

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

Although the norm of "one man, one vote" is widely accepted in the United States, the political realities frequently fail to correspond to that norm. For example, unequal distribution of wealth is reflected in voting strength—either by reason of property or poll tax limitations on the right to vote or because of the practical necessity for ample funds to finance the campaign expenditures of a modern campaign. Corrupt practices and outright voting fraud are also not unknown in this country as creators of inequalities in the right to vote.

Sex was eliminated by the nineteenth amendment as a determinant of entitlement to vote. Although the fifteenth amendment prohibited the use of race and color to abridge voting rights, there is considerable evidence that in actual practice these factors can have a very real effect on the opportunity to vote. Moreover, the value of a citizen's right to vote often hinges on the location of his residence in relation to the electoral units of the state where he lives.<sup>1</sup> This inequality has become all the more noticeable in recent years because of long-protracted failure to reapportion or redistrict to take account of the flight from the farm to cities and suburbs.<sup>2</sup>

Since the political realities depart so markedly from the ideal of an all-inclusive equal right to vote, should an effort be made to change existing practices; or, on the other hand, is re-examination of this ideal called for? Also, should any desired changes be left to the states for accomplishment, or should federal action be utilized for this purpose?

Clearly the draftsmen of our Constitution intended that the separate states should have considerable autonomy in choosing between competing norms in respect to the grant of suffrage and then in implementing that choice. In connection with the election of representatives in the Congress, article one of the Constitution provides that "the Electors in each State shall have the qualifications requisite for Electors of the most numerous branch of the State Legislature."<sup>3</sup> More than a century later an analogous provision was placed in the seventeenth amendment with respect to the election of Senators. Against this backdrop, the Supreme Court recently ruled that

<sup>1</sup> The voter's geographical location in relation to the electoral units utilized in municipal elections may also affect the value of his right to vote in such election.

<sup>2</sup> In Tennessee, the failure to reapportion had continued for almost sixty years prior to the decision in *Baker v. Carr*, 369 U.S. 186 (1962).

<sup>3</sup> Art. I, § 2, cl. 3. With respect to presidential electors, article II, section 1, clause 2 provide that "each State shall appoint, *in such manner, as the legislature thereof may direct*, a Number of Electors . . ." (Emphasis added.)

a state could adopt the ideal of a literate, rather than an all-encompassing, electorate and could enforce that ideal by restricting the franchise, even in elections of federal officers, to persons passing a fairly-administered literacy test prescribed by state law.<sup>4</sup>

However, the Constitution also definitely entrusts to the federal government some area of responsibility as to voting rights. Although the state legislatures may prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives," the Congress may "make or alter such Regulations, except as to the Places of chusing Senators."<sup>5</sup> Moreover, Congress was specifically empowered to "enforce by appropriate legislation" the voting rights protected by the fourteenth and fifteenth amendments.<sup>6</sup>

These constitutional authorizations of congressional action to enforce voting rights might be construed as an indication of an intention that legislative action, rather than judicial decree, should be primarily relied on to formulate the norms for voting entitlement and to provide remedies for departures from those norms. Under this view, the courts would not be required to enter a "political thicket." On the other hand, leaving the responsibility for orderly change in the hands of legislators, whether state or federal, makes the accomplishment of change dependent to a considerable extent on the altruism of those persons who benefit from the status quo.

Dissatisfied with the well-demonstrated lack of any such altruism, the Supreme Court in *Baker v. Carr*<sup>7</sup> has finally committed the courts to judicial activism in the protection of the right to vote.<sup>8</sup> That decision, however, only signifies that the courts have a right to take action; and it does not prescribe the standards which should govern that action or the means for implementing those standards once they have been determined. *Baker v. Carr* has already induced—and will undoubtedly continue to induce—legislative action intended to obviate the occasion for further judicial intervention in the electoral process; but the legislatures, like the courts, will be called upon to make some basic choices between competing norms. The editors of *Law and Contemporary Problems* hope that this symposium will materially aid judges, legislators, and the public in an urgently needed reappraisal of our ideals concerning the right to vote and of our present electoral practices.

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<sup>4</sup> *Lassiter v. Northhampton County Board of Elections*, 360 U.S. 45 (1959). It is interesting to note that § 2 of the fourteenth amendment provides for reduction of the basis of representation when the right to vote "is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime . . ."

<sup>5</sup> Art. I, § 4, cl. 1.

<sup>6</sup> U.S. CONST. amend. XIV, § 5; amend. XV, § 2.

<sup>7</sup> 369 U.S. 186 (1962).

<sup>8</sup> Long continued inactivity in another field produced a recent significant change of position by the Supreme Court in *Mapp v. Ohio*, 367 U.S. 643 (1961). In this connection, see Traynor, *Mapp v. Ohio at Large in the Fifty States*, 1962 DUKE L.J. 319.