Conditions and Consequences of the Voting Rights Act

After the monumental victory for voting rights that occurred in 1920 with the ratification of the Nineteenth Amendment, the years between the 1920s and the early 1960s were a time of relative stasis in the election process. Alexander Keyssar has called this era the "Quiet Years." "Despite skirmishes large and small, partisan as well as ideological, there were few major changes in the laws governing the right to vote," he writes. "In the South . . . the dense web of restrictions woven between 1890 and 1910 continued to disenfranchise nearly all blacks and many poor whites." For much of this period, immigration decreased, making newcomers less of a lightning rod in the battle for votes. Movements for greater enfranchisement tended to be small and disparate.

One important exception to this trend of stagnation was the elimination of the poll tax in a handful of states. This movement toward inclusion was principally motivated by an understanding on the part of white politicians that poll taxes were having a bigger effect on poor whites than blacks. As the country entered the Depression, there were, on the other hand, new
efforts to disenfranchise paupers or people on unemployment relief, although none met with great success.3

Another major change in the voting system during the years of World War II was the elimination of the whites-only primary, prevalent throughout the South. In 1944 the U.S. Supreme Court ruled these primaries, exclusively adopted by the Democratic Party, unconstitutional.4 Because Democratic primaries had been practically a sure ticket to election throughout the South, state laws that stipulated that white citizens alone could participate in primary elections were an extremely effective measure for excluding African Americans from the decision-making process.5 With the 1944 Supreme Court ruling in Smith v. Allwright, however, that barrier was removed. Moreover, because the political allegiance of black voters had switched to the Democratic Party during the New Deal, the legal and political changes established the conditions for a significant change in party politics and electioneering in the South.

Changing Political Alliances and the Consequences of Realignment

The New Deal had a profound impact on the political allegiances of African Americans and southern whites. These changes would serve as precursors to the major realignments in politics to come some thirty years later. In the 1930s, President Franklin Delano Roosevelt, a Democrat, was reluctant to take on civil rights issues directly. Nonetheless, the programs of the New Deal, although often discriminatory in implementation, provided African Americans with direct economic assistance—a kind of opportunity they had never experienced before. As a result of these programs, as well as a series of popular but largely symbolic actions toward the African American community, those blacks who could vote voted overwhelmingly for Roosevelt and, like many working-class Americans, came to revere him. (As a result of the First Great Migration, in which as many as two million African Americans left the South for the industrial cities of the North, many of these African American votes were cast outside the Jim Crow South.6 The landslide presidential election of 1936 sealed black voters' allegiance to Roosevelt and the Democratic Party.7 In that election, Roosevelt carried more than 60 percent of the popular vote—and 71 percent of the black vote.8 His appeal transcended regions; with 98.5 percent of the electoral vote, Roosevelt took every state but Maine and Vermont against the Republican candidate Alf Landon. Since the New Deal, the ideological split between upper-income and lower-income voters has remained substantial, with the wealthy much more likely to vote Republican and lower-income Americans voting Democratic.9 In subsequent decades, this demographic difference in voting patterns has, not surprisingly, led to vote suppression tactics targeting low-income voters.

From the New Deal to the Advent of the Great Society

It was in the post–World War II era that the civil rights movement triggered a major transformation in American politics, creating the next big moment in the history of our election system. The conditions for this change had been set up in the New Deal. But it was the impetus of African American citizens, undertaking organized action across the United States, that changed the political landscape. Between the late 1950s and the early 1980s the southern states went from being dominated by the Democratic Party to, for the most part, being a majority Republican region at some levels by the late 1960s and in almost all respects by the early 1980s. There were a number of reasons for this transition, but race and the shifting attitudes of the two parties with respect to civil rights were the most prominent. This fundamental change had a profound impact on the shape, form, and dimensions of manipulation of voting procedures that persists to the present.

Prior to midcentury, the Democrats had been consistently successful in the South in large part because they had long realized that an important key to defeating the party of Lincoln was race: appealing to traditional white voters while keeping black voters out of the process. As the South's political dynamics shifted, Republicans learned to be masters of this same strategy.

As the civil rights movement grew—and grew more bloody—social unrest forced the federal government increasingly, though incrementally, to intervene in blocking the discriminatory activities taking place in the South. The federal intervention started in 1954 with the Supreme Court decision Brown v. Board of Education, which found segregation in public
schools to be unconstitutional, and continued via actions such as the intervention of National Guard troops, at the order of President Dwight D. Eisenhower, to safeguard school integration in Little Rock, Arkansas, in 1957. Federal action continued and intensified somewhat during the John F. Kennedy years when, in response to civil rights leaders’ growing frustration with the new president, the administration came to strongly support efforts to register black voters. (The Kennedy administration continued to disappoint black leaders, however, with its cautious approach to civil rights and limited willingness to protect civil rights protesters against violence.)

Shortly before Kennedy’s death, due to the pressure of the civil rights movement, he and his advisers crafted what would become the Civil Rights Act of 1964. This legislation, along with the Voting Rights Act of 1965, would be enacted under President Lyndon B. Johnson and trigger a massive transformation in American parties and politics. The Civil Rights Act declared racial segregation in public schools, places of work, and any public accommodations illegal. These provisions all drew their authority from the equal protection clause of the Fourteenth Amendment. Looking to the same constitutional source, the 1964 legislation also banned any uneven application of voter registration requirements (for example, poll taxes and literacy tests). In order to put the teeth of enforcement on the matter of voting into the Civil Rights Act, Johnson signed the Voting Rights Act just a year later. That act banned many of the disenfranchising Jim Crow practices and provided the federal Department of Justice authority to screen, prior to implementation, any change in elections procedures in some states. While the laws were national in scope, the southern states were the clear targets of these legislative actions.

These two measures marked a major new federal involvement in desegregating the states of the South. They effectively put an end to practices that had disenfranchised black voters for decades and created a white backlash against the Democratic Party in the South, changing the political equation in that region. The transformation in party politics was significant, but it was not linear and not total. While African Americans, with their Democratic Party leanings, were added to the voting rolls, large demographic shifts were also underway, with some five million African Americans leaving for points north and west from the 1940s to the 1970s. Beginning in the 1960s, whites were also moving to the “Sunbelt” states of the South and Southwest.

A form of Republican majority has since emerged in the South. In the region, the Republican Party has been fairly dominant at the presidential and U.S. Senate level, and less universally successful in races lower down the ticket. Moreover, the realignment has never been and is not to this day complete. Several southern states have remained competitive, and Democrats have even continued to dominate in certain offices, particularly local offices and in some state legislatures and offices below governor. All these factors make the period after the 1960s complicated when it comes to analyzing how partisans may have used election rules and procedures to their advantage.

Despite the complex dynamics at play in the region, some observations can be made. First, immediately after passage of the Voting Rights Act, the most blatantly discriminatory vote suppression practices continued to be utilized primarily by Democrats. The Democrats were still dominant during this period in the South in many elections (though not all); racism combined with the desire to thwart black candidates seems to have trumped the idea that drawing blacks into the electoral process could be a boon for the party. That strategic notion would come later.

Second, with the Voting Rights Act—and federal officials in the South to enforce it—it became increasingly less feasible to prevent African Americans from registering and voting. Indeed, the number of blacks registering and voting surged after passage of the act. As the number of registered African Americans grew, the parties—both of them—turned to changing the structure of elections and redistricting in order to preserve their power.

Third, a realignment of African American voters toward the Democratic Party that began with the New Deal soared during the 1960s, and African Americans have identified as Democrats and voted for Democratic presidential candidates in overwhelming numbers since then. By the time the South turned to the Republican Party at most levels of elected office in the 1980s and 1990s, it was southern Republicans who were most inclined to use election laws to depress the African American Democratic vote. Not coincidentally, the Democratic Party had fully realized by the early 1970s that its winning ticket—not only in the South—was supported by biracial and later multiracial coalitions. The Republican Party’s manipulative use of election laws was an ironic and even perverse revision of tradition. Republicans, so long beaten at the polls in the South because
of the exclusion of African American votes, now adopted and refined the very same Democratic Party tactics to secure partisan success at the polls.

The Legal Transformation

The Civil Rights Act of 1964 and the Voting Rights Act of 1965 marked a historic federal intervention into matters of racial and political equality that until that time had been considered a state prerogative. The acts’ provisions profoundly shaped and continued to inform electoral strategies not only in the South but across the country. The Civil Rights Act banned discrimination based on “race, color, religion, or national origin” in public establishments that had a connection to interstate commerce or that were supported by the state. Public establishments include hotels, restaurants, gas stations, bars, taverns, and places of entertainment. Title VI of the Civil Rights Act prohibits discrimination in federally funded programs. Title VII of the Civil Rights Act prohibits employment discrimination where the employer is engaged in interstate commerce.

Building on Title I of the Civil Rights Act, which barred the unequal application of voting requirements, the Voting Rights Act with one great sweep outlawed many of the practices that had been used for decades, especially in the South, to disenfranchise blacks. It also ensured that southern states could not evade or backslide from their new obligations, although many would try. Section 2 of the act is a nationwide prohibition against voting practices and procedures—including redistricting plans and at-large election systems, poll worker hiring, and voter registration procedures—that discriminate on the basis of race, color, or membership in a language minority group. It prohibits election practices and procedures that are intended to be racially discriminatory, as well as those that have a racially discriminatory impact. Under Section 5, any changes in election laws or procedures in certain covered jurisdictions, mostly in the South, must be “pre-cleared” by the Department of Justice or by the federal district court in the District of Columbia before taking effect. If the change is found to be “retrogressive” for minorities—that is, if it makes them worse off than they were before the change—the department or court can block the change with an “objection.” The act also allows the Department of Justice to send federal observers to certain key locations during elections.17

The Southern Political Transformation

Both acts were passed by means of a coalition of northern Republicans and Democrats, and, of course, they became law by virtue of the signature of a Democratic president. Southern Democrats remained staunchly opposed. (In the Senate vote, which was 79–18 in favor of passage, only 4 southern Democrats supported the bill.) This regional alliance had a profound impact on the political attitudes of white southerners toward the parties and changed internal party dynamics as well. Even more important with these measures, the Democratic Party at the national level became undeniably identified as the party on the side of equal rights for blacks. This new reality altered how southern conservatives saw the party and led many to feel permanently betrayed by the national Democratic Party, and also forced the Democratic Party to change out of strategic necessity. Candidates running on the Democratic ticket would increasingly have to rely on attracting a maximum number of blacks in the South. Over time, this forced the emergence of a new “moderate” breed of southern Democrat.

At the same time that the legal revolutions were in process, and well before the Democratic Party comprehended the changing political landscape in the South, the 1964 presidential campaign of Republican Barry Goldwater advanced the transformation of the South by aligning his message with the perceived interests of white southerners. Richard M. Nixon’s “southern strategy” was a further step in the South’s change to a majority Republican region, and the election of Republican Ronald Reagan in 1980 completed the region’s shift.

Prior to the 1960s, Democrats dominated in the South at the congressional level to an extraordinary degree. In 1990 there were no Republican senators and only two Republican members of the House of Representatives from the South.18 Even at the presidential level, only twice from 1876 to 1948 did a Republican presidential nominee carry even one southern state. In the 1952 presidential election, the Deep South went solidly for Democrat Adlai Stevenson.19

Goldwater, a U.S. senator from Arizona and the Republican nominee for president in 1964, was one of the few Republicans in the Senate who had worked to defeat the Civil Rights Act. His presidential campaign explicitly appealed to the racism of white southern voters, alienating African Americans in the process. During the campaign, Goldwater made it clear
that Republicans would stand against civil rights and civil rights legislation, choosing to rely on big white majorities in the South in order to win the election. At the polls, the results were disastrous—a landslide loss to Johnson in which the only states besides Arizona to give their electoral votes to Goldwater that November were the five Deep South states of Alabama, Georgia, Louisiana, Mississippi, and South Carolina (all states in which only a small proportion of African Americans were able to vote). A gleam of political hope for the GOP for the future, however, could be found in the fact that Goldwater carried an estimated 55 percent of southern white voters, and 71 percent of white voters in the Deep South.20

Although southern blacks had supported Republicans for one hundred years, including in the presidential election of 1960, that support evaporated in 1964, and southern blacks would continue to vote Democratic in presidential elections in all subsequent years.21 The new black Democratic vote was even more notable because of the growing number of blacks voting throughout the country. While the Voting Rights Act the following year was the big turning point, beginning in the 1950s the civil rights movement had heighten the political awareness of blacks. As James L. Sundquist has found, the proportion of blacks considering themselves apolitical fell from about 28 percent in the 1950s to 3 percent at the end of the 1960s, and the number who considered themselves strong partisans doubled from 30 percent to 60 percent—most of them Democrats.22

Nixon’s so-called southern strategy in 1972 furthered the transformation. In the election of 1968, George Wallace had run for president as an American Independent Party candidate on an anti–civil rights platform of maintaining racial segregation. He carried five southern states—Alabama, Arkansas, Georgia, Louisiana, and Mississippi—and clearly sapped political strength from Nixon, who only edged Democratic candidate Hubert Humphrey by fewer than half a million votes. Wallace’s success prompted Nixon to adopt a similar anti–civil rights strategy to win these formerly secure Democratic states to the Republican cause. The Nixon campaign in 1972 was designed to exploit racial divisions, and he adopted a stance of federal detachment when it came to active enforcement of civil rights. His opposition to school busing programs for desegregating the schools (mandated by court decisions) became a central theme in the campaign. Nixon’s focus on “law and order” and his attack on welfare both had racial undertones. These campaign positions were set on a policy foundation from his first term when he denigrated minority set-aside programs and tried to appoint extremely conservative southern justices to the Supreme Court.23 In 1972, this approach worked, as Nixon carried every southern state, taking more than two-thirds of the vote in the region and an overwhelming majority of white southerners’ votes.24

While Nixon’s successful effort would not immediately redound to Republicans in 1974 and 1976 because of the Watergate scandal, the effect was real, and it was enduring. By the 1970s, alienation among white conservatives from the Democratic Party and black voters’ unwavering support for Democrats made the realignment in the South complete at the level of presidential elections.25

Strategies after the Voting Rights Act

The 1960s and 1970s saw a remarkable expansion of voting rights. In addition to passage of the Voting Rights Act of 1965, poll taxes, literacy tests, and voting restrictions on paupers were all banned through legislation and litigation. Residency requirements were limited to thirty days nationwide. The voting age was lowered to eighteen. In 1975, the Voting Rights Act was amended to provide additional protections and greater access for limited English speakers. According to the historian and social policy expert Alexander Keyssar, the total number of new voters added to the electorate was in excess of twenty million.26 On balance, this period of history was very positive for voter rights, and the reforms instituted all met the standards of the Voter Inclusion Principle.

But the story is not one of sheer democratic progress. During the 1960s and 1970s, seemingly blinded by racism and impelled by the desire to remain in power and keep out competition from anyone—including other Democrats if they were black—Democrats in the South continued to use forms of the party’s old discriminatory practices to exclude blacks from the voting process, particularly during primaries. This was of course shortsighted, as a more expansive understanding would have dictated an acknowledgment of the potential of the black vote to give Democrats new advantages against a growing Republican presence; effective partisanship would have counseled the Democrats to solicit and not suppress the African American vote. Hindered by the Democratic leadership’s lingering
racism and unwillingness to share power, however, the party would grasp this potential only later, after the Republicans had begun to make major advances in the region. By that time, Republicans had borrowed the Democratic playbook, working to exclude blacks in general elections for partisan gain, as will be explored in the next chapters.

The subsequent tug-of-war over electoral procedure took two forms. During this period of transition, both parties used the structure of elections not only to prevent some people from voting, but also to dilute the value of votes cast, especially through at-large elections and redistricting. Although there is no specific agreed-upon definition of vote dilution, in general it is a method of diminishing the political power of a particular group—usually a minority group such as African Americans—without actually blocking access to the ballot. The voting process is arranged so that laws and practices combined with bloc voting by an identifiable group diminish the voting power of another identifiable group to elect a candidate.

As Keyssar has observed, lifting hard barriers to the ballot box moved vote suppression strategies into a new phase, "a prolonged series of conflicts over a related yet distinct issue: the value of individual's vote. Deterred now from using the voting process as a way to limit voting power, policymakers and others looked rather to the structure of elections to diminish voting power of political opponents." With respect to general elections, "the legal terrain shifted—from the right to vote itself to apportionment, districting, and the structure of representation." Both parties have made use of these tactics, depending on whether it was to their advantage, given the demographics and politics of a jurisdiction.

Despite legal changes on paper, both parties also excluded black voters using variations of well-established forms of vote suppression. Through the 1960s, white Democrats continued to flout the dictates and spirit of the new laws to keep out black competition within the party. Later on, as the Republican Party made gains in the South, Republicans engaged in some outright suppression in order to keep down the black—and Democratic—vote in general elections.

Reports of the United States Commission on Civil Rights (USCCR) issued in the first sixteen years after the Voting Rights Act, along with other contemporary research, provide considerable information on the types of exclusion that continued to be employed against African American voters in the South. In the first years after the passage of the Voting Rights Act, white southern Democrats aimed to keep blacks out of positions of power in the party and to limit their access to Democratic primaries. Maintaining solid blocks of white party leaders was not, per se, something done for partisan advantage. Rather these efforts at suppression were akin to how party leaders protect incumbents from electoral challenges from within the party. Democrats were not yet facing any serious threat from Republicans, but the expansion of the vote to include blacks did threaten the power positions of white southern Democrats, since blacks were now in the position to vote for new black candidates and were increasingly able to do so with success after 1965.

A 1968 USCCR report documents that these intraparty practices included exclusion from precinct meetings at which party officials were chosen, omission of the names of registered Negroes from voter lists, failure to provide sufficient voting facilities in areas with heavy Negro registration, harassment of Negro voters by election officials, refusal to assist illiterate Negro voters, provision of erroneous or inadequate instructions to Negro voters, disqualification of Negro ballots on technical grounds, failure to afford Negro voters the same opportunity as white voters to cast absentee ballots, and discriminatory location of polling places. The Commission staff also found instances of racially segregated voting facilities and voter lists in some Southern counties.

Democrats also made attempts in primaries to keep up some aspects of the old but now-banned literacy tests:

In several counties in Alabama, South Carolina, and Mississippi there have been reports that election officials have refused to provide or allow adequate assistance to illiterate Negro voters. In addition, illiterate voters in some Southern states have been denied the use of aids to enable them to overcome their lack of literacy. In some areas of Mississippi illiterates have been denied the use of sample ballots even though such use is not prohibited by State law. In Virginia officials have rejected write-in ballots cast by illiterates through the use of gummed labels.

These USCCR reports continued to document this type of activity through the 1970s.
Direct Vote Suppression in the 1970s

The USCCR’s 1975 report on implementation of the Voting Rights Act ten years on further illuminates how southern states continued to try to suppress minority voting through the 1970s. Many of these practices relate to voter registration. The commission reported, “While formal barriers for the most part no longer exist, the lack of interest and of affirmative attempts to register voters on the part of county registrars become hindrances to participation. These hindrances include restrictive time and location for registration, the inadequate number of minority registration personnel, and purging of the registration rolls and re-registration.”32 The USCCR particularly singled out the practice of purging voter rolls and deleting eligible voters in the process—a practice that would reappear as a partisan weapon in later years.33 The 1975 report also condemned felon disenfranchisement and noted the difficulty voters who had served their time had getting their voting rights back, another matter that would carry into later years.34

The Commission on Civil Rights’ report on the eve of the debate over reauthorization of the Voting Rights Act in 1981 underscores how the practices of disenfranchisement of minorities continued in the South throughout the 1970s—still most often in an effort by Democrats to keep out black competition in primaries. The 1981 report documented continuing problems with purging and requiring re-registration. In the mid-1970s the United States attorney general objected under Section 5 of the Voter Rights Act to purging and re-registration laws in Texas and Mississippi.35 Election administrators moved polling places away from black voters to more distant locations, leading to more Section 5 objections in several states.36

Once the Voting Rights Act was implemented and southern states became obliged to submit any changes to election procedures for pre-clearance by the Department of Justice, the Department of Justice recorded, by means of objections, the types of strategies deployed. The 1981 report lays out the pattern of objections and shows the increased use of vote dilution strategies over vote suppression tactics as the Voting Rights Act took full effect and blatant suppression activities became less effective. By 1981, two-thirds of the Department of Justice’s objections to submitted changes in election practices related to dilution of the minority vote, rather than the outright vote denial.37 The USCCR states that the most prevalent strategy was annexation of white areas to dilute black voting strength; it also found many of the objections were regarding at-large elections and variations of that system, as well as redistricting efforts.38 Thus we see the shift in tactics given the changing political and electoral conditions on the ground.

The 1981 USCCR report—the last one to be produced for twenty-five years analyzing the effectiveness of the Voting Rights Act—concludes that blacks continued to encounter white resistance to their political participation in virtually every aspect of the elections process. Certainly the system had improved dramatically, but voter exclusion on a wide scale was continuing—and would continue in the years to come. Written in the first year of Reagan’s presidency, the report warned of ongoing challenges. While both parties in the 1960s continued to block African Americans from political power—for Democrats via the primaries—the late 1960s marked the beginning of Republican assumption of the vote suppression machinery in presidential elections, which would then move down the ticket over the next two decades and solidify just after this USCCR report was written, with the election of Ronald Reagan to the presidency and the increasing Republican domination of the white South at every level of the federal government.