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Civil Rights and Universal Franchise

Joseph P. Josephson

COMMENTS

CIVIL RIGHTS AND UNIVERSAL FRANCHISE

The Commission; Its Goals and Methods

In the Civil Rights Act of 1957[1] Congress created the United States Commission on Civil Rights. The Commission was established as an independent agency within the executive department.[2] With respect to voting, Congress directed the Commission to investigate sworn written allegations of discrimination.[3] The Commission was required under the statute to submit a report by September 9, 1959 to Congress and the President.[4]

The Commission's report drew immediate fire from southern members of Congress. Much of the attack by the southern critics related to the methodology of the Commission. The selection of Dean George M. Johnson of Howard University Law School to serve as Director of Planning and Research produced a bitter attack from a southern critic, who referred to the Howard University law students as "NAACP's corps of part-time law clerks."[6] The use of secondary source material of questionable reliability was heavily criticized.[7]

Evaluation of the report requires an acknowledgment of the fact that the Senate delayed in confirming the nominees to the Commission and the President delayed in making nominations.[8] The Commission operated under the severe handicap of uncooperative behavior by some of the state officials, notably in Alabama. The Commission reported "a general lack of reliable information on voting according to race, color, or national origin", and recommended compilation of voting statistics, by race, by the Bureau of Census. No sworn complaints were submitted to the Commission until August, 1958—almost a year after passage of the Act of 1957 and less than 13 months prior to the date of the scheduled report required by the Act.[9] The Commission found itself additionally handicapped by the provision in the Act requiring it to request that the Attorney General petition for court orders compelling compliance with Commission subpoenas by contumacious witnesses instead of permitting direct petition by the Commission itself.[10]

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[1] 71 STAT. 634 (1957), 42 U. S. C. § 1975 (1958).
[2] 71 STAT. 634 (1957), 42 U. S. C. § 1975(a) (1958).
[3] 71 STAT. 635 (1957), 42 U. S. C. § 1975c(a)(1) (1958).
[4] 71 STAT. 635 (1957), 42 U. S. C. § 1975c(b) (1958).
[5] See, e. g., remarks by Senator Talmadge (Ga.), 105 CONG. REC. 17365 (Sept. 10, 1959).
[6] Speech by Senator Ellender (La.), 105 CONG. REC. 18028 (Sept. 14, 1959).
[7] *Ibid*, e. g.
[8] The President first nominated Commissioners on November 7, 1957. He nominated the first staff director on February 18, 1958. The Senate confirmed commissioners in March, 1958, after a delay caused in part by the resignation of one of the original nominees, Mr. Justice Reed. The staff director was not confirmed until May 14, 1958.
[9] REPORT of the U. S. Commission on Civil Rights, 1959, p. xiii.
[10] 71 STAT. 636 (1957), 42 U. S. C. § 1975d(g) (1958).

The report of the Commission, in fact, asked Congress to remove this impediment and to allow the Commission to apply directly for orders enforcing such subpoenas.[11]

Notwithstanding the difficulties under which the Commission functioned, useful information was supplied to Congress. The information gathered or compiled by the Commission revealed little indication of voting discriminations in the North[12] and West, and considerable evidence of deprivation of voting rights in the South. This deprivation was reflected in voting statistics, in testimony at public hearings held by the Commission, and in state statutes and constitutional provisions governing the electoral process.

The provisions in the statutes are fascinating, if disheartening, tributes to the ingenuity of men. Let the "grandfather clause" be held to contravene the Fifteenth Amendment.[13] Let the poll tax be repealed by the states themselves or by amendment to the Constitution of the United States.[14] Let the "White primary" be condemned on constitutional grounds.[15] None of these developments, alone or in combination, pierces the resources of determined legal imaginations dedicated to disenfranchisement of a race. The report of the Commission makes clear, through discussion of the legislative history of some of the state constitutions and statutes, that their purpose was boldly and patently to deprive Negroes of the vote. Quoting from the Official Journal of the Constitutional Convention of the State of Louisiana, 1898, the Commission cites the closing remarks of the Convention's President:

> "We have not drafted the exact Constitution that we should like to have drafted; otherwise we should have inscribed in it, if I know the popular sentiment of this state, universal white manhood suffrage, and the exclusion from the suffrage of every man with a trace of African blood in his veins. . . . What care I whether the test we have put be a new one or an old one? What care I whether it be more or less ridiculous or not? Doesn't it meet the case? Doesn't it let the white man vote, and doesn't it stop the Negro from voting, and isn't that what we came here for? (Applause.)"[16]

Findings of the Commission

Whether reached by study of southern election statutes and constitutional provisions as reported by the Commission, or by personal research, two conclusions are inevitable. The first conclusion is that innumerable methods of restricting voting by Negroes can be devised which, on their face, do not contravene the

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[11] *Op. cit. supra,* at 139.

[12] The Commission did find that Spanish-speaking residents of New York were frequent objects of disenfranchisement, an allegation repeated often in the Senate debates of 1960.

[13] Guinn v. United States, 238 U. S. 347 (1915).

[14] Since 1944, Georgia, South Carolina, and Tennessee have abandoned the poll tax.

[15] Smith v. Allwright, 321 U. S. 649 (1944).

[16] *Op. cit. supra,* at 33.

Fifteenth Amendment. These methods—provisions in state codes and constitutions —are efficient in themselves. Supplemented by biased administration by state officials and by intimidation, they can be doubly effective. Another inevitable conclusion is that these provisions relate chiefly to qualifications for registration and voting. Best known of the qualification provisions is the so-called "literacy test". In Louisiana the literacy test does not take the actual form of a requirement that the registrant be able to read and write. Instead, the Constitution requires that the registrant be able to interpret any provision in the Constitution of Louisiana or the Constitution of the United States.[17] The writer trusts that it was with mock seriousness that Senator Russell Long of Louisiana defended the fairness of the Louisiana literacy tests in the early stages of the 1960 civil rights debate:

> "The only requirement in that respect is that a person must be able to read a section of the Constitution of the United States or of the State of Louisiana and he could be asked to give a reasonable explanation of it. But that test is not given in English. If the person speaks French or Italian or some other language, the test is given to him in his native language.
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> "Much has been made about the test of a person's being asked to interpret any action of the Constitution. The interpretation given of the test by the Senator from New York is that a person must be able to interpret every section of the Constitution. That is not what is meant. The test is that one must be able to give some reasonable explanation of anything written in either the State Constitution or the Federal Constitution. If he can read only a few lines, such as the 14th Amendment, that would be satisfactory. Any colored man should be able to tell what that means, should he not? Or he might be able to read the 15th Amendment. He must be able to read any section and give a reasonable explanation of what that section means. The law does not require him to read every section. It requires him to read any section. If a person can give an explanation, he can be registered."[18]

Any literacy test lends itself to subjective administration by state officials. Negro residents of Bolivar County, Mississippi, told the Commission that after having been directed to write "a reasonable interpretation" of a section of the State Constitution, they were denied registration with the words, "your replies won't do".[19] The opportunity for subjectivity is especially great when the state officials determining qualification have vague statutory standards to guide them[20]

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[17] "Character and Understanding. If he is not able to read or write, then he shall be entitled to register if he shall be a person of good character and reputation, attached to the principles of the Constitution of the United States and of the State of Louisiana, and shall be able to understand and give a reasonable interpretation of any section of either Constitution when read to him by the registrar, and he must be well disposed to the good order and happiness of the State of Louisiana and of the United States and must understand the duties and obligations of citizenship under a republican form of government." LA. CONST., ART. VIII, § 1(d). Moreover, Louisiana citizen seeking to register must be able to write out the application forms without assistance or suggestions, and be intelligent enough to compute the number of years, months, and days he has lived. See State ex. rel. Smith v. Dardenne, 129 La. 835, 56 So. 905 (1911).

[18] 106 CONG. REC. 3900 (Mar. 2, 1960).

[19] *Op. cit. supra*, at 59.

[20] LA. CONST., Art. VIII, § 1(d).

or where, as in Louisiana or Mississippi,[21] the applicant must "interpret" possibly abstruse constitutional provisions to the satisfaction of the officials. It is interesting to note that in some states the applicant for registration must meet statutory literacy standards subject to the approval of the registrar, but the registrar himself need not have any special qualifications.[22]

The list of restrictive qualifications is endless. The Alabama "voucher" system[23] requires applicants for registration to be endorsed by enrolled voters and limits to two the number of applicants any voter may endorse. The North Carolina statutes give permanent registration to some voters, but not to others.[24] A recent Georgia statute allows a registrar to select those applicants who, in his judgment, should be required to answer thirty questions about civics and Georgia government.[25]

Negroes who meet the statutory qualifications, even as determined by biased administrators, may find themselves unable to register because the registrars cease to work[26] or because the identity of the registrars is kept secret.[27] Economic reprisals or long delays may be the cup of Negroes seeking to vote.[28] On election day, the precinct may have one voting line and ballot box for Negroes, and another voting line and ballot box for white persons.[29]

The legal and extra-legal weapons designed to curb Negro enfranchisement are effective deterrents. It is true that the low ratio of Negro voters in the South cannot be attributed solely to the legal and extra-legal weapons. There is voter apathy everywhere in America, among citizens of all races. It would not be surprising if many Negroes in the South, having had little educational opportunities and feeling something less than enthusiasm for the candidates on the ballot, are genuinely apathetic about the franchise. But the statistics defy the conclusion that apathy is the primary cause of low Negro registration. In each of the states which compose the Confederacy, save Tennessee, Texas and Arkansas, the ratio of non-whites of voting age to white persons of voting age is at least twice as great as the ratio of registered non-whites to registered whites. Apparently the most severe voting problem, in this connection, is in Mississippi.[30] No statistics, by

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[21] MISS. CONST. ART. XII, § 244.

[22] E. g., see VA. CODE, tit. 24, c. 3 and c. 6 (1958 Cum. Sup.); cf. VA. CONST., Art. II, § 20, 23. See also ALA. CODE 1940, tit. 17.

[23] *Op. cit. supra,* at 76.

[24] N. C. GEN. STAT., c. 163, § 32 (1952).

[25] GA. STAT. ANN. tit. 34, c, 34-1 (Supp. 1958).

[26] *Op. cit. supra,* at 79.

[27] *Ibid,* at 75-76.

[28] *Ibid,* at 79.

[29] *Ibid,* at 66, a reference to procedure reported by Ga. State Advisory Committee.

[30] According to unofficial figures cited by the Commission at p. 50 of the Report, no nonwhite persons were registered in 6 Miss. counties in which the majority of the population is nonwhite (1955 year). Only 3.89 percent of the total 1950 population of voting-age nonwhites were registered in 1950. The unofficial sources for these figures include a former

race, were available in Tennessee. In Texas nonwhites were 13.5 percent of all registered voters, although only 12.3 percent of the total voting age population.[31] In Arkansas nonwhites were 11.4 percent of all registered voters, but 20.5 percent of the total voting age population, bringing Arkansas just beneath the 2 to 1 ratio.[32]

On the basis of the statistics and the record accumulated by the Commission, it is not surprising that the Commission concludes that "something more than apathy"[33] causes the proportionately small Negro vote. The Commission's conclusion, indeed, finds support in the attitude taken by some southern officials, despite such denials as Alabama's Governor Patterson's that "Alabama has anything to hide."[34] Refusal of Alabama officials to cooperate with the Commission led one southern newspaper to observe: "Mr. Patterson's pugnacious attitude cannot help but create the impression in other parts of the country that we've got something to hide."[35]

It would not be fair to conclude that southern opposition to the Civil Rights Act of 1957 and to additional legislation in 1960 to protect voting rights further negatived the notion that voluntary "apathy" among Negroes is a principal cause in low voting figures. But southern opposition to voting legislation, in the middle of contentions of voting apathy among Negroes, created an inevitable reaction: why all the fuss? Certainly the mood of some Negroes in the South during the development of the Martin Luther King peaceful resistance movement, the spiritual father, perhaps, of this year's sit-ins in restaurants and snack bars, does not connote apathy. Moreover, the startling shift from county to county in registration figures manifests something else than apathy. During the Senate filibuster of 1960, perhaps the most profound southern voice in the Senate was that of Spessard Holland, senior Senator from Florida, who told his colleagues:

> "I do not know what has happened in Gadsden County. It is to me one of the dearest counties in the State . . .
>
> "Mr. President, there is a climate in that county adverse to the general participation of Negroes in voting. Therefore they do not register and vote. Human nature will be present in this problem wherever we find it. It happens that the two counties on the east and west of Gadsden County have very large participation in voting by their Negro citizens. The county just east is Leon County, where the State capital, Tallahassee, is located. It is a sensitive county politically. In it, as the record shows, Negro citizens have registered heavily and have voted heavily . . .
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> "Something happened in Gadsden County. It is a fine county. Good people live in Gadsden County, both white and colored. The situation in that

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Attorney General of Mississippi, a master's thesis published at the University of Mississippi, and a survey conducted by a newspaper at Jackson, Mississippi.

[31] *Ibid,* at 51, citing unofficial figures.

[32] *Ibid,* at 42 citing figures from official sources.

[33] *Ibid,* at 52.

[34] *Ibid,* at 86.

[35] From The Lee County (Ala.) Bulletin, quoted in the Report at p. 85.

> county is reflected in the climate there, which is not favorable as yet toward general participation by the Negro citizens in voting. So they have not registered and voted.
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> "I wish at this time to digress long enough to expand on this thought of human nature as having a great deal to do with this problem. Let us not forget that even though there is no threat, or even though there is no violence, or even any refusal by officials to allow Negroes to vote, if a Negro knows that the climate of opinion is strongly adverse to his registering and voting, realizing that the land belongs in large measure to the white people, that the banks belong to the white people, that the stores belong to the white people, that the county officials are entirely white people, and that the people who employ the teachers in the public school—and of course our Negro schools have nothing but Negro teachers—are white, a Negro under such a situation many times tends to be apprehensive. I believe we can all understand that that is quite natural.
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> "Evidently the Negroes in that county, in that very small county which does not have as many voters as one of the precincts in my hometown, the small town of Bartow, Fla., do feel that apprehensive." [36]

The social sciences should be ready, perhaps, to admit that much labor is expended within the discipline by elaborate "proofs" of generally accepted propositions. The proposition that Negroes are effectively disenfranchised in some southern areas cannot be gainsaid. (See, for example, the record in the *Washington Parish* case).[37] But it is a measure of our quest for accuracy and our sensitivity to charges of inadequate documentation that we labor to demonstrate the incontrovertible.

The Recommendations of the Commission

The hearings of the Commission, then, showed a pattern of deprivation throughout the South. This deprivation is achieved in many ways, which vary from state to state and from county to county. Behind the methods in use looms the spectre of variations in endless number, which could be applied in sequence or simultaneously, forming a complex fortress of resistance to the ideal of universal suffrage. The problem facing the Commission was to recommend solutions to the pattern of deprivation, solutions that in themselves might create a minimum of new problems and animosities.

The Report of the Commission contained four recommendations. Having found "a general deficiency of information pertinent to the phenomenon of nonvoting",[38] the Commission called for compilation by the Bureau of the Census of registration and voting statistics by race, color, and national origin. Since registration and voting application forms in some areas can be destroyed under

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[36] 106 CONG. REC. 3599-3600 (Mar. 1, 1960).

[37] United States of America v. Curtis M. Thomas, Registrar of Voters of Washington Parish, La., U. S. Sup. Ct., Feb. 29, 1960. Reference is made, *infra*, to certain aspects of the record, to which the Solicitor General made reference in oral argument. The provisions in the La. Const., the record showed, were used to disenfranchise Negroes who miscalculated by as little as one day the number of days of their life.

[38] *Op. cit. supra*, at 136.

state law[39] to resist federal investigations, the Commission recommended that Congress enact a federal requirement that registration and voting records be preserved for five years subject to public inspection during that period.[40] One of the methods of depriving Negroes of the opportunity to vote is inaction or failure to act by registrars. This method supplements affirmative acts of discrimination. The Commission recommended an amendment to the Civil Rights Act of 1957 to establish affirmative duties inconsistent with such inaction, and to make failure to act "under color of state law, arbitrarily and without legal justification or cause . . . in such manner as to deprive or threaten to deprive any individual or group of individuals of the opportunity to . . . vote", by any person or group of persons a civil wrong subject to injunctive relief.[41] As mentioned above, a recommendation was included to allow the Commission to petition for court orders enforcing Commission subpoenas.[42] Under the Civil Rights Act as passed in 1957 the Commission was required to request the Department of Justice to file such petitions.[43] The Commission found that this procedure was cumbersome and unsound.

By far the most discussed recommendation by the Commission was that Congress should authorize the President to appoint temporary federal registrars who would administer the state qualification laws and issue to all individuals found qualified, registration certificates entitling them to vote in federal elections. As the proposal appeared in the Report, the President would appoint the temporary registrars only upon certification by the Civil Rights Commission that sworn allegations of discrimination and unsuccessful registration in the locality where the temporary registrars were to function were well-founded.[44]

This recommendation was the source of much of the Congressional debate on civil rights in 1960. Southern spokesmen echoed the objection of Commissioner Battle:

> ". . . I disagree with the proposal for the appointment of a Federal Registrar which would place in the hands of the Federal Government a vital part of the election process so zealously guarded and carefully reserved to the States by the founding fathers."[45]

Finally, three of the Commissioners recommended a constitutional amendment. The proposed amendment would read:

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[39] See the Report, at p. 137, for discussion of retaliatory action taken against the Commission by the Alabama Legislature.
[40] *Op. cit. supra*, at 138.
[41] *Ibid*, at 138.
[42] *Ibid*, at 139.
[43] 71 STAT. 636 (1957), 42 U. S. C. § 1975d(g) (1958).
[44] *Op. cit. supra*, at 141-2.
[45] *Ibid.*

"Article XXIII

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State or by any person for any cause except inability to meet State age or length-of-residence requirements uniformly applied to all persons within the State, or legal confinement at the time of registration or election. This right to vote shall include the right to register or otherwise qualify to vote, and to have one's vote counted.

"Section 2. The Congress shall have power to enforce this article by appropriate legislation."

Three commissioners dissented from the recommended amendment. Commissioner Battle joined Vice Chairman Storey and Commissioner Carlton in dissent. They argued that the legislative remedies proposed by the Commission would prove adequate, and that no constitutional amendment should be enacted unless it were shown by experience that statutory relief could not safeguard the right to vote. In the debate on civil rights in the Chambers of Congress in 1960, almost nothing was heard about the proposed amendment. Liberals and conservatives, northerners and southerners alike, neglected it.

Can the legislative remedies proposed by the Commission or adopted by Congress break the heart of resistance? Probably no final judgment can yet be made. History would indicate that the immediate influence of legislation on mores and social attitudes is limited. History—and the attitude of some southerners and their spokesmen—would indicate too that the will to resist may harden as legislative pressure increases. Numerous southern spokesmen warned that the effect of civil rights legislation might be to increase racial repressions in the South, over the short run.[46] No doubt some of these warnings were sincere, and surely their validity can be logically defended, even if yielding to them would be akin to allowing mob domination of the government, and poor precedent in a democracy.

Such warnings cannot be said, of course, to be the basis for neglect of the proposed constitutional amendment. The warnings were directed at the legislation pending in Congress. The warnings would appear to be most apt in reference to legislation aimed patently at the South. The temporary registrar plan, of course, is in essence the voice of an America that is skeptical about the willingness of state officials in the south to comply with federal law. The proposed constitutional amendment would change the law of voter qualification in all but five states. Its effects would be felt in North as well as South. Under the amendment there would be no federal officials who would be symbols in their person of a resented

[46] E. g., see remarks of Rep. Robert Hemphill (S. C.), 106 CONG. REC. 4958-9 (March 11, 1960). "If I am a Member of this House and happen to be back here when the fire starts burning in places where it is not supposed to burn, if the Maker allows me, I intend to remind those of you who did vote for this legislation that you were told on this day and on yesterday exactly what it was that you were enacting."

central government. Nor would a checkerboard pattern of registration procedures be established in which federal officials would have the registration responsibility in some communities, but state or local officials would have that responsibility elsewhere. This checkerboard pattern will, of course, create resentment at the county courthouse level. The local registrar, removed from office, will grumble, and many of his peers will regard registration by the federal official—even when the federal registrar is the local postmaster—as an invasion of local prerogatives and as "discrimination in reverse". In contrast, the constitutional amendment would breed no such resentment. Its effects would be uniform, national, impersonal, and definite. No threat of federal executive intervention would hang over the head of the local officials.

Issues in any litigation would be simplified: is the complainant of age under state law? How long has the complainant been a resident of the state, the county, or the precinct?

This much having been said about the proposed amendment, the inevitable question is why the amendment has been neglected. The staunchest senatorial advocates of civil rights legislation have not advanced the amendment.

The overwhelming reason, probably, is political. During the congressional debate this year on civil rights, very little mail was received by members of Congress on the issue. Virtually all of the expressed interest in legislation came from the National Association for the Advancement of Colored People. The NAACP was an active lobby. Years of denial of the constitutional rights of American Negroes gave the lobby a powerful weapon—the weapon of crusading self-righteousness. The lobby's appeal was not always cerebral; it was capable of emotion, for which few could censure. A telegram from Roy Wilkins, Executive Secretary of the NAACP, dated March 3, 1960, to pro-civil rights senators manifested the NAACP mood:

> "after this sturdy display by you and other advocates of strong civil rights bill, the filibusterers are about to be offered victory in the form of emasculated version. No bill which has even grudging acquiescence of Russell, Eastland and Company can be acceptable to citizens for civil rights. . . . National Association for Advancement of Colored People soberly advises that current widespread dissatisfaction of Negro population with status quo clearly suggests that Congress should not temporize on action overdue by at least two generations."

With civil rights advocates indignant about action "overdue by at least two generations", the cumbersome amendment process could hardly have seemed attractive to civil rights proponents in Congress. Advancement of the amendment, even if coupled with legislative remedies, might well have raised the politically fearful charge of compromise. The lobby was clearly impatient.

The impatience was demonstrated by another event in the 1960 debate.

This was the decision by Senator Javits and Senator Douglas to seek poll tax elimination through legislation, not constitutional amendment, even though doubts about the constitutionality of such legislation were expressed. Introducing the poll tax elimination bill (S. 2868), Senator Javits told the Senate:

> "If once we adopt the idea that we have to proceed in this field by constitutional amendment, it seems to me we handicap ourselves in the normal current of civil rights legislation. Therefore, if we do not need a constitutional amendment—and I think I can demonstrate that irrefutably in the legal discussion which will take place—then we who believe in eliminating the poll tax as a requirement for voting should certainly not seek to do it ourselves.
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> "Then, too, Mr. President, as everyone knows, the constitutional amendment method is a very difficult and cumbersome one; for example, between 1927 and 1959, 1,819 constitutional amendments were proposed, but only 3 of that enormous number were ratified by the States as amendments to the U. S. Constitution."[47]

Senator Javits noted that in the civil rights field, "it seems inevitable that on many major bills to secure these rights, charges of unconstitutionality are constantly raised."[48]

It is true that a constitutional amendment requires the assent of 38 legislatures or state conventions, a truly "cumbersome" process. It has been noted that the overwhelming number of states, from New York to Alaska, have literacy requirements or other limitations upon universal suffrage, beyond the limitations of age or residence. Some of these would hesitate to ratify the proposed constitutional amendment, and the southern states could be expected to refuse ratification. It may also be true that a system of federal registrars or referees would prove to be adequate safeguards for the franchise. History and the record of southern parliamentary ingenuity compel skepticism about the adequacy of the statutory remedies.

However sufficient the legislative palliatives recommended or adopted may prove to be, the proponents of universal suffrage should surely desire an arsenal as potent and as varied as the arsenal of the resisters. One wonders whether the federal registrar, a local federal official whose federal career may depend upon the views or desires of his neighbors and his United States Senators, would have sufficient independence to handle complicated and inherently subjective qualification requirements objectively. In addition to career pressures the registrar would be subject to social pressures. In fact, no pressures might be required, for it is likely that the registrar would reflect the attitudes and fears of his community. It is doubtful whether the statute recommended by the Commission allowing establishment of temporary registrars would be invoked by the President of the United States. It is not difficult to imagine that some southern communities would

[47] 106 CONG. REC. 740 (Jan. 20, 1960).
[48] *Ibid.*

become expert at enrolling Negro voters at a pace fast enough to avoid the temporary registrar system, and slow enough to preserve the political impotency of the southern Negro. Surely the foot-dragging with "all deliberate speed" in the school integration cases would support such a prediction.

At least one spokesman for the South impliedly supported the principle of the proposed amendment. Said Senator Spessard Holland of Florida:

> ". . . in my view the wholesome situation is for us to have a universal suffrage subject only to age requirements, residence requirements, and lawful records requirements. In our State we have no educational test and no "grandfather clause" that makes eligible some white people whose fathers or grandfathers were veterans. We have no special consideration for any class of people."[49]

It is submitted that the elimination of literacy requirements and other qualifications as conditions precedent to voting is merited even apart from the present concern on racial discrimination. At one time in our history, the ability to read and write, or other indications of learning, may have had some significance in relation to the ballot. Today, when knowledge of world events is available through a variety of media not requiring literacy, although reading remains the best source of information, the *raison d'etre* of the literacy requirement is obscure. Why should the qualifications for voting be even stiffer than the qualifications of testamentary capacity?

Some criticism has been expressed to the effect that the proposed constitutional amendment would allow idiots, lunatics, or imbeciles not institutionalized to vote. It is doubtful that idiots, lunatics, or imbeciles would exercise the franchise in significant number. It is also doubtful whether idiots, lunatics, or imbeciles are necessarily without basis upon which to make political judgments, and it cannot be assumed that for the purposes of voting, they are so unable to determine where their self-interest and the self-interest of the country lie that they should be denied the vote. There is no indication that states imposing only age and residence qualifications have suffered as a result. And the "parade of horrors" which this argument against the constitutional amendment can conjure up is less dreadful than the actual, present, horror of disenfranchised Americans.

In conclusion it is suggested that the proposed constitutional amendment merited consideration by Congress, and received none; that no civil rights statute can put an end to the complicated litigation, abuses in the application of subjective registration tests, or terminate the long, hard, road to universal suffrage. Even adoption of the amendment, alone or in combination with legislation, would provide no panacea. Discrimination can be accomplished by subjective treatment of voting applications, without reference to literacy or mental qualifications, as shown by the record in the *Washington Parish* case. In Washington Parish, the

[49] 106 CONG. REC. 3598 (Mar. 1, 1960).

United States showed, Negro voters were denied registration on the most trivial of grounds. The application form required the applicant to indicate his race. Negroes who wrote "colored", "Negro", "c", or "n", were challenged and disqualified; the sole correct answer, the local officials held, was "black". Happily, the Court affirmed an order requiring them to be registered.

Behind the decision to ignore the proposed constitutional amendment lies the fact that the public is largely indifferent to the civil rights cause. The white south is aroused; the Negroes of America sense the dawn of a new day. They know that they are able now to shape events, even as in former days events took them up, enslaved them, repressed them. But the general public wants neither extreme. The civil rights forces have concentrated on the elected representatives, with bold political pressure but they have neglected the public at large.

In a country of almost universal literacy, the literacy test as a prerequisite to registration or voting can be little more than a tool for mischief. It is doubtful whether restrictions upon the franchise which affect the unconfined mentally ill or ex-convicts serve a useful purpose. There is no indication that such restrictions produce more intelligent decisions at the polls, and it is probable that they are anachronisms or, at best, traditions. Especially in view of the findings by the Commission, restrictions upon the franchise should be reviewed. The cause of civil rights will be advanced if its champions interest the general public in these problems of public policy. Today, the writer believes, most citizens view the civil rights struggle as spectators view a contest, but they do not root very hard.

Postscript

The Senate has passed, with amendments, H.R. 8601, the Civil Rights Bill of 1960. Congress has rejected the temporary registrar plan proposed by the Commission. A court-appointed referee plan suggested by the Eisenhower administration has been approved, but this plan is hardly less susceptible to objections of federal interference in state matters. It excludes the possibility of legal and moral leadership from the White House under the 1960 civil rights legislation.

Under this 1960 Bill a federal district judge may appoint a voting referee who shall receive applications for court orders declaring applicants qualified to vote and shall take evidence and report his findings to the district court. Applicants would be required to apply for registration first from state officers before they could petition for a federal district court order. Such an order can affect only federal elections. The referee must be a registered voter within the judicial district. Actual enrolment of a voter remains with state officials, but state officials who knowingly disregard a court order may be punished for contempt of court. No order can be issued unless there is a finding of a pattern or practice

of disenfranchisement and unless the applicant is found to be "qualified under state law to vote".

Citizens concerned with the civil rights cause can only hope that the 1960 legislation will make possible a more complete Negro franchise, and will not hamper future efforts to achieve better legislation if the hope is unfulfilled. The fundamental problem of state qualification laws has not been tackled. The procedures established under the 1960 legislation are not sleek, simple or swift. It cannot be said now that the proposed law represents a significant advance, although in practice it may prove better than it seems.

JOSEPH P. JOSEPHSON

THE USE OF INDEPENDENT CONTRACTORS TO MINIMIZE EMPLOYMENT TAXES—THE DOUBTFUL CASES

The social security and unemployment taxes due from proprietors are based upon wages paid employees. If services are performed by independent contractors the compensation afforded is free of these taxes.[1] The 1958 amendments to the Federal Insurance Contributions Act (FICA) increased the amount due from both employer and employee to 3% of the wages paid.[2] Unemployment taxes which are paid by the employer remained at 2.7% to the state and .3% to the federal government.[3]

This increasing tax and ever-constant bookkeeping burden can be alleviated if the individual performing the services could be placed on an independent contractor basis. The independent contractor would thereupon be liable to pay 4½%

[1] 26 U.S.C. (I.R.C. 1954) § 3306.

[2] 26 U.S.C. §§ 3101, 3111 as amended 1958. The Federal Insurance Contributions Act requires that a certain amount (currently 3%) be withheld from wages paid employees and that an equal amount be contributed by the employer toward the Social Security Fund.

[3] The Federal Unemployment Tax Act (FUTA) 26 U.S.C. § 3301 requires that an amount equal to 3% of wages paid be deposited in the federal fund but a credit up to 90% of that due is given to contributions made to state unemployment funds that qualify under federal standards. All states enacted the requisite unemployment tax laws and the 2.7% due to state funds became uniform. Many state laws so passed gave a more restrictive definition of independent contractors so that some individuals might be exempt from FUTA taxes but liable under the state unemployment tax acts (SUTA).