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Constitutional Law -- Use of Literary Tests to Restrict the Right to Vote

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NOTES

Constitutional Law

USE OF LITERACY TESTS TO RESTRICT THE RIGHT TO VOTE

Introduction

From the time the Fifteenth Amendment[1] was adopted in 1870, and particularly in the 1890's, the Southern states have made every conceivable effort to circumvent its obvious intent. The devices used to prevent Negroes from enjoying the privilege of voting have run the gamut from the "grandfather clause" to the literacy test. The means used to disfranchise the Negro have been illegal, extralegal, direct and indirect. But the courts have not been hesitant in looking behind the wording of the laws in discovering discrimination in its most blatant form. Although these legal obstacles have been more impressive in theory than in practice,[2] since informal methods of coercion have been used to prevent Negro voting, there still remains one cloak of legality behind which discrimination may be practiced with impunity, if it appears to be necessary. This sole surviving subterfuge, which has not been specifically struck down by the Supreme Court as unconstitutional and which can be used with great effectiveness to achieve the desired discrimination, is the requirement of literacy as a qualification for voting. This device is particularly invidious, for the reason that it is usually constitutional on its face, yet discriminatory in its purpose and application. It has been used throughout the South with varying degrees of success in keeping Negroes from the polls. Since the "white primary" was declared unconstitutional in 1944,[3] and since the poll tax has lost favor because of its effect on both Negro and White, it appears that the literacy test is the last method of exclusive discrimination which can be applied against the Negro.

In this Note the constitutional aspects of the literacy test will be discussed, and some review of its application in the South as well as in the North will be presented in an attempt to indicate that the test may be valid and efficacious in promoting good government, and yet may also be used as a most destructive weapon

1 U. S. CONST. amend. XV.

2 KEY, SOUTHERN POLITICS 555 (1949).

3 Smith v. Allwright, 321 U.S. 649 (1944).

against the basic ideals of democratic equality.

Background of the Problem

It was early pointed out by the Supreme Court that the Constitution did not vest the right of suffrage in any citizen of the United States. The granting of the voting privilege was considered strictly a prerogative of the individual states, and the source of this prerogative was the state constitution.[4] The only exception to this state power was afforded by the Fifteenth Amendment which prohibited any state from basing its voting privilege on a criterion of race. The right to vote comes from the states; right of exemption from prohibited discrimination comes from the United States.[5]

One of the most obvious attempts to prevent those of the Negro race from voting was the "grandfather clause," which the courts had little difficulty in striking down as being unconstitutional.[6] An Oklahoma constitutional amendment provided that no one would be allowed to register unless he could read and write, with the exception that anyone entitled to vote, or whose ancestors were entitled to vote, on or prior to January 1, 1866, should not be denied registration because of his illiteracy. In referring to this amendment the Supreme Court found that although it was not discriminating on its face, it appeared that the only reason for basing the classification upon a period of time prior to the Fifteenth Amendment was for the purpose of defeating its effect.[7] In a case decided the same day concerning another "grandfather clause," the Supreme Court, in reviewing a Maryland statute, stated that the Fifteenth Amendment removed the word "white" from the Constitution of Maryland granting upon "every white male citizen" the right to vote, and held the 1908 statute, making, in effect, the same discrimination, to be also invalid.[8]

After its "grandfather clause" was invalidated by the Supreme Court, the State of Oklahoma enacted a statute which made registration a prerequisite to voting, and provided that all citizens qualified to vote in 1916 who failed to register between April 30, and May 11, 1916, should be perpetually disfranchised, excepting those who had voted in 1914. In striking down the statute, the

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4 United States v. Cruikshank, 92 U. S. 542 (1875).

5 *Id.* at 555-556.

6 Guinn v. United States, 238 U.S. 347 (1915).

7 *Id.* at 365.

8 Myers v. Anderson, 238 U.S. 368 (1915).

Supreme Court was not taken in by this subterfuge and considered it to be a very crude substitute for the previously invalidated "grandfather clause."[9]

Several states attempted to set up procedural obstacles to the enforcement of the Fifteenth Amendment by enacting statutes which prohibited judicial review of a refusal to register those applying for the privilege of voting. These obstacles were never very effective, as the federal courts assumed jurisdiction of these cases on the ground that they were not purely administrative actions, but were actually judicial proceedings.[10]

Perhaps the most effective bar to Negro participation in the election of public officials was the "white primary." The Supreme Court was first presented with this device of apparent legality in 1927, when it was called upon to determine if a Negro could be prevented from voting in the Texas Democratic primary election, pursuant to a state statute which provided that a Negro was not eligible to particapate in such primary election. The Court had no difficulty in finding that this was state infringement on a right secured to the citizen by the equal protection clause of the Fourteenth Amendment. The Court felt the discrimination was so complete that it was unnecessary to base its decision on the Fifteenth Amendment.[11] Immediately following this decision, the state of Texas passed legislation permitting the party executive committee to prescribe qualifications for all members of the party. Under this authority the party restricted its membership to all "white democrats." Pursuant to this restriction the complainant in the preceeding case was once again refused the right to vote, and again he appealed to the Supreme Court. The Court found for the complainant by reasoning that the executive committee's power was statutory and that the committee was an agency of the state; therefore, the state had discriminated against the complainant because of his race.[12] Not easily discouraged in its efforts to keep the Negroes from the polls, the Texas Democratic party in full convention passed a resolution restricting membership in the party to white citizens. Following the reasoning of the earlier cases, the Supreme Court found that this was not the action of the state but of the independent party organization; and thus there was no state action which could be curtailed under the Fourteenth and Fifteenth Amendments.[13] This decision was not

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9 Lane v. Wilson, 307 U.S. 268 (1939).

10 *Ibid;* Bryce v. Byrd, 201 F.2d 664 (5th Cir. 1953); Hall v. Nagel, 154 F.2d 931 (5th Cir. 1946).

11 Nixon v. Herndon, 273 U.S. 536 (1927).

12 Nixon v. Condon, 286 U.S. 73 (1932).

13 Grovey v. Townsend, 295 U.S. 45 (1935).

destined for long life, being overruled in 1944.[14] In the later decision the Supreme Court followed its reasoning in a previous case[15] which held that a primary election in Louisiana was in effect an election which controlled the choice of congressional representatives. By this reasoning, the Court found that the primary election under consideration was an election within the meaning of the Fifteenth Amendment, and that the state of Texas made the action of the party the action of the state.[16]

Subsequently the Democratic party in Georgia was prohibited from excluding Negroes from primary elections.[17] South Carolina made a valiant attempt to circumvent the decision of the Supreme Court in *Smith v. Allwright* [18] by repealing approximately 150 statutes all relating to primaries. But this action was of no avail as the United States district court held that the primary election was the only real election in that state and the only place ". . . where one can express a choice in selecting federal and other officials."[19] After recovering from the shock of this decision, the Democratic party of South Carolina again attempted to prevent Negroes from exercising their right to vote by establishing a dual system of voting within the party. One section of the party's rules provided that all white Democrats might vote; another section permitted all qualified Negroes to vote if they presented a general election certificate and took an oath, among other things, to support the "social and educational separation of races," and to oppose the Fair Employment Practices Code. The same court which had ruled against "white primaries" the year before was vehement in its attack on this more subtle effort to disfranchise the Negro.[20] The court ordered the Democratic party to open their books to all who ask to be registered, whether colored or white, and to abstain from giving the oath.[21]

Still another form of the "white primary" persisted in Texas until the Supreme Court held it unconstitutional in 1953.[22] Instead of having but one primary election, in effect, two primaries

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14 Smith v. Allwright, 321 U.S. 649 (1944). This decision declared the "white primary" unconstitutional.

15 United States v. Classic, 313 U.S. 299 (1941).

16 Smith v. Allwright, 321 U.S. 649 (1944).

17 Chapman v. King, 154 F.2d 460 (5th Cir.), *cert. denied*, 327 U.S. 800 (1946).

18 See note 14 *supra*.

19 Elmore v. Rice, 72 F. Supp. 516, 528 (E.D.S.C. 1947), *aff'd*, 165 F.2d 387 (4th Cir. 1947), *cert. denied*, 333 U.S. 875 (1948).

20 Brown v. Baskin, 78 F. Supp. 933 (E.D.S.C. 1948), *aff'd*, 174 F.2d 391 (4th Cir. 1949).

21 78 F. Supp. at 942.

22 Terry v. Adams, 345 U.S. 461 (1953).

were held. The first was an election by the "Jaybird Democratic Association" of candidates who were perfunctorily nominated in second, the official Democratic party primary. Subsequently these same candidates were elected to office as a matter of course in the general election. This had been the practice for a period dating back to 1889. As to this ingenious bit of discrimination the Court held that:

> The effect of the whole procedure . . . is to do precisely that which the Fifteenth Amendment forbids—strip Negroes of every vestige of influence in selecting the officials who control the local county matters that intimately touch the daily lives of citizens.[23]

From the foregoing it appears the "white primary" has been completely and conclusively defeated as a means of disfranchising the Negro. Because of this the political leaders of the South have been hard pressed to look elsewhere for a "legal" way of keeping the Negroes away from the polls. Although the poll tax has been declared constitutional,[24] it is not an efficient device as it prevents many whites from voting. The literacy test, consequently, emerges as the last hope for maintaining a solid white South.

The Statutory Test

Presently there are nineteen states which have some form of literacy requirement as a qualification for voting. Included in this number are all but three[25] of the traditionally southern states, and twelve northern states.[26] The statutory tests vary greatly. The abilities to read and write, or either one or the other, are the only tests of literacy in fourteen of the states.[27] At this

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23 *Id.* at 469-70.

24 Breedlove v. Suttles, 302 U. S. 277 (1937).

25 Florida, Tennessee and Texas.

26 Arizona, California, Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New York, Oklahoma, Oregon, Washington and Wyoming. See note 27 *infra*.

27 ARIZ. CODE ANN. § 55-201 (1939), read constitution in English and write name; CAL. CONST. art. II, § 1, read constitution in English and write name; CONN. CONST. amend. XI, read constitution or any section of state statutes; DEL. CODE ANN. tit. 15, § 1701 (1953), read constitution in English and write name; ME. REV. STAT. ANN. c.3, § 20 (1954), read constitution in English and write name; MASS. ANN. LAWS c.51, § 1 (1953), read constitution in English and write name; N.H. CONST. Pt. 1, art. 11, read constitution in English and write; N.Y. CONST. art. 2, § 1, read and write English; N.C. GEN. STAT. § 163-28 (1952), read and write any section of constitution to satisfaction of registrar; OKLA. STAT. ANN. tit. 26, § 61 (1955), read and write any section of constitution; ORE. REV. STAT. § 247.040 (1953), read and write English; S.C. CODE § 23-62 (1952), read and write any section of constitution; WASH. REV. CODE § 29.07.070 (1951), read and speak English, or read aloud and explain meaning of ordinary English prose; WYO. COMP. STAT. ANN. § 31-104 (Supp. 1955), read constitution.

point the similarity ends. Alabama requires that an applicant be able to read and write any article of the Constitution in English and to answer questions concerning his qualifications as an elector by filling out a questionnaire prescribed by the Alabama Supreme Court.[28] Georgia requires the abilities to read and write English plus a demonstration by the applicant of an understanding of the duties and obligations of citizenship.[29] In Louisiana it is required that a person be able to read and write any clause in the state or federal constitutions and to give a reasonable interpretation of the clause, and fill out the application to vote in English or his mother tongue.[30] The Virginia statute provides that the application be made in one's own handwriting without aid, that the applicant be able to answer questions affecting his qualifications as a voter, and the answers must be reduced to writing and made under oath.[31]

The most recent and probably the most ambiguous test was adopted by the state of Mississippi in amending its constitution in 1954. The amendment sets up the following battery of qualifications: ability to read and write any section of the state constitution, ability to give a reasonable interpretation thereof to the registrar, and the ability to demonstrate to the registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.[32]

It is obvious from this summary of the different statutes that there is some degree of ambiguity in all of them which may, in some cases, be resolved by taking notice of the various ways in which these tests have been applied.

The most exemplary use of the literacy test has been made in New York, where definite, objective standards have been established. In 1943, twelve tests, prepared by the state department of education and administered by the board of regents, were given to all applicants for registration throughout the state. These tests were designed for a sixth grade level of reading, each test consisted of an eight to ten line composition on topics of civics, history, geography, natural science or biography. Following this composition were eight questions based on the composition and which could be easily answered if the applicant could understand what he had read. In 1945, only 9.21 per cent of those who took the test failed it, and this in a state with an extremely large alien

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28 ALA. CODE ANN. tit. 17, §§ 31, 32 (Supp. 1953).

29 GA. CONST. art. II, § 2-704.

30 LA. REV. STAT. ANN. §§ 18:31, 18:35 (1951).

31 VA. CODE ANN. §§ 24-68, 24-69 (1950).

32 MISS. CONST. art. 12, § 244.

population.[33] Moreover, the courts of New York have greatly restricted the power of the board of election inspectors by holding that their function was merely ministerial and not of an inquisitorial nature.[34] Once some evidence of the applicant's qualifications, an 8th grade diploma, etc., was presented, the election inspectors could do nothing but register such person as a voter.[35]

New Hampshire, in order to avoid discrimination, printed its entire constitution on cards, five lines to a card, and placed them in boxes at the registration offices throughout the state. An applicant for registration was then required to pick a card from one of the boxes and to read that part of the constitution printed on it. However, this procedure was not a satisfactory solution to the problem of discrimination, as some of the cards were more difficult to read than others.[36]

In Massachusetts and California the literacy requirement is no longer enforced.[37] The registrars in Washington are very lenient, and there are apparently no charges of discrimination. To satisfy the requirement of an ability to read some registrars there require the reading of a short oath, while others merely request that something from a newspaper be read by the applicant.[38] The Washington Supreme Court held a vote valid that had been cast by a person who read rather poorly, hardly understanding it, from a second grade reader. The ballot in this case was allowed because the voter had marked it without aid and had identified the names of the candidates printed on it during the trial.[39]

In Kentucky, the courts established a test to satisfy the school elections law, which provided that all women could vote in such elections if they were able to read and write. This test required that a voter be able, by the use of alphabetical signs, to express in a fairly legible way words in common use and of average difficulty.[40]

The northern states have, at least, made some attempt to administer the literacy tests in a way which would not be discriminatory against any race or nationality. New York has provided a

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33 McGovney, The American Suffrage Medley 63-4 (1949).

34 Koninski v. Vieser, 97 Misc. 259, 161 N.Y.S. 129 (County Ct. 1916).

35 People *ex rel.* Malawer v. Board of Elections, 51 N.Y.S.2d 216 (County Ct. 1944).

36 McGovney, *op. cit. supra* note 33.

37 *Id.* at 62.

38 *Ibid.*

39 Hill v. Howell, 70 Wash. 603, 127 Pac. 211 (1912).

40 Helton v. Burdette, 180 Ky. 492, 203 S.W. 189 (1918); Williams v. Hays, 175 Ky. 170, 193 S.W. 1046 (1917); Justice v. Meade, 162 Ky. 421, 172 S.W. 678 (1915).

model for the use of the test in handling the difficult problem of alien voting; for this reason it appears that the tests have some validity and excuse for their existence. In contrast to the procedure in the North, the use of the tests in the South has presented a very different picture.

The educational tests have been widely used throughout the South in a "bluntly illegal way" to disfranchise the Negro.[41] Many of the southern registration officials have spoken boastfully of their arbitrary power to determine who will be allowed to vote. One such officer in Georgia went so far as to claim that "God, Himself, couldn't understand" a certain constitutional clause as the officer was the final judge and must be satisfied as to the correctness of the answer.[42] Each local registration officer is a law unto himself regarding literacy and understanding since there are no state agencies which have any means of control over the individual registration officials.[43] In North Carolina, where the statutory requirement is the ability to read and write, some registrars also require an interpretation of the constitutional clause which has been read, while another registrar bases his determination of the right to vote on the general character of the Negro; for instance: would his vote be purchasable?[44]

A Mississippi official has required that poll tax receipts be presented before registration, notwithstanding the fact that the poll tax was not authorized by the Mississippi statutes.[45] In one rural area in South Carolina, prospective voters were required to read the entire state constitution.[46] Virginia's requirement that a person fill out the application form in his own handwriting seems objective enough. However, in some areas blank paper was filled in by the applicant; in Richmond Negroes and whites were both given printed application forms, and in another area the registrar asked questions of the applicant and filled in the application himself.[47]

Four Mississippi officials testified before a United States Senate campaign investigating committee in 1946 that they had discriminated against Negroes when they applied for registration. One of them further testified that he had told Negroes they would have a "hard time convincing him that they were qualified."[48]

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41 MYRDAL, 1 AN AMERICAN DILEMMA 485 (1944).

42 *Id.* at 485; note 34 *supra.*

43 KEY, SOUTHERN POLITICS 563 (1949).

44 *Id.* at 565.

45 *Id.* at 567.

46 *Id.* at 568.

47 *Id.* at 564.

48 N.Y. Times, Dec. 4, 1946, p. 64, col. 3.

The literacy test is rarely applied in the rural areas of Louisiana for the simple reason that physical coercion, threats and fear keep the Negro from exercising his voting privilege.[49] Registration in Macon County, Alabama, 81 per cent Negro, was completely stalled when in 1946 the board of registrars resigned, and no new board was established for two years. It seemed the registrars had been sued by a Negro for refusing to register him, and no other citizens of the county were willing to risk the cost of such a suit, for the remuneration given a registrar was only $7.50 a day.[50] Another registrar in South Carolina refused to perform his duties until he was informed that the National Association for the Advancement of Colored People was going to be brought in by the Negroes of the county.[51]

The questions asked Negroes when they attempted to register point out clearly the fact that they have been denied registration simply because they were members of the Negro race. In Birmingham, Alabama, these questions were put to Negroes requesting the right to vote: What do we mean by the U.N.? How old are your wife's father and mother? Who is in charge of street improvements in Birmingham?[52] An intelligent Negro woman in North Carolina was denied registration because she mispronounced "contingency" and "constitutionality" when she read the state constitution.[53] In the same state a Negro school teacher, after reading a section of the constitution, was asked to define certain terms in that section. To this she replied, "This is not part of the law, to define terms;" and the registrar replied, "You must satisfy me, and don't argue with me."[54] Pursuant to the Virginia Constitution, which required that an applicant for registration answer questions affecting his qualifications as an elector, a Negro was asked these questions: "What is meant by a legal resident of Virginia? When is the payment of the poll tax not required? What are the requisites necessary for registration in Virginia?"[55] The Virginia Supreme Court of Appeals held the second and third questions were immaterial to a determination of the applicant's qualifications as a voter, and the written answer to the first question, "All persons Who have lived in the Stat- for one year are

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49 KEY, *op. cit. supra* note 43, at 573.

50 *Id.* at 572.

51 *Id.* at 568.

52 *Id.* at 572 n. 22, as reported in the Birmingham News Feb. 11, 13, 18, 20, 1948. The articles were written by Dr. Douglas L. Hunt.

53 MYRDAL, 1 AN AMERICAN DILEMMA 485 (1944).

54 *Ibid.*

55 The original form of the questions contained several grammatical and spelling errors which have been corrected.

a Legal Residenter," [*sic*] was substantially correct.[56]

In Alabama during the time the "Boswell Amendment" (discussed *infra*) was in effect, which required that an applicant for registration "understand and explain" any clause of the Constitution, several Negro Ph.D.'s failed to pass a test given by the registrars. One of the questions asked was, "How many bubbles are there in a bar of soap?"[57] And it has been reported that a Negro graduate of Harvard, when he applied for registration in Mississippi, was asked to read the Bible, the Constitution, a Latin book and a Greek text, which he did successfully. Then he was asked to read a Chinese laundry ticket, and when asked what it meant, he replied "It means that you white folks are not going to let me vote."[58]

In the main these reported cases of discrimination appear to have been isolated and infrequent, occurring almost entirely in those rural areas where there was a large Negro population. Nevertheless, where it was possible to reject 50 per cent of the qualified Negro voters in one county on the basis of a simple writing test,[59] it appears obvious that unconstitutional discrimination has occurred and will persist under subjective-type literacy tests. A pertinent observation has been made in a study of this problem to the effect that if the New York statute had been applied in Louisiana, at least 100,000 adult Negroes in that state would have been entitled to vote, instead of the 886 then registered under the Louisiana statutes.[60] Another important fact which cannot be overlooked is the almost complete lack of political activity on the part of the American Negro. In a recent survey it was disclosed that only 15 per cent of the qualified Negroes in the United States were active in politics, while 60 per cent were very inactive; this was the highest percentage of inactivity within any of the sub-groups surveyed.[61] Furthermore, it does not appear that the situation has improved, for the number of Negroes voting in the 1952 presidential election was slightly less than the number voting in the 1948 election.[62] It is impossible to determine with any certitude to what extent this political inactivity can be attributed to the various literacy tests, but it can scarcely be denied that they do have some effect in keeping the Negro out of politics.

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56 Davis v. Allen, 157 Va. 84, 160 S.E. 85 (1931).

57 Verney, *The American Negro*, 1 POL. SCI. Q. 128 (1955).

58 EMBREE, BROWN AMERICA 184 (1931).

59 KEY, SOUTHERN POLITICS 565 (1950).

60 MCGOVNEY, THE AMERICAN SUFFRAGE MEDLEY 70 (1949).

61 Woodward and Roper, *Political Activity of American Citizens*, 44 AM. POL. SCI. REV. 872, 877 (1950).

Constitutionality of the Tests

The Supreme Court in an early decision ruled that a state did not violate the Fourteenth Amendment by subjecting its prospective voters to a test of literacy.[63] The test in that case, *Williams v. Mississippi,* required that a person read any section of the state constitution, or as an alternative be able to understand the clause or give a reasonable interpretation of it. The Court made its ruling on the ground that the statutes were not discriminatory on their face, and there was no evidence presented to show any discrimination in their application. The Court did note, however, that the evil of racial discrimination was possible under the statutes reviewed.[64]

In a later case which involved a so-called "grandfather clause,"[65] the Supreme Court held that a literacy test standing alone was a lawful exercise of state power, not subject to judicial supervision. But, because of its connection with the unconstitutional "grandfather clause," the test was struck down by the Court because the purpose of the state constitutional amendment would have been nullified had the literacy test been allowed to stand alone.

Subsequently it was decided that a test of reading, with the further requirement of an ability to give a reasonable interpretation of any clause in the state or Federal Constitutions, was valid, since it applied to all voters, both colored and white, and because there was no evidence of any actual discrimination. The complainant had failed to set out in his complaint the words he had used in his attempt to interpret the state constitution.[66]

The Supreme Court of North Carolina, in sustaining a demurrer to an action for a declaratory judgment, considered a test of reading and writing to the registrar's satisfaction to be constitutional. The test was not class legislation as it applied to all the citizens of North Carolina.[67] The court was also of the opinion that because of the state's great advancement in the field of education, the requirement of literacy would not prove discriminatory for either colored or white.

A most important pronouncement on the subject of literacy tests was given by the United States District Court for the South-

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62 CAMPBELL, GURIN & MILLER, THE VOTER DECIDES 71, (1954).

63 Williams v. Mississippi, 170 U.S. 213 (1898).

64 *Id.* at 225.

65 Guinn v. United States, 238 U.S. 347 (1915).

66 Trudeau v. Barnes, 1 F. Supp. 453 (S.D. La. 1932), *aff'd,* 65 F. 2d 563 (5th Cir.), *cert. denied,* 290 U.S. 659 (1933).

67 Allison v. Sharp, 209 N.C. 477, 184 S.E. 27 (1936).

ern District of Alabama, when it was held, by a three judge court, that the "Boswell Amendment" to the Alabama State Constitution was a violation of the Fourteenth and Fifteenth Amendments.[68] This amendment provided that no one would be registered as a voter unless he had the ability to "understand and explain" any clause of the constitution. The court declared the amendment unconstitutional both in its purpose and the manner of its administration. Judicial notice was taken of the history of the period immediately prior to the adoption of the amendment, and there was no doubt, as far as the court was concerned, that the amendment was passed to avoid the Supreme Court's decision in *Smith v. Allwright, supra,* (white primary held unconstitutional). The court found that the board of registrars had the arbitrary power to accept or reject any one applying for registration, and that this type of arbitrary power had been condemned by the Supreme Court in the landmark case of *Yick Wo v. Hopkins.*[69] The action was brought against the registrars of Mobile County, Alabama, to prevent the registrars from enforcing the provisions of the amendment. Mobile County, at that time, had a population of 230,000, 36 per cent of which were Negroes; 2800 Whites and 104 Negroes were registered in the county. It was also disclosed by the county's records that fifty-seven Negroes had been refused registration because they could not "understand and explain" the constitution, while eleven whites had been refused registration, but not for failing to meet the requirements of the amendment. After a consideration of all these facts, the court had no doubt in finding that the "Boswell Amendment" was a definite attempt to disfranchise the Negro in Alabama. This decision was subsequently affirmed, per curiam, by the Supreme Court in a memorandum decision.[70]

In a recent case in Louisiana, the federal district court declined to consider the constitutionality of a constitutional amendment which provided that a person seeking to be registered be able to read any part of the constitution and give a reasonable interpretation thereof.[71] The plaintiffs in this class action were unable to fill out application forms in the specified manner, and for this reason they were not registered. It was shown that approximately 300 Whites and 800 Negroes had been denied regis-

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68 Davis v. Schnell, 81 F. Supp. 872 (S.D. Ala. 1949), *aff'd mem.,* 336 U.S. 933 (1949).

69 118 U.S. 356 (1886).

70 See note 66 *supra.* Court cited Lane v. Wilson, 307 U.S. 268 (1939); *Yick Wo v. Hopkins,* note 69 *supra;* and Williams v. Mississippi, 170 U.S. 213 (1898).

71 Williams v. McCulley, 128 F. Supp. 897 (W.D.La. 1955).

tration for the same reason. The court ruled that no discrimination had been proven and decided, therefore, that no decision on the constitutionality of the amendment was necessary. The court was not disposed to, ". . . impose on state and local authorities our conception of what constitutes a proper administration of their offices, so long as there is no discrimination and the laws are equally administered."[72] Also, the court specifically denied that it was in any way intimating an ultimate answer to the constitutional question involved in the case.

From the review of these cases, it is important to note that the federal courts have been reluctant to interfere with the sovereignty of the states in granting the right of suffrage, unless of course there is a clear violation of the Constitution. However, as demonstrated in the cases, a clear violation is exceedingly difficult to prove.

Conclusion

The question of the Negro's status in the South still remains the primary obstacle to achieving greater democracy in that part of the United States which has long been an enigma to those who have studied its problems.[73] To the serious students of southern problems, the solution is not expected to be instantaneous by the abolishing of any one discriminatory law, but many observers agree that this is an essential step toward the ultimate goal of racial equality. The courts have often appeared reluctant to order the states to meet their obligations to provide constitutional equality to Negroes and the courts have increased the difficulty of arriving at the ultimate solution to the problem by refusing to recognize the southern literacy tests for what they are. To dodge the issue by refusing to take notice of the commonly known incidents of discrimination, is sacrificing the constitutional rights of the Negro for an exasperating adherence to the rules of evidence. "To do this would be to shut our eyes to what all others than we can see and understand."[74] The very words of the tests themselves patently permit the exercise of that arbitrary power so vehemently condemned by the Supreme Court in *Yick Wo v. Hopkins, supra.* Can an ordinary layman satisfactorily interpret a clause of the Constitution when the most learned lawyers of the country arrive at diametrically opposed conclusions on the

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72 *Id.* at 899.

73 KEY, SOUTHERN POLITICS 675 (1949).

74 United States v. Butler, 297 U.S. 1, 61 (1936).

same clause? To ask the question is to answer it. This of course is not to condemn the literacy test as such, as it has been used with beneficial results, and if based on the theory that it is to insure an intelligent electorate it is valid. But to allow it to stand when its purpose is to disfranchise a great proportion of the American citizens is to admit that democracy cannot be fulfilled, since the privilege of voting is the very essence of the democratic system. The Supreme Court recently handed down an historic decision in refusing to continue the concept of "separate but equal" in the field of southern education.[75] This is some indication that the traditional methods of "legal" discrimination will no longer be tolerated by the courts. It can only be hoped that the courts will invoke this uncompromising ideal of equality to give to every eligible Negro his right to vote.

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[75] Brown v. Board of Education, 347 U.S. 483 (1954).