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The Poll Tax: Its Impact on Racial Suffrage

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Notes

THE POLL TAX: ITS IMPACT ON RACIAL SUFFRAGE

There had been a clamor to outlaw the poll tax by federal action for years, but more often than not the proposals were for legislative action. There was a feeling in some quarters, however, that such action might be held unconstitutional and that a better method would be a constitutional amendment. Action toward this end began on the Senate floor on March 14, 1962, and after nearly two weeks of debate in what was termed the "friendly filibuster" by the southern Senators, a proposed constitutional amendment to outlaw the poll tax in all federal elections was favored by a vote of 77-16, fifteen more votes than the required two-thirds majority.[1] In 1964, the proposal was ratified by the thirty-eighth state and became the twenty-fourth amendment to the Constitution.

The problem of poll taxes in state elections in four states remained. An amendment to the last voting rights bill to eliminate the tax by statute failed by four votes in the Senate. It was feared by the majority that the amendment might endanger the constitutionality of the whole bill and that a safer procedure would be to test the state taxes in the courts. Such tests are now being made.[2]

It is the intent of this note to examine the impact of poll taxes on racial suffrage and to determine if these taxes contravene the due process and equal protection of the law clauses of the fourteenth amendment, or abridge the right of citizens to vote on account of race or color in violation of the fifteenth amendment.

Though in recent years most public discussion of the poll tax has dealt with its use as a means of disenfranchising certain groups, the term "poll tax" does not, itself, refer to voting. The first and most famous tax of this name was levied in 1377 in England. It led to the peasant revolt of Wat Taylor in 1381. Subsequent taxes of this sort (so called "head taxes" or "capitation taxes") were favorite means of raising revenue in England until about 1715.[3] Indeed, the tax is a popular one in several American states as a source of municipal revenue. Though sometimes going under the less politically ex-

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[1] Robinson, *This Month's Feature*, Cong. Dig., May, 1957, p. 132.
[2] Bickell, *Congress and the Poll Tax*, The New Republic, April 24, 1957, p. 11.
[3] XVIII Encyclopedia Brittanica 173 (1953).

plosive names, "residence tax" or "occupational tax," nearly all states either permit their municipalities to levy the tax or do so themselves.[4]

The tax became a prerequisite to voting in ten southern states between 1889 and 1902. Georgia had enacted a similar statute much earlier. With the rise of the Populist Party in the West and South just prior to the turn of the century came the first serious challenge to Democratic political supremacy. The Populists were a low-income farmers' party, the first party willing to bargain for the Negro vote. The intensity of the competition between Democrats and Populists led to the enfranchisement of many lower class Caucasians and Negroes who were quite undesirable elements once the Populist threat had subsided. This led many southern legislatures to amend their state constitutions to include a number of devices designed to keep the vote from these classes. The poll tax was one of these.[5]

II

After the First World War, the tax was abolished by state action in six of the eleven states, but constitutional amendments to remove it in Arkansas, Texas and Virginia failed. As permitted by the twenty-fourth amendment, the tax has remained for state elections in Texas and Virginia, as well as in Alabama and Mississippi. Arkansas repealed its tax in 1964. Texas (and Arkansas before repeal) requires only that the tax be paid prior to the election when one wishes to vote. In Virginia and Mississippi the tax is somewhat cumulative, and in Alabama a delinquent could accumulate a bill for as much as thirty-six dollars to be paid prior to voting. This last requirement was dropped recently, and the tax now has a maximum levy of two dollars in Mississippi. Various exemptions are granted to discharged soldiers, the disabled and the aged.[6]

In *Breedlove v. Suttles*,[7] decided by a unanimous court in 1937, the Supreme Court sustained, against a fourteenth amendment attack, a provision of the Georgia Constitution laying down a poll tax as a requirement for voting. The Court held that:

> To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the Fourteenth Amendment. Privilege of voting is not derived from the United States, but is conferred by the state and, save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, the state may condition suffrage as it deems appropriate.[8]

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[4] Sause, *Municipal Poll Taxes in Pennsylvania*, 8 Nat'l Tax J. 400 (1957).
[5] Encyclopedia Brittanica, *op. cit. supra* note 3.
[6] Robinson, *supra* note 1, at 135-36.
[7] 302 U.S. 277 (1937).
[8] *Id.* at 283.

In *Breedlove* the petitioner did not allege indigency and inability to pay the tax. If he had, could the tax have been sustained against a charge of equal protection of the laws? The fourteenth amendment offers some protection for the poor. In *Griffin v. Illinois*[9] the Court upheld the contention that due process and equal protection of the laws were denied an indigent appellant by failure of the State of Illinois to provide a free transcript of trial proceedings for appeal. Justice Black in writing the opinion of the Court, observed:

> In criminal trials a State can no more discriminate on account of poverty than on account of religion, race, or color. Plainly the ability to pay costs in advance bears no rational relationship to a defendant's guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial. . . . There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.[10]

But certainly, state statutes which discriminate against the poor are not unconstitutional per se. Justice Harlan, dissenting in *Douglas v. California*, cogently pointed out:

> Every financial exaction which the State imposes on a uniform basis is more easily satisfied by the well-to-do than by the indigent. Yet I take it that no one would dispute the constitutional power of the State to levy a uniform sales tax, to charge tuition at a state university, to fix rates for the purchase of water from a municipal corporation, to impose a standard fine for criminal violations, or to establish minimum bail for various categories of offenses. . . . Laws such as these do not deny equal protection to the less fortunate for one essential reason: the Equal Protection Clause does not impose on the States "an affirmative duty to lift the handicaps flowing from differences in economic circumstances."[11]

But, with the probable exception of Justice Black,[12] the Supreme Court also requires all state regulatory legislation to pass the test of rationality, *i.e.*, that it be reasonably related to an allowable end. Aside from its possible value as a revenue measure (the tax brought in more than 600,000 dollars to the state of Arkansas[13]) the states will argue that the allowable end is the selection of a suitable electorate,

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[9] 351 U.S. 12 (1956).

[10] *Id.* at 18, 19.

[11] 372 U.S. 353, 361 (1963).

[12] See Black's dissent in Griswold v. Connecticut, 381 U.S. 479, 511. "The due process argument which my Brothers Harlan and White adopt here is based, as their opinions indicate, on the premise that this Court is vested with power to invalidate all state laws that it considers to be arbitrary, capricious, unreasonable or oppressive, or on this Court's belief that a particular state law under scrutiny has no 'rational or justifying' purpose, or is offensive to a 'sense of fairness and justice.' If these formulas based on 'natural justice,' or others which mean the same thing, are to prevail, they require judges to determine what is or is not constitutional on the basis of their own appraisal of what laws are unwise or unnecessary. The power to make such decisions is of course that of a legislative body."

[13] Robinson, *supra* note 1, at 147.

and that the poll tax contributes to this end as much as do qualifications of literacy, age, residence, or absence of a criminal record. "It ensures that the act of voting is deliberate, that the citizen participates in the process of government not casually, but with a certain will."[14] And if it seems that the tax is ill-designed to achieve that end, the answer is that:

> The doctrine that . . . due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies who are elected to pass laws. . . . It is only "invidious discrimination" which offends the Constitution.[15]

Moreover, exercise of police power will be upheld if any state of facts, either known or which could be reasonably assumed, accords support for it.[16]

III

It appears then that the poll tax should be upheld again as constitutional under the fourteenth amendment's due process and equal protection of the law clauses. Can the same be said for the validity of the tax under the fifteenth amendment?

Today arguments against the poll tax generally run along the lines that it is a white supremacy measure, and as such it is an obstacle to Negro voting. If this is true, more must be shown than that indigent Negroes are discriminated against along with many indigent whites; it must be shown that Negroes are discriminated against *as a class.*

The Senate debates on the poll tax amendment brought out a number of statistics which indicate this may be done. In Louisiana there were 130,000 Negroes registered in 1897 before the poll tax, but only 5,300 in 1900 and 1,340 in 1904.[17] After repeal of the tax in Georgia the overall voter turnout increased from 16.9 per cent to 30.3 per cent of those eligible to vote. Four years after the abolition of the tax in Florida the total vote rose 46 per cent, while it rose 12 per cent in Tennessee after repeal.[18] Opponents of the tax also point out that Mississippi and Alabama, both poll tax states, are traditionally at the very bottom in voter turnout.

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[14] Bickell, *supra* note 2, at 12.
[15] Ferguson v. Skrupa, 372 U.S. 726, 730, 732 (1963).
[16] United States v. Carolene Prods. Co., 304 U.S. 144, 153 (1938).
[17] Robinson, *supra* note 1, at 144.
[18] *Id.* at 146.

Senator Paul Douglas sums up the civil rights argument by saying: "It [the poll tax] was intended to reduce the number of low-income citizens who could vote. It disenfranchised poor whites as well as poor Negroes. But since the Negroes were on the average much poorer than the whites, it disenfranchised more Negroes than whites."[19]

Defenders of the tax deny that it discriminates in favor of the white southerner. Senator Fulbright has pointed out that the Civil Rights Commission "was unable to find any evidence of discrimination due to existence of the poll tax." Furthermore, the commission cited only three southern states where Negroes now appear to face no racially motivated impediments to voting. All three of these states, Arkansas, Texas and Virginia, had poll taxes at that time.[20]

There is other evidence that the poll tax is not racially discriminatory. Negro registration is low in all parts of the South, but apparently there can be no distinction made between states with the poll tax and those without it. Mississippi keeps no statistics with regard to voter registration where the voter's race is noted, but in the other four states with the poll tax there were 33.3 per cent of the eligible Negroes registered to vote. In the six non-poll tax states there were 34.8 per cent of the Negroes registered.[21] If the statistics from Tennessee, where Negro registration is so disproportionately high as to render it "out of the South," are excluded (Tennessee has 20 per cent more Negroes registered than the second place state, Texas), there are actually 2 per cent more Negroes registered in poll tax states than non-poll tax states.[22] Though Negro registration has increased everywhere in the South in the past ten years, it is up 41.7 per cent more in all five poll tax states than in the six non-poll tax states.[23] A telling argument against poll tax discrimination comes from Edward Gamarekian's study of white pressure techniques on the Negro voters in Mississippi. In Mound Bayou, Mississippi, 295 of the 700 Negroes of voting age pay their poll taxes regularly—even though they realize their votes are never counted.[24] Apparently, the Mississippi Department of Revenue is quite willing for the Negro to pay his poll tax; there were other effective ways to keep him from voting.

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[19] *Id.* at 144.
[20] *Id.* at 147.
[21] *How Many of the South's Negroes Really Vote,* U.S. News and World Report, March 28, 1960, p. 44.
[22] *Ibid.*
[23] *Ibid.*
[24] Gamarekian, *A Report from the South on the Negro Voter,* Reporter, June 27, 1957, p. 10.

If the poll tax is no inhibitor to Negro voting, how can we explain the very low level of voting pointed out earlier that exists in the five poll tax states? Economic pressures are one reason. "In the rural counties, the economy of the Negro is tied so closely to that of the white man that he is afraid to try to vote."[25] Of course, there are the less subtle methods of literacy tests, challenges to Negroes already on the voter roles, and straight terrorism.[26] Probably the greatest inhibitor to Negro voting was apathy brought on by the one party system, *i.e.*, "the main reason is that the Democrats are so sure of victory that voters just don't care."[27] The Negro is more interested in who gets elected sheriff than who goes to Washington.[28] Residence requirements also take a big toll. In the 1956 Presidential election, Alabama with 28.5 per cent voting and Mississippi with a 22.1 per cent turnout were at the bottom of the list. Here residence requirements were two years, the longest in the nation, and the registration deadline was in May and September. By contrast Idaho with 80 per cent voting and Connecticut with 76.6 per cent led the nation. There was only a six months residence requirement here, and the two states allowed registration until three days and two weeks respectively before the election day.[29] If the poll tax does not remain as a serious obstacle to Negro voting, does it then effect the electorate in any more subtle way than in its nuisance value?

In the 1930's Huey Long swept into power with the aid of the neo-populist movement in the South. In 1934 he widened his base of power with the repeal of the Louisiana poll tax. The average rate of participation in senatorial primaries increased frrom 31.2 per cent to 46.5 per cent; the increase in gubernatorial primaries was from 40.2 per cent to 60.1 per cent.[30]

In 1936 Florida repealed its poll tax, and as noted earlier, there was a voter turnout increase corresponding to the increase in Louisiana. In four years there was an increase of 152,688 votes in the democratic primary elections or approximately 28 per cent. At this time Florida still had a white primary. The Negro registration, however, hovered around the 20,000 mark it had been before repeal until well into the 1940's.[31]

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[25] *Negroes Stay Home, Vote Crusade Fails,* U.S. News and World Report, May 2, 1958, p. 52.
[26] Gamarekian, *supra* note 24, at 9.
[27] *Fewer People Voting: Why They Stay at Home,* U.S. News and World Report, August 9, 1952, p. 16.
[28] *Negroes Stay Home, Vote Crusade Fails,* U.S. News and World Report, *supra* note 25, at 54.
[29] Saturday Evening Post, November 12, 1960, p. 10.
[30] Seymour Mortin Lipset, *Political Man,* (New York, 1960), p. 170.
[31] Robinson, *supra* note 1, at 146.

As pointed out earlier, the percentage of registered Negroes is approximately the same in poll tax and non-poll tax states. In regard to white voters, however, there are 13.4 per cent more of the eligible white voters registered in poll tax states than in non-poll tax states. If figures for Mississippi were available the disparity would doubtless be much greater. The reader will recall that the state of Tennessee was excluded from one comparison earlier because its Negro registration was so far out of proportion to other southern states that it needed a separate classification. However, excluding Tennessee's white registration here makes no appreciable difference in the comparison, *i.e.*, non-poll tax states still have 12.4 per cent more of their whites registered than do the poll tax states.[32]

If we tie together these facts we come to a not very surprising conclusion: people vote when they have a cause to champion and when their cause will be helped by their votes. Thus, voter turnout increased in 1934 in Louisiana for both the poor whites and the Negroes because their cause was championed by Huey Long. There was no corresponding increase in the Negro vote in Florida at that time because the Negro had no cause.

In the present day South the poll tax inhibits the poor white's voting because he has nothing to gain and a dollar to lose. By contrast, the Negro can better himself substantially at the ballot box. Of course, the white southerner has been particularly ingenious at devising other means of keeping the Negro from the polls, but if the hypothesis is correct, once the other obstacles are overcome, the poll tax does not dissuade the Negro, while it does dissuade the poor white.

The author sought to corroborate his hypothesis by conducting a poll in one precinct in the city of Lexington, Virginia, in November, 1963. (Virginia, of course, is one of the states which retains the poll tax.) The precinct is located in northeast Lexington. It is an integrated neighborhood of approximately two Negroes to every white. The area contains a wide divergence of incomes since it includes some of the housing for Virginia Military Institute professors along with a good many shanties giving shelter to those living on relief and unemployment checks. I interviewed forty-four persons over age twenty-one who responded to the questions; of these, twelve, or 27½ per cent, voted regularly. In Virginia, the overall figure has been approximately 29 percent,[33] for the past three years. Twenty-one of

[32] *How Many of the South's Negroes Really Vote,* U.S. News and World Report, *supra* note 21, at 40-41.

[33] *Ibid.*

my respondents were white, twenty-three were Negro. The following questions were asked with the following replies:

1. How many times do you think you have voted in the past ten years?

Please check the appropriate box

A. More than five times	11
B. Two to four times	1
C. Never voted at all	32

Thus there were twelve voters (5 whites, 7 Negro) and 32 non-voters (16 whites, 16 Negro).

2. If you had voted in the last Presidential election, would you have voted for Kennedy or Nixon?

Kennedy _____ Nixon _____

Of the 32 non-voters questioned, 16 would have voted for Kennedy, 6 for Nixon, and 10 had no opinion.

3. Do you feel that generally the voters make a wise choice between the candidates offered them? (This was clarified to mean, are you generally satisfied with your elected officials?)

	Voters	Non Voters	Colored Voters	White Voters	Colored Non Voters	White Non Voters
Yes	6	22	4	2	11	11
No	5	5	3	2	2	3
No Opinion	1	5	..	1	3	2

4. If Virginia did not have a poll tax, do you feel that you would vote?
   A. More often _____.
   B. About the same number of times _____.

	Voters	Non Voters	Colored Voters	White Voters	Colored Non Voters	White Non Voters
A.	..	6	..	..	2	4
B.	12	26	7	5	14	12

The obvious conclusion to be drawn from the data is the impotency of the poll tax to keep anyone from the polls who wants to vote. This conclusion is true regardless of race and was emphasized again and again throughout the interviews. On the other hand, the conclusion of Senator Douglas is no less obvious. "Even payment of a dollar or two is a burden for an adult to bear . . . particularly when

the benefits are at best intangible, and doubtless seem to many to be illusory."[34] The poll tax does show its "deterrent" effect here. But, following the hypothesis, the deterrent effect seems to lie with the white non voter more than with the colored non voter.

Turning from the problem of apathy to the problem of dissensus, it was surmised earlier that dissensus occurred when there was a great and sudden increase of new voters, as in the Huey Long election in 1934, or today where Negroes are gaining the vote more rapidly than whites in the deep South. If we look at responses to question three the hypothesis is corroborated. Among the twelve voters, five replied "no" to question three indicating dissatisfaction, *i.e.*, dissensus. In other words 42 per cent of the voters indicated dissensus. Among non-voters the total was again five, but this was only 15 per cent of the total. Following true to form, three of the five dissatisfied non-voters were Negroes.

In correlation with question two not a single Negro who showed dissensus in question three would have voted for Nixon while two whites indicated they would have.

Correlating questions three and four, we find that only one respondent indicated both dissatisfaction and at the same time did not vote because of the poll tax. He was questioned, and he stated that the deterrent was "principle" not money. He was earning sixty-five dollars a week as a cook and janitor. Thus, according to the poll there were only 2.2 per cent of the potential electorate who were generally dissatisfied with their elected officials and who did not vote because of the poll-tax.

IV

The thesis of this article has been that the poll-tax is constitutional under both the fourteenth and fifteenth amendments.

The tax should be sustained under the fourteenth amendment as either a revenue measure or as a police regulation. Given the Court's present liberal tests of "rationality" or absence of "invidious discrimination" it should not be difficult for the state to come up with a legitimate interest which the tax is designed to foster or protect. The means chosen need have only some plausible or presumable relevance towards achieving the permitted end.

Sustaining the tax under the fifteenth amendment should involve no greater challenge. It needs merely be shown that no citizen is denied the right to vote on account of race. If a poll-tax state grants each citizen, regardless of his race, the unhindered opportunity to

[34] Robinson, *supra* note 1, at 146.

pay the tax and if the level of the tax be not so high as to single out for special privileges or disabilities any ethnic group because of its economic position, then the tax is constitutional. It is submitted that the poll-tax states adhere to these requirements. Indeed, it is the author's conclusion from the statistics available that though there is a sizeable dissatisfied element in the electorate among poll-tax states, that the Negro portion of this element tends to vote with *greater* frequency than the Caucasian portion. In the study presented there were nearly three times the number of dissatisfied *voters* as *non-voters*. Of the dissatisfied voters, 60 per cent were Negro. Of the dissatisfied non-voters 60 percent were Caucasian. The conclusion from the data can only be that if a poll tax dissuades any ethnic group from voting it must be the poorer Caucasians, not the Negroes. It cannot be contended that the poll-tax discriminates unfairly against Negro voters as a class in violation of the fifteenth amendment.

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