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FREE AT LAST TO VOTE: THE ALABAMA ORIGINS OF THE 1965 VOTING RIGHTS ACT, by Brian K. Landsberg. Lawrence, Kansas: University Press of Kansas, 2007. 280pp. Cloth. $34.95. ISBN: 9780700615100.

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As key provisions of the Voting Rights Act (VRA) of 1965 were being considered for renewal in 2005-06, supporters and critics competed to eulogize the law. "The statute accomplished what it was beautifully designed to do: ending black disfranchisement in the Jim Crow South," cooed Abigail Thernstrom, a critic (Thernstrom 2005). It was "the twentieth century's noblest and most transformative law," George Will, a skeptic, chimed in (Will 2005). "[P]erhaps the most significant piece of legislation ever passed," enthused Judiciary Subcommittee Chairman Steve Chabot, an Ohio Republican supporter (Arnold 2005).

Such rhetoric nearly always disguises disagreement and ignorance. Was the Act the result of a sudden national moral consensus brought about by the Alabama State Troopers' "Bloody Sunday" attack on civil rights marchers in Selma, or the product of a long legal struggle, intensified in the frustrating experiences of the Justice Department in trying to overcome the resistance of Deep South registrars and judges to the 1957 and 1960 Civil Rights Acts? Should the upsurge in African-American registration in the Deep South after 1965 be attributed specifically to the Act's ban on literacy tests and provisions allowing the Department of Justice unfettered discretion in appointing federal voting registrars and observers or, more vaguely, to a societal shift in white attitudes toward black disfranchisement as a result of the Civil Rights Movement, and to a new confidence among southern blacks in general and civil rights workers in particular, a byproduct of the passage of the 1964 Civil Rights Act and the 1965 VRA? What happened in elections and public policy when blacks were re-enfranchised? How should we weigh the short-term gains that took place after the Act's passage – the registration surge – compared to the longer-term effects – the use of the Act to attack electoral rules and changes in those rules that were designed to minimize minority political power? Even if we assume, without much systematic evidence, that incremental legal struggles, not profound public transformations, were the real keys to the voting rights drama of the 1960s, which details of the Act's background we focus on will depend on whether we are trying to explain short-term or long-term consequences.

Former Justice Department attorney Brian Landsberg, who helped litigate three voting rights cases in Alabama at the beginning of his career in 1964, devotes only brief attention to such larger questions at the beginning and end of his book, centering his limited study on the legal cases from Elmore, Sumter, and especially Perry County among the seventy cases that the Department

brought under the 1957 and 1960 Civil Rights Acts. He presents persuasive evidence that the Department's experience in the three and similar cases was crucial in the framing of the literacy, registrar, observer, and preclearance provisions of the 1965 VRA – in the content, not the passage of the Act (p.5). An analytical memoir or monographic autobiography, the study draws on insider experiences and, very heavily, on Justice Department records that are now available in the National Archives. Clear and often engagingly written, FREE AT LAST TO VOTE puts flesh on the conventional statement that the 1965 Act sought to overcome southern intransigence, and it offers the most complete account yet published of the shaping of provisions of the legislation. Yet it leaves some puzzles, only partially filling one of the significant gaps – how and why certain sections of the VRA were adopted and what their original intent was – in our knowledge of the history of civil rights in America.

At the time that the Civil Rights Division of the Department of Justice (DOJ), established by the 1957 Civil Rights Act, began to litigate voting rights cases, it had only a weak, vague law and few detailed precedents with which to assault the long-entrenched, resourceful interests of southern white political supremacy. Landsberg's is not a description of high legal doctrine or grand litigation strategies. The fifteenth amendment, designed to override state and local prerogatives, provided the basic legal doctrine, and Landsberg was too junior in 1964 to be privy to grand strategy, if any existed (pp.75, 91-92).

Because the southern voting laws did not discriminate on their face and southern officials no longer declared their racist intentions openly, the DOJ had to document every aspect of the process extensively. Local intransigence at divulging records of registration inspired a provision of the 1960 Civil Rights Act that guaranteed the DOJ access to such records (pp.52-53). Landsberg's account of fact-gathering, which he refers to as "the romance of the records" – photocopying voter registration documents, reading them on microfilm, transferring the information to index cards, sorting and resorting the cards to discover patterns, and finally, presenting the conclusions based on these patterns to courts – will interest scholars who enjoy similar informational love affairs (pp.55-56). It parallels in the bureaucratized civil rights movement the dreary task of the more public movement in convincing appropriately frightened African-Americans to try to register at county courthouses.

Drawing on such painstaking research, the DOJ legal briefs in the cases created new law, rather than relying on settled law, and they created that law out of facts, not case law citations or legal theory (p.100), an observation that reinforces the more general impression (not expressed by Landsberg) that civil rights law has developed less from elaboration of principles than from deductions from facts. To overcome registrar and judicial resistance, the DOJ had to develop innovative legal theories and institutional techniques, innovations that would eventually provide the mechanics of the 1965 VRA.

That the resistance of Alabama judges provoked DOJ inventiveness was not the only irony of the struggle in the decade after Brown. The Alabama Attorney

General's effort to suppress the NAACP through legal actions beginning in 1956 left a void that was filled by less established, less cautious civil rights organizations that competed with each other to register new black voters, heightening the level of activity beyond anything that the NAACP ever mustered (pp.15-16). What these key local black organizations had to overcome to register African-Americans from the 1950s to 1965 were a variety of literacy and knowledge tests, with numerous questions about, for example, a voter's past criminal convictions and loyalty to the constitution and the laws, the name of the lieutenant governor, and excerpts from the constitution to be read orally, that gave registrars all the discretion they needed to refuse registration to almost any potential black voter, including teachers with masters' degrees, while registering virtually all whites (pp.19-20, 43).

In all three overwhelmingly African-American Alabama counties, which shared a history of racial violence and oppression, records conclusively showed blatant discrimination by voting registrars. In Elmore County between December 1959 and February 1964, for example, registrars allowed 2277 whites and only 16 blacks to register to vote, excluding five percent of white and ninety-three percent of black applicants. Nonetheless, the decisions made and the remedies granted in the three cases brought by the DOJ depended entirely on which of the three federal judges, Harlan Hobart Grooms, Frank M. Johnson, and Daniel H. Thomas, sat on the case. The cautious Judge Grooms, who presided over the Sumter County case, ruled for the DOJ, but did not grant sufficiently far-reaching relief to prevent registrars from continuing to discriminate (pp.70-73). By contrast, the more activist civil rights proponent Judge Johnson mandated the registration of specific blacks whose experiences had been detailed in the trial evidence, and more importantly, granted "freezing" relief, ordering officials to apply the same standards, administered in the same manner, to future black applicants for registration as they had applied to white applicants in the past (p.101). Developed by the Fifth Circuit Court of Appeals in a case from Panola County, Mississippi, which in turn had drawn on an earlier opinion by Judge Johnson, the freezing doctrine was the root of Section Five of the VRA, which prevents certain jurisdictions from putting new election laws or practices into effect without the approval ("preclearance") of the DOJ or the District Court of the District of Columbia (pp.105-07, 154, 171).

But the heart of Landsberg's institutional incrementalist study, where his prose quickens and his analysis deepens, is his chapter on Perry County, a desperately poor Black Belt county near Selma. The childhood home of Corretta Scott, future wife of Martin Luther King, Jr., Perry County contained both a tradition of black independence and education and a proclivity towards violence against anyone, black or white, who might challenge the old racial order – a volatile mix. Most important for Landsberg's story, the Perry County case was presided over by Judge Thomas, one of the most intransigent defenders of the racial *status quo* among southern federal judges, a man whose actions were key to a congressional backlash that led to at least two provisions of voting rights laws. First, the 1964 Civil Rights Act's provision allowing the DOJ to demand a

three-judge, rather than a single-judge court to hear certain voting rights cases is known informally as "the Thomas Amendment," inspired by his dilatory, discriminatory tactics in the Perry County and other cases (pp.118, 134). Second, a key motive for the section of the 1965 VRA that stripped federal judges of the power to appoint temporary federal voting registrars (called "examiners" in the Act) and gave it directly to the DOJ was Thomas' appointment and repeated support of a federal registrar in Perry County who was nearly as committed to excluding blacks from registration as local officials were (pp.137, 178). Thomas' recalcitrance was classic. Having found a pattern or practice of discrimination in the refusal of Perry County officials to register 173 blacks, the judge declared that he did "not have the slightest intention of doing anything" (p.125, emphasis in original).

The seven years of DOJ litigation, Landsberg suggests, "provided a factual predicate" for the legislation and helped the DOJ seize control of the framing of the Act from the Civil Rights Commission, which from 1957 to 1965 had been as prominent as the DOJ in setting federal voting rights policy (p.149). The primary draftsmen of the Johnson Administration's voting bill were two DOJ lawyers, Harold Greene and Louis Claiborne, who had recently handled appeals in voting rights cases from Alabama and Louisiana, including the Perry County case (p.155). Responding to a November, 1964 directive by President Johnson, the DOJ began planning a bill, presenting their superiors with a major draft on May 5, 1965, two days before Bloody Sunday. This draft banned literacy, knowledge, understanding, and "moral character" tests, but not poll taxes, in certain southern jurisdictions, and it provided for administrative appointment of federal voting registrars where necessary. However, it contained no preclearance section, and the Civil Rights Commission, not the DOJ, was tasked with reviewing requests from states or localities to be allowed to continue to employ voting tests (pp.158-159). After the crisis in Selma pushed voting rights to the top of the Administration's agenda, new drafts and memos on the issue spewed from the Department. For example, the Civil Rights Commission was stripped of any institutional role in the federal voting rights machinery in the second draft of the bill on a single day, March 12 (p.159).

Although the VRA's most controversial provision, Section 5 preclearance, originated in the judicial "freezing" doctrine championed by the DOJ and applied by Judge Johnson in the Elmore County case, its development was complicated and by no means automatic (pp.101, 168). A temporary ban on any new tests for voting in jurisdictions where voting turnout was low and literacy tests had been applied was proposed in a February, 1965 memo produced by the office of Solicitor General Archibald Cox. After being dropped from intervening proposals, it reappeared, for reasons Landsberg does not explain, in a May 13 draft (pp.159-160). Two days later, in the midst of negotiations between the Administration, Congress, and civil rights lobbyists, legal language allowing appeals of the test prohibition to the D.C. District Court was added to the bill, along with an authorization of suits in the same court by states or localities seeking exclusion

from the ban through a declaratory judgment that they had not engaged in racial discrimination in elections for the past ten years (pp.160-161). Thus, the selective coverage, preclearance, and "bail-out" provisions of the law were nearly finished by May 15, when President Johnson made his famous "We Shall Overcome" speech to a joint session of Congress, and no local federal judge like Daniel H. Thomas would be able to protect the discriminators once the law passed. Apparently after the Administration's bill was introduced, the Justice Department was added as a forum for preclearance and the ban on "tests or devices" was made more general – crucial amendments that Landsberg does not explain and which remain significant subjects for research. The DOJ immediately became the principal preclearance site, and the general description of discriminatory laws was used to attack changes in electoral structures, as well as in voting requirements for individuals.

Landsberg's contention that the VRA was the product not only of the Civil Rights Movement, but also of the succession of the 1957, 1960, and 1964 Civil Rights Acts and the litigation to enforce them by the DOJ is persuasive. In this case, as in so many expansions of rights in American history, intransigence by opponents not only opened the way for change, but shaped its contours (pp.188-189). Facts built up incrementally, not principles emerging suddenly, largely account for the imperfect institutions that guard our civil rights, institutions whose structures and roles are often in need of reform and renewal. Landsberg's book is not the final word on the subject of the origins of all of the provisions of the VRA, but it is an important start.

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