and was not condemned by the North, which itself included several states on their way to eliminating undesired foreign voters through reforms.

The right to participate in juries was recognized as a right enjoyed by citizens of the United States under the Civil Rights Act of 1875, which reflected the view that an all-white jury could not guarantee Black citizens the right to a fair trial. In 1880, the Supreme Court decision in *Strauder v. West Virginia* ruled that a West Virginia state law limiting juries to white males was unconstitutional, yet that of *Virginia v. Rives* held that an all-white jury alone was not evidence of discrimination. The latter decision rendered it difficult to overturn a Black defendant's conviction on the basis of an all-white jury unless other evidence of discrimination could be provided, such as a statutory provision or testimony from a public official admitting discrimination. Most white citizens would not accept a Black jury, and in trials involving Black and white plaintiffs and defendants, all-white juries often found the defendant guilty if he was Black or acquitted him if he was white. The effects of this pattern did not go unappreciated, as African Americans continually advocated that the participation of Black men on juries was necessary to secure their rights under the law and that it was extremely difficult for them to obtain a fair verdict in a courtroom dominated by whites.

During the Reconstruction, the right to serve on juries was extended to African American men in most Southern states, and Black jurors could be found in Black-majority counties. By the late 1880s, however, as Reconstruction ended and Democrats regained control of state politics in the South, jury membership became tied to voting rights and was left to the discretion of local officials. By the late 1880s, African American participation in juries was shrinking in the South. Concurrently, Democratic violence and electoral fraud against Republican supporters increased in intensity, and when most Black male voters were disfranchised at the turn of the century, local official positions were filled with whites who supported the Democratic Party. The requirement of voting status for jury selection and the discretionary power of selection given to elected Democratic local officials severely limited the participation of Black citizens in the

64. Klarman, *From Jim Crow to Civil Rights*, 455−56.

administration of justice.

All-white juries became complicit in the prison business—in which the state government was also involved—by sentencing Black petty criminals to prison labor for guilty verdicts. To avoid harsh prison labor, Black defendants who chose to pay fines instead of prison were subject to debt peonage from white employers. When this forced labor was uncovered, local white juries tended to acquit or be lenient with the apparently guilty defendants. Moreover, it was incredibly rare for perpetrators and participants in lynchings to be charged and convicted, as all-white juries refused to prosecute or convict those they viewed as their "racial" brethren: white perpetrators. As such, white juries were continually indifferent to the rights of African Americans, who were routinely and falsely accused of crimes; moreover, they allowed violence to go unchecked by the law by failing to punish those who perpetrated outrageous violence.

At the turn of the twentieth century, jury qualification was tied to voting qualification in many Southern states. Even in counties where voting qualification was not in question, elected local public office holders were given discretionary power of selection. At this time, when legal disfranchisement was primarily targeted at Black Americans, most Blacks were also disqualified from jury service, as it was tied to voting eligibility. Furthermore, Blacks were also arguably excluded from the process of electing public officials who would make fair decisions for them.

In response to these issues, Black Americans emphasized the necessity of their participation in the jury process and the ability to elect local officials who would participate in jury selection and would render fair decisions across racial lines. In other words, the right to vote was critical for African Americans to secure jury participation and, in turn, seek justice for Black defendants to prevent wrongful conviction and punishment and to bring justice to white perpetrators of anti-Black violence. The deprivation of voting rights at the turn of the twentieth century was a serious, life-threatening matter for African Americans in the South.

Although this essay has offered conclusions regarding the connection between disfranchisement, all-white juries, and the consequent damage to African American society in the South, some gaps in understanding remain. Thus, it is recommended that future work examine the entire trial process while paying attention to the roles of jurors as well as witnesses, prosecutors, and attorneys. Scholars could also investigate individual cases of prison labor, peonage, lynching, and other issues related to the exclusion of African Americans in jury selection to provide more detailed insights.