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VOTING RIGHTS

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." So spoke Chief Justice EARL WARREN, on behalf of the Supreme Court, in REYNOLDS V. SIMS (1964).

The Chief Justice's words were in direct philosophic succession to principles of the primacy of representative political institutions announced by the FIRST CONTINENTAL CONGRESS 190 years before, in the Declaration and Resolves of October 14, 1774:

[T]he foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council: and as the English colonists are not represented, and from their local and other circumstances, cannot properly be represented in the British parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal policy, subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed.

The failure of King George III, through his ministers, to recognize the urgency of the colonists' demand for true representative institutions was one of the chief causes of revolution set forth in the DECLARATION OF INDEPENDENCE : "He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions in the rights of the people. He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise."

The severing of the ties with Britain required the establishment, at the state level and at the national level, of new and more representative institutions of government. American constitutional history is characterized in part by the continuing enlargement of the right to vote, the mechanism which, in the American political tradition, has become the *sine qua non* of a valid system of REPRESENTATION. An anomaly presents itself: The Constitution, as amended, addresses aspects of the right to vote with far greater frequency than any other topic. Nonetheless, it has never been the function of the Constitution affirmatively to define the universe of voters. The Constitution's function has been narrower—progressively to limit the permissible grounds of disenfranchisement.

Prior to the AMERICAN REVOLUTION, eligibility to vote was not uniform among the colonies, but the variations were relatively minor. Broadly speaking, voting for colonial (as distinct from township or borough) officials was reserved to adult (generally meaning twenty-one or older) "freeholders." In equating property ownership and suffrage, the colonies were following a familiar English model. But landowning was far more widely dispersed in the colonies than in the mother country, so the proportion of colonists eligible to vote was larger.

There were not more than a few black or women freeholders in any of the colonies, and pursuant either to convention or to formal legal specification those few did not vote. Religious restrictions were also commonplace but varied somewhat among the colonies and at different times. In general, the franchise was the prerogative of the propertied, Protestant, white male.

With the coming of independence, all of the newly sovereign states except Connecticut and Rhode Island adopted new charters of government—"constitutions." Impelled by the rhetoric of revolution and the eagerness of thousands of militiamen to participate in the processes of governance, the drafters of the new state constitutions relaxed but did not abandon the property and religious Page 2805 | Top of Article qualifications for voting for state officials (and the correlative, and generally more stringent, qualifications for holding state office). As Max Farrand observed, Americans might declare that "all men are created equal," and bills of rights might assert that government rested upon the consent of the governed; but these constitutions carefully provided that such consent should come from property owners, and, in many of the States, from religious believers and even followers of the Christian faith. "The man of small means might vote, but none save well-to-do Christians could legislate, and in many states none but a rich Christian could be a governor." In South Carolina, for example, a freehold of 10,000 currency was required of the Governor, Lieutenant Governor, and members of the council; 2,000 of the members of the Senate; and, while every elector was eligible to the House of Representatives, he had to acknowledge the being of a God and to believe in a future state of rewards and punishments, as well as to hold "a freehold at least of fifty acres of land, or a town lot."

Under the ARTICLES OF CONFEDERATION, the state delegates in Congress constituted the nation's government. The Articles limited the numbers of delegates (no fewer than two and no more than seven per state) but left each state legislature free to determine the qualifications of those selected and the mode of their annual selection. The Articles did not preclude popular election of delegates, but the word "appointed," in the phrase "appointed in such manner as the legislature of each State shall direct," suggests that it was not anticipated that legislatures would remit to their constituents the power to choose those who would speak and vote for the states in Congress.

At the CONSTITUTIONAL CONVENTION OF 1787, the Framers divided on how the lower house was to be selected. JAMES MADISON told his fellow delegates that he "considered an election of one branch at least of the legislature by the people immediately, as a clear principle of true government." Madison's view carried the day. But then the Convention faced the question whether the Constitution should set the qualifications of those who were to elect representatives. GOUVERNEUR MORRIS of Pennsylvania proposed that only freeholders should vote. Colonel GEORGE MASON of Virginia found this proposal regressive: "Eight of nine States have extended the right of suffrage beyond the freeholders. What will the people there say, if they should be disfranchised." OLIVER ELLSWORTH of Connecticut also challenged Morris's proposal: "How

shall the freehold be defined? Ought not every man who pays a tax to vote for the representative who is to levy and dispose of his money?" Morris was unpersuaded: "He had long learned not to be the dupe of words.… Give the votes to people who have no property, and they will sell them to the rich who will be able to buy them." But BENJAMIN FRANKLIN took decisive issue with his fellow Pennsylvanian: "It is of great consequence that we should not depress the virtue and public spirit of our common people; of which they displayed a great deal during the war, and which contributed principally to the favorable issue of it." Morris's proposal was decisively defeated. The Convention instead approved the provision that has endured ever since, under which eligibility to vote for representatives is keyed, in each state, to that state's rules of eligibility to vote for members of the most numerous house of the state legislature.

When it came to designing the method of selecting the President and vice-president, the Convention devised the indirect election system of the ELECTORAL COLLEGE. The expectation was that the electors—themselves chosen from among the leading citizens of their respective states—would, through disinterested deliberation, select as the nation's chief executive officials the two persons of highest civic virtue, wholly without regard for the vulgar demands of "politics." According to ALEXANDER HAMILTON in THE FEDERALIST #68, "[t]he mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents." But, measured against its intended purpose, no other structural aspect of the Constitution has wound up wider of the mark. The Framers of the Constitution wholly failed to anticipate the development of national political parties whose chief political goal would be the election of the party leader as President. That development has meant that since the fourth presidential election—that of 1800, in which THOMAS JEFFERSON defeated JOHN ADAMS—the electors in each state have themselves been selected as adherents of the political party prevailing in that state and thus have, with the rarest of exceptions, cast their electoral votes for the party's presidential and vice-presidential candidates. The system of electors remains to this day, but it has been entirely drained of its intended function.

Those who drafted the Constitution in 1787, and who saw it through ratification to the launching of the new ship of state in 1789, were America's aristocracy. The transformation of American politics from 1789 to the Civil War can be measured in the marked shift in class status of those who occupied the Presidency. The Presidents from GEORGE WASHINGTON to JOHN QUINCY ADAMS were all patricians. Most of the Presidents from ANDREW JACKSON to ABRAHAM LINCOLN were not. The growth of national parties, beginning with Jefferson and accelerating with Jackson, democratized politics by putting politicians in the business of seeking to enlarge their voting constituencies. Property Page 2806 | Top of Article qualifications gave way, for the most part, to taxpayer qualifications. And, in many states, these in turn were soon largely abandoned.

The erosion of property tests for voting did not mean that anything approximating universal suffrage was at hand. As one political scientist has summarized the situation:

Apart from a few midwestern states, hungry for settlers, no one was very warm to the prospect of aliens and immigrants at the polls; all the states but Maine, Massachusetts, Vermont, New Hampshire, Rhode Island, and New York explicitly barred free blacks from voting, and New

York imposed special property requirements on blacks which, while repeatedly challenged, were repeatedly upheld in popular referenda. Even in the tiny handful of northern states that did not exclude blacks by law, social pressures tended to accomplish the same end. New Hampshire and Vermont in 1857 and 1858 had to pass special laws against excluding blacks from voting. Chancellor James Kent concluded that only in Maine could the black man participate equally with the white man in civil and political rights. Women were universally denied the vote [Elliott 1974, p. 40].

In 1848, a year of revolution in Europe, 300 people gathered in a church in the little upstate New York town of Seneca Falls to consider the status of women. The most revolutionary item on the agenda was voting. Half a century before there had been a small outcropping of female voting in New Jersey, whose 1776 constitution had, perhaps inadvertently, used the word "inhabitants" to describe those who, if they met the property qualifications, could vote. It appears that by 1807, respectable New Jersey opinion had reached the consensus that laxity was slipping into license (at a local election in Trenton even slaves and Philadelphians were said to have cast ballots). At this point, "reform" was clearly called for: the legislature promptly altered the electoral code to bring New Jersey's voting qualifications back into conformity with the white maleness that characterized the electorate in the rest of the country and remained the accepted order of things until Seneca Falls.

The chief driving energies behind the SENECA FALLS CONVENTION were ELIZABETH CADY STANTON and Lucretia Mott. Stanton drafted the "Declaration of Principles" and the several resolutions which the convention was asked to adopt. The only resolution to receive less-than-unanimous endorsement was the ninth: "Resolved, that it is the duty of the women of this country to secure to themselves their sacred right to the elective franchise." That the franchise was a far more chimerical goal than other concerns (for example, property rights for married women) was recognized by Mott. She had asked Stanton not to submit the ninth resolution for the reason that "Thou will make us ridiculous." The factor that may have tipped the balance in Stanton's decision not to subordinate her principle to Mott's pragmatism was the strong encouragement of Frederick Douglass. The great black leader supported the ninth resolution. He joined the cause of equal rights for women to the cause of abolition.

The women's movement maintained its close association with abolitionism through the CIVIL WAR. After the freeing of the slaves, the country's attention focused on the terms on which American blacks were to be brought into the mainstream of American life. The leaders of the women's movement hoped that the drive for women's suffrage would complement and be reinforced by the drive for black suffrage. But that was not to be. As the war neared its end, a number of Republican leaders began to recognize a strong partisan interest in creating black voters to counter the feared resurgence of the Democratic party; there were no comparable reasons for creating women voters. Many of the women leaders, recognizing the political realities, accepted—albeit with no enthusiasm—the priority given to the rights of blacks. But not Elizabeth Cady Stanton and SUSAN B. ANTHONY. Said Anthony: "I will cut off this right arm before I will ever work for or demand the ballot for the Negro and not the woman." (Anthony and Stanton then formed the National Woman Suffrage Association, while the other leaders worked through the American Woman Suffrage Association; the split was not to be healed for twenty-five years.)

In 1864 Abraham Lincoln appointed SALMON P. CHASE—Lincoln's former secretary of the treasure and one of his chief rivals for the Republican presidential nomination in 1860—to succeed ROGER B. TANEY as CHIEF JUSTICE of the United States. Chase's elevation to the Court did not abate his presidential ambitions and his attendant interest in promoting a favorable political environment. The new Chief Justice wrote to Lincoln, as he subsequently wrote to President ANDREW JOHNSON, urging that black suffrage be made a condition of the reconstruction of the rebel states. And by 1867 Chase had taken the position that Congress had constitutional authority to enfranchise blacks as a mode of enforcing the THIRTEENTH AMENDMENT : "Can anything be clearer than that the National Legislature charged with the duty of "enforcing by appropriate legislation' the condition of universal freedom, is authorized and bound to provide for universal suffrage? Is not *suffrage* the best security against *slavery* and *involuntary servitude* ? Is not the legislation which provides the *best* security the most *appropriate* ?" Chase lost interest in active promotion of black voting when it became apparent that his modest chances of being nominated for the presidency were more likely to be realized in the Democratic party than in the Republican party. In any event, the question whether the Thirteenth Amendment could have been Page 2807 | Top of Article a platform for enlarging the franchise became moot upon the adoption of the two other post-Civil War amendments, both of which expressly addressed the franchise—for blacks, not for women.

The FOURTEENTH AMENDMENT, ratified in 1868, dealt with black voting by indirection. By declaring that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," the first sentence of the first section of the amendment overruled Roger B. Taney's pronouncement in DRED SCOTT V. SANDFORD (1857), that blacks, whether slave or free, could not be citizens within the contemplation of the Constitution. The second sentence of the first section sought to protect the CIVIL RIGHTS of blacks: First, it guaranteed "the privileges and immunities of citizens of the United States" against state abridgment and, second, it prohibited state denial to any person, whether citizen or not, of "life, liberty or property without DUE PROCESS OF LAW, " or deprivation of the " EQUAL PROTECTION OF THE LAWS." The second section of the amendment spoke to the political rights of blacks. It provided that any state that denied participation in federal or state elections to "any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States … except for participation in rebellion, or other crime," should have its allocation of representatives and of presidential electors proportionately reduced. The framers of the amendment thus preserved the states' entitlement to discriminate but proposed a substantial penalty as the price of discrimination.

By 1869, after General ULYSSES S. GRANT'S narrow victory in the 1868 presidential election, the Republican party recognized that black votes were essential to its survival. So the Republican leadership in Congress fashioned the FIFTEENTH AMENDMENT. That amendment, ratified in 1870, addressed the question of black voting directly. A citizen's entitlement to vote could not be "abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Notwithstanding that the express language of the Fourteenth Amendment addressed male voting, and that the express language of the Fifteenth Amendment addressed discriminations rooted in "race, color or previous condition of servitude," some leaders of the women's movement

contended that women were constitutionally entitled to vote. Arguing that the right to vote in a federal election was a privilege of national citizenship protected by section 1 of the Fourteenth Amendment, Susan B. Anthony actually persuaded election officials in Rochester, New York, to let her vote in 1872 notwithstanding that the New York constitution limited the franchise to men. Anthony was promptly charged with the crime of casting a ballot in a federal election in which she was not an eligible voter. The presiding judge was Justice WARD HUNT of the Supreme Court. Justice Hunt rejected Anthony's constitutional claim in the following words:

The right of voting, or the privilege of voting, is a right or privilege arising under the constitution of the state, and not under the Constitution of the United States. The qualifications are different in the different states. Citizenship, age, sex, residence, are variously required in the different states, or may be so. If the right belongs to any particular person, it is because such person is entitled to it by the laws of the state where he offers to exercise it, and not because of citizenship of the United States. If the state of New York should provide that no person should vote until he had reached the age of thirty years, or after he had reached the age of thirty years, or after he had reached the age of fifty, or that no person having grey hair, or who had not the use of all his limbs, should be entitled to vote, I do not see how it could be held to be a violation of any right derived or held under the Constitution of the United States. We might say that such regulations were unjust, tyrannical, unfit for the regulation of an intelligent state; but, if rights of a citizen are thereby violated they are of that fundamental class, derived from his position as a citizen of the state, and not those limited rights belonging to him as a citizen of the United States.

Read through the prism of a century of doctrinal hindsight, Justice Hunt's words seem—at least at first blush—somewhat surprising. The surprise is not occasioned by the fact that the Justice gave such short shrift to arguments based on the Fourteenth Amendment's PRIVILEGES AND IMMUNITIES CLAUSE, for we are accustomed to the fact that, ever since the SLAUGHTERHOUSE CASES (1873), the Supreme Court has read the grant of privileges and immunities flowing from national citizenship very restrictively. The surprise stems from Hunt's failure—which may also have been counsel's failure—to approach sex-based denial of the franchise (not to mention the assertedly analogous hypothetical denials based on age, physical handicap, or color of hair) in equal protection terms. The likely explanation is that in *Slaughterhouse* the Court doubted that "any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the" equal protection clause.

Justice Hunt directed the jury to return a verdict of guilty and imposed a fine of $100.

Justice Hunt's rejection of Anthony's privileges and immunities claim was vindicated two years later by Chief Justice MORRISON R. WAITE'S opinion for the unanimous Court in MINOR V. HAPPERSETT (1875). This was a civil suit brought in a Missouri state court by Virginia L. Minor, and her lawyer husband Francis Minor, to challenge the refusal of a Missouri election official to register her as a voter. The Minors contended that the provision of the Missouri
 constitution limiting the electorate to male citizens transgressed the privileges and immunities clause. In rejecting the Minors' contention, Chief Justice Waite demonstrated that limitation of the franchise to males had been the norm, despite the fact that women were citizens. Voting had not been a privilege of national citizenship prior to the Fourteenth Amendment. As the amendment "did not add to the privileges and immunities of a

citizen," but merely "furnished an additional guaranty for the protection of such as he already had," Missouri's refusal to let Minor vote was not unconstitutional. *Minor v. Happersett* ended attempts to win the campaign for woman's suffrage by litigation. The road to the ballot box was to be political—persuading male legislators to pass laws giving women the vote.

It was to be a long road. In 1870 Wyoming's territorial legislature enacted a law entitling women to vote. Utah followed suit, but the victory there was temporary. An 1887 congressional statute forbidding Utah's Mormons from practicing polygamy also overrode the territorial legislature's grant of the franchise to women. Three years later Wyoming's first state constitution called for women's suffrage. Thereafter progress was slow. Many state campaigns were fought and most were lost. In the South, votes for women were seen as a harbinger of votes for blacks, and the states resisted accordingly; in the East, many industrialists mistrusted the links between some women's suffragists and trade union and other reform groups; in the Midwest, the women's suffrage movement was seen by the brewing interests as the advance guard of prohibition. By 1913 women could vote in only nine states; in that year Illinois admitted women to participation in presidential elections.

In 1912, THEODORE ROOSEVELT'S Progressive party endorsed women's suffrage. This endorsement served as a reminder that Susan B. Anthony and her associates had sought to achieve women's suffrage not state-by-state but by amending the Constitution. Pressure for a women's suffrage amendment mounted during World War I when women entered the work force in record numbers. In 1918 WOODROW WILSON announced support for the proposed amendment, notwithstanding that women's suffrage was anathema to the white Democratic South. In 1919, with Democrats divided and Republicans strongly in favor, Congress submitted to the states a proposed amendment barring denial or abridgment of the right to vote in any election on grounds of sex. In 1920, the NINETEENTH AMENDMENT was ratified. In the 1920 elections one of the voters was Charlotte Woodward Pierce who, as a nineteen-year-old farm girl, had attended the Seneca Falls Convention in 1848.

Following the Civil War, the military occupation of the South ushered in a period in which blacks not only voted but were elected to office. With the adoption of the Fifteenth Amendment, there appeared to be some ground for supposing that black voting had achieved a legal infrastructure which might suffice even after the army departed. However, although the amendment bars race, color, and previous condition of servitude as criteria of eligibility to vote, it does not proscribe other criteria—such as literacy or taxpayer status—susceptible of adaptation as surrogates for racism. The lesson was that most blacks might be prevented from voting by educational or property qualifications.

Following the COMPROMISE OF 1877, which led to the withdrawal from the South of the last military units, the twilight of black participation in the southern political process began. Through the 1880s, some black voting continued—frequently in Populist alliance with poor whites. But in the 1890s, as a corollary of the spreading gospel of Jim Crow, the southern white political leadership forged a consensus to exclude blacks from the ballot box. Some of this was achieved by force, and some by skulduggery, but in large measure the forms of law were utilized. LITERACY TESTS and POLL TAXES were common exclusionary devices, as was closing Democratic primaries—the only real elections in most of the South—to blacks. The underlying

rationale was that offered by Senator James Vardaman of Mississippi: "I am just as much opposed to Booker Washington as a voter, with all his Anglo-Saxon reinforcements, as I am to the cocoanut-headed, chocolate-covered, typical little coon, Andy Dottson, who blacks my shoes every morning. Neither is fit to perform the supreme function of citizenship."

By and large, the legal stratagems employed by the southern states to disenfranchise blacks succeeded. Poll taxes and literacy tests which did not on their face show a discriminatory purpose easily passed constitutional muster from BREEDLOVE V. SUTTLES (1937) to *Lassiter v. Northampton Election Board* (1959). To be sure, the Supreme Court did intervene in those rare instances in which the purpose to discriminate was evident on the face of the challenged restraint. A flagrant example was the so-called GRANDFATHER CLAUSE in Oklahoma's 1910 constitution, which exempted from the literacy requirement any would-be voter "who was, on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and [any] lineal descendant thereof." In GUINN V. UNITED STATES (1915) the Supreme Court held this literacy test invalid.

Because during the first half of the twentieth century the decisive voting in the South took place in Democratic primaries, not in the general elections, the cases of greatest practical as well as doctrinal consequence were those that challenged devices to maintain the whiteness of the "white primary."

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In NIXON V. HERNDON (1927) a unanimous Court, speaking through Justice OLIVER WENDELL HOLMES, sustained the complaint of L. A. Nixon, who contended that he had been unconstitutionally barred from voting in a Texas Democratic primary through enforcement of a Texas statute that recited that "in no event shall a negro be eligible to participate in a Democratic party primary election held in the state of Texas." The Court held that this statutory racial exclusion contravened the Fourteenth Amendment.

The consequence of this ruling was described by Justice BENJAMIN N. CARDOZO in his opinion in NIXON V. CONDON (1932): "Promptly after the announcement of [the Herndon] decision, the legislature of Texas enacted a new statute … repealing the article condemned by this court; declaring that the effect of the decision was to create an emergency with a need for immediate action; and substituting for the article so repealed another bearing the same number. By the article thus substituted, "every political party in this State through its State Executive Committee shall have the power to prescribe the qualifications of its own members and shall in its own way determine who shall be qualified to vote or otherwise participate in such political party.…" Thereupon the executive committee of the Texas Democratic party voted to limit party membership and participation to whites, and L. A. Nixon was once again barred from voting in the Democratic primary. Once again Nixon brought a lawsuit, and once again he prevailed in the Supreme Court. Justice Cardozo, speaking for a majority of five, concluded that the new Texas statute delegated exercise of the state's power over primaries to party executive committees, with the result that the racial exclusion decided on by the executive committee was in effect the racially discriminatory act of the State of Texas and hence prohibited by the Fourteenth Amendment. Justice JAMES C. MCREYNOLDS, joined by three other Justices, dissented.

Three years later, in GROVEY V. TOWNSEND (1935), the Court considered the next refinement in the Texas Democratic primary—exclusion of blacks by vote of the party convention. Speaking through Justice OWEN J. ROBERTS, the Court this time unanimously concluded that the action taken by the Texas Democratic party was an entirely private decision for which the State of Texas was not accountable; accordingly, neither the Fourteenth nor the Fifteenth Amendment was transgressed.

Nine years later, toward the end of World War II, the Court, in SMITH V. ALLWRIGHT (1944), again considered the *Grovey v. Townsend* question. In the interval, seven of the Justices who had participated in *Grovey v. Townsend* had died or retired. Approaching the matter in a common sense way, the Court, with Justice Roberts dissenting, concluded that the role of the primary as a formal and vital predicate of the election made it an integral part of the state's voting processes and hence subject to the requirement of the Fifteenth Amendment. Accordingly, the Court in *Smith v. Allwright* overruled *Grovey v. Townsend.*

The resumption, after three-quarters of a century, of significant black participation in the southern political process dates from the decision in *Smith v. Allwright.* But the elimination of the most egregious legal barriers did not mean that all blacks were automatically free to vote. Hundreds of thousands of would-be black voters were still kept from the polls by fraud or force or both. In 1957, three years after the Court, in BROWN V. BOARD OF EDUCATION (1954), held that legally mandated racial SEGREGATION contravened the Fourteenth Amendment, Congress passed the first federal civil rights law enacted since the 1870s: a voting rights law which authorized modest federal supervision of the southern voting process. And the year 1964 witnessed ratification of the TWENTY-FOURTH AMENDMENT, barring exclusion of American citizens from voting in any federal election on grounds of failure to pay any poll tax or other tax. But as black demands for equal treatment multiplied, responsive abuses escalated.

In the spring of 1965, a Boston minister, one of scores of clergymen who had gone to Selma, Alabama, to help MARTIN LUTHER KING, JR. , launch a voter registration drive, was murdered. A few days later, on March 15, 1965, President LYNDON B. JOHNSON addressed Congress:

Many of the issues of civil rights are very complex and most difficult. But about this there can and should be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty we have to ensure that right.

Yet the harsh fact is that in many places in this country men and women are kept from voting simply because they are Negroes.

Every device of which human ingenuity is capable has been used to deny this right. The Negro citizen may go to register only to be told that the day is wrong, or the hour is late, or the official in charge is absent. And if he persists and if he manages to present himself to the registrar, he may be disqualified because he did not spell out his middle name or because he abbreviated a word on the application. And if he manages to fill out an application, he is given a test. The registrar is the sole judge of whether he passes this test. He may be asked to recite the entire

constitution, or explain the most complex provisions of state laws. And even a college degree cannot be used to prove that he can read and write.

For the fact is that the only way to pass these barriers is to show a white skin.

Experience has clearly shown that the existing process of law cannot overcome systematic and ingenious discrimination. No law that we now have on the books—and I Page 2810 | Top of Article have helped to put three of them there—can ensure the right to vote when local officials are determined to deny it.…

This time, on this issue, there must be no delay, or no hesitation or no compromise with our purpose.

We cannot, we must not refuse to protect the right of every American to vote in every election that he may desire to participate in. And we ought not, we must not wait another eight months before we get a bill. We have already waited a hundred years and more and the time for waiting is gone.…

But even if we pass this bill, the battle will not be over. What happened in Selma is part of a far larger movement which reaches into every section and state of America. It is the effort of American Negroes to secure for themselves the full blessings of American life.

Their cause must be our cause too. Because it is not just Negroes, but really it is all of us, who must overcome the crippling legacy of bigotry and injustice. And we shall overcome.

As a man whose roots go deeply into Southern soil I know how agonizing racial feelings are. I know how difficult it is to reshape the attitudes and the structure of our society.

But a century has passed, more than a hundred years, since the Negro was freed. And he is not fully free tonight.

It was more than a hundred years ago that Abraham Lincoln, the great President of the Northern party, signed the Emancipation Proclamation, but emancipation is a proclamation and not a fact.

A century has passed, more than a hundred years since equality was promised. And yet the Negro is not equal.

A century has passed since the day of promise. And the promise is unkept.

The time of justice has now come. I tell you that I believe sincerely that no force can hold it back. It is right in the eyes of man and God that it should come. And when it does, I think that day will brighten the lives of every American.

Congress enacted the VOTING RIGHTS ACT OF 1965. The act provided, among other things, for the suspension of literacy tests for five years in states or political subdivisions thereof in which fewer than "50 per cent of its voting-age residents were registered on November 1, 1964, or

voted in the presidential election of November, 1964." This and other major provisions of the 1965 act were thereafter sustained in SOUTH CAROLINA V. KATZENBACH (1966), *Rome v. United States* (1980), and KATZENBACH V. MORGAN (1966), as appropriate ways of enforcing the Fifteenth and Fourteenth Amendments. Subsequent amendments to the 1965 act have broadened its coverage.

The 1944 decision in *Smith v. Allwright* was more than a new and hospitable judicial approach to the right of blacks to participate in the American political process. It was a major advance (as, four years later, was SHELLEY V. KRAEMER, 1948) toward the day—May 17, 1954—when a unanimous Court, speaking through Chief Justice Warren, was to hold, in *Brown v. Board of Education,* that the equal protection clause barred the legally mandated racial segregation of school children. Subsequent decisions, building on *Brown v. Board of Education,* soon made it plain that the equal protection clause barred all the legal trappings of Jim Crow. *Brown v. Board of Education* worked a fundamental change in the Court's and the nation's perception of the scope of judicial responsibility to vindicate those values.

In 1962, eight years after *Brown v. Board of Education,* the Court, in *Baker v. Carr,* held that allegations that a state legislature suffered from systematic malapportionment, under which districts of widely different populations were each represented by one legislator, stated a claim cognizable under the equal protection clause. The importance of *Baker v. Carr* cannot be overestimated. Chief Justice Warren thought it the most significant decision handed down by the Court during his sixteen years in the center chair. Even those who rank *Brown v. Board of Education* ahead of *Baker v. Carr* must nonetheless acknowledge that the latter decision set in motion a process that resulted in the redesign of numerous state legislatures and a myriad of local governing bodies, and, indeed, of the House of Representatives. That redesign has been required to meet the Court's pronouncement, in GRAY V. SANDERS (1963), that "[t]he conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote." Long-standing patterns of malapportionment in which rural districts with relatively few inhabitants were represented on equal terms with heavily populated urban districts have become a thing of the past. (See REAPPORTIONMENT.)

Guaranteeing the voting rights of women and blacks and overcoming rampant malapportionment have cured the major inexcusable deficiencies of the American political process. In recent decades, certain lesser inequalities have also begun to be addressed.

From the beginning of the republic, Americans residing in the continental United States but not within any state—for example, those who lived in federal territories—had no way of voting in national elections. In the most egregious of anomalies, residents of the nation's capital were voiceless in the selection of the President who dwelt and governed in their own home town. So matters stood until 1964, when the TWENTY-THIRD AMENDMENT was added to the Constitution, giving the DISTRICT OF COLUMBIA a minimum of three electoral votes in presidential elections.

In the late 1960s, profound divisions in American opinion about America's military involvement in the VIETNAM WAR forced recognition of another anomaly—that tens of thousands of young men were being drafted to fight in an unpopular foreign war although

they were not old enough to vote in national elections choosing the officials responsible for making decisions for war or for peace. In 1970, Congress, in amending the Voting Rights Act, included a provision forbidding abridgment of the right of any citizen to vote "on account of age if such citizen is eighteen years or older." The statute was promptly challenged in OREGON V. MITCHELL (1970). Four Justices concluded that Congress had the power to lower the voting age to eighteen. Four Justices concluded that Congress had no such power. The casting vote was that of Justice Hugo L. Black, who held that Congress could regulate the voting age in national elections but not in state elections. Because Americans vote every two years for state and national officials at the same time, *Oregon v. Mitchell* was an invitation to chaos. Within six months, Congress proposed and the requisite three-fourths of the states ratified, the TWENTY-SIXTH AMENDMENT which accomplished by constitutional mandate what Congress had been unable to achieve by statute.

In the course of two centuries law and conscience have combined to make the American suffrage almost truly universal. One massive obstacle remains: apathy. In recent national elections in the European democracies, seventy-two percent of the eligible electorate voted in Great Britain, seventy-nine percent in Spain, eighty-five percent in France, and eighty-nine percent in Italy and West Germany. By contrast, in the American presidential election of 1980, only fifty-three percent of those eligible voted. In America's 1984 presidential election, after both major parties had made massive efforts to register new voters, not more than fifty-five percent of those who could have voted made their way to the ballot box. A fateful question confronting American democracy is whether tens of millions of self-disenfranchised Americans will in the years to come find the energy and good sense to exercise the precious right won at such great labor at the Constitutional Convention, in Congress and state legislatures and the Supreme Court, and at Selma and Seneca Falls.

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(SEE ALSO: Rogers v. Lodge .)

Bibliography

CHUTE, MARCHETTE G. 1969 *First Liberty: A History of the Right to Vote in America, 1619–1850.* New York: Dutton.

DU BOIS, ELLEN CAROL, ed. 1981 *Elizabeth Cady Stanton, Susan B. Anthony: Correspondence, Writings, Speeches.* New York: Shocken.

ELLIOTT, WARD E. Y. 1974 *The Rise of Guardian Democracy: The Supreme Court's Role in Voting Rights Disputes, 1845–1969.* Cambridge, Mass.: Harvard University Press.

FAIRMAN, CHARLES 1971 *Reconstruction and Reunion, 1864–1888.* New York: Macmillan.

FARRAND, MAX, ed. 1911 *The Records of the Federal Convention of 1787.* New Haven, Conn.: Yale University Press.

——, ed. 1921 *The Fathers of the Constitution.* New Haven, Conn.: Yale University Press.

FLEXNER, ELEANOR 1975 *Century of Struggle: The Woman's Right to Vote Movement in the United States.* Rev. ed. Cambridge, Mass.: Harvard University Press.

HIGGINBOTHAM, A. L., JR. 1984 "States' 'Rights' and States' 'Wrongs': Apartheid, Virginia and South African Style." Dubois Lecture, Harvard University.

MC KAY, ROBERT B. 1965 *Reapportionment: The Law and Politics of Equal Representation.* New York: Twentieth Century Fund.

WILLIAMSON, CHILTON 1960 *American Suffrage from Property to Democracy, 1760–1860.* Princeton, N.J.: Princeton University Press.

WOODWARD, C. VANN 1951 *Origins of the New South, 1877–1913.* Baton Rouge: Louisiana State University Press.

——1957 *The Strange Career of Jim Crow.* New York: Oxford University Press.

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