without standards, without limitations imposed by law; the judgment is necessarily subjective. Thus the right to vote depends more upon the caprice of the registrar than upon the possession of measurable qualifications.

A year after the Convention of 1898, Thomas J. Kernan, an outstanding Louisiana lawyer and one of the delegates to the convention, pegged the understanding and interpretation test about as well as it could be pegged:

> "The 'understanding clause' was objectionable for many reasons. . . . The adoption of such a plan would have negatived the idea of a return to 'purer methods, wiser laws' in the matter of elections, which, in Louisiana, had grown to be a demand, second in importance only to that for the elimination of the negro from the electorate. This 'understanding clause' fixes no standard of qualification for the franchise. It is left to the discretion of the registration officer to select any one of the numerous articles of the Constitution as the test of the voter's 'understanding;' and there are, therefore, as many different tests as there are articles in the Constitution. This arbitrary power, lodged with the registration officer, practically places his decision beyond the pale of judicial review; and he can enfranchise or disfranchise voters at his own sweet will and pleasure without let or hindrance. As long as registration officers are mere men, endowed with the same qualities only as their fellow mortals, it will always be unsafe to intrust them with such absolute power. The Convention, in my opinion, acted wisely in refusing to adopt the 'understanding clause,'." Kernan, The Constitutional Convention of 1898 and Its Work, Proc. La. Bar Ass'n for 1899, 54, 59.

The ordered society our Constitution establishes does not permit one man to have uncontrolled power over his fellow citizens. When the State clothes a registrar with omnipotence in deciding the qualifications of voters, it has enacted "not a law, but an attempt to make the arbiter in such a case a law in himself." City of New Orleans v. Palmisano, 1920, 146 La. 518, 83 So. 789, 791. See also State v. Chisesi, 1937, 187 La. 675, 175 So. 453; City of New Orleans v. Levy, 1957, 233 La. 844, 98 So. 2d 210; Benjevich v. Louisiana Licensing Bd. for Marine Divers, 1959, 237

La. 467, 111 So. 2d 505. When a State constitution gives raw power to a registrar to grant, or to withhold registration as he sees fit, the constitution violates both the due process and the equal protection clauses of the Fourteenth Amendment.

Yick Wo v. Hopkins firmly established the principle that the unequal enforcement of a law will render the results of the enforcement void. In Yick Wo, convictions were overturned without a declaration that the ordinance itself was invalid, assuming possible nondiscriminatory enforcement. But the doctrine of nondiscriminatory enforcement of a law has never been limited to nullifying the effects of the law. Indeed, a Maryland case extensively quoted in Yick Wo concerned the invalidation of an ordinance granting unrestrained power to the city government to issue permits for boilers. Baltimore v. Radecke, 49 Md. 217. City of New Orleans v. Palmisano.

In sum, some laws may never win constitutional approbation, because they have no rational relation to a legitimate governmental objective and because the unrestrained discretion, without standards, they grant an officeholder makes them incurably subjective, unreasonable, and incapable of equal enforcement. The understanding and interpretation test is such a law. 89 Although the vote-abridging purpose and effect of the test render it per se invalid under the Fifteenth Amendment, it is also per se invalid under the Fourteenth Amendment. The vices cannot be cured by an injunction enjoining its unfair application. The appropriate relief, therefore, is to declare the test invalid and enjoin its enforcement in Louisiana.

VII.

We come now to consideration of the new citizenship test.

By resolution of August 3, 1962, in compliance with Act 90 62 of 1962, the State Board of Registration adopted a voter-qualification test, apparently tailored to fit this case should the interpretation test be held unconstitutional. The resolution and the statute do not, and could not, affect the constitutionality of the interpretation test. That test is still the law of the State; so there is no question of mootness. The new requirement rests on an understanding and interpretation of the Constitution of United States as a whole. The statute requires the Board to prepare "an objective test of citizenship". The Board in its resolution of August third directed the registrars to use the new test, pointing out that Louisiana law prescribes as one of the qualifications for registration that the applicant "shall be of good character, and shall understand the duties and obligations of citizenship under a republican form of government". This qualification has been in the Constitution, unimplemented, since 1898.

The Board's "Instructions to registrars" require an applicant to draw one of ten cards. Each card has six multiple-choice questions, only four of which the applicant must answer correctly. There are a total of forty-three different questions in various combinations. This test is considerably more difficult than the "tests" administered to white applicants in the past, in that it requires a comprehension of the theory of the American system of government and a knowledge of specific constitutional provisions. 91 The sort of answers shown by the evidence to have been accepted in the past from white applicants would be unacceptable now under a fair administration of the test. Considering Louisiana's unhappy position as the State with the highest rate of illiteracy and the lowest percentage of citizens

with a high school education, the citizenship test can be regarded as a step forward only by those in favor of a severely limited representative government of guardians elected by a small, elite assembly.

It is no small constitutional problem to define "a republican form of government" and determine if the Board's new test measures fairly an applicant's understanding of the "duties and obligations of citizenship under a republican form of government." The Supreme Court could not do it, or so it seemed to say.[92] We reserve judgment therefore on the constitutionality of the new examination. Although we need not pass on the constitutionality of the "citizenship test" itself, we must consider the constitutional effect of this new action on those who have been discriminated against in the past. The object of this suit is not only to prevent future injustices but to rectify past injustices.

In the twenty-one parishes which used the interpretation test, there are few Negroes registered. This is only partly a result of the policy of initially registering as many white persons and as few Negroes as possible. It is also a result of past discrimination in purging the rolls of Negro but not white registrants, as a first step; and, as a second step, preventing the re-registration of Negroes (but not white applicants) by an arbitrary administration of the interpretation test. Moreover, we cannot overlook the inhibiting effect of this policy on Negroes who would otherwise have registered.

A major change in the standards of voting qualifications is usually followed by a general re-registration of all voters. This practice prevents previously registered voters, who are unacceptable under the new standards, from remaining on the rolls

while those with equal or superior qualifications are denied suffrage. Thus, complete re-registration was used in 1898 to wipe clean the rolls and prevent the re-registration of Negroes under the new standards. Similarly, when the qualifications were formally altered in 1921, the State required the re-registration of all voters. Except in the parishes with periodic registration, there has been no complete re-registration since the interpretation test was resurrected in the middle fifties. In no parish has there been re-registration since the introduction of the new test. Of course, general re-registration would in large measure destroy the continuing usefulness of the past discriminations designed to keep Negroes off of the registration rolls. Yet the new test, or any other procedure more demanding than those previously applied to the white applicants, will have the effect of perpetuating the differences created by the discriminatory practices of the past; most of the potential white voters are on the rolls but few if any of the potential Negro voters are on the rolls. As in Gomillion v. Lightfoot and Lane v. Wilson, the necessary effect of the new law, regardless of its fair facade, is built-in unconstitutional discrimination.

The cessation of prior discriminatory practices cannot justify the imposition of new and onerous requirements, theoretically applicable to all, but practically affecting primarily those who bore the brunt of previous discrimination. An appropriate remedy therefore should undo the results of past discrimination as well as prevent future inequality of treatment. A court of equity is not powerless to eradicate the effects of former discrimination. If it were, the State could seal into permanent existence the injustices of the past.

A good example of the principle that the abolition of one variety of discrimination does not justify the imposition of another is Lane v. Wilson. After the Supreme Court in Guinn struck the grandfather clause from the Oklahoma Constitution, Oklahoma required all qualified persons not registered at a time when that clause was in effect to register within twelve days or be permanently disenfranchised. Most of the eligible whites were already registered but most eligible Negroes were not. In declaring unconstitutional the second Oklahoma attempt to bar Negroes from the ballot box, the Supreme Court said:

> "Exemption from this onerous provision was enjoyed by all who had registered in 1914. But this registration was held under the statute which was condemned in the Guinn case. Unfair discrimination was thus retained by automatically granting voting privileges for life to the white citizens whom the constitutional 'grandfather clause' had sheltered while subjecting colored citizens to a new burden." 307 U. S. 276.

In Guinn and Lane no past wrongdoing could be imputed to the State because denial of the suffrage to Negroes was legal before 1866 -- the "freezing" date. The instant case cries louder for relief because the citizenship tests freeze the results of past illegal practices.

Recently, in Mississippi, a sheriff, as an ex-officio poll tax collector, had instituted a new policy requiring individuals paying the poll tax for the first time see him personally. He maintained two offices and was seldom at either office. Speaking for the Fifth Circuit, Judge Bootle, sitting by designation, declared:

> "This new policy, while purporting to apply to Negroes and whites indiscriminately, actually operates to the disadvantage of Negroes on account of their race, as did the previous instruction. Substantially, all of the 5,099 white persons of voting age who were liable to pay a poll tax have been permitted to do so while not one of the Quitman's 6,438 Negroes of voting

age has been listed as paying the tax. Obviously, a blanket requirement that all persons who have never paid the poll tax before, that being a relatively small percentage of white people and all Negroes, who now desire to pay their poll tax for the first time must see the Sheriff personally operates unequally and discriminatorily against Negroes. . . . Sheriff Dogan's new instructions by necessary result re-creates and perpetuates the very discrimination which prevailed under his former instructions and practices." United States v. Dogan, 1963, 5 Cir. 314 F.2d 767.

In United States v. Atkins, No. 20325, September 30, 1963, the Court of Appeals for this Circuit, recently quoted Dogan with approval on freezing although it declined to apply the principle:

"We do not dispute the power of the federal courts to invoke the freezing principle to give relief when necessary. It has been used before in voting cases. . . ."

Insofar as freezing is concerned, Atkins is distinguishable from the instant case on the facts and on the relief sought. In Atkins, the Court of Appeals noted that (1) it would be feasible to purge the registration lists in Dallas County of "those persons proved by the appellant to have been registered by a procedure which does not meet the minimal requirements of state law"; (2) "the procedure of the Registrars which would have the greatest freezing effect was the practice of not allowing rejected applicants to reapply", a practice the District Court has now eliminated; (3) "other [discriminatory] practices soon will be eliminated"; (4) "The only remaining freezing effect could come as a result of differences of practices allowable within the zone of permissible interpretation of Alabama law", but "where or how strictly the Board will interpret Alabama law, is yet to be determined". In Atkins, the United States asked the Court to order the Board of Registrars "to register Negroes in the future who possess the qualifications required of whites during the period 1952-60". The Court objected to making " . . . permanent fixture in Dallas County"

of practices violative of state law. Here, as will be developed later in the opinion, the relief does not have such an effect and is restricted in its application. Moreover, Atkins was a pattern and practice case under Section 1971 in which the district court held that the current Board of Registrars had not discriminated against Negroes, a finding undisturbed by the Court of Appeals. Finally, in Atkins, the question was whether a Board of Registrar should be required to violate a valid state law in the future because predecessor boards of that county had violated the same law in the past; here, the issue as to the citizenship test is whether a state may raise the standards for registration by enacting a new law which has the necessary, inescapable effect of freezing discrimination under an unconstitutional prior law. A fortiori, Lane v. Wilson squarely covers the case before this Court.

In United States v. Lynd, 5 Cir. 1962, 301 F.2d 818, cert. den'd, 1963, 371 U. S. 393, this Court entered a temporary injunction, pending appeal, restraining a Registrar from

> . . . failing or refusing to give to Negro applicants the same privileges as to reviewing their application forms at the time they are filled out and advising Negro applicants of such omissions as appear on their forms as they are now or heretofore have given to white applicants under similar circumstances. . . .(Emphasis added.)

Again, in United States v. Penton, M.D.Ala. 1962, 212 F. Supp. 193 the district court found that while prior to February 1961, the Board of Registrars of Montgomery County, Alabama, had not required perfection in completing the application form, as of that date "the Board raised the standard to require a perfect application." 212 F. Supp. at 197. During the earlier period the Board had used the application form "as a tricky examination or test" for Negroes only, and "[i]f a Negro applicant failed to meet the standard required of him,

he was denied registration regardless of whether the error or omission on the form was formal, technical, or inconsequential." White applicants, unlike Negroes, had been assisted in manifold ways. With respect to past and future Negro applicants, Judge Johnson applied "standards consistent with past practices." Id. at 200. He enjoined the defendants "from using . . . different and more stringent qualification requirements for registration . . . than . . . [those] used by the Board . . . since at least January 1, 1956." United States v. Penton, Civil Action No. 1741-N (M.D.Ala., 1962), Decree, p. 2.

Ross v. Dyer, 5 Cir. 1962, 312 F.2d 191, presented an analogous situation. The Court had before it the brother-and-sister rule of the Houston public school system, a long-standing rule requiring a child to attend the school which his older siblings attended. The rule was one "of long standing applied to white and Negroes alike". This Court observed:

> "On the basis of the evidence which showed it to be a rule of long standing applied to white and Negroes alike, the District Judge in his memorandum opinion reasoned that 'the colored plaintiffs do not seek the same treatment as is afforded white students, to which they are entitled; in fact, they seek a different, and superior, treatment, by reason of their race. The law does not grant them this.' But we think that logic alone is insufficient to overcome the practical effect of this rule which as to some Negro families perpetuates a segregated system despite the plain purpose of the stair-step plan to ameliorate it. That it applies equally to white and Negro overlooks the fact that as to one group, compulsory attendance at certain schools has been the result of unconstitutional discrimination. The purpose of the court decree is to eradicate them under circumstances of equal protection, no matter how they are manifested. (Emphasis added.)

Similarly, Taylor v. Board of Education of New Rochelle, S.D.N.Y. 1961, 191 F. Supp. 181, aff'd 1961, 2 Cir. 294 F.2d 36, cert. den'd, 368 U. S. 940 (1961), involved a situation in which the school board of the City of New Rochelle recognized that there

had been past discrimination, but sought to justify a gerrymandered school district as merely a result of a policy of not changing the boundaries of any school district. The district court held that the school board could not "maintain the status quo, imposing, in effect, a freeze on the artifically created boundaries of the Lincoln district." 191 F. Supp. at 186. Judge Clark, for the Court, said

> The facts recited above showing the Board's acceleration of segregation at Lincoln up to 1949 and its actions since then amounting only to a perpetuation and a freezing in of this condition negate the argument that the present situation in Lincoln School is only the "change" or "inevitable" result of applying a neighborhood school policy to a community where residential patterns show a racial imbalance. Rather they make it appear that the Board considered Lincoln as the "Negro" school and that district lines were drawn and retained so as to perpetuate this condition. (Emphasis added.)

In insisting that registrars not apply new to Negroes a difficult test which was never applied to white registrants, there is no more compulsion of state officials to violate state law here than there was in Yick Wo. Enforcement of the citizenship test at this point would be just as discriminatory against Negroes as enforcement of the San Francisco licensing ordinance directed against Chinese laundrymen would have been in Yick Wo. The validity of the ordinance requiring a license for a laundry operated in a wooden building could be asserted only after a relicensing of all laundries on a nondiscriminatory basis. Allowing white laundrymen who had been favored in the past to remain licensed would have perpetuated the discrimination. Thus, although the application of the ordinance was enjoined, the ordinance itself was unconstitutional in the sense that its enforcement had the necessary effect of violating the constitution until the State revoked all outstanding licenses and thereafter issued new licenses nondiscriminatorily.[93] So it is here.

In short, the obligation of the State to abolish its system of racial discrimination in voting registration is not met simply by a process of applying new and higher standards to all future applicants. The new tests discriminate against Negroes of voting age by subjecting them to standards to which the registered applicants (most whom are white) were not subjected. The future promise of evenhanded justice does not render federal courts helpless to rectify past injustices.

VIII.

This brings us to the question of fashioning an appropriate remedy.

The power of Congress to adopt Civil Rights measures for protection of the electoral process against debasement by discrimination is expressly granted in the Fifteenth and Fourteenth Amendments. It is no housekeeping power. The sweep of the "appropriate legislation" clause is no less than the sweep of the "necessary and proper" clause. The protection of the right to vote, without regard to race, is important to the individual, but the Nation has the paramount interest in the integrity of the electoral process. These considerations argue against a grudging, narrow remedy. So that the will of Congress will be clear to the courts, Section 1791(e) expressly states:

> "This subsection shall in no way be construed as a limitation upon the existing powers of the court."

Thus, in addition to the specific remedy provided in the Civil Rights Act, courts retain an undiminished authority to grant suitable equitable relief that will both rectify past inequities now, without delay, and will prevent future inequities. See State of Alabama v. United States, 5 Cir. 1962, 304 F.2d 583, aff'd 1962, 371 U. S. 37, 83 S. Ct. 145, 9 L. Ed. 2d 112.

Remedies suited to past litigation are not appropriate here for several reasons: (1) it is impracticable, if not impossible, and in any event it would create hardships, generate endless litigation, and dislocate registration offices, if a wholesale attempt were made to purge the rolls of white persons improperly registered; (2) it would be extremely difficult to establish who was unconstitutionally purged for failing to take the interpretation test; (3) it would be next to impossible to establish which qualified Negroes were rejected for failure to understand or interpret a constitutional provision to the satisfaction of the registrar, because in many parishes inadequate records are maintained by the registrars; and (4) it is completely impossible to ascertain how many and which qualified Negroes were deterred from seeking registration, knowing that they had no chance of succeeding, since other qualified Negroes were kept off of the rolls by the practice of racial discrimination. In many respects, the last factor is the most important:

> Discrimination by a registrar is especially harmful because it is the most effective method for denying the right to vote: it denies the right to vote before an individual has the chance to exercise it, and it bars not only the individual concerned from all elections but inhibits other qualified voters from running the gauntlet of discriminatory and humiliating practices by a registrar and his deputies. United States v. Manning, W.D.La. 1963, 215 F. Supp. 272, 288.

A nondiscriminatory re-registration of all voters in the State would be the only completely fair and effective means of clearing away the effect of the interpretation test and of applying the new citizenship test. In a general registration the State could require any new, reasonable qualifications. However, this Court adheres to the principle that only to the extent clearly necessary should federal courts interfere with established state

as to the citizenship test,
and local procedures. Accordingly,/we restrict our order to the twenty-one parishes in which the interpretation test was used and we cast our order so as to afford an option to the State. In any of the twenty-one parishes where the interpretation test was used, there need be no general re-registration. However, until there is a general re-registration of all voters in a parish where the test was used, or until the discriminatory effect of the test has been vitiated to the satisfaction of the court, we enjoin the use of the citizenship test. We narrow our order further, in the interest of equalizing the qualifications for registering, by restricting the injunction against the use of the citizenship test to the registration of those persons who were of voting ageand who had the required residence in the parish prior to August 3, 1962; that is the period in which they were exposed to discrimination.

This is a suit in equity. Its purpose is not to punish Louisiana for past activities. Such a purpose would be presumptuous on the part of the Court and offensive to principles of American federalism. Neither is it merely to prevent continued enforcement of unconstitutional provisions of Louisiana law. The prime purpose is to provide a remedy for a federally protected right by giving equitable relief: opening the rolls for those to whom the rolls were illegally closed, those who were directly discriminated against by rejection of their applications and those who were inhibited from attempting to register because of known humiliating discriminatory practices of registrars. Finally, we repeat that this decision does not touch upon the constitutionality of the citizenship test as a state qualification for voting. Our order forbids enforcement of the citizenship test until Negro applicants can be judged by the same standards

used in qualifying those persons already registered. In that sense the court is cooperating with the State in laying a predicate for the fair application of a voting qualification which the State is now endeavoring to convert into an objective test with ascertainable, although unusually high, standards.

IX.

We summarize our holding. The Court holds that the interpretation test is unconstitutional because of its unlawful purpose, operation, and inescapably unconstitutional effect. We enjoin its use in Louisiana. To make this decree effective and to exorcise past discrimination, the Court enjoins the use of the "citizenship test" in the Parishes of Bienville, Claiborne, DeSoto, East Carroll, East Feliciana, Franklin, Jackson, LaSalle, Lincoln, Morehouse, Ouachita, Plaquemines, Rapides, Red River, Richland, St. Helena, Union, Webster, West Carroll, West Feliciana, and Winn as to persons of voting age who had the requisite residence in the parish before August 3, 1962. These are parishes where the registrars used the interpretation test. We enjoin the use of the citizenship test in the named parishes until there has been a general re-registration of all voters in a named parish, or until it has been shown, to the satisfaction of the court, that the interpretation test has lost its discriminatory effect in the parish.

This Court retains jurisdiction for the purpose of allowing the United States to prove and the State to disprove that the interpretation test was used in any of the forty-three

parishes not named in the Court's decree, and for other purposes.

Formal findings of fact and conclusions of law will be entered at a later date.

/S/ JOHN MINOR WISDOM
UNITED STATES CIRCUIT JUDGE

/S/ HERBERT W. CHRISTENBERRY
UNITED STATES DISTRICT JUDGE

E. GORDON WEST dissenting:

I respectfully dissent. Reasons to be assigned.

/S/ E. GORDON WEST
UNITED STATES DISTRICT JUDGE

FOOTNOTES

1/ The following authorities are cited by author and page only:

Carter, The Angry Scar (1959); Caskey, Secession and Reconstruction in Louisiana (1910); 1 Chambers, History of Louisiana (1925); 1 Davis, History of Louisiana (1960); Evans, A Study in the State Government of Louisiana (1910); Ficklen, History of Reconstruction in Louisiana (1910); 4 Fortier, History of Louisiana (1904); Howard, Political Tendencies in Louisiana (1957); Kendall, The Civil War and Reconstruction (1953); Landry, The Battle of Liberty Place (1955); Lonn, Reconstruction in Louisiana (1918); Phelps, Louisiana (1905); Powell, History of Louisiana Constitutions, Volume 1, Part 1, Louisiana Law Institute, Projet of a Constitution for the State of Louisiana (1954); Randall, The Civil War and Reconstruction (1937); Shugg, Origins of Class Struggle in Louisiana (1939); Simkins, History of the South (1953); Woodward, Origins of the New South (1951).

2/ Article VII, Section 2 and Article I, Section 4, La. Const. of 1921.

3/ Article VIII, Section 18, La. Const. of 1921, as amended in 1962 and LSA-R.S. 18:191.

4/ Article VIII, Section 18, La. Const. of 1921.

5/ The registrar of voters for the Parish of Orleans is appointed by the Governor. La. Const. of 1921, Article VIII, Section 18, LSA-R.S. 18:1.

6/ As originally adopted in 1921, Article VIII of the Constitution contained two separate interpretation tests.

Cont'd - Footnotes - #6

Section 1(c) provided that persons able to read and write "shall also be able to read any clause in this Constitution or the Constitution of the United States, and give a reasonable interpretation thereof." Section 1(d) provided that persons unable to read or write could register if "able to understand and give a reasonable interpretation of any section of either Constitution when read to him by the registrar. . . ." (Emphasis added.) In 1961, the test in Section 1(c) was deleted entirely as was the opening phrase of Section 1(d), which had made the latter section applicable only to illiterates. The result is that the test originally designed for illiterates is now the test applicable to every registrant, and the literacy requirements of Section 1(c) (filling out the form, etc.) are now applicable to every applicant.

LSA-R.S. 18:35 repeats verbatim the interpretation test as it appeared in Article VIII, Section 1(c) of the Constitution. Although that language has been deleted from the Constitution it remains in the statute. LSA-R.S. 18:36 repeats the test for illiterates that appeared in Article VIII, Section 1(d) of the Constitution before 1960, and which is now applicable to literate registrants as well. Section 36 has not been changed; thus according to the statute, illiterates can register, although under the Constitution it appears that they cannot register.

7/ Art. 1, Section 2, and the Seventeenth Amendment provide that in elections of United States Representatives and Senators "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature". Traditionally, these provisions establish the

basis for the proposition that the States alone possess the right to establish qualifications for voting. See Ervin, Literacy Tests for Voters: A Case Study in Federalism, 27 Duke L. Cont. Prob. 481 (1962); Werdegar, The Constitutionality of Federal Legislation to Abolish Literacy Tests, 30 Geo. Wash. L. Rev. 723 (1962) (Werdegar accepts the constitutionality of a congressional standard for literacy); Ritz, Free Elections and the Power of Congress over Voter Qualifications, 49 Am. Bar Jour. 949 (1963); Note, Use of Literacy Tests to Restrict The Right to Vote, 31 Notre Dame L. Rev. 250 (1956). For recent writings in which the authors conclude that a congressional anti-literacy statute is constitutional, see Van Alystyne, "The Administration's Anti-Literacy Test Bill", 61 Mich. L. Rev. 805 (1963); Maggs and Wallace, Congress and Literacy Tests, 27 Duke L. & Cont. Prob. 516 (1962); Bement, Congressional Authority to Restrict the Use of Literacy Tests, 30 Cal. L. Rev. 265 (1962); Note, The Constitutionality of Federal Anti-Literacy Test Legislation, 46 Minn. L. Rev. 1076 (1962). See also 1 Crosskey, Politics and The Constitution 524-537 (1953).

2/ The Civil Rights Commission has unanimously found, to the surprise of none, that the registration procedure was the principal means of disfranchising Negroes. 1961 Civil Rights Report 133. A leading authority writes: "In the South registration assumes special importance because of the peculiar regional suffrage qualifications. Registration authorities determine whether applicants meet literacy and understanding tests and thus have functioned as the principal governmental agency for Negro disfranchisement. . . . Commonly the statutes attempt to vest finality of decision in the local registration

officials and make appeals from their decisions difficult. In states whose suffrage qualifications involve wide discretion in their application, this finality of decision may re-enforce abuses of discretion. . . . Every local registration officer is a law unto himself in determining the citizens's possession of literacy, understanding, and other qualifications. . . . Louisiana's battery of literacy, understanding, and character requirements . . . for the white population mean absolutely nothing. They exist only as a bar to Negro registration." Key, Southern Politics 560, 563, 573 (1949). "[The findings of the Civil Rights Commission] and a survey of cases filed under Section 1971 will make even clearer that it is abuses of discretion by registrars, operating under state laws allowing them to test applicants by subjective standards, that is felt to be the problem." Van Alystyne, Anti-Literacy Test Legislation, 61 Mich. L. Rev. 805, 813 (1953). See also McGovney, The American Suffrage Medley 61, 66-73 (1949).

"Apathy", an unctuous, self-excusing word comes trippingly to the tongue to rationalize the small Negro registration in some of the parishes in Louisiana. There are undoubtedly a number of reasons besides discrimination for the disparity between Negro and white registration. Thus, in a recent study the authors write: "About 28 per cent of the voting age Negroes in the South were registered to vote in 1958, as compared to about 60 per cent of the voting age whites. It would be a gross error to attribute this substantial disparity to legal and political discrimination alone, though unquestionably official discrimination is a factor. For Southern Negroes

overwhelmingly possess the historical heritage of low social status, relatively small incomes, and limited educations received in inferior schools. These attributes are associated with low voter turnout among all populations, regardless of skin color or region. Moreover, the low status, income and education of many southern whites foster racial prejudice. Thus poverty and ignorance may have a double-barrelled effect on Negro political participation by decreasing the Negroes' motivation and ability to participate while increasing white resistance to their doing so. The low voting rates of Negroes in the South may result to a large extent from these factors, as well as from direct political or legal discrimination by the white community." Mathews and Prothro, Political Factors and Negro Voter Registration in the South, 57 Am. Pol. Sc. Rev. 355 (1963). See also Mathews & Prothro, Social and Economic Factors and Negro Voter Registration in the South, 57 Am. Pol. Sc. Rev. 24, 39-44 (1963). But discriminatory registration laws and practices are the most potent weapons to keep Negro voting down. Price, The Negro and the Ballot in the South (1959); Brown, American Suffrage (1960); Mangum, The Legal Status of the Negro (1960). There was no apathy in the Negro electorate in 1897 when Negro registration equalled white registration in Louisiana. It is a fair inference that Negro interest in voting, accelerated as it must have been by the civil rights explosion of recent years, is no less in 1963 than it was in 1897.

9/ In 1810 New Orleans had 8,001 white persons, 5,727 free persons of color, and 10,824 slaves. Aggregate Amount of Persons Within the United States in 1810. (Wash. D.C. 1811) p. 82

Cont'd - Footnotes - #9

A battalion of gens de couleur fought at the Battle of New Orleans in 1815. In 1830 there were 16,710 free persons of color and 109,588 slaves in Louisiana. Rousseve, The Negro in Louisiana 24-29, 44-45 (1937); Stahl, The Free Negro in Ante-Bellum Louisiana, 25 La. Hist. Quart. 301 (1942); Woodson, Free Negro Heads of Families in the United States in 1830 (1925). In 1860 Louisiana free men of color owned real property and slaves valued at $50,000,000. Carter, 253. A person of color was presumed to be free. Adelle v. Beauregard, 1810, 1 Mart. 183.

10/ President Lincoln had suggested to Governor Hahn that "some of the colored people" might be given the franchise, "as for instance, the very intelligent and especially those who have fought gallantly in our ranks." See Carter, 253-255. The Constitution of 1864 was hailed as a model in the North, but Congress did not approve it. Evans, 42. The Louisiana Supreme Court held that the Constitution and legislation under it was only "provisional in character". Police Jury v. Burthe, 1869, 21 La. Ann. 325.

11/ Ficklen, 71; Caskey, 128, Carter, 253-255.

12/ Debates in Convention, 1864, 450; Ficklen, 72.

13/ Report of the Board of Registration to the General Assembly of Louisiana (1869).

The Civil Rights Act of March 2, 1867, required a registration of all voters of "whatever race, color, or previous condition." No one could be registered, however, "who had participated in the rebellion", and a loyalty oath had to be taken by each registrant.

14/ Resolution of Democrats, p. 9.

Cont'd - Footnotes

15/ Ficklen, 109-115, 4 Fortier, 94. See Warmoth's self-serving but firsthand, War, Politics, and Reconstruction (1930). Ironically, the election was meaningless, except for its effect on Warmoth's carerr. Congress did not recognize either Warmoth or the two Louisiana senators.

16/ Shugg, 211.

17/ Shugg, 211; Powell, 369.

18/ Shugg, 213. The most severe laws were enacted by the police juries, not the legislature. Fleming, Documentary History of Reconstruction 279-81 (1906). See also Randall, 724-30.

19/ Shugg, 216. Caskey, 219-31. Thirty-four Negroes were killed and over 200 were wounded. The Congressional Report of the Select Committee on the New Orleans Riots concluded that it was a "massacre" plotted and perpetuated in cold blood. H.R. Rep. 39 Cong. 2d Sess., No. 16 (1866). No historian has endorsed that judgment. Shugg, 217. Compare Ficklen, 175 and DuBois, Black Reconstruction in America 464 (1935).

20/ Shugg, 218. See also Howard, 73. "The reconstruction of Louisiana prolonged the civil war between North and South and precipitated within the state first a social revolution and then a counter-revolution. Each phase was marked by a new constitution which changed, directly or indirectly, the dispensation of power." Shugg, 196.

21/ "The new suffrage law was the most stringent, perhaps, in its defranchising clauses to be found in the constitutions of all the Southern states." Evans, 45.

22/ Article 99, in part, provided: "The following persons shall be prohibited from voting and holding any office: . . . All

persons who are estopped from claiming the right of suffrage by abjuring their allegiance to the United States Government, or by notoriously levying war against it, or adhering to its enemies, giving them aid or comfort, but who have not expatriated themselves, nor have been convicted of any of the crimes mentioned in the first paragraph of this article, are hereby restored to the said right, except the following: Those who held office, civil or military, for one year or more, under the organization styled 'the Confederate States of America;' those who registered themselves as enemies of the United States; those who acted as leaders of guerrilla bands during the late rebellion; those who, in the advocacy of treason, wrote or published newspaper articles or preached sermons during the late rebellion; and those who voted for and signed an ordinance of secession in any State. No person included in these exceptions shall either vote or hold office until he shall have relieved himself by voluntarily writing and signing a certificate setting forth that he acknowledges the late rebellion to have been morally and politically wrong, and that he regrets any aid and comfort he may have given it; and he shall file the certificate in the office of the secretary of state, and it shall be published in the official journal." This Article was amended in 1870 to prohibit only those persons from voting or holding office who had been convicted of treason, or of a crime punishable by imprisonment in the penitentiary.

23/ Powell, 370.

24/ In 1873 the Kellogg legislature elected Pinchback to the United States Senate. After a contest extending over many years the Senate gave him $20,000 for expenses, but refused to

seat him. "[E]ducated mulattoes such as Oscar Dunn and P.B.S. Pinchback [were] a type which was the peculiar product of ante-bellum racial relations in Louisiana." Shugg, 221.

25/ Chambers, 675; Simkins, 287; Lonn, 240-45; Howard, 76; Carter, 202-209.

26/ Lonn, 265-67; 1 Chambers, 682; Simkins, 287; Howard, 76; Carter, 225; Sen. Exe. Doc., 43 Cong., 2 Sess., No. 17, House Repts., 43 Cong., 2 Sess., No. 261, 773-80.

27/ Shugg, 224, 226.

28/ "The best men of the State were soon enrolled in its [White League] ranks." Phelps, 376. In 1875, when General Sheridan called the leaders of the White League "banditti", the Catholic Archbishop in New Orleans, the Episcopal Bishop of Louisiana, the Methodist Bishop at New Orleans, the leading Jewish Rabbi and the leading Presbyterian Rector in New Orleans promptly came to their defense in a joint public statement. 4 Fortier, 175. Not long after, the people in New Orleans danced to the tune of "The Banditti Waltz".

29/ "It is impossible to estimate the strength or to exaggerate the importance of an organization like the White League. When the New Orleans Bulletin, put its enrollment at at fourteen thousand men, 'organized and armed', a North Louisiana paper [Minden Democrat, August 29, 1874] claimed that there were at least ten thousand men who belonged to it in that region." Shugg, 230. According to Chambers, the first organization was formed at Opelousas in St. Landry in April 1874. Carter states that it was originated in Winn Parish. Cross (2 Biographical and Historical Memories 57. Goodspeed, 1892) claimed it for Caddo. There were a number of organizations,

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some very loosely organized, which became White Leagues or were associated with the White League formed in New Orleans July 2, 1874. For example, there was The White Man's Club or Caucasian Club, organized in Franklin, in St. Mary's Parish by Judge Alcibiade DeBlanc as early as 1867; leagues in Winn and Grant in July 1874; "Bulldoozers" in East Feliciana, West Feliciana, East Baton Rouge, Morehouse, and Ouachita; the Innocents, most of whom were of Italian extraction. The White Leagues were especially strong in Southwest Louisiana, St. Landry, St. Martin, St. Mary, Lafayette, and New Iberia. The New Orleans White League was formed by the same men who had organized the Crescent City Democratic Club in 1868. This was a secret society composed of members of the Chalmette Club, a social club which merged with the Boston Club in 1873. The Crescent City White League, under General Fred N. Ogden, was organized into two regiments in infantry and one regiment of artillery; in the parishes the leagues were often only political clubs. Associated with the Crescent White League was the First Louisiana Regiment, known as "Louisiana's Own", a secret organization intended to serve as part of Governor McEnery's militia. (The Federal Government recognized William Kellogg and not John McEnery as Governor.) See Landry, 52-68; Lonn, 254-307; Kendall, 363; 1 Chambers, 679; Phelps, 376; Fortier, 132-62; Carter, 224-229; 1 Davis, 271; Lestage, The White League and Its Participation in Reconstruction Riots, 18 La. Hist. Quart. 358 (1928); House Repts. 43, Cong., 2 Sess., No. 101, Part ii. 206-7.

Negroes and radical Republicans formed Black Leagues (The "Republican Alliances") and other protective organizations, but no organized leagues comparable with the White Leagues. In

1867 the Union League Clubs of New York and Philadelphia sent organizers into Louisiana to form Union and Liberty Leagues among the Negroes. Landry, 10; Carter, 52, 62; Lonn, 255-57.

30/ The Metropolitan Police was a military force equipped with guns and cannon, under a commission of five, including three Negroes. Originally it had jurisdiction over New Orleans, Jefferson City, and Saint Bernard Parish. Later, the Governor was authorized to use it anywhere in the State.

31/ "The 14th of September, 1874, though apparently barren of results, was really the blow that broke the fetters imposed upon by the Reconstruction acts of 1867. On January 9, 1877, the people rose again to achieve the freedom of their State, and the chains, half-sundered in 1874, fell to the ground." 4 Fortier, 162. "The Battle of Liberty Place in 1874 changed the tide of opinion, brought the end of Reconstruction in the South, and started the Southern people on their way to the great prosperity which they now enjoy." Landry, 193. These opinions are typical of the views of all the orthodox Louisiana historians.

32/ Landry, 190-192.

33/ Woodward, 23-30; Haworth, The Hayes-Tilden Disputed Election of 1876 (1906); Woodward, Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction (1951); Carter, 326-341; Simkins, op. cit. 293-94; 4 Fortier, 191; Kendall, 876 (1953); Lonn, Reconstruction in Louisiana 495-525 (1918). The Commission appointed by President Hayes to investigate the Nicholls-Packard election, declared Nicholls, the Democratic candidate, legally elected, while it gave the electoral votes to Hayes, instead of to Tilden. The Nicholls legislature,

which the President's commission recognized, elected Henry M. Spofford to the United States Senate; the unrecognized Packard legislature elected William P. Kellogg. The Senate refused to seat Spofford and seated Kellogg. President Hayes pensioned off Packard as a United States Consul.

34/ Cash, The Mind of the South 128 (1941). For an appraisal of these events which most white Louisianians would regard as unorthodox, see Howard, 77-83. For example: "[T]he Negro became the object of white terror based primarily on political grounds. The inescapable conclusion is that in 1873 the Republican party was not given a free ballot in a fair election. . . . A planter - merchant elite re-established itself in the political sun, but it could stay there only through gaining support of farmer groups and a portion of the Negro groups, or through intimidation of either or both." Howard, 82.

35/ Powell, 386.

36/ "The South had not yet solved the problem of disfranchising the illiterate, ignorant Negro by organic law non-violative of the Fourteenth and Fifteenth Amendments to the United States Constitution. Until such a solution was arrived at, other means had to be employed-intimidation, permission, subtle suggestion that to vote the white man's ticket was most inconducive to the black man's health, call it what you will. . . . [The Constitution of 1879 partly met] the threat of a possible return to black domination . . . [by] the constitutional provision which lodged in the hands of the chief executive of the state extraordinary appointive powers. The Governor named all local and state officials whose election by popular suffrage was

not specifically enjoined by the Constitution. He appointed the members of the police jury of every parish, a select body of representative citizens upon whom devoloped the enacting of laws and ordinances affecting parish affairs, as well as the determining of just what the rate of local taxation would be to meet parish needs." 1 Chambers, 697. See also Evans, 53, Woodward, 54.

37/ General Beauregard asked for complete political equality for Negroes, desegregated public schools, and desegregated places of public accommodation. Williams, The Louisiana Unification Movement of 1873, 2 Jour. Sou. Hist. 349 (1945).

38/ Statement of Registered Voters in the State of Louisiana.

39/ Report of the Secretary of State 1962, 562.

40/ "There are those who maintain to this day that John N. Pharr . . . was really elected. . . . The near success . . . shaped their future course to the end that elections in Louisiana should be determined by the white vote and not black." 1 Chambers, 698. "The contest over the Governorship in 1896 showed that until the Negro vote was eliminated from the electorate, there was always some danger of the election of a Republican Governor, and made apparent to the Democratic leaders the advisability of a new Constitution." Marr, A Historical Review of the Constitutions of Louisiana, 1912-13 Proc. La. Bar Ass'n, 229, 246; Preface to Annotated Constitution of Louisiana (1930). Judge Robert H. Marr was chairman of the Committee of Seventy, which sponsored the "Convention of the White People [Leagues] of Louisiana" in Baton Rouge, August 24, 1874, and constituted an inner circle of the White League. He called the meeting of the White League to order at

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Henry Clay Statue on Canal Street just before the Battle of Liberty Place.

41/ Howard, p. 99.

42/ "The Fusionists were sure the Democrats had stuffed the ballot boxes and insured victory." Howard, 99. "It is true that we win these elections but at a heavy cost, and by the use of methods repugnant to our idea of political honesty and which must, in times, demoralize the people of Louisiana." New Orleans Times-Democrat, January 11, 1893. "The remedy, declared the reformers, was the disfranchisement of the Negro. . . . 'The remedy suggested here is to punish the man who has been injured . . . to prevent the Democratic election officials from stealing their votes'". Woodward, 327. "Now we are not begging for 'ballot reform' or anything of that sort", explained William C. Handley of Georgia. "But we want to be relieved of purchasing the Negro to carry elections. I want cheaper votes." Carter, 379.

In addition, as Woodward, Shugg, Howard, Key, Heard and many others have pointed out, the disfranchising qualifications were important in the struggle as to <u>which whites</u> should be supreme. In Louisiana the predominantly white parishes were fighting, not only Negro domination, but also oligarchic domination of the State by New Orleans and the southern parishes in which the population was predominantly Negro. A similar situation existed in Mississippi and Alabama where the cleavage was sharp between the counties in the Black Belt and those in the Hill country.

43/ Journal of the Constitutional Convention of 1898, 374.

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44/ There is an excellent account of the convention in Eaton, The Suffrage Clause of the New Louisiana Constitution, 13 Harv. L. Rev. 279 (1899). J. A. Snider (Bossier) summed up the Convention's policy, to "disfranchise as many Negroes and as few whites as possible". New Orleans Times-Democrat, Feb. 8, 1898. A year later, Thomas J. Kernan, one of the distinguished members of the Convention, used these identical words. Kernan, The Constitutional Convention of 1898, Proc. La. Bar Ass'n for 1899, at p. 51. Conscious of the moral dilemma and the paradox, Kernan observed: "By the irony of fate, this ultra conservative convention was called upon as its first chief duty to do the most radical thing known to legislation; to falsify the accepted teaching of history and roll back the wheels of political revolution without blood shed; to take away the ballot from almost, if not quite, a majority of the voters of the State." Ibid at 56. "Ernest B. Kruttchnitt . . . on taking the chair, stated that the great purpose for which the Convention had been called together was . . . the elimination of the Negro vote, while granting the suffrage to every white man in the State". Marr, 219.

45/ There never was any doubt as to the purpose of the "understanding clause" in any of the Southern States which adopted it. Judge S. S. Calhoun, President of the Mississippi Convention, said: "There was revolution. There is no manhood nor honesty in attempting to disguise. Our people said to the miserable hucksters and their ignorant Negro dupes, 'You shall rule a great State no longer. . . . Come down, get out!' And they did come down and get out and the white people of Mississippi took charge of her polity." Calhoun, The Causes and

Events that Led to the Calling of the Constitutional Convention of 1890, 6 Miss. Hist. Soc. Pub. 105 (1902). "Of two ills Mississippi chose the lesser. She has exchanged an organic malady for a functional disorder. The Convention substitutes a desiccated for a diseased electorate. . . . Southern civilization no longer requires evil acts to secure good government. McNeilly, The Constitutional Convention of 1890, 6 Miss. Hist. Soc. Pub. 130-38 (1902). See also 2 Rowland, Mississippi, The Heart of the South 246-255 (1925). In the South Carolina Convention, the next to adopt the clause, Ben Tillman dealt with the problem with characteristic candor: "Some have said there is fraud in this understanding clause. Some poisons in small doses are very salutary and valuable medicines. . . . The [registration] officer is responsible to his conscience and his God; he is responsible to nobody else. There is no particle of fraud or illegality in it. It is just showing partiality, perhaps, (laughter) or discriminating. Ah, you grin." (Emphasis added.) Journal of the Constitutional Convention of the State of South Carolina, 469 (1895). In the Virginia Convention Senator Carter Glass was equally outspoken: "Discrimination! Why that is precisely what we propose; that exactly is what this convention was elected for". Proceedings and Debates of the Constitutional Convention, 1901-02, II, 3076. See Woodward, 332-35. See also Monnet, The Latest Phase of Negro Disfranchisement, 26 Harv. L Rev. 42 (1912); Smith, Negro Suffrage in the South, Studies in Southern History and Politics 231-56 (1914); Porter, A History of Suffrage in the United States, 208-12 (1918).

46/ Frank P. Stubbs, a delegate from Ouachita, was quoted as saying: "To adopt the understanding clause would be 'to send

word' to the registrars to do what you will not do yourself. We are told that it is more honorable to permit highway robbery than to rob a hen roost. I see no honor in either". New Orleans Times-Democrat, March 20, 1898. Mr. Phanor Breazeale of Nachitoches opposed the plan as a certain instrument of fraud. Judge A. V. Coco of Avoyelles wrote to the Picayune, "The very reason of this Convention is, in morals, dishonest, for its purposes are to do in an indirect way what we cannot do directly. . . . This unconstitutional measure we propose to enact through constitutional and honest means. Well, I say it cannot be done through constitutional and honest means." Eaton, The Suffrage Clause in the New Louisiana Constitution 13 Harv. L. Rev. 279, 290 (1899)

"Most of the discussions of the Convention seemed to have been about Section 5 of Article 197. Many of the gentlemen expressed the view that that section was in conflict with the Amendments of the Federal Constitution. Mr. Semmes, in voting for the suffrage ordinance, said . . . that he had no scruples of conscience as to its moraltiy. . . . In view of the fact that these amendments were never constitutionally adopted, it is hard to understand what question of conscience is involved in the advocacy of measures by means of which the operation of those two amendments may be defeated. The sole question is what is the surest and most practicable way to bring about that defeat. Mr. Semmes' prophesy [that it would withstand constitutional attack] has been fully justified by the results. The suffrage provisions of the Constitution of 1898 have worked well. Under the authority of the Primary Election Law, to annex additional qualifications for party suffrage, the Democratic State Central Committee has added the qualification 'white' and thus politically wiped out the Negro". Marr, 2-5. Dr. H. Dickson Bruns,

whose father wrote the appeal to the "Citizens of New Orleans" which precipitated the Battle of Liberty Place, voted against Section 5 because he considered it an "unAmerican doctrine that a man shall be a voter because his father or grandfather once possessed that right . . . [it] violates justice, law and morals, and I have faith that such violation inexorably evolves in the fulness of time its own punishment upon the violator, be it a man, a party, or a State". Journal, Constitutional Convention of 1898, 142. William O. Hart, an eminent lawyer, voted against it because he "consider[ed] Section 5 in conflict with the Constitution of the United States". Id. 144.W. H. Wise agreed: "Section 5 is unconstitutional, and vicious, and undemocratic in principle." Id. 147. Charles T. Soniat voted against it because it was "glaringly unconstitutional, undemocratic, and unAmerican. . . . You are discriminating against certain colored citizens in the very teeth of the Constitut[ion] . . . this law, conceived in secret and born in the still hours of last night . . . will breed discord and strife, and will be in a few years execrated by the very parties who now support it on its final passage." Id. 141. Judge Coco thought that the section was a "weak and transparent subterfuge and unmanly evasion of the Constitution of the United States".

The press was highly critical. The New Orleans Times-Democrat, March 8, 1898, reported that "indignation over the suffrage ordinance is limited to no section of the State". Again, March 29, 1898, "North Louisiana joins hands with Central and Southern Louisiana in protest." Part of this protest was based on the fear that too many white persons would also

be disfranchised. The Times-Democrat for February 8, 26, 27, 1898 reported that the understanding clause was rejected because most of the delegates feared that it would place too much power in the hands of the registrar.

Both Louisiana Senators, McEnery and Caffrey, expressed the opinion that the Louisiana suffrage provision was unconstitutional. Porter, History of Suffrage in the United States, 213 (1918).

47/ Section 5 of Article 197 provides in part: "No male person who was on January 1st, 1867, or at any date prior thereto, entitled to vote under the Constitution or statutes of any State of the United States, wherein he then resided, and no son or grandson of any such person not less than twenty-one years of age at the date of the adoption of this Constitution, and no male person of foreign birth, who was naturalized prior to the first day of January, 1898, shall be denied the right to register and vote in this State by reason of his failure to possess the educational or property qualifications prescribed by this Constitution; provided, he shall have resided in this State for five years next preceding the date at which he shall apply for registration, and shall have registered in accordance with the terms of this article prior to September 1, 1898, and no person shall be entitled to register under this section after said date."

48/ Negro males in Louisiana over twenty-one who owned property in excess of $300, and were thus qualified to register, numbered 5900. Report of the Secretary of State 559 (1902).

The disfranchising character of the complicated application form was also of great importance. This form has a number

of traps for the unwary. One requirement is that the applicant state his age in years, months, and days. "It was estimated that not more than ten per cent of negroes of voting age would be able to satisfactorily pass this test." Evans, 56. See Kernan, 57-60.

49/ Persons who qualified under this section before September 1, 1898, when it expired, were: 37,377 whites and 111 Negroes. Report of the Secretary of State 558 (1902). Later, registration under the grandfather clause was extended to September 1, 1913. Act 24 of 1912.

50/ "One fourth of the white voters had been disfranchised or discouraged from registering. Almost 40,000 less white people had registered in 1900 than in 1897." Howard, 103.

51/ Journal of the Constitutional Convention, 9.

52/ Journal of the Constitutional Convention, 380.

53/ La. Senate Journ. 1898, 33-35

54/ The Constitution of 1898 was called under an act of the Legislature which was voted upon by the people, who, in so voting, agreed that the Convention might declare the Constitution adopted without referring it back again to the people. "This act . . . is a curiosity among the acts calling constitutional conventions." Eaton, The Suffrage Clause in the New Constitution of Louisiana, 13 Harv. L. Rev. 279 (1899). However, the "only constitutions wholly submitted to the people in a proper election were those in 1845 and 1852." Hart, The Constitutions of Louisiana, 3 La. Hist. Quar. 750, 782 (1921).

55/ These figures and most of the others used in this opinion are taken from Reports of the Secretary of State, compiled as "Statements of Registered Voters in the State of

Louisiana".

The voters qualified to register in 1900 were as follows:

	White	Negro
Under the "educational" qualification	86,157	4,327
Under the "property" qualification	10,793	916
Under the "grandfather" clause	29,189	0

There should be a mental adjustment for all comparative registrations figures in Louisiana to take into account the downward trend of the Negro population in the State. For example in 1900 Negroes made up about 50 per cent of the population. Today, they make up about 30 per cent of the population of Louisiana.

56/ 1 Chambers, 699.

57/ Landry, 130, 233.

58/ Times-Picayune, February 27, 1921. As early as 1916, in a comment in the first issue of the Southern Law Quarterly, now the Tulane Law Review, M. B. Redman discussed the interpretation test (Mississippi's understanding clause) as a constitutional equivalent of the Louisiana grandfather clause. 1 Sou. L. Quart. 46, 47-48 (1916).

59/ "Historical facts of general and public notoriety may indeed be proved by reputation, and that reputation may be established by historical words of known character and accuracy." Morris v. Lesses, 1833, 7 Pet. 553, 558. (J. Story)

The United States introduced a large number of certified copies of newspaper articles of the period. The newspaper articles are admissible to show purpose. They are the only contemporaneous reports of the 1921 convention available,

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because of the Convention's decision to hold secret, unreported meetings and discussions on suffrage. In Hall v. St. Helena Parish School Board, E.D. La. 1961, 197 F. Supp. 649, aff'd 1961, 368 U. S. 515, 82 S. Ct. 529, 7 L. Ed. 2d 521, this Court turned to newspaper accounts in support of its finding of a racially discriminatory purpose in the adoption of a local option school closing law. In that case we noted: "The sponsors of this legislation, in their public statements, if not in the Act itself, have spelled out its real purpose" (197 F. Supp. 652). In an accompanying footnote, we said: "In Louisiana, as in most states, the legislative debates, committee proceedings, and committee reports are not recorded officially. Going to the next best records, newspapers, we find in the record of this case a mass of contemporary newspaper articles, filed by the plaintiff and by amicus curiae, bearing on the legislative history of Act 2 and its related measures. Affidavits from the authors of the articles attest their accuracy. In all instances they are part of official records. Their reliability is evidenced by their substantial agreement." See Dallas County v. Commercial Union Assurance Co., 5 Cir. 1961, 286 F.2d 388, involving private litigation. See also Davis v. Schnell, S.D.Ala. 1949, 81 F. Supp. 872, aff'd 336 U. S. 933, 69 S. Ct. 743, 93 L. Ed. 1093. Cf. Grosjean v. American Press Co., 1936, 297 U. S. 233, 56 S. Ct. 444, 80 L. Ed. 660.

60/ New Orleans Times-Picayune, April 3, 1921, p. 1; New Orleans States, March 3, 1921, p. 2.

61/ New Orleans Times-Picayune, March 27, 1921, p. 16.

62/ New Orleans Times-Picayune, February 27, 1921, p. 8;

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Looney, Suffrage in the Louisiana Constitution of 1921, 6 Loyola L. Jour. 75, 87 (1925).

63/ Times-Picayune, March 14, 1921. The Times-Picayune of March 22, 1921 reported that Judge Pugh "holds that these requirements or qualifications are judicially bombproof."

64/ Baton Rouge State Times, May 9, 1921, p. 7; New Orleans Times-Picayune, March 14, 27, 1921, p. 1; Looney, 79. "With regard to suffrage, the principal feature . . . was the addition of the 'reasonable interpretation' and 'understanding' provision of the Mississippi Constitution". Evans, 68.

65/ New Orleans States, March 31, 1921, p. 6. As in 1898, when Booker T. Washington pleaded unsuccessfully for the Convention not to disfranchise the Negroes, Bishop R. E. Jones, Dr. J. S. Clark, President of Southern University, John G. Lewis, B. V. Baranco, and Walter L. Cohen, had no quarrel with an objective educational requirement.

66/ Powell, 485.

67/ The (Baton Rouge) State Times, May 9, 1921, p. 7, col. 1. See also New Orleans Times-Picayune, March 27, 1921, p. 1, col. 1.

68/ Powell, 443.

69/ "Until its nullification by the Supreme Court in 1944, the white primary was a more important component of the system than formal limitations on the right to vote. Negroes were excluded as Negroes from the party primary; they could be legally excluded from the general election only by indirection. Invalidation of the white primary, therefore, brought again into prominence the literacy test and other methods of disfranchisement by indirection." Key, Southern Politics, 555 (1949).

See also Weeks, The White Primary, 8 Miss. L J. 135 (1935); Weeks, The White Primary: 1944-48, 42 Am. Pol. Sc. R. 500 (1948); Harris, The Quest for Equality 113-125 (1960); Moon, The Negro Vote in the Presidential Election of 1956, 26 Jour. Negro Education 219 (1957); Lubell, The Future of the Negro Voter in the United States, 26 Jour. Negro Education 400 (1957); Nabrit, The Future of the Negro Voter in the South, 26 Jour. Negro Education 418 (1957); Sindler, Huey Long's Louisiana 34 (1956); Ewing, Primary Elections in the South 4 (1957); Note, Negro Disfranchisement, 47 Col. L. Rev. 76, 77 (1947). "But as late as 1944, before the Supreme Court struck down the White Primary, not a single Negro held public office in the South; unless one includes a few border states." Greenberg, Race Relations 133 (1959).

70/ Minutes of the Democratic State Central Committee, various meetings, Oct. 6, 1931 to Oct. 7, 1947.

71/ See also Nixon v. Herndon, 1924, 273 U. S. 536, 47 S. Ct. 446, 71 L. Ed. 759; United States v. Classic, 1941, 313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368; Terry v. Adams, 1953, 345 U. S. 461, 73 S. Ct. 809, 97 L. Ed. 1152; Elmore v. Rice, E.D. S.C. 1947, 72 F. Supp. 516, aff'd 4 Cir. 1947, 165 F.2d 387, cert. den'd, 333 U. S. 875.

72/ The number of white voters increased from 711,289 in 1944 to 762,560 in 1946 to 385,437 in 1948. Again, these are from the Secretary of State Reports, Statements of Registered Voters in the State of Louisiana. See also Price, The Negro Voter in the South 1 (1957).

73/ La. Legislature, House Concurrent Resolution No. 27 (1954).

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74/ The Report of the State Board of Registration for the month ending December 31, 1962, shows that 5,216 white persons and 34 Negroes are registered to vote in Claiborne Parish.

75/ Article II, Act of Incorporation.

76/ April 15, 1956, the Citizens Council of Ouachita Parish challenged all 5,782 of the registered Negroes. Of these, all but 595 were stricken from the rolls. The Attorney General of Louisiana sent Mr. Shaw as a special representative to advise the Registrar of voters of Ouachita Parish. As of December 1962, Negro registration in Ouachita was up to 1,038. In Bienville Parish permanent registration was adopted after the purge. All persons who had registered since January 1, 1953, were put on the permanent rolls, except those who were purged. For the Negroes, nearly all of whom were purged, the interpretation test was a prerequisite to registration while for whites, nearly all of whom had registered before, it was not a prerequisite. Thus, as of October 1, 1955, there were 4,825 white persons registered to vote in Bienville Parish out of a white voting population which, according to the 1960 census, was 5,617.

Some parishes required no special effort. For example, in East Carroll, Madison, Tensas, and West Feliciana, there were no registered Negroes and in Claiborne there were only a few on the rolls. In parishes such as Webster, Morehouse, Franklin, and West Carroll, where there was periodic registration, there was no need for a purge because the rolls were automatically cleared. Negro registration in Webster dropped from 1,776 to 83 in 1956. However, there were purges even in some parishes which had periodic registration, such as

Lincoln, Red River, and Richland Parishes. Negro registration in Red River dropped from 1,360 to 16 in 1958.

77/ These parishes are: Bienville, Claiborne, DeSoto, East Carroll, East Feliciana, Franklin, Jackson, LaSalle, Lincoln, Morehouse, Ouachita, Plaquemines, Rapides, Red River, Richland, St. Helena, Union, Webster, West Carroll, West Feliciana, and Winn. The Director of the State Board of Registration testified that certain other parishes use the test but he has no personal knowledge of this. He said Caddo Parish uses the test, but the parties have agreed that it does not.

78/ The depositions were taken of twenty registrars and former registrars who used the interpretation test. The earliest use of the test by any of these registrars was in November 1955. The former registrar of Plaquemines Parish testified that he started using the test late in 1954. But see Trudeau v. Barnes, 5 Cir. 1933, 65 F.2d 563.

79/ Thus, in Red River Parish very few Negroes have applied since 1956, although there were 1,362 Negroes registered before the purge. As of December 31, 1962, there were 31 Negroes registered.

80/ Article 7 reads: "All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve; all of whom must concur to render a verdict." Article 10 reads: "The

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power of taxation shall be vested in the Legislature; shall never be surrendered, suspended or contracted away; and all taxes shall be uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only. No property shall be assessed for more than its actual cash value, ascertained as directed by law, and all taxpayers shall have the right of testing the correctness of their assessments before the courts at the domicile of the assessing authority, or as may be directed by law. The valuation and classification fixed for State purposes shall be the valuation and classification for local purposes; but the taxing authorities of the local subdivision may adopt a different percentage of such valuation for purposes of local taxation." Article 14 reads: "The City of New Orleans by a vote of three-fourths of all members of the Sewerage and Water Board of New Orleans, approved by a vote of three-fourths of all the members of the Board of Liquidation, City Debt, and approved by resolution of the Commission Council, or governing body, shall have power and is hereby authorized to issue bonds to the amount of Nine Million Dollars ($9,000,000) of said City to be styled 'City of New Orleans, Sewerage, Water and Drainage Serial Gold Bonds', and to bear such rate of interest as the Board of Liquidation, City Debt, may fix from time to time as said bonds are offered for sale, as hereinafter provided, for the purpose of constructing and extending the sewerage, water and drainage system of said City."

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81/ DISCRIMINATORY EFFECT OF THE INTERPRETATION TEST

PARISH	Voting Age Population (1960)		Registered Voters March 17,1956		Registered Voters Dec. 31, 1960	
	White	Negro	White	Negro	White	Negro
Bienville	5,617	4,077	5,328	587	5,175	25
Claiborne	6,415	5,032	5,808	17	5,501	29
DeSoto	6,543	6,753	5,640	762	5,822	594
East Carroll	2,996	4,183	3,000	0	2,845	0
East Feliciana	4,200	4,102	2,812	1,301	2,448	82
Franklin	8,954	4,433	8,297	650	8,260	390
Jackson	6,607	2,535	5,457	1,113	5,804	483
LaSalle	6,799	849	6,861	742	6,823	220
Lincoln	9,611	5,723	7,029	1,166	6,928	860
Morehouse	10,311	7,208	9,400	935	7,489	301
Ouachita	40,185	16,377	24,184	5,782	24,789	729
Plaquemines	8,633	2,897	4,741	49	7,160	47
Rapides	44,823	18,141	26,293	3,160	30,362	3,073
Red River	3,294	2,181	3,575	1,512	3,429	27
Richland	7,601	4,608	7,195	740	6,075	263
St. Helena	2,363	2,082	2,555	1,694	2,478	1,243
Union	7,021	3,006	6,895	1,600	5,911	597
Webster	15,713	7,045	12,618	1,769	12,250	130
West Carroll	6,171	1,389	5,660	292	5,182	70
West Feliciana	1,632	2,235	1,272	0	1,303	0
Winn	6,790	2,590	6,449	1,430	6,393	1,093
TOTAL	212,273	107,446	161,069	25,361	162,427	10,256

Cont'd - Footnotes

82/ The distribution of literacy among the registered voters is revealing.

	1940	1960
Number of white voters who write their names	652,271	786,506
Number of Negro voters who write their names	848	116,676
Number of white voters who make mark	50,473	22,956
Number of colored voters who make mark	14	12,804

83/ This bizzare result was reached in East Feliciana.

84/ The Louisiana Law Institute, composed of the State's most distinguished attorneys and law teachers, is chartered by the legislature as "an official advisory law revision commission, law reform agency, and legal research agency of the State of Louisiana". ZLa. R.S. 24:204 (1950). See Smith, Role of Louisiana Law Institute, 16 La. L. Rev. 691 (1956); Tucker, The Louisiana Law Institute, 1 La. L. Rev. 139 (1938).

85/ In 1956 the voters rejected a constitutional convention.

86/ The Institute comments on Davis v. Schnell are:

"It is clear that the constitutionality of the provisions listed above is now questionable. It is impossible to predict exactly what the supreme court may require in the future to strike down the 'understanding' and similar clauses. In the Schnell case it was shown (1) that the purpose in adopting the amendment was to disfranchise the Negroes and (2) that, in fact, the amendment was administered in such a way as to disfranchise the Negroes. Certainly if the same charges could be successfully made concerning the Louisiana provisions, they would be unconstitutional.

"It also seems likely that the court would find a violation of the equal protection clause of the Fourteenth Amend-

ment if only discriminatory administration were proved. [Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064 (1886); William v. Mississippi, 170 U. S. 213, 18 S. Ct. 583 (1898); and Trudeau v. Barnes, 65 F. (2d 563 (1933)]. Discrimination as to race or color in administration, together with disfranchisement of the Negro as the original purpose of a constitutional provision, would seem to be contrary to the Fifteenth Amendment.

"Whether constitutional provisions of this character could now stand, even though there is no showing of malicious purpose in adoption or discrimination in administration, is subject to question. In two previous cases involving such 'understanding' clauses, one concerning the Mississippi constitutional provision [Williams v. Mississippi, 170 U. S. 213, 18 S. Ct. 583 (1898)] and the other involving the Louisiana constitutional provision [Trudeau v. Barnes, 65 F. (2d) 563 (1933)], the court held that the constitutional provisions standing alone without proof of discrimination in administration were not unconstitutional as violative of the equal protection clause of the Fourteenth Amendment. However, in the Schnell case, although discrimination in administration was found, the lower court did not base its conclusion upon this; rather, it declared the provision unconstitutional on its face because it furnished no test or standard to control administrative discretion. Thus, it may be that now such provisions will be held unconstitutional in themselves regardless of whether or not discriminatory administration is found." 3 Projet of a Constitution for the State of Louisiana 40, 41 (1954).

87/ In Darby the court relied strongly on Williams v. Mississippi, 1898, 170 U S. 213, 18 S. Ct. 583, 42 L. Ed. 1012.

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That case did not involve a direct attack on the standards for registration. Williams was a murder case; the suffrage issue was collateral. The record in Williams, as in Trudeau, showed no proof of a discriminatory purpose and no discriminatory use of the test. Moreover, the relief sought was [illegible] registration under the "understanding" standards rather than invalidation of them. See Comment, 72 Yale L. Jour. 770 (1963).

88/ The delegates to the Constitutional Convention of 1921 fully understood that the Convention had adopted the Mississippi understanding clause. Thus, Frank J Looney, an active member and prominent lawyer, wrote in 1925: "This is the clause known as the 'understanding clause' and has been passed on by the United States Supreme Court in the case of Williams v. Mississippi, 170 U. S. 213." Looney, Suffrage in the Constitution of 1921, 6 Loyola L. Jour. 75, 79 (1925). "With regard to suffrage the principal feature . . . is the addition of the 'reasonable interpretation' and 'understanding' provision of the Mississippi Constitution". Berdahl, The Louisiana Constitutional Convention, 15 Amer. Pol. Sc. Rev. 565 (1921).

39/ A keen student of the South and the acknowledged leading authority in the field of Southern politics writes: "Tests supplementary to literacy -- ability to understand, explain, or interpret the constitution -- . . . [b]orn of a union of constitutional fraud and political ineptitude . . . must in their nature be cloaks for the arbitrary exclusion of voters or tests for the possession of useless knowledge. . . . [I]f any test of understanding were applied at all to any substantial number of citizens of status, the registrars would be hanged to

the nearest lamp post and no grand jury could be found that would return a true bill. Suffrage requirements that cannot be made at least to appear nondiscriminatory in their application will sooner or later fall before the constitutional ban on racial discrimination." Key, Southern Politics 577 (1949).

90/ Act 62 of 1962 amended LSA-R.S. 18:191 to provide that the Board of Registrars "shall prescribe and direct the registrars of voters to propound an objective test of citizenship under a Republican form of government . . ." A constitutional amendment to the same effect was adopted at the state-wide general election held on November 6, 1962.

The provisions in the Louisiana Constitution and statutes setting out the interpretation test as a requirement for voter registration remain unchanged. The new constitutional provision amends Article VIII, section 18 while the interpretation test is found in Article VIII, section 1(d); the statutory change adds the new requirement to LSA-R.S. 18:191, leaving untouched LSA-R.S. 18:35, the provision containing the test under attack.

91/ These are some of the questions. No. 2: "Limits are placed on the right to vote by the (a) National Government (b) States (c) Courts." No. 14: "The Articles of Confederation are (a) the Constitution we now have (b) a plan for State government (c) an early plan of government for the original 13 States". No. 16: "Our Constitution has been changed (a) by the President (b) by the Congress and the people (c) by the Supreme Court". No. 35: "The United States Supreme Court is made up of (a) 9 Justices (b) 6 Justices (c) 5 Justices.

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92/ Pacific States Tel. & Tel. Co. v. Oregon, 1912, 223 U. S. 118, 32 S. Ct. 224, 56 L. Ed. 377. See also Minor v. Happersett, 1874, 88 U. S. (21 Wall.) 162, 22 L. Ed. 627; Texas v. White, 1868, 74 U. S. (7 Wall.) 700, 19 L. Ed. 227; Luther v. Borden, 1849, 48 U. S. (7 How.) 1, 12 L. Ed. 581; The Federalist 49 (Editor's Introduction; Wright Ed. 1961)

93/ See Comment, The Federal Voting Referee Plan, 72 Yale L. Jour. 770, 782-84 (1963).