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# Voting Policy and Voter Participation: The Legacy of the 1980s

by  
Alex Willingham

It has been widely recognized, at least since the Selma march during the civil rights movement, that the interests of black citizens and other minorities are directly connected to their capacity to participate in the political process and to public policies that protect that option. The clear message of the Selma demonstration was that, for a people constrained by a broad range of oppressive racist structures, voting is a basic resource for protecting all other rights. Further, it was clear that those who control power will restrict access to the ballot as their main line of defense.<sup>1</sup>

Today, no doubt, we are less sanguine about the significance of electoral campaigns given the persistence of so many problems. Black communities continue to face severely restricted economic opportunities and there has been resegregation, in effect, of public school education. Public channels can be woefully ineffective as seen in the Rodney King verdict and the reaction in Los Angeles. Still, the messages of Selma ring true when we think about what will be necessary to bring real change under the conditions of the 1990s.

It is especially important to think about current trends as we approach the 1992 elections and anticipate the form that political struggle will take in the coming decade. Redistributing power will remain important, and difficult, no matter the outcome of this election. Indeed, if things go as expected, the elections in November will be characterized by a low turnout among those very populations that suffer most from the economic conditions prevailing in the 1990s and in whose name the most persistent demands for justice have been raised.

The threat to minorities in general, and to the black community in particular, is twofold. First, winning politicians may continue to refuse to use the powers of government for positive action. Second, political campaigning will be driven by such incidents as the Willie Horton caper that ignore real issues and demean a whole racial group. Recent history gives ample evidence of this possibility in the policies and campaign tactics of Ronald Reagan and George Bush in the period 1980–1992.<sup>2</sup>

## Changing Political Policy

There is a growing genre of writings, both popular and academic, that give ample attention to the social and economic philosophy and policies of the Reagan and Bush administrations. The general interpretation is that

these policies represent a major impact, making the 1980s a distinctive—and regressive—era in U.S. political history. Little has been said, however, about policies on politics.<sup>3</sup> When the issue was raised, it was framed as a discussion of the threat of a “permanent Congress,” term limitations, and campaign financing—items which betray a profound distrust of the voter, if not of democracy itself. There was little discussion about registration and voting. But, these two administrations have presided over a growing restriction of the American electorate. In the early 1990s, at the end of three terms of Republican presidential power, it is clear that the practice of political participation itself is a critical social justice problem in the United States.

The basic facts are undisputed. To exercise minimal influence on policy, Americans are called upon to cast ballots in a myriad of elections, at several levels of government at different times. There has been low voting at all levels. The last presidential election continued the decline, going back to the Kennedy-Nixon race of 1960, in the percentage of Americans voting. State and local contests have substantially lower turnout than even the presidential elections. The 1992 presidential primaries recorded lower levels of voter turnout compared to 1988.<sup>4</sup>

Low voting is marked, to be sure, by some condescension. The well-to-do may deem themselves above the political fray. But, low voting is characterized more so by ineffective participation among people who find it difficult to negotiate the maze of residency requirements, dual registration, cut-off dates, purges, English-language-only instructions, ballot security checks, awkward registration sites, or inconvenient office hours. Consequently they do not get registered to vote and cannot make their voices heard. Electoral participation is critical in setting the public agenda but remains low and skewed away from racial minorities and the poor.

## The Legacy of the 1980s

In significant part, these conditions are a legacy of the ineffective voting reforms of the 1980s. Indeed, the Reagan and Bush administrations have been uniformly hostile to reforms designed to increase voter participation while supporting other voting changes (such as term limits) that decrease the choice of voters. In his first year in office, Reagan lobbied against an amendment to the federal Voting Rights Act of 1965 that would have expanded the coverage of the act.<sup>5</sup> Reagan changed course on this in the face of overwhelming congressional and popular opinion and agreed to a compromise that preserved the essential changes necessary to improve the law.<sup>6</sup>

The Reagan-Bush administrations also gradually changed their opposition to other voting reforms. They came to support affirmative districting, for example. The single-member district was supported as an alternative to at-large election, and different patterns of districts were supported so that constituencies of majority-mi-

minority voters could be created usually ensuring the election of a minority. That change, while dramatic, had been slow in coming. The Reagan administration argued against these reforms in a number of lawsuits during the 1980s. By the 1990 round of reapportionment, the administration was accused of being promiscuous on redistricting!<sup>7</sup> This turnabout is intriguing and provides further insight into the complex relationship, and trade-off, between efforts to expand the franchise and efforts, on the other hand, to adjust to the restricted electorate. Affirmative districting, for example, is used to compensate for underparticipation in minority populations. The administration, then, is in the position of rejecting voting improvement measures while supporting the compensatory device.<sup>8</sup>

The Reagan administration was effective in restricting the involvement of legal services lawyers in voting discrimination lawsuits. This decision was significant

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because of the cost of bringing voting litigation. The Legal Services Corporation is an independent, publicly funded agency that provides professional assistance to low income persons and communities not otherwise able to pay legal costs. The Reagan administration ordered the Legal Services Corporation to discontinue challenges to discrimination in voting on the grounds that this work is “political.” The change placed more of a burden on the Department of Justice—a politically sensitive agency—and the private groups in the civil rights community. The Bush administration continued the attack on the Legal Services Corporation including a ban on legal support to communities challenging election structures.<sup>9</sup>

The Reagan administration was also active in blocking reform initiatives taken by the states and communities. In an extraordinary 1985 action, the full weight of federal power was brought to bear on the wide-spread investigation and prosecution of community-based voter registration and Get-Out-The-Vote activists in Alabama’s Black Belt. Eight visible black community leaders were prosecuted, including Albert Turner who had been an organizer of the Selma marches. After a year of investigation, the government was able to convict only one of the persons on a minor charge of mishandling absentee ballots. Although a federal lawsuit charging selective prosecution was inconclusive, the effort amounted to harassment of leaders and effectively chilled political work for some time.

### **The National Litigation Campaign**

Reagan’s action is also well-illustrated by looking at the response to a special voter registration campaign in the mid-1980s. That campaign was developed by Hu-

man SERVE (Service Employees Registration and Voter Education) and involved a loose coalition of advocacy groups newly drawn to voting work including ACORN (Association of Community Organizations for Reform Now), Project Vote, and Common Cause.<sup>10</sup> Groups in the campaign argued that the responsibility for voter registration was that of the government rather than individual citizens. The campaign sought to define the issue of participation in terms of three factors: first, that registration itself was the problem; second, that reform initiatives should be taken at the local level; and third, that practical remedies do exist within the authority of local officials. The key fact for the campaign was their finding that a relatively high level of voting occurs among citizens *once* they register. While voter turnout routinely measures below 50 percent when those voting are counted against all age-eligibles, the levels are much higher when voters are compared only to those registered. Not convinced that this was a sign of apathy, the sponsors of the registration campaign determined registration itself to be a barrier.<sup>11</sup>

The goal of the special campaign was to improve levels of voting by removing barriers to registration through action at the local level. This strategy seemed appealing. The barriers were embedded in the administrative process, were racially neutral on their face, and had not been brought within the scope of the federal Voting Rights Act. Further, the primary responsibility for setting registration requirements is at the state and local levels and all of these barriers were put in place there. Finally, this strategy allowed the reformers to give attention to innovative procedures in neighboring states that could be used as models. This last factor was helpful in two ways: It allowed them to rebut the charges that more open registration necessarily resulted in fraud; and it allowed them to show improvement in turnout levels. Finally, there were ideological and practical advantages to the local focus given the New Federalism of the Reagan-era which aimed to increase the role of local officials in all policy areas.

A range of specific reforms were advocated and several emerged as typical of the campaign. One would require voting officials to allow registration by mail. Another would expand the duties of certain agencies to include voter registration. This would apply to government social services agencies that serve large numbers of citizens in the normal course of business and include driver’s license bureaus serving a general clientele as well as food surplus lines where the hard-core poor could be reached.

Another strategy was to file lawsuits where specific barriers could be challenged. However, unlike the expanding litigation under the Voting Rights Act, which focused on office holding, this litigation targeted registration. The challenges were often brought in state court pursuant to the state constitutions. Between 1984 and 1987 there were twenty-nine registration access lawsuits active in twelve states and in the federal courts.<sup>12</sup>

A key assumption in the strategic thinking of the campaign concerned the growing number of persons holding official positions who had an interest in easing access because they had been elected from biracial constituencies. It was expected that these officials would be sympathetic to reforms making their own base more firm. There were some dramatic gestures. In 1987, a task force of the National Association of Secretaries of State issued a report incorporating a good deal of the thinking of the campaign, stating that "... full participation awaits major reform and full implementation of the registration outreach methods that are already known and in use in states throughout the nation."<sup>13</sup>

Also, several officials moved decisively. Governors in Montana, New Mexico, New York, Ohio, and Texas—all states with significant minority populations—issued executive orders to institute some form of agency-based, nonpartisan registration.

Republican party officials opposed the efforts vigorously.<sup>14</sup> The Federal Office of Personnel Management wrote the governors with an opinion that the state actions violated federal law. After the 1984 election, the Reagan administration initiated investigations of the state orders. The action was especially noteworthy because such intervention went against the New Federalism ideology.<sup>15</sup>

### Attempts at Voting Reform in the States

In the state of Mississippi, the state chapter of Operation PUSH (People United to Save Humanity) and other black citizens went into federal court and challenged the whole range of state registration laws. A federal lawsuit was filed in March 1984. After trials and appeals, the final decision was rendered seven years later in 1991! The Mississippi litigation represented an effort to use demonstrable evidence of discrimination to convince the federal court to require extensive registration reform. The court, however, deferred to the state legislature which corrected several flagrant practices and enacted a mail-registration law, but refused to pass any of the more radical measures.<sup>16</sup>

In California the results were also mixed. The state supreme court refused to hear the case which removed any possibility of a statewide ruling. However, a coalition of groups, including Common Cause, the Southern Christian Leadership Conference, and the Mexican-American Legal Defense and Educational Fund, filed a suit in superior court challenging restrictive practices in Los Angeles county. County officials contested the lawsuit but the court ordered them to adopt an agency-based system.

Operating in the several states was expensive and time-consuming. Results were uneven. In some states with more flexible officials, negotiations were fruitful. In other states, local officials contested the proposed changes as vigorously in state court as in federal court. In others, federal court intervention was necessary, after all. The campaign was probably most effective in pub-

licizing the alternative ways of looking at how to do registration and drawing attention to reforms actually in place in other states.<sup>17</sup>

### The Federal Response

Another effort to address the problem of registration occurred at the federal level. During his first months in office, Jimmy Carter proposed to Congress a major reform in voter registration laws.<sup>18</sup> Carter's proposal included same-day registration, financial assistance to the states, registration by mail, off-site registrars, criminal penalties for fraud, and such other items as campaign financing for the House and Senate, direct popular election of the president, and modification of the Hatch Act. These proposals were introduced in Congress as the Universal Voter Registration Act of 1977. The legislation was not acted upon during the Carter years, 1977–1980.

But, with the victories by Reagan in 1980 and 1984, there was new official concern about voting.<sup>19</sup> During Reagan's second term, a comprehensive bill was proposed in Congress. The Universal Voter Registration Act of 1987 proposed to set up a uniform national registration law under federal control. The bill, sponsored by Alan Cranston, incorporated the main premises of the registration reform campaign but was directed at a federal-level response. It accepted the notion that voter registration is a government responsibility that should involve innovative outreach efforts and incentives. The bill included provisions for mail-in registration, election-day registration, and agency-based registration. It would have also provided a system of federal funding to encourage states to develop plans for compliance. This bill never received support from the president and did not pass Congress.

The behavior of the Reagan administration had a dramatic and confounding impact on how to think about voting. In Reagan, the country had its most politically conservative and actively partisan president in modern times. His outlook was narrow and, so it was expected, sure to provoke alternative mobilization among constituencies hurt by his policies but eligible to vote. Instead, in Reagan's 1984 bid for reelection and in Bush's election in 1988, the electorate returned the Republican party to presidential power on a *smaller* percentage of the voters than at the time of Reagan's first election!

Another proposal was introduced in Congress during the first year of the Bush presidency. It was less comprehensive than the Cranston bill but incorporated many of the ideas about registration that had become current. This bill did not receive presidential support but was more successful in that it passed the House but lost to a filibuster in the Senate in September of 1990 and again in 1991.

A third—less ambitious—voter registration bill was introduced. This was known as the *motor voter* bill, passed by Congress in 1992, that would allow voter

registration at driver's license bureaus. The legislation passed Congress but was vetoed by President Bush on July 2, four months before an election in which he was a candidate. This effectively ended the major federal legislative action although state-level proposals remain active.<sup>20</sup>

In the veto of the motor voter bill, Bush continued the legacy of hostility of the 1980s. However, on two other issues bearing on political access for racial minorities, the administration's position was less hostile. One concerns Section 203 of the Voting Rights Act requiring assistance to language minorities that expires in 1992.

The other issue concerns Supreme Court decisions. Two rulings in 1992 suggest that the federal judiciary, which had been a strong protector of voting rights, may be changing its stance. In one decision, the Court allowed a state law in Hawaii that prohibits write-in candidates to stand.<sup>21</sup> In another, the Court made a narrow interpretation of the Voting Rights Act to allow a local jurisdiction to change and reduce the powers of an office in reaction to the first election of a black person.

This second decision, *Presley v. Etowah County*,<sup>22</sup> came out of traditional bi-racial southern communities that exhibit a very typical bigotry. Successful lawsuits challenging at-large elections had forced previously all-white governing commissions to adopt single-member districts that guaranteed black majority districts. In response, the Alabama state legislature, raising images of the infamous gerrymander at Tuskegee, was prevailed upon to change and reduce the powers of the office. The state refused to submit the change for preclearance as required by Section 5 of the Voting Rights Act. The Court, stressing a narrow interpretation of the act, decided that the change was not really a change in voting and did not need to be submitted.

The decision in *Presley* was ominous for two reasons: first, the state's action was a direct response to effective use of the ballot by a minority; second, the change falls in a class of maneuvers made in response to empowerment efforts and is sure to invite similar changes in other jurisdictions. And, because government reorganization can be a rational decision unrelated to discrimination, scrutiny under Section 5 would be a way to develop standards and instill confidence. The Bush administration did support minority voters in this dispute by arguing to apply the act to the *Presley* circumstances. However, its efforts were blocked by the Court's majority, composed of Reagan-Bush appointees, who agreed with the narrow construction and exempted the change from coverage under the act.

### **Rethinking Voting Policy – Toward True Reform in the 1990s**

The experience with voting reform in the 1980s is a starting point to rethink voting policy on the whole. Four factors make our task difficult. I have already mentioned the successful way in which the Reagan and Bush administrations have politicized voting access. A sec-

ond factor is the dramatic rise of minority elected officials—a condition that obscures the continuing problem of popular participation.

Two other trends bear some mention in conclusion. Low voting levels may be explained away by certain otherwise well-meaning conceptions of the community of potential voters. This is especially troubling with respect to popular images associated with the neoconservative notions about the *urban underclass*. Theories about the essential character, or civic virtue, of the poor have always been a topic of concern in societies divided by wealth. Allegations about a distinctive psychology associated with racist oppression in the United States reemerges during each historical period. The political implication of this notion, in current discussions on poverty, is to undermine the very expectation that this population would act effectively in politics. It grounds the cause of ineffective political action in internal attributes. It will be difficult to see the significance of low voting where flawed agency is assumed on the part of a large sector of the population.

But, complacency is not the only assumption resulting from notions about the underclass. The notion appeals to the most backward instincts of the nation's liberal reform tradition—i.e., its paternal urge to act *for* victims rather than to act *with* them. When such attitudes gain currency among potential allies in the liberal wings of the parties, the major funding institutions, or in black leadership circles, it can produce bizarre results. One response has been to embrace a charismatic motivation that could “speak to” those in horrid social conditions and motivate them to join the electorate. This was the rationale behind the national mobilizations by Jesse Jackson during the 1980s. This notion represented a specific strategic alternative. But, the consequence has been continued low levels of voter participation and renewed doubts about the political impact of charisma.

The political parties have adjusted to the restricted electorate and now compete on its terms. The Republicans, even when claiming their appeal to be anti-elitist and populist, learned this early and enjoyed successes especially in the presidential elections of Nixon, Reagan, and Bush.<sup>23</sup> The Democrats have moved increasingly in recent years to replicate that effort. One example is recent elections in Virginia where that party was able to recapture the governor's office and a U.S. Senate seat after a string of defeats in state elections. The election of the state's first black governor showed that the strategy had some implications for racial justice. Another example is 1986 midterm elections when Democrats won a string of seats to recapture a majority in the U. S. Senate by running a series of middle-of-the-road white men. The effort to transfer these tactics to the presidential level is represented in the rise of the Democratic Leadership Council (DLC)—the group that has propelled the 1992 Clinton candidacy—where the platform and ideology are structured to compete within the known electorate.

But, such a strategy, while commendable in its realism and probably successful in retaining a competitive, two-party system, will hardly do much to change the basic discussion of public issues if the voting constituency remains exclusive. Racial minorities will continue to face an inattentive government or insulting campaign discourse as they are made into the issue that will tip the balance of an election.

There is little reason to expect any real improvement in voter participation given current policies and politics. But, it is important to think about the future. A starting point would be a uniform national system. Advocacy work would need to continue in communities to forge whatever changes are possible. But, the need to change official policy—national or local—should be complemented by an organizing strategy tied to political work among the nonvoters. The efforts to respond to low voting in the 1980s moved away from grassroots organizing to a focus on institutional barriers. This represented a significant turn that resulted in an increasing focus on legislative lobbying and bureaucratic reform.

It is a commentary on the changing times that the Voter Education Project (VEP)—organized in the seedbed of militant voter registration and education—closed down in January of 1992. That event marked the end of an institution intimately associated with mobilizing new voters in the black community. Its closing helps to focus attention on how and whether to revive an approach that may be fading as a tactic for empowerment. Insofar as VEP represents a model, it is one in which organizing is done for political results and the entreaty to register is openly connected to the goal of empowering new people to address their problems. The sense of the politics of that organizing was gradually lost and replaced by a nonpolitical stance justified by concerns over partisanship. During the 1980s, when concern mounted about low voting, and while all voting policies were increasingly politicized, the two were confused and the rational need to be nonpartisan, that was required in order to avoid capture by the two parties, was confused with the need to avoid a political stance altogether. So, the rationale for voter registration work lost the connection to power. It was sometimes stated as merely benign (where it means nothing) or dismissed as deceptive (a surreptitious partisan attack). Proponents of voter registration found themselves in the position of promising to keep their hands off politics! Today it is necessary to recapture the new voter mobilization represented by VEP and to reintegrate the political stance and grassroots methodology.

## Notes

<sup>1</sup>See discussion about protest and politics in two recent books on the civil rights movement: Taylor Branch, *Parting the Waters: America in the King Years, 1954–1963* (New York: Simon and Schuster, 1988) and Fred Powledge, *Free at Last: The Civil Rights Movement and the People Who Made It* (Englewood Cliffs: Little Brown, 1991).

<sup>2</sup>And in local campaigns by Jesse Helms (in North Carolina), Guy Hunt (Alabama), David Duke (Louisiana), and John Silber (Massachusetts).

<sup>3</sup>Compare Kevin Phillips, *The Politics of Rich and Poor* (New York: Random House, 1990) or Haynes Johnson, *Sleepwalking Through History:*

*America in the Reagan Years* (New York: Norton, 1991) with Frances Fox Piven and Richard Cloward, *Why Americans Don't Vote* (New York: Pantheon, 1987).

<sup>4</sup>For data and opinions about the persistence of voter participation as a problem see Frances Piven and Cloward, *Why Americans Don't Vote; Voting and Registration in the Election of November, 1984*, (Washington, D.C.: Bureau of the Census, 1985); *Voter Participation Statistics from Recent Elections in Selected Countries*, (Washington, D.C.: Congressional Research Service, November, 1987); *Non-Voter Study, '88-'89*, (Washington, D.C.: Committee for the Study of the American Electorate, 1988).

<sup>5</sup>The issue is difficult to describe without legal jargon. It involved Section 2 of the act which a 1980 Supreme Court decision (*City of Mobile v. Bolden*) had restricted to those situations where discrimination resulted from conscious "intent" of governmental officials.

<sup>6</sup>See Dianne Pinderhughes, "Black Interest Groups and the 1982 Voting Rights Act," (1983).

<sup>7</sup>See, for example, editorial "America's 'Segreganders,'" *Wall Street Journal*, 2 April 1992, and more generally, Abigail M. Thernstrom, *Whose Votes Count? Affirmative Action and Minority Voting Rights* (Cambridge: Harvard University Press, 1987).

<sup>8</sup>On the voting rights movement see Laughlin McDonald, "The Quiet Revolution in Minority Voting Rights," *Vanderbilt Law Review* 42 (May, 1989): 1249–97.

<sup>9</sup>See U. S. district and appeal court rulings in *Texas Rural Legal Aid, Inc. v. Legal Services Corporation* 740 F. Supp. 880 (1990) and *Texas Rural Legal Aid, Inc. v. Legal Services Corporation* 940 F. 2d. 685 (1991).

<sup>10</sup>Where lawsuits were involved they were handled by the litigation groups like the Lawyers Committee for Civil Rights Under the Law, the NAACP Legal Defense Fund or the ACLU. See Cynthia A. Williams, "Current Litigation Challenging Voter Registration Procedures," Appendix D in Piven and Cloward, *Why Americans Don't Vote*, 272–290.

<sup>11</sup>*After the Voting Rights Act: Registration Barriers*, Report of the Subcommittee on Civil and Constitutional Rights, U. S. House of Representatives, 98th Congress, 2nd Sess., October 1984; Piven and Cloward, *Why Americans Don't Vote*; Committee for the Study of the American Electorate, *Creating the Opportunity: How Changes in Registration and Voting Law Can Enhance Voter Participation* (Washington, D.C.: 1987); National Association of Secretaries of State, *Barriers to Voting* (Columbus, Ohio: Office of the Secretary of State, 1987); Citizens' Commission on Civil Rights, *Barriers to Registration and Voting: An Agenda for Reform* (Washington, D.C.: National Center for Policy Alternatives, 1988); and Farley Peters, Sandra Martin, and Beth Kyle (eds.) *Voter Registration and the States: Effective Policy Approaches to Increasing Participation* (Washington, D.C.: National Center for Policy Alternatives, 1986).

<sup>12</sup>Lani Guinier's Statement of 13 June 1984 states the goals of the litigation aspect of the campaign (New York: NAACP Legal Defense and Educational Fund, 1984).

<sup>13</sup>*Barriers to Voting*, 17. See also *After the Voting Rights Act: Registration Barriers*.

<sup>14</sup>Ann Cooper, "GOP and Democrats Split over Public Agencies Signing up the Poor to Vote," *National Journal* (16 June 1984): 1175–77.

<sup>15</sup>Peter Earley, "OPM Chief Queries States on Vote Drive," *Washington Post*, 28 September 1984.

<sup>16</sup>See trial and appeals court opinions in *Mississippi State Chapter, Operation PUSH v. Allain* 674 F. Supp. 1245 (16 November 1987); *Mississippi State Chapter, Operation PUSH v. Mabus* 717 F. Supp. 1189 (18 July 1989); and *Mississippi State Chapter, Operation Push v. Mabus* 932 F. 2d 400 (31 May 1991).

<sup>17</sup>Cynthia Williams and Linda Davidoff, *Litigating the Rights to Register and to Cast a Ballot: A Summary of Current Cases and Approaches*, (New York: Human SERVE, October, 1986).

<sup>18</sup>See *Changes in the Electoral Process*, Carter's message to Congress, 22 March 1977.

<sup>19</sup>See *Voter Participation Statistics from Recent Elections in Selected Countries*, (Washington, D.C.: Congressional Research Service, November, 1987) and *Recent Voter Turnout in Selected States and Major Cities*, (Washington, D.C.: Congressional Research Service, 29 January 1988).

<sup>20</sup>Jo-Anne Chasnow, "News on Agency-Based Voter Registration" (New York: 100% Vote/Human SERVE, April 1992).

<sup>21</sup>*Burdick v. Takushi* (8 June 1992).

<sup>22</sup>*Presley v. Etowah County* (27 January 1992).

<sup>23</sup>On the place of populist thinking in Republican party strategy see Phillips, *The Politics of Rich and Poor*.

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