A POLITICAL SCIENTIST AND VOTING-RIGHTS LITIGATION: THE CASE OF THE 1966 TEXAS REGISTRATION STATUTE

WALTER DEAN BURNHAM*

A veritable revolution in the public law of voting rights has been underway in this country since the early 1960's. Not so very long ago, it was almost universally accepted doctrine that the states had nearly plenary power to regulate the conduct of elections, the qualifications of voters and the apportionment of legislative-district boundaries within their borders. This sweeping power, for all intents and purposes, was circumscribed only by the requirement that the states not discriminate in too crude a way against racial minorities.[1] Since World War II this very broad state discretion has undergone erosion, and this erosion has been immensely accelerated during the past decade. Even the most cursory review of the development of legal doctrine in this area must conclude that the hitherto ascendant "American suffrage medley" has been increasingly subjected to central authority.[2] As a consequence of both judicial and congressional action, a considerable degree of nationalization or standardization of suffrage and apportionment has come into being.[3]

There is evidence that this era of national consolidation may now be drawing to a close. The most conspicuous evidence is the remarkable Supreme Court decision in *Mitchell v. Oregon* (Dec. 21, 1970), which simultaneously affirmed Congress' power to set a uniform minimum voting age of 18 in federal elections and invalidated that part of the 1970 Civil Rights Act which attempted to set the same standard for state and local elections. Even so, judicial and legislative action since the landmark case of *Baker v. Carr* and the 1965 Civil Rights Act has produced a more explicit and comprehensive assertion of national sovereignty over voting-rights and apportionment issues than any which

*Professor of Political Science, Washington University.

1. *See, e.g.*, the early judicial invalidation of Oklahoma's "grandfather clause" in Guinn v. United States, 238 U.S. 347 (1915).

2. D. McGOVNEY, THE AMERICAN SUFFRAGE MEDLEY: THE NEED FOR A NATIONAL UNIFORM SUFFRAGE (1949).

3. For an excellent review of the structure and growth of judicial doctrine in this area down to the eve of *Mitchell v. Oregon*, *see* R. CLAUDE, THE SUPREME COURT AND THE ELECTORAL PROCESS (1970).

has ever existed before, with the possible and partial exception of the Reconstruction period.

Nor is the association with Reconstruction accidental. For at least the past century, the balance between central and local control of electoral process at any given time has been largely determined by the level of national tolerance of racism in our political life. The national commitment to juridical equality for all American citizens which has emerged over the last generation has inevitably subjected all sorts of exclusionist Southern electoral-management devices to a devastating attack from the center. But with this movement has also come a much wider sensitivity to the more subtly discriminatory nature of many state-prescribed "rules of the game" which have little obtrusive relationship to race or region.

It is not the purpose of this commentary to deal at length with the evolution of judicial doctrine and legislative action affecting voting rights. Rather, I shall attempt a sketch of two things here: the background and implications of a recently decided case in which a state's personal-registration statute was struck down by a federal court, and my own involvement in the case.

Between 1890 and 1908, all eleven of the ex-Confederate states adopted without effective federal challenge an interlocking network of legal devices whose primary purpose was to purge blacks from their electoral processes. This is now a matter of common knowledge, even knowledge of the special sort subject to official—and especially judicial—cognizance. But it is perhaps less apparent that these control devices were paralleled in a less extreme form elsewhere by the introduction at the same time of such devices as literacy tests, contrived malapportionments and personal-registration statutes which initially were applied solely against the populations of major cities. There are certain broad themes which link the origins of all such legislation together. To a very great degree, it was motivated by racism — in the North, directed against the "newer races" immigrating from Eastern and Southern Europe — and by fear of the considerable potential for political radicalism during an era of transition to industrial-capitalist hegemony over the political economy.[4] To this should be added more than a dash of old-middle-class reformism directed against state and city

4. *See* W. BURNHAM, CRITICAL ELECTIONS AND THE MAINSPRINGS OF AMERICAN POLITICS 71-90 (1970). For an illuminating review of the effects of this fear on the development of judicial doctrine during the 1890's *see* A. PAUL, CONSERVATIVE CRISIS AND THE RULE OF LAW (1960).

"machines" and their ethnic clienteles. Perhaps most important was the influence of a broad, if very ambiguously defined, consensus that voting was rather more a privilege the individual had to prove himself worthy to exercise than a right which was an attribute of adult citizenship.

The peculiarities of such American suffrage-regulating mechanisms as personal-registration statutes are best appreciated in a comparative context. During the same transitional period, virtually every other Western democratic polity — including Canada to our north — made public authority, not the individual, legally responsible for the burden of voter registration. Virtually everywhere outside the United States, government is charged with the duty of compiling and updating registers of qualified electors. This might seem to be a small enough matter of technical detail, were it not for the demonstrated fact that personal-registration qualifications *impose a sociologically differential barrier to the exercise of the franchise.*[5] The United States has incomparably the steepest class differentials in voting participation to be found in any western nation. Turnout among blue-collar strata is normally hardly more than half of the rate of participation among professional-managerial people. There is no doubt that the reasons for this are complex, but two considerations emerge which are relevant to this discussion. In the first place, personal-registration statutes produce a measurable and substantial depressing effect on lower-class participation. Secondly, before about 1900, class differentials in American voting participation, at least outside the South, were extremely small — probably not much if any greater than in Germany or Sweden today.

Perhaps most remarkable of all, the adoption of personal-registration statutes appears to have met with practically no effective resistance in the 1890-1910 period. Moreover, a perusal of the literature of political science down until well after World War II reveals only the most limited awareness of the political sociology involved. Indeed, the entire question was virtually invisible to scholars and political elites alike; the device was simply accepted by something approaching unanimous consent. Such unquestioning acceptance of this form of electoral bookkeeping can, I think, be explained only on the ground that the individual-responsibility value premises on which the legislation rested conformed admirably to the larger postulates of an individualist-liberal political culture at a time

5. Kelley, Jr., *Registration and Voting: Putting First Things First*, 61 AM. POL. SCI. REV. 359 (1967).

when these postulates had not been brought under effective critical review, either in academic or other elite circles.

The voting-rights revolution has changed a good deal of this. Perhaps more precisely, this revolution is itself an artifact of a changing and much more self-conscious awareness by judges, lawyers and academics about the nonobtrusive social costs of a traditional American politico-legal pattern. One result is that political scientists like myself are now being asked to contribute position papers to party commissions concerned with expanding and equalizing the franchise, and also depositions in cases challenging the constitutionality of certain kinds of personal-registration statutes.

There is a sense in which the creation of new ranges of constitutional doctrine can sometimes be said to flow from a "dialectic of extremes". This was particularly obvious in the decisional background of *Brown v. Board of Education* which laid down the general doctrine that "separate educational facilities are inherently unequal." For the Supreme Court had been sensitized over a number of years to the sociological realities of educational segregation by a series of *law-school* cases extending from Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938) to Sweatt v. Painter, 339 U.S. 629 (1950). As lawyers, the Justices could see from their own experience and knowledge that "separate" was not only far from being "equal" in the field of legal education, but that racial segregation itself fundamentally denied equality of opportunity or of access to the larger benefits of professional status to the blacks involved. From this point in 1950, it required rather little more for the Justices in the 1954 *Segregation Cases* to reach their famous reformulation of the relationship between racial separation and equality in education generally.

Of course, it would be most premature to assume that the public law of personal-registration statutes will follow the same pattern even though alternative procedures for voter enrollment exist elsewhere which minimize the severe class bias in voter participation so conspicuously associated with personal registration. Indeed, there seem to be specific difficulties in the way of such a doctrinal evolution from "extremes" to general principles in this field. First, the profound national consensus about the utility and equity of these procedures has only very recently been significantly challenged even by professional students of the American political process. It can be assumed that challenges directed at the substantive sociological effects of such statutes as a general class of regulation of the franchise will be rather long in coming and even longer

in being accepted by courts. Second, the equal-protection questions involved in this area seem to lead further away from the originally close relationship between race and voting-rights litigation. This requires the establishment of a quite discrete array of empirical evidence which, related to the more diffuse class implications of registration statutes, has power to persuade courts; and this too will take time. Third and not least important, changes in the personnel of the U.S. Supreme Court produce the likelihood — at least in the short run — that a more or less "conservative" majority, a majority of Justices whose decision-shaping values may not include sensitivity to such empirical demonstrations, will control the court's decisions.

Nevertheless, we may be on our way. An extreme case which highlights a more general problem has emerged in Texas. This case is of particular interest, both because it sets a precedent involving judicial scrutiny of personal-registration statutes and the requirements they establish for individual access to the polls, and because of the court's heavy reliance in its opinion upon the testimony and quantitative data presented by political scientists.

Before 1966, Texas was one of the few states which still imposed a poll tax as a prerequisite for voting. The paid-up poll tax receipt was used by election officials as the equivalent of personal registration. Such receipts had to be collected and the tax paid not later than January 31 of the year in which the election was to take place. After judicial invalidation of the poll tax prerequisite,[6] the Texas legislature drafted a personal-registration statute which was in essence a reenactment of the old poll tax law with the $1.75 left out. The 1966 statute had two leading features which worked to depress turnout about as much as possible without including a money charge for voting. First, it provided for closing the registry books as of January 31 of the year of election. Second, it provided for a system of *periodic* personal-registration, *i.e.*, the individual was required to reregister in person every year.[7]

In February, 1970, one Jimmy F. Beare of Corpus Christi attempted to register, but was turned away by local officials because the January 31 cutoff date had passed. Suit was brought in federal district court to challenge the constitutionality of the 1966 Texas registration statute. Along with several other political scientists, I was contacted by

6. Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966); United States v. Texas, 252 F. Supp. 234 (W.D. Tex.), *aff'd*, 384 U.S. 155 (1966).

7. A comprehensive discussion of this law is found in Doty, *Texas Voter Registration Law and the Due Process Clause*, 7 HOUSTON L. REV. 163 (1969).

attorneys for the plaintiff in the spring of 1970 and asked to provide answers to certain questions of fact in my capacity as a professional student of voting behavior. The interrogatories and my answers to them follow in an appendix to this discussion.

On January 7, 1971, a three-judge federal district court unanimously invalidated both the statute and a parallel provision of the Texas constitution[8] as being in violation of the Equal Protection Clause of the Fourteenth Amendment.[9] In his opinion for the court, Judge Singleton followed his preliminary statement of the controversy by a forceful assertion of the right to vote as a fundamental social and political value in the United States. The opinion goes on to observe that "It is beyond doubt that the present Texas voter registration procedures tend to disenfranchise multitudes of Texas citizens otherwise qualified to vote."[10] This conclusion was based on the court's estimate that at least one million Texans were effectively disenfranchised by the onerous requirement of annual registration, and that about one million Texans were also disenfranchised by the cutting off of registration more than nine months before the date of the general election. In turn, these estimates are wholly based on the testimony given by political scientists, particularly by Professors Allen Shinn of the University of Texas, Stanley Kelley, Jr., of Princeton University and myself. One of the most enlightening features of Professor Shinn's presentation was the determination that turnout increases at a rate of about 2.7% for each month of an election year as one approaches the date of the general election — a fairly precise statement of the familiar generalization that many people tend to become motivated to vote by exposure to the issues and individuals of a political campaign, not months before the candidates actively take the field.

The court then reviewed the state's claim that it had a predominant state interest in the maintenance of these procedures.[11] It first concluded that annual registration was hardly compellingly necessary to avoid electoral corruption or fraud: elections in the overwhelming majority of

8. Article VI, Section 2.

9. Beare v. Smith, ___ F. Supp. ___ (S.D. Tex. 1971).

10. *Id.* at ___(advance sheet at 7-8).

11. Here, as the district court points out, the Supreme Court has insisted since 1965 that the state interest in regulating the suffrage must be shown to be *compelling*. *Id.* at ___ (advance sheet at 13). The leading cases relied on by the district court are: City of Phoenix v. Kolodgiejski, 90 S. Ct. 1990 (1970); Cipriano v. City of Houma, 395 U.S. 701 (1969); Kramer v. Union Free School Dist., 395 U.S. 621 (1969).

states which have permanent rather than periodic registration are clean enough for the most part. The court then turned to an argument made by the state which brilliantly discloses the profound significance of this case.

> One such interest suggested by the state as compelling which the provisions in question are said to promote is the purity of the ballot. In other words, the state contends that those who overcome the annual hurdle of registering at a time remote to the fall elections will more likely be better informed and have greater capabilities of making an intelligent choice than those who do not care enough to register. This is a claim which cannot be accepted. . . . A state may not dilute a person's vote to give weight to other interests, see, *e.g., Reynolds v. Sims,* 377 U.S. 533 (1964), much less deny it completely to thousands of Texans who fail to comply with the existing registration statutes.[12]

Here, in 1971, we are confronted with a fundamental issue of political philosophy and values. The Texas argument here is—couched in modern form—the proposition that voting is less a universal right than a privilege to be confined, if possible, to the *melior pars* of the citizenry. The theory which animated the original poll-tax legislation still dominates the thinking of the state's officials; it represents one side of an ancient controversy. The key issue in this controversy is simply this: is there, or ought there to be, a social stratum which should be accepted as "weightier" than the rest of the citizenry because of some supposed virtue, and hence be given *legally-prescribed preference* over the rest? This is the kind of question to which, broadly, only a yes or a no is a possible answer; and the answer defines the respondent's political philosophy. Conflict over which answer to this question is to prevail can be easily traced back to the debates on enfranchisement in the Massachusetts and New York conventions of 1820 and 1821, and beyond into the colonial period.[13] But it is ultimately traceable to a still earlier if not primordial set of debates: those conducted at Putney by members of Oliver Cromwell's army in the years 1647-1649, and especially a justly memorable colloquy between General Ireton and Colonel Rainborough.[14]

Lest it be said that this is very ancient history indeed, let us examine

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12. ___ F. Supp. at ___ (advance sheet at 17-18).

13. J. POLE, POLITICAL REPRESENTATION IN ENGLAND AND THE ORIGINS OF THE AMERICAN REPUBLIC (1966).

14. PURITANISM AND LIBERTY: BEING THE ARMY DEBATES (1647-1649) (A. Woodhouse ed. 1951) esp. at 53-64.

the antiphonies involved, not only within each "debate" but between the two, separated as they are by more than three centuries. First, the exchange between Rainborough and Ireton concerning voting and representation:

> Rainborough: . . .For really I think that the poorest he that is in England hath a life to live, as the greatest he; and therefore truly, sir, I think it's clear, that every man that is to live under a government ought first by his own consent to put himself under that government; and I do think that the poorest man in England is not at all bound in a strict sense to that government that he hath not a voice to put himself under. . .
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> Ireton: . . .Give me leave to tell you, that if you make this the rule I think you must fly for refuge to an absolute natural right, and you must deny all civil right; and I am sure it will come to that in the consequence. . . .I think that no person hath a right to an interest or share in the disposing of the affairs of the kingdom, and in determining or choosing those that shall determine what laws we shall be ruled by here — no person hath a right to this, that hath not a permanent fixed interest in this kingdom, and those persons together are properly the represented of this kingdom, and consequently are to make up the representers of this kingdom, who taken together do comprehend whatsoever is of real or permanent interest in the kingdom.[15]

Then, in 1970-71, came the case of *Beare v. Smith.* The argument made by Texas to justify its procedures has already been stated as paraphrased by the court: it asserts a compelling state interest in insuring that only the intensely political survivors of its multiple procedural hurdles will be admitted to the active electorate. By such tests, apparently, such voters will have demonstrated that they have a "permanent fixed interest in this kingdom," now that poll taxes may no longer be levied. The court's answer to this is a remarkably unambiguous statement of the opposite view:

> At the outset, it must be said that the right to vote is a right which is at the heart of our system of government. . . .That government should derive its powers from the consent of the governed is one of the basic tenets of the Declaration of Independence. This right is one which has been jealously guarded by the judiciary over the years.[16]

Later in his opinion, Judge Singleton incorporated with approval the following commentary by an outside observer:

> Participation in decisions affecting one's life and the community

15. *Id.* 53-54.

16. ___ F. Supp. at ___ (advance sheet at 5-6).

> contributes to the growth of the individual and tends to promote the stability of the political system by enhancing its legitimacy. In this day and age, with many explosive forces at work, we should pay more attention to the stability acquired by justly giving to all qualified citizens easy access to the ballot.[17]

Admitting that Rainborough was obviously committed to the political fate of the little man, while the author quoted approvingly by the court is more preoccupied with stabilizing the political system, the resonance thus achieved with the utterances of a man dead more than three hundred years is nonetheless striking.

The issue presented here is of the most cardinal importance in determining what "free government" actually means in concrete terms. For those of us who may have thought that this issue had become largely academic in the United States, Texas' Iretonian argument of 1970 comes as a pointed reminder that it is not academic at all. Still more, it reveals with unusual clarity that this primordial question of political value has never been conclusively resolved in this country down to the present day. If it be true that this is an extreme case, and that Texas' argument was expressed in exceptionally explicit if not crass terms, it seems to me equally true that personal-registration requirements as such survive because the United States has yet to accept without ambiguity the elementary proposition that voting in elections is an attribute of adult citizenship, and not a reward for good behavior or some superior virtue.

So far as the district court's reliance on social-science evidence is concerned, of course, no new ground was broken here. The growing complexity of society long ago brought the realization to lawyers and judges that expert testimony was required for rational decisions in many fields where judicial decisions were to be made. It was after all at the turn of this century that the Goldmark-Brandeis brief, with its heavy emphasis on sociological data relevant to legal problems, was developed; and as early as 1908 that the Supreme Court's decision in a major case was informed by the data in such briefs.[18] The precedent here is substantive, not methodological: courts are now involved in exploring a major "gray area" of voting rights, though how far they move into it—or even whether they remain in it — must ultimately rest on what the

17. *Id.* at ___ (advance sheet at 18-19), citing May, *The Texas Voter Registration System,* 16 PUB. AFFAIRS COMMENT 4 (July 1970).

18. Muller v. Oregon, 208 U.S. 412 (1908).

Supreme Court does in the years ahead. Even so, one further note about method should be added. The quantitative-behavioral revolution in the study of voting has permitted political scientists to develop increasing precision in their statements about the effects of electoral laws on electorates.[19] We are in a far better position than even five years ago to provide concrete information which should be useful to courts as they evaluate the right to vote on one hand and the "compellingness" of state interest in suffrage regulations on the other.

The process of egalitarian standardization of voting requirements in the United States will, I think, prove irreversible in the long run. Our self-consciousness about supposedly neutral "rules of the game" has almost certainly undergone irreversible expansion. That new-found consciousness alone will make it difficult for a number of traditionally sanctioned practices to survive indefinitely. Moreover, individuals who are subject to complex procedural restrictions on their right to vote will be increasingly likely to file suits challenging the constitutionality of such restrictions. Both the volume of this litigation and the pressure engendered by it to change legal doctrine and formulate universalistic norms will correspondingly increase. And thus the involvement of voting-behavior specialists in the judicial process — a properly peripheral but not insignificant involvement — will probably not cease with *Beare v. Smith.*

10. *Cf.* D. RAE, THE POLITICAL CONSEQUENCES OF ELECTORAL LAWS (1967).

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JIMMY F. BEARE, ET AL X
VS. X CIVIL ACTION NUMBER 70-C-42
PRESTON SMITH, ET AL X

ANSWERS TO INTERROGATORIES

BY: WALTER DEAN BURNHAM, PROFESSOR OF POLITICAL SCIENCE,
WASHINGTON UNIVERSITY, ST. LOUIS, MISSOURI 63130.

* * *

5. *Occasion to engage in research on voting statutes and electoral participation.* Yes, I have had such occasion.

(a) The nature of my research and study is as follows: I have compiled estimates of the total potential (adult male/adult citizen) voting population by state for the period 1824-1968. In addition, I am now working on a more refined project examining voter participation by counties in a number of states over the past hundred years, and the correlates of current voting participation in one major city.

6. *What is a personal registration system?* A personal registration system is one in which individual voters are required by law to appear in person before designated registration or election officials, and to declare—under penalty for false declaration—that they are qualified electors under the relevant provisions of state law governing suffrage qualifications. In all cases of which I have knowledge, the registration statutes establish dates during which the registry books are open for new personal enrollments, and also the places at which the registration is to take place.

(a) *The relationship between personal registration systems and electoral participation in general.* My research and study has shown a very marked relationship between personal registration and electoral participation. In explaining this relationship, two points of comparative analysis need to be borne in mind. (1) In a number of American cases, past and present, personal registration statutes have applied only to urban places, or counties in which large cities are to be found. In rural or small-town areas, no personal registration is required for voting; simple appearance at the polls on election day suffices. Prior to about 1900 this was nearly universally the case in the United States. (2) In European countries and Canada, the burden of registration and of the enrollment of qualified voters is assumed by central state authority. This is the functional equivalent of the absence of personal registration requirements in some American rural counties; both are, in effect, nonpersonal, permanent registration systems.

It is, therefore, easy to establish quantitative statements which indicate the approximate effect of personal registration as an intervening variable in voting participation. Annexes I-III are presented at the end of my answers to these interrogatories. Three states are stratified by registration requirements. In the case of Pennsylvania (Annex I), personal registration statutes for cities of the third class and larger were subjected to personal registration requirements in 1906. From then until 1937, other areas of the state were non-registration territory; in the latter year, permanent personal registration was extended to the entire state. In no case except for Philadelphia did personal registration during this period extend to the whole territory of any county; consequently, the category "Registration counties" for the period ending in 1937 should be understood to be roughly equivalent to the "partial registration" category found in Ohio (Annex III). Evaluation of the difference between the two sets of Pennsylvania counties in the period 1900-1960 is achieved through a standard t-test of significant differences between means and standard deviations in each of the two

groups. Establishing (for a one-tailed test, since direction can be predicted, *i.e.*, the hypothesis can be made *a priori* that personal registration requirements tend to depress electoral participation, (*ceteris paribus*) a.01 level for significant differences, we find that all of the years from 1908 through 1940 show t values higher than could be attributed to chance except for 1928, and that remarkably high values appear for the years 1912, 1916, 1920, 1924, 1932 and 1936. So far as the non-registration counties are concerned, it is particularly significant that the 1936 figure of 80.0% participation, achieved just before the imposition of statewide registration, has not come close to being equalled since, even in the high-participation year 1960; while in the registration counties, the 1960 turnout rate was almost as high as that reached in 1936.

Annexes II (Missouri) and III (Ohio) reveal aggregate arrays of the same type. In the case of Ohio, the stratification falls into three groups by completeness of personal registration coverage: and participation monotonically decreases with the extent of personal registration in the counties in question. Data not reported here reveals also that, as counties acquire personal registration systems, their turnout falls by roughly 8 to 12 per cent from previous levels—approximately the same as with the 1936 and 1960 turnout levels in the non-registration counties of Pennsylvania.

Annex IV presents estimated voter turnout in Texas for the period 1928-1968 and in the nation as a whole. Further discussion of non-American participation rates is deferred to Question 11.

7. *Has your research shown any relationship between personal registration systems and class bias and voter participation?* Yes, although as a professional student of electoral processes, I should at some point emphasize that there are many variables which enter into a truly comprehensive evaluation of the influence of registration as such on class stratification in American electoral participation. It seems evident to me, however, that such relationship exists.

If so, what is that relationship? The analytical argument in favor of the relationship is simple enough, and is essentially taken from Anthony Downs' volume, *An Economic Theory of Democracy*. Putting the matter most simply, it can be said that any personal registration system imposes costs of access to the polls on individual voters to some extent. These costs are legally identical but sociologically sharply differentiated; that is, people of lower socio-economic status will tend to find the additional hurdle of personal registration more of a barrier (in terms of expenditure of scarce time resources, the costs of transportation to central places of registration, etc.) than will people in the middle classes. The extreme case can be found in the dense network of hurdles which were set up by the Southern states in the period 1890-1904—including in many cases extremely laborious and inconvenient registration procedures. Such hurdles were explicitly set up to achieve complete disfranchisement of Negroes, of course; but they clearly worked to disfranchise considerable parts of the poor-white populations of these states as well.

Further discussion of comparative class stratification in voter participation will be left to the answer to Question 11. At this point, several ranges of data can be presented. (1) Prior to the introduction of personal registration statutes, the turnout in a number of states was so high as to make it virtually certain that lower-class people participated about as fully as did middle and upper-class people. Thus, for example, the following turnout in the 1880-1896 period can be found in several selected states with considerable urban populations:

	% Turnout of Estimated Potential Electorate					
	1880	1884	1888	1892	1896	Mean, 1952-68
Illinois	89.9	84.4	82.9	86.0	95.7	73.9
Indiana	94.4	92.2	93.3	89.0	95.1	74.5
New Jersey	95.4	88.6	91.9	90.3	88.4	69.7
New York	89.3	87.5	92.3	86.3	84.3	65.6
Ohio	94.4	93.4	91.9	86.2	95.5	67.6

There are, as mentioned above, a number of explanations for the much lower turnout in these states today than in the 1880-1896 period; but among these, personal registration costs of access to the

polls seem of considerable significance. It seems evident on the face of the data that in this earlier period there must have been virtually no differential in turnout along class lines in these states.

(2) The existence of profound class bias in actual participation is easy to detect in the United States at the present time. It can, I think, be categorically stated (to anticipate somewhat my answer to Question 11) that this bias is sharper by far in the United States than in any other Western democratic political system.

Annex V presents correlation data drawn from intensive aggregate analysis of Baltimore, 1952-1968, resting ultimately on the precinct level. The simple correlation array at the top of the page sets out in sharp relief the extremely sharp class-related basis of electoral participation in that city. There is also a substantial negative correlation between turnout and the nonwhite population, as could be expected. What is doubly significant, however, is that when class is controlled for in the multiple correlations, at the bottom of the page, the racial-ethnic correlations virtually disappear. Indeed, the percentage Negro and the percentage turnout is actually positively correlated, once the former is controlled for by two classifications of lower-class percentages in the 1960 male labor force. This further reinforces the point that, untangling racial-ethnic variables, class remains clearly the strongest predictor of turnout and that there is a systematic relationship between the two. This can be summarized more simply by the assertion that, on balance, the ratio between upper-middle class and lower-class turnout in Baltimore is approximately 2 to 1.

The same point emerges from the recent sample surveys taken by the Census Bureau in its Current Population Reports series. The relevant photo-copied pages for the 1968 report (Series P-20, No. 192, December 2, 1969) are included as Annex VI.

Finally, it seems extremely likely that, granted the systematic differences in voter participation in areas with personal registration systems and in areas without, the class bias of participation is markedly less strong in non-registration areas (those which correspond functionally to European politics where registration is assumed by the state) than in areas which, like Baltimore City, impose this additional cost of access to the polls on the individual voter.

8. *What is a periodic registration system?* A periodic registration system is one in which, in addition to the requirements of personal registration, the individual voter is also required to re-register in person, usually before each election.

9. *Has your research shown any relationship between periodic registration systems and electoral participation in general?* On the whole not, since such systems have tended to become unusual in the United States. I am able, however, to cite two points in texts by leading American political scientists; these are referred to immediately below.

If so, what is that relationship? It is, again, perfectly clear to me that the additional imposition of a requirement that individual voters re-register in advance of each election will further depress turnout above and beyond what might be expected from the effects of personal registration systems generally. One authority for this view is that of *The American Party System,* 3rd. (1940) edition, by Charles Merriam and Harold F. Gosnell. These two scholars, both of the University of Chicago, were among the leading experts on American politics a generation ago. They comment as follows (p. 385):

> "When personal registration was adopted in the large cities of this country, it was felt that it should be periodic. The requirement of a new personal registration at frequent intervals would automatically clear the lists of those who had died or moved away. Registration was made annual in New York and a number of states, while it was made biennial or quadrennial in other states. *There is no question that the periodic systems of registration are burdensome upon the voters and virtually disfranchise many qualified persons. . . .*" (emphasis added)

The requirement imposed by the New York legislature whereby voters in New York City, and only such voters, were required to register annually was particularly notorious as a bone of contention between the city and the upstate areas which controlled the legislature. The late V.O. Key, Jr.—the undisputed dean of students of American politics during his lifetime—had the

following to say about the New York case in his text, *Politics, Parties and Pressure Groups* (New York: Crowell, 1958—4th edition) at pp. 677-678, footnote 8:

> "Nonpersonal registration is used in over half the election districts in upstate New York. In 1950 registration in ten of the 57 upstate counties of New York exceeded the numbers of citizens 21 and over as reported by the census. In another 11 counties registrants numbered between 90 and 100 per cent of the citizenry of voting age. In New York City, with personal [and at the time periodic—WDB] registration, only 53.5 per cent of the citizens 21 and over were registered; in the state outside the city the percentage was 79.8."

The periodic-registration requirement for New York City was at last abolished by the state legislature in 1957, and a permanent registration substituted for it.

A very rough estimate on my part would be that—assuming that, as in New York, periodic re-registration was permitted up to a few weeks before election day—such an additional burden on the voter would depress turnout by between 10 and 20 per cent from what might be expected from a permanent registration system fairly and non-discriminatorily administered.

10. *Has your research shown any relationship between periodic registration systems and class bias in voter participation?* In terms of specific research on this question, the answer has to be no. It is my professional judgment, however, that the requirement for periodic re-registration would inevitably work through a kind of multiplier effect to increase even further the class bias in voter participation which exists under American permanent-registration systems. The argument in my answer to Question 7, as well as reasonable inferences which can be drawn from the New York registration data reported in my answer to Question 9, lead almost inevitably to such a conclusion.

11. *Does class bias exist in registration systems used outside the United States in countries whose cultures and traditions are somewhat cognate to our own?* This question is put a little inaccurately. We may begin with the point that throughout Western Europe and in Canada, the responsibility for developing registers of qualified voters and keeping them up to date is borne entirely by governmental authority, delegated in some cases (such as Great Britain and Canada) to Electoral Officers with powers to punish for noncompliance by individuals with their surveys of the resident population. By definition, therefore, such systems preclude class bias in the registration procedure, except in the very limited sense that people of the very lowest social classes may be difficult to locate at fixed addresses. If one asks, however, what class bias tends to exist in European or Canadian voting *turnout* at elections, the answer is somewhat more varied. In general, it can be surmised that a moderate class differential in participation *may* exist in Canada and Great Britain, though I have no data which bears directly on this. It seems certain that even here, the class bias in turnout is immeasurably less than it is in the United States, if it indeed exists to any significant extent.

Voting turnout in Continental Europe is much more nearly *invariant along classs lines*, and is also much higher, than it is in the United States. In general, it can be said that in historical perspective, class bias in which middle-class persons participated more than working-class persons was more frequently encountered in European political systems before World War II and especially before World War I, but that: (a) in the past quarter-century such bias has virtually disappeared; and (b) there are numerous cases even in the earlier period of high mobilization of all classes in the population. (See Annexes VII, VIII and IX.)

What factors cause this difference? A comprehensive answer to this question—which answer even then would be necessarily incomplete—would require a whole volume. For what ultimately is involved is a whole network of causes; the key question, far transcending in importance even the personal registration question, is this: what causes and perpetuates the exceptional political and social demoralization and fragmentation of the lower classes which exists in this country? I can affirm as a professional judgment that personal registration requirements constitute a significant barrier to participation by people of lower socio-economic status. But much more is involved. I have developed some discussion of this problem in my forthcoming book, but further discussion here would probably be irrelevant to a civil action in which the constitutional validity of certain statutory requirements for registration of voters is at issue.

12. (a) Yes, I have an opinion regarding the probable consequences of establishing a permanent, non-periodic registration system of the sort described in the question.

13. My judgment is that it would considerably reduce the burden on the individual voter.

* * *

Requiring individuals to re-register for each election with a terminal date falling months before the actual election is particularly onerous. People become interested in elections during the campaign, not months before it; and it is my considered view that having a January 31 cutoff date for periodic registration guarantees a low turnout; indeed, a turnout which is probably about as low as possible short of a reimposition of the poll tax.

In 1968 (I assume under the registration law now under attack), almost exactly one-half of the potential electorate of Texas voted for presidential electors. I believe that a permanent registration system—provided that it permitted registration up to a few weeks or days before primary and general elections, as is now common in this country—would permit Texas turnout to increase from 50% to between 65% and 70%. In 1968, the estimated potential electorate of Texas was approximately 6,180,000. Of these, only 3,078,917 actually voted in the presidential election. An increase of turnout to 65% would be equivalent to adding about 940,000 voters to the presidential electorate. If the turnout reached 70%, this would involve an addition of about 1,250,000 persons who did not actually vote in 1968 in Texas. Even if the periodic-registration requirement was responsible for only one-half of this difference, it is evident that hundreds of thousands of potential voters are involved.

14. Were Texas to eliminate its personal registration system and place the burden of registration on the government, the probable result would be to increase electoral participation to a maximum of about 80% of those potentially qualified—a rate significantly below that of many European countries, but approximating that found in high-stimulus election years in countries such as Canada, Great Britain and France. This would add about 1,850,000 more actual voters than came to the polls in 1968. Presented in tabular form, the approximate results of changes in electoral law suggested in Questions 13 and 14 (these are maximum results, assuming that no other intervening variables in Texas turnout exist) would look as follows:

Actual Voting in 1968 Compared with Potential Voting under Changes in Electoral Law

Category	Vote 1968	Increase over Actual
Existing statute	3,079,406	...
Permanent personal registration: lower limit	4,020,000	+941,000
Permanent personal registration: upper limit	4,328,000	+1,249,000
Governmental maintenance of registry	4,947,000	+1,868,000
Potential electorate, 1968 (approximate)	6,184,000	...

15. It seems reasonably certain to me that such a change as a transition to a permanent personal registration system—qualified by the need to ensure that the books remain open until at least several weeks before election day—would result in significant increases in participation by voters in the working classes. It could be anticipated that such a change would contribute to such increases both in major metropolitan centers such as Houston and Dallas, and in the more rural counties of the state as well.

16. Adoption of a system of registration in which public authority assumed the burden of maintaining and updating electoral registers would be accompanied by massive reductions in the class bias now prevalent in electoral participation in this country. To the extent that other factors exist which work to depress lower-class participation in voting in the United States, it may be that some class bias would remain, particularly in the early years of such a system. In the long run, such bias would tend to disappear under a system of governmental registration of qualified voters. I am

not, of course, a constitutional lawyer. But so strong do these relationships between voting and registration requirements seem to me to be that I am now prepared to express the view that *any* system of personal registration works in practical fact to deprive persons in specific classes of equal protection of the laws. The Texas statute under review, with its requirement for periodic re-registration and a closing of the registry lists more than *nine months* prior to the date of the general election, is a particularly extreme case and is associated with extremely low voting participation, particularly in non-presidential years.

17. Yes, I have written on this subject. One short piece which I have recently completed is a study, "Registration Statutes and Electoral Participation." A more extensive treatment of the historical antecedents of personal registration statutes and other laws affecting participation is to be found in my forthcoming book, *Critical Elections and the Mainsprings of American Politics* (New York: Norton, 1970).

* * *

The sources of my research materials are severalfold: (1) Estimates of potential electorate derived from census data and, wherever possible, omitting nonqualified adults (*e.g.*, noncitizens, institutional populations, etc.). I enclose an updated statement of estimated turnout in American presidential elections by state, 1824-1968. Additionally, I have developed county data based on census data and linear intercensal interpolations for the states of Ohio (1900-1960), Pennsylvania (1900-1960), New York (1844-1870 and 1952-1968), Alabama (1868-1908 and 1952-1968), Louisiana (1952-1968), North Carolina (1868-1908 and 1952-1968), and Missouri (1900-1960). (2) Registration statutes in several American states and a 1956 Library of Congress compendium of all American state election laws, as well as relevant discussions of British electoral law. (3) Compendia of European electoral laws and voting participation (*e.g.*, Dolf Sternberger and Bernhard Vogel (eds.), *Die Wahl der Parlamente, Band I: Europa* (Berlin: Walter de Gruyter & Co., 1969); (4) Secondary accounts of suffrage and electoral law in the United States, such as those of Merriam & Gosnell and Key mentioned earlier.

The method used to reach these conclusions is, so far as possible, quantitative, *i.e.*, the development of accurate data for countries and states (and in some cases counties) with different registration laws, and the application of statistical method to those data. Of course, such research is informed by a theory concerning the peculiarities and dynamics of American politics. Of necessity, the inferences which I have drawn have sometimes been qualitative if, one hopes, informed judgments based on many years of professional study of voting behavior.

Walter Dean Burnham
Professor of Political Science

ANNEX I

Pennsylvania: Turnout 1900-1960

Year	Non-Registration Counties			Registration Counties		
	M	V	s	M	V	s
1900	81.3	37.87	6.15	77.9	36.50	6.04
1904	76.8	78.23	8.84	73.5	53.43	7.31
1908	77.9	39.97	6.32	72.4	70.83	8.42
1912	70.6	31.31	5.60	65.2	42.19	6.50
1916	69.4	43.33	6.58	63.3	25.44	5.04
1920	48.5	42.04	6.48	41.8	25.94	5.09
1924	53.0	49.71	7.05	46.0	25.04	5.00
1928	65.9	47.88	6.92	62.1	39.01	6.25
1932	61.6	60.99	7.81	51.6	28.85	5.37
1936	80.0	55.22	7.43	70.2	34.96	5.91
1940	68.8	54.12	7.36	64.0	25.88	5.09
1944	58.6	46.16	6.79	56.1	17.85	4.23
1948	52.2	58.06	7.62	51.1	33.49	5.79
1952	64.4	60.89	7.80	63.8	30.92	5.56
1956	67.0	65.20	8.07	62.9	24.53	4.95
1960	72.5	59.74	7.73	69.0	24.93	4.99
M 1908-36:	65.9			59.1		

	Philadelphia: Turnout
1900	72.7
1904	82.3
1908	74.2
1912	64.1
1916	66.8
1920	43.3
1924	43.1
1928	63.2
1932	52.2
1936	74.3
1940	71.9
1944	64.9
1948	64.8
1952	69.5
1956	66.3
1960	69.8
M 1908-36:	60.2

T test:	Regis./Nonregis.
1900	-2.191
1904	-1.618
1908	-3.043
1912	-3.598
1916	-4.147
1920	-4.596
1924	-4.593
1928	-2.323
1932	-5.962
1936	-5.844
1940	-3.023
1944	-1.738
1948	-0.649
1952	-0.346
1956	-2.459
1960	-2.129

df = 64
for one-tailed test, df = 60:

P > .0005	3.460
P > .005	2.660
P > .01	2.390
P > .025	2.000
P > .05	1.671

ANNEX II

Missouri: Turnout 1920-1960

Year	St. Louis City & County, Jackson Co.		All Other		Diff.
	Mean	s.d.	Mean	s.d.	
1920	65.0	5.17	71.6	5.91	+6.6
1924	58.1	6.27	68.4	7.64	+10.3
1928	68.9	4.91	70.9	6.19	+2.0
1932	72.5	7.23	71.7	6.94	-0.7
1936	77.6	11.04	79.5	7.02	+1.9
1940	69.9	2.64	79.5	6.24	+9.6
1944	58.5	1.00	67.7	7.14	+9.2
1948	57.6	3.45	66.0	7.39	+9.4
1952	69.5	3.26	77.2	7.67	+7.7
1956	66.8	5.50	74.7	9.05	+7.9
1960	68.8	7.94	78.1	9.46	+9.3
Mean Turnout:	66.7		73.2		

ANNEX III

Ohio: Turnout by Categories of Registration in Counties, 1932-1960

Year	Full Registration		Partial Registration		No Registration	
	Mean	s.d.	Mean	s.d.	Mean	s.d.
1932	...	...	67.5	6.31	79.5	7.20
1936	...	...	73.1	6.04	82.6	6.84
1948	58.3	5.46	58.3	4.70	64.3	5.76
1952	66.9	4.43	71.4	4.56	75.0	5.52
1956	64.6	5.30	67.5	3.40	71.6	6.14
1960	66.2	13.45	73.4	4.46	78.6	5.35
Mean Turnout:	64.0		68.5		75.3	

ANNEX IV

Participation Rates In Texas and the United States, 1928-1968

Year	% Turnout of Estimated Potential Electorate	
	Texas	United States
1928	24.8	56.9
1932	27.2	56.9
1936	24.8	61.0
1940	30.1	62.5
1944	28.2	55.9
1948	26.0	53.0
1952	43.5	63.3
1956	37.9	60.6
1960	42.4	64.0
1964	45.4	63.0
1968	49.8	62.0

ANNEX V

Baltimore:

Correlations between Turnout and Socio-Political Variables

All (N = 83) (M = 34.0% Nonwhite)
(Mean turnout, 1960: 53.0%; sd = 12.83)

Turnout and:	
Professional-Managerial	+0.744
Clerical-Sales	+0.769
Skilled, Semi-Skilled	-0.346
Unskilled, N.A.	-0.802
Nonwhite	-0.600
Foreign-Stock White	+0.602
% Children in Public Schools	-0.676
% Dem. 1952	-0.631
% Dem. 1956	-0.340
% Dem. 1960	-0.513
% Dem. 1964	-0.565
% Dem. 1968	-0.448
% Rep. 1968	+0.576
% Wallace 1968	-0.046
% Dem. 1954	-0.057
% Dem. 1958	-0.336
% Dem. 1962	-0.413
% Dem. 1966	+0.150
% Rep. 1966	-0.174
% Ind. 1966	+0.115

Four-variable multiple correlation

Turnout and:	Partial R	Partial R^2
Skilled, Semi	-0.357	0.127
Unskilled, N.A.	-0.649	0.421
Nonwhite	+0.207	0.043
Foreign-Stock White	+0.110	0.012
R^2 0.720		

Four-variable multiple correlation

Turnout and:	Partial R	Partial R^2
Professional Managerial	+0.382	0.143
Clerical-Sales	+0.326	0.106
Nonwhite	-0.139	0.019
Foreign-Stock White	+0.062	0.004
R^2 0.666		

ANNEX VII

Turnout Data in Certain Political Systems before World War II

Danzig 1927 (Men Only)*

Occupational Groups	% of Electors Voting
Independent occupations	90.5
Free Professions	82.1
Higher Officials	93.6
Officials in Intermediate Position	96.5
Lower Officials	90.2
Employed in Leading Positions	86.1
Other Employed	88.8
Skilled Workers	87.9
Unskilled Workers	89.3
Persons without Occupation	78.9

Which very roughly collapses to the following analogue to US stratification:		(By comparison:) Baltimore	USA
Upper, Professional, Managerial	90.4	76	80
Middle Classes (White Collar)	90.8	65	75
Skilled Workers	87.9	55	65
Unskilled and No Occupation	86.8	42	56

Vienna, 1923**

Industry, Trade, Communications:

Independent	92.0
Salaried	90.2
Workers	93.8
Servants	78.7
Free Professions (lawyers, doctors, etc.)	86.2
Public Service	93.2
No Occupation:	
Rentiers (living on capital invest.)	83.8
Others	88.6
Religious Communities	94.7

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* Source: H. L. A. Tingsten, *Political Behavior* (Stockholm 1937), p. 141.
** Source: *Ibid.*, p. 154.

ANNEX VIII A.

Sweden: Voter Participation by Sex and Broad Occupational Category, 1960*

Category	Electoral Participation in %, 1960			N of Cases
	Men	Women	Total	
Non-Agricultural:				
Employers and Professional Workers	91.1	90.6	90.8	18,371
Office Employees (Salaried)	90.9	90.4	90.7	15,722
Salaried Service Employees (Including governmental)	93.8	91.3	92.5	8,493
Other Salaried Employees	90.0	88.0	88.6	13,335
Foremen and Craftsmen	93.2	93.5	93.3	4,084
Workers	88.0	87.0	87.5	60,064
Independent, Members of Families	78.1	72.9	75.5	23,275
Agricultural:				
Farmers & Farm Managers	90.4	86.4	88.4	19,890
Farm and Other Workers	80.9	84.1	82.5	6,834
Total, 1960	87.6	85.5	86.6	163,339

* Based on a 1/30th sample of the total voting-age population.

Source: *Statistisk Arsbok for Sverige,* 1964, p. 380.

ANNEX VIII B.

United States: Voter Participation by Sex and Broad Occupational Category, 1968*

Category	Electoral Participation in %, 1968		
	Men	Women	Total
Non-Agricultural:			
Professional & Managerial	81.4	82.7	81.8
Clerical, Sales & Kindred Workers	79.0	76.5	77.4
Manual Workers:	63.5	56.9	62.3
Craftsmen, Foremen, etc.	68.6	69.3	68.6
Operatives & Kindred Workers	60.3	56.0	58.9
Laborers, except Farm & Mine	54.8	54.3	54.8
Service Workers	67.6	60.2	62.7
Agricultural:			
Farmers, Farm Managers	82.3	66.5	81.6
Farm Laborers & Foremen	42.4	62.1	50.6
Total USA, 1968	71.4	70.6	71.1

* Source: U.S. Bureau of the Census, Current Population Reports Series P-20, No. 192 (December 2, 1969), *Voting and Registration in the Election of November 1968*, p. 22.

There is, it should be noted, a major anomaly in the American survey which does not appear in the Swedish. The Swedish survey indicates a turnout rate of 86.6%, while the aggregate returns yield a turnout rate of 85.9%—an overreporting of 0.7%. In the United States, however, the percentage of the potential electorate which actually voted was approximately 60.6%; the survey above thus overreports actual participation by 10.5%. There are good reasons to believe that this overreporting (and other census data problems) is also heavily class-biased and, hence, that the true turnout figures for lower-class populations are considerably below those reported above. See David M. Heer, ed., *Social Statistics and the City* (Cambridge, Mass.: Joint Center for Urban Studies, 1968).

ANNEX IX A.

Average (Mean) Electoral Participation in
Twenty Western Nations, 1945-1969

I. Countries with Compulsory Voting

Country	Mean Turnout
Australia	95.5
Belgium	92.3
Italy	92.4

II. Countries with Non-Compulsory Voting

Country	Mean Turnout
Austria	94.9
Canada	76.3
Denmark	85.0
Finland	78.9
France	79.0
Germany (West)	85.6
Iceland	90.4
Ireland	73.8
Israel	82.3
Luxemburg	91.1
Netherlands	94.7
New Zealand	90.7
Norway	79.7
Sweden	82.6
Switzerland	69.0
United Kingdom	79.2
United States	59.9

III. Composite Averages

Category	Mean Turnout
Compulsory-voting Nations	93.4
All others except United States	83.3
English-speaking countries except Australia and United States	80.0
Nations of Continental Europe + Israel	84.4
United States	59.9
(Texas, 1948-1968:	40.8)