

12-1-1963

Civil Rights in North Carolina

Paul R. Ervin

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>Part of the [Law Commons](#)

Recommended Citation

Paul R. Ervin, *Civil Rights in North Carolina*, 42 N.C. L. REV. 30 (1963).Available at: <http://scholarship.law.unc.edu/nclr/vol42/iss1/11>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

CIVIL RIGHTS IN NORTH CAROLINA

PAUL R. ERVIN*

We the people of the State of North Carolina, grateful to Almighty God, Sovereign Ruler of nations, for the existence of our civil, political and religious liberties . . . do, for the more certain security thereof, ordain and establish this Constitution.¹

Today in North Carolina there are some who look upon the words "civil rights" with suspicion and distrust. Others despise the term. Some have convinced themselves that in a vague sort of way the idea of civil rights was conceived by an international communist conspiracy. Some now seek to defeat all proposals which are designed "for the more certain security" of "our civil, political and religious liberties" by sustained legal "nitpicking."

I am inclined to believe, however, that a majority of the citizens of our state have a genuine appreciation for those civil rights which were held so dear by the framers of both our state and federal constitutions, and that they are "grateful to Almighty God" for their preservation; considering them not only a rich heritage from preceding generations but the present bulwark of the liberty and freedom of the individual. In North Carolina, as in most of the states of the Union, the only real question now is whether these rights shall apply to all persons without respect to their race or color. With respect to religion, sex and economic status, all doubts have long since been resolved against discrimination, at least so far as the constitution and the law is concerned.

Let us look at the history of the constitutional and legal development of the civil rights of our people in this state, and let us then see if in practice we are living up to the noble words of our constitution and the laws made pursuant thereto.

I. THE RIGHT TO VOTE AND HOLD PUBLIC OFFICE

The right of every qualified citizen to vote in free elections, and the assurance that his vote will be counted (and counted for as much as every other citizen's vote) is fundamental in a democratic state.

* Member of the North Carolina Bar; Former Member of the North Carolina Advisory Committee on Civil Rights.

¹ N.C. CONST. preamble.

Our state constitution and our laws would seem to guarantee this right to every qualified citizen² with one notable and one less notable exception which will be mentioned later.

The first constitution adopted in North Carolina in 1776 set up certain economic and religious qualifications for voting and for office holding, but there were no restrictions based on race.³ No one was eligible for public office in the state who denied the "being of God or the truth of the protestant religion, or the divine authority of either the Old or the New Testament or who shall hold religious principles incompatible with the freedom and safety of the State."⁴ This, of course, excluded members of the Catholic and Jewish faiths, atheists and possibly some others from holding public office, although some Jews and Catholics were elected despite the constitutional inhibition.⁵ One could not vote for a state senator unless he owned fifty acres of land or more,⁶ while only taxpayers could vote for members of the House of Commons.⁷ All freemen, white and colored, were given the right to vote and hold office subject to the religious and economic qualifications referred to above. Foreigners settling in the state were eligible to vote after a residence of one year and after taking an oath of allegiance.⁸

In 1835 the constitution was amended and free Negroes were disfranchised,⁹ but in the allocation of representatives in the General Assembly Negroes, both free and slave, were counted to the extent of three-fifths of their number.¹⁰ The result of this vicarious voting privilege was to give an advantage to those sections of the state where there was a heavy concentration of Negro population. The same convention changed the word "Protestant" to "Christian" in the religious qualifications for office holding, thus qualifying Catholics but still leaving others beyond the pale.¹¹

² N.C. CONST. art. VI, § 1.

³ N.C. CONST. §§ 5-9 (1776).

⁴ N.C. CONST. §§ 31-32 (1776).

⁵ A notable exception was Judge William Gaston, a Roman Catholic, who was elected to and served with distinction as a member of the Supreme Court of North Carolina.

⁶ N.C. CONST. §§ 7-8 (1776).

⁷ *Ibid.*

⁸ N.C. CONST. § 40 (1776).

⁹ N.C. Const. of 1776 Amendments of 1835, art. 1, § 3, cl. 3, reprinted in Rev. Code of 1854, at 23.

¹⁰ N.C. Const. of 1776 Amendments of 1835, art. 1, § 1, cl. 2, reprinted in Rev. Code of 1854, at 23.

¹¹ N.C. Const. of 1776 Amendments of 1835, art. IV, § 2, reprinted in Rev. Code of 1854, at 23.

In 1857 another amendment to the constitution eliminated the requirement that a citizen had to be a landowner to vote for state senators.¹² From that time until the adoption of the present constitution in 1868 the members of the General Assembly were elected by vote of the adult male white population.

The 1865-1866 legislature following the close of the Civil War enacted a code of Negro civil rights.¹³ Though it was more liberal than the "black codes" adopted about the same time by other southern states,¹⁴ it did not confer the voting privilege upon Negroes.

Congress passed the Reconstruction Act in 1867.¹⁵ This act required every state in the former Confederacy before being readmitted to the Union to ratify the fourteenth amendment (which the 1865-1866 legislature had declined to do) and to adopt a constitution granting to Negroes the right to vote. This act also disfranchised a large portion of the adult male white population because of their participation in the late war.¹⁶

Under the prodding of the Reconstruction Act and of General Canby, the Military Governor of the District in which North Carolina was located, a constitutional convention was held in Raleigh early in 1868. This convention drafted our present constitution. Despite the fact that the convention was composed mostly of carpetbaggers, Negroes and Republicans,¹⁷ it came up with a surprisingly good and durable document; so durable in fact that we still have it with relatively few amendments. The election on the new constitution was held in April, 1868. There was a new registration of 196,872 voters, of whom 117,428 were white and 79,444 were Negroes.¹⁸ The constitution was adopted by a vote of 93,084 to 74,015.¹⁹ Congress duly approved the constitution and readmitted the state to the Union on July 20, 1868.²⁰

¹² N.C. ADVISORY COMMITTEE ON CIVIL RIGHTS, EQUAL PROTECTION OF THE LAWS IN NORTH CAROLINA 6-7 (1962) [hereinafter cited as EQUAL PROTECTION].

¹³ Message of the President of the United States to the House of Representatives, *Freedmen*, H.R. Doc. No. 118, 39th Cong., 1st Sess. (1886).

¹⁴ For a general comparison of these laws see *ibid.*

¹⁵ Ch. 153, 14 Stat. 428.

¹⁶ *Ibid.*

¹⁷ The membership of the 1868 Constitutional Convention was comprised of 13 conservatives, 107 Republicans, including 18 carpetbaggers, 15 Negroes, and 74 native whites. LEFLER & NEWSOME, *NORTH CAROLINA, THE HISTORY OF A SOUTHERN STATE* 460 (1954).

¹⁸ *Id.* at 461.

¹⁹ *Id.* at 462.

²⁰ *Ibid.*

The 1868 constitution provided for universal manhood suffrage and the elimination of all property and religious qualifications for voting and office holding²¹ excepting article VI section 8 which disqualified "all persons who deny the being of Almighty God" from holding office. Curiously enough this section of the constitution seems never to have been tested in the courts, although it would appear to be clearly in conflict with the first and fourteenth amendment to the Constitution of the United States²² and even with sections 1 and 7 of article I of the state constitution itself.²³ This is the less notable defect in our law to which I have referred.

Following what has been termed "the white supremacy campaign" of 1898, the 1899 legislature submitted to the voters an amendment to the constitution to provide that no person could register to vote unless he "shall be able to read and write any section of the Constitution in the English language."²⁴ The same amendment established a grandfather clause for the purpose of safeguarding the right of illiterate white men to vote. The amendment was adopted by the people in the election of 1900, becoming section 4 of article VI of the state constitution. The second part of the amendment now has been rendered academic by the passage of time.²⁵

The legislature of 1901 implemented this literacy amendment to the constitution by enacting into law the first sentence of section

²¹ N.C. CONST. art. VI, §§ 1, 4, 5, 22.

²² *Torcaso v. Watkins*, 367 U.S. 488 (1961).

²³ "That we hold it to be self evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness." N.C. CONST. art. I, § 1. "No person or set of persons are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services." N.C. CONST. art. I, § 7.

²⁴ N.C. Sess. Laws 1899, ch. 218.

²⁵ Article VI, § 4 of the constitution, as amended, establishes a grandfather clause in the following words: "But, no male person who was on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any state in the United States, wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election, in this State, by reason of his failure to possess the educational qualifications herein prescribed; provided he shall have registered in accordance with the terms of this section prior to December 1, 1908." Thus, a voter who registered under this provision on or before January 1, 1908, would perforce now have to be more than seventy-six years of age. Further, such grandfather clauses have been held unconstitutional by the Supreme Court of the United States. *Guinn v. United States*, 238 U.S. 342 (1915).

4 article VI of the constitution (the literacy amendment) and by adding these words: "and shall show to the satisfaction of the registrar his ability to read and write any such section when he applies for registration, and before he is registered."²⁶ In 1957 the legislature eliminated the words within quotes above and inserted in lieu thereof the following: "It shall be the duty of each registrar to administer the provisions of this section."²⁷ In addition, the 1957 legislature added appeal procedures by which any person who is denied the right to register may appeal from the registrar to the Board of Elections to the superior court to the supreme court.²⁸

The courts, state and federal, have upheld the constitutionality of the literacy test as contained in the North Carolina constitution and law.²⁹ There can be little doubt that this test was originally designed to prevent the registration of Negro voters, most of whom were illiterate when the amendment was first adopted, and that the test upon occasion must have been successfully utilized for that purpose. However, the record indicates that the enforcement of this test at the present time is now having very little effect on the registration of non-white voters. For about two years from January 1, 1960, The North Carolina Advisory Committee on Civil Rights³⁰ conducted a careful study into the extent to which this law is currently being used to disqualify would-be registrants. In that period of time there were 37 counties in the state in which no voter was denied the right to register on the ground of illiteracy,³¹ and in the state as a whole less than 1,000 persons, white and colored, were denied the right to register for this reason.³² In Mecklenburg County, the most populous county in the state, there has not been a single appeal to the Board of Elections in more than ten years³³

²⁶ N.C. Sess. Laws 1901, ch. 89, § 12.

²⁷ N.C. GEN. STAT. § 163-28 (Supp. 1961).

²⁸ N.C. GEN. STAT. §§ 163-28.1 to -.3 (Supp. 1961).

²⁹ See *Lassiter v. Northampton County Bd. of Elections*, 248 N.C. 102, 102 S.E.2d 853 (1958), *aff'd*, 360 U.S. 45 (1959).

³⁰ The North Carolina Committee was established by the Civil Rights Commission in accordance with the Civil Rights Act of 1957 § 105(c), 71 Stat. 634 (1957), 42 U.S.C. § 1975d(c) (1959), which provides in part that "the Commission may constitute such advisory committees within States composed of citizens of that State . . . as it deems advisable."

³¹ EQUAL PROTECTION 33.

³² *Id.* at 32.

³³ This fact was determined by the author after a search of the Records of the Mecklenburg County Board of Elections.

and on an average less than ten persons a year, white and colored, are denied the right to register because of illiteracy.³⁴

The constitutional guarantees, the law, and the manner in which the law is administered in voter registration in North Carolina are fundamentally fair and honest with remarkably few exceptions. Yet, in a state with a white population of 3,399,285 and a Negro population of 1,116,021,³⁵ there is an overwhelming imbalance in favor of white registered voters and an even greater imbalance in favor of whites who actually vote. In 1960 the percentage of potential white voters who were registered was 90.2;³⁶ whereas, in the same year, the percentage of potential Negro voters who were registered was 31.2.³⁷ Why? In my opinion the reasons are as follows, in the following order of importance: (1) apathy upon the part of the great majority of the Negro population. By and large, this segment of our population is simply not interested in exercising this privilege of citizenship; (2) the majority of our colored citizens are in the lower economic brackets, and the lower a person is in the economic scale the greater are the chances that he will not vote or even register to vote; (3) there is an inherited feeling upon the part of some Negroes that "Negroes are not supposed to vote"; and (4) those campaigning for office are reluctant to make appeals to the Negro voter, both because the candidate fears a reaction from the white segment of the population and because they doubt that the Negro will respond.

As of today it may fairly be said that if our non-white citizens do not exercise their civil right to vote, they have no one to blame but themselves. It is to be expected that in the years ahead there will be a vast increase in the number of Negroes who will register and vote, for they are slowly but surely becoming aware of the power and importance of the ballot. Candidates will be quick to learn that they cannot ignore one-third of the potential voters of the state.

It is not always true, however, that every citizen's vote in North Carolina is counted for as much as every other citizen's vote. Article II section 4 of our state constitution provides that the General Assembly at its first session after the return of every federal

³⁴ *Ibid.*

³⁵ HANSEN, *THE WORLD ALMANAC AND BOOK OF FACTS* 257 (1963).

³⁶ *EQUAL PROTECTION* 22.

³⁷ *Ibid.*

census shall reapportion the senatorial districts so that "each Senate district contain as near as may be, an equal number of inhabitants." The General Assembly has been notoriously slow to follow the mandate of this section of the constitution. Session after session has refused to perform its constitutional duty in this respect.³⁸ The result has been, and is, that the more populous areas of the state have been denied and are now denied equal representation in the upper house of the General Assembly in defiance of our constitution.³⁹ Prior to *Baker v. Carr*,⁴⁰ the Supreme Court of North Carolina held that reapportionment is a political, not a judicial question "and there is nothing the courts can do about it."⁴¹ Now that the United States Supreme Court has held contra,⁴² a reluctant General Assembly will either have to reapportion the senatorial districts in accordance with the constitution or run the risk of being compelled to do so by the courts. The continued refusal by the General Assembly to reapportion senatorial representation is the most notable defect in the law of our state respecting the right of every citizen to have his vote counted—no discounted.^{42a}

II. THE RIGHT TO AN EDUCATION

In North Carolina we feel that the acquisition of an education—at the expense of the public—is not only a right, it is a privilege. In the words of section 27 of article I of the constitution, "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right." No state in the Union is more public education-minded than is North Carolina. There are very few parochial schools in the state and very few private schools of any kind below the college level. Our people take great pride in their school system. The people are close to the schools. It is not surprising that those who drafted our constitution in 1868 stated that "schools and the means of education shall forever be encouraged."⁴³

³⁸ See generally INSTITUTE OF GOVERNMENT, DATA ON NORTH CAROLINA CONGRESSIONAL DISTRICTS, STATE SENATORIAL DISTRICTS, AND APPORTIONMENT OF THE STATE HOUSE OF REPRESENTATIVES (1961).

³⁹ *Ibid.*

⁴⁰ 369 U.S. 186 (1962).

⁴¹ *Leonard v. Maxwell*, 216 N.C. 89, 99, 3 S.E.2d 316, 324 (1939).

⁴² *Gray v. Sanders*, 372 U.S. 368 (1963); *Baker v. Carr*, 369 U.S. 186 (1962).

^{42a} Within the past month the General Assembly has passed a reapportionment measure. [Ed.]

⁴³ N.C. CONST. art. IX, § 1.

Thus the constitution directed the General Assembly to provide a state-wide free public school system. The 1875 constitutional convention added these words: "and the children of the white race and the children of the colored race shall be taught in separate public schools, but there shall be no discrimination in favor of, or to the prejudice of, either race."⁴⁴

From 1875 until 1954 North Carolina conducted a segregated school system. Although the school system was based upon the "separate but equal" doctrine, there was discrimination in favor of white students. The facilities were not equal despite the fact that as early as 1871 the Supreme Court of North Carolina had stated "every locality, yea, every child, is to have the same advantage and be subject to the same rules and regulations."⁴⁵ In 1902 our court further held that both races shall have equal opportunities for an education, so far as the public money is concerned.⁴⁶ A few figures will show the disparity. In 1920 the appraisal value of school property used by white students was \$45.32 per student against \$11.20 per Negro child.⁴⁷ In 1950 the figures were \$314.29 per white child and \$127.38 per Negro child.⁴⁸ In 1960 the figures were \$709.54 per white child and \$487.10 per Negro child.⁴⁹ These figures indicate a commendable increase in the amount of public funds dedicated to the education of our children but still demonstrate a pattern of "separate" but not "equal."

Long before *Brown*,⁵⁰ lawyers and educators had begun to doubt that the courts would continue to adhere to the "separate but equal" doctrine laid down in *Plessy v. Ferguson*.⁵¹ There was a lingering hope, though, that the rule would survive. With this thought in mind, desperate though belated efforts were made in North Carolina to equalize the physical facilities provided for colored children with those provided for white children.⁵² Despite these efforts, and despite the fact that colored school teachers were paid on the same salary level as white teachers,⁵³ the student attainment

⁴⁴ N.C. CONST. art. IX, § 2 (1875).

⁴⁵ *Lane v. Stanly*, 65 N.C. 153, 158 (1871).

⁴⁶ *Hooker v. Town of Greenville*, 130 N.C. 472, 42 S.E. 141 (1902).

⁴⁷ EQUAL PROTECTION 104.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

⁵¹ 163 U.S. 537 (1896).

⁵² EQUAL PROTECTION 104.

⁵³ *Id.* at 102.

level of colored students was definitely below that of white students.⁵⁴ Many reasons have been assigned for this in addition to unequal facilities, including the higher truancy rate among colored students,⁵⁵ less encouragement and assistance from parents, and the economic necessity for many colored students to assist in earning a living for the family.

In 1950 Judge Soper, speaking for the Fourth Circuit Court of Appeals in *Carter v. School Board*,⁵⁶ began to pry open the problem

⁵⁴ Dr. Wayne C. Church, Director of Research of the Charlotte-Mecklenburg County School District (which is the largest in the state) has made exhaustive tests of the intelligence, achievement, and aptitude of white and Negro students in the district. For the school year 1960-1961, these tests indicated: (1) white students entering the first grade had an average readiness score of 77 (or 66 percentile where 50 percentile is the national norm), and Negro students had an average readiness score of 59 (or 25 percentile); (2) white students entering the second grade had an average reading placement of 2.6 or six months above grade norm, Negro students, an average reading placement of 1.9 or seven months below the white rating; (3) in the fourth grade the white pupils averaged a mental age of 5.1, the Negro pupils averaged 3.2 (or eight months below grade and one year and nine months below the white rating), at the same grade level the average achievement rating for the white students was 5.0, for the Negro students, 3.6; (4) the sixth grade average achievement level for white students was 7.0 (or one year above average national norm), and of the Negro students, 5.2 (or eight months below grade and one year and eight months below the white rating); (5) for the tenth grade, the average white pupil was reading at a 10.4 rating and the average Negro pupil was reading at 7.8 (or two and one-half years below the white rating), the average comprehension level for the white students was 10.5 and for the Negro students, 8.0; (6) for the twelfth grade, the grade placement in reading for the white students was 12.4, for the Negro students, 9.0. Also in the twelfth grade the average white student had an IQ of 105, while the average IQ of the Negro student was 88.

These records indicate two significant findings: (a) the average Negro child enters the first grade about one-half a year behind the average white child; and (b) at the end of his public schooling the average Negro child rates on achievement tests about three and one-half years behind the average white child; for each four years the usual Negro child attends school his achievement level rises only three years; and on tests at various levels his achievement approximates his mental ability so that the Negro-white gap widens for achieving between early years and later school years.

When interviewed by the author Dr. Church stated: "After eight years directing standardized testing programs in the schools, strong evidence shows that the achievement rating parallels the ability level of students regardless of race. Evidence strongly indicates that pupils having low economic standing rate low on standardized tests regardless of race. The Negro students who have been integrated into white schools so far have largely been selective and have made a fair contribution to their new schools."

⁵⁵ It is common knowledge that the truancy laws in North Carolina are less strictly enforced against colored students than against white students.

⁵⁶ 182 F.2d 531 (4th Cir. 1950).

when he made this pungent statement: "The burdens inherent in segregation must be met by the state which maintains the practice."⁵⁷ And in 1951 Judge Johnson J. Hayes in *Blue v. Durham Public School Dist.*,⁵⁸ granted injunctive relief to colored students seeking better plant facilities. In his opinion, Judge Hayes stated:

The local school officials concede many disparities between the facilities available to the negro children as compared to those afforded white children, most of which arise from unequal plant facilities

The present local officials have not had an easy task to meet the demands of the white school children and to match them with similar conveniences for the negro children, due to lack of funds and other handicaps The fact remains, however, that the net result of what has been done still leaves the negro school children at many disadvantages which must be overcome before substantially equal facilities are made available to the negro children.⁵⁹

In 1954, the Supreme Court in the *Brown* case struck a new note. Chief Justice Warren speaking for the Court there held that segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible"⁶⁰ factors may be equal, deprive the children of the minority group of equal educational opportunities. In Justice Warren's words: "To separate them [minority groups] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."⁶¹ The Supreme Court thus arrived at a conclusion which had long before been known to educators. There is no such thing as "separate" schools being "equal" in fact. One of the most notable lessons already learned is that when schools are desegregated the colored student who is given an opportunity to compete with white students hastens to catch up with his white fellow students⁶²—and often does.

⁵⁷ *Id.* at 536.

⁵⁸ 95 F. Supp. 441 (M.D.N.C. 1961).

⁵⁹ *Id.* at 444.

⁶⁰ *Brown v. Board of Educ.*, 348 U.S. 483, 493 (1954).

⁶¹ *Id.* at 494.

⁶² Dr. Elmer Garinger, past Superintendent of the Charlotte City School System has stated to the author that when Negro students are transferred to white schools they make noticeable, sometimes spectacular, strides forward, due in part to the higher quality teaching personnel in white

North Carolina, like all of the states in the South, was poorly prepared for the impact of the *Brown* case. Shortly after that opinion was rendered the late Governor William B. Umstead appointed a Special Advisory Committee on Education composed of outstanding citizens of our state of both races. This committee filed its report with Governor Luther H. Hodges on December 30, 1954, which report among other things states:

First: The Committee is of the opinion that the mixing of the races forthwith in the public schools throughout the state cannot be accomplished and should not be attempted.

The schools of our state are so intimately related to the customs and feelings of the people of each community that their effective operation is impossible in conformity with community attitudes. The Committee feels that the compulsory mixing of the races in our schools, on a state-wide basis and without regard to local conditions and assignment factors other than race, would alienate public support of the schools to such an extent that they could not be operated successfully.⁶³

On April 8, 1955, the North Carolina General Assembly adopted this report as the approved declaration of policy of the state on the subject of a segregated school system.⁶⁴ This resolution also declared the feelings of the General Assembly in somewhat more pointed fashion in these words: "That the mixing of the races in the public schools cannot be accomplished *and if attempted would alienate public support of the schools to such an extent that they could not be operated successfully.*"⁶⁵ The resolution then provided for the appointment by the Governor of a committee of seven members to be known as The Advisory Committee on Education to "make a continuing study of the problems which exist and may arise in this State directly or indirectly from the decision of the Supreme Court of the United States on May 17, 1954, in the matter of separate schools for the races."⁶⁶

Meanwhile, on March 30, 1955 the General Assembly enacted what has become known as the Assignment and Enrollment of schools and in part to the challenge which competition with white students brings.

⁶³ GOVERNOR'S SPECIAL ADVISORY COMMITTEE ON EDUCATION, REPORT ON THE EFFECTS OF THE DECISION OF THE SUPREME COURT OF THE UNITED STATES OF MAY 17, 1954 AND RECOMMENDATIONS THEREUNDER 2 (1960).

⁶⁴ N.C. Sess. Laws 1955, Res. 29, § 1.

⁶⁵ N.C. Sess. Laws 1955, Res. 29, § 2. (Emphasis added.)

⁶⁶ N.C. Sess. Laws 1955, Res. 29, § 3.

Pupils Act of North Carolina.⁶⁷ The purpose of this act was to lessen the impact of the school desegregation cases and to give the local boards of education a substantial amount of freedom in the assignment of students to various schools. The act has been tested in the courts and held to be constitutional on its face.⁶⁸ Following a rash of litigation in both the state⁶⁹ and federal courts,⁷⁰ many areas of the state have begun a gradual process of slow integration of the schools, a process which gathers momentum with each passing school term.⁷¹ It should be noted that this token integration has been accomplished without serious incident⁷² for the most part and that the dire predictions of our General Assembly have not come to pass, and probably never will come to pass. The days of token integration in the public schools of North Carolina are almost over. Henceforth, school boards will more and more assign students to the various schools without regard to race. It should be a matter of pride to the people of our state that this significant transition

⁶⁷ N.C. Sess. Laws 1955, ch. 366, as amended, N.C. Sess. Laws 1956 (extra sess.), ch. 7, now N.C. GEN. STAT. §§ 115-176 to -179 (1960).

⁶⁸ *Carson v. Warlick*, 238 F.2d 724 (4th Cir. 1956); *Joyner v. McDowell County Bd. of Educ.*, 244 N.C. 164, 92 S.E.2d 795 (1956).

⁶⁹ *E.g.*, In re Application for Reassignment, 247 N.C. 164, 101 S.E.2d 359 (1958); *Joyner v. McDowell County Bd. of Educ.*, *supra* note 68.

⁷⁰ *Carson v. Warlick*, 238 F.2d 724 (4th Cir. 1956); *Wheeler v. Durham Bd. of Educ.*, 196 F. Supp. 71 (M.D.N.C. 1960); *Griffith v. Yancey County Bd. of Educ.*, 186 F. Supp. 511 (W.D.N.C. 1960); *McCoy v. Greensboro Bd. of Educ.*, 179 F. Supp. 745 (M.D.N.C. 1960), *aff'd*, 283 F.2d 667 (4th Cir. 1960); *McKissick v. Durham Bd. of Educ.*, 176 F. Supp. 3 (M.D.N.C. 1959); *Covington v. Edwards*, 165 F. Supp. 957 (M.D.N.C. 1958), *aff'd*, 264 F.2d 780 (4th Cir. 1959); *Holt v. Raleigh Bd. of Educ.*, 164 F. Supp. 853 (E.D.N.C. 1958), *aff'd*, 265 F.2d 95 (4th Cir. 1959), *cert. denied*, 361 U.S. 818 (1959).

⁷¹ In the 1962-1963 school year 879 Negroes were attending 55 formerly all-white schools in 18 school districts within the state. Southern School News, June 1963, p. 1, cols. 1-3. In 1963, 21 additional school districts in the state desegregated, making a total of 39 desegregated school districts in the state. Southern School News, Sept. 1963, pp. 10-11. The number of Negro students attending the schools in the current school year is not yet available.

⁷² Despite the fact that the overwhelming sentiment among the white citizens of North Carolina is against integration of the school system, no serious disturbance to the "peace and dignity" of the state has been occasioned by the integration of the school system which has thus far taken place. This fact may be attributed to the following: (a) the respect which most of the people have for the law in the state; (b) the good judgment and planning of the school administrators in the districts affected; and (c) the leadership afforded at the top level of our state government, which is a marked contrast to the failure of leadership in some other southern states, notably Mississippi and Alabama.

has so far been made without bloodshed and without serious interruption to the processes of education. Our schools remain our state's most precious possession and its most important business.

III. THE RIGHT TO WORK

Unless a citizen has a means of making a living other civil rights mean little to him. Article I section 1 of the North Carolina Constitution declares "all persons . . . are endowed by their Creator with certain inalienable rights; that among these are . . . the enjoyment of the fruits of their own labor" The constitution does not guarantee a job to anyone, nor could it. Neither the constitution nor the law of the state undertakes to protect the individual against discrimination on account of race in the vital area of making a living. We do not, as some states do, have a Fair Employment Practice Act. There has been some legislation in this general field, however. In 1891 the General Assembly passed an act to regulate and tax employment agencies in this state.⁷³ The real purpose of the act was to make it difficult to entice colored laborers from the farms. This statute was declared unconstitutional by our supreme court in 1893.⁷⁴ The statute was re-enacted in 1901 shorn of its unconstitutional provisions⁷⁵ and was upheld by the state supreme court in 1901.⁷⁶ The law in its present form is section 105-90 of the General Statutes,⁷⁷ and is, presumably, a revenue raising measure, although its ancestry leads one to believe that the real purpose of the act remains the same.

A long list of occupations have been the subject of legislation in North Carolina. The purpose has been to establish the requirements and qualifications which an individual must possess to engage in certain callings and to create boards to regulate various occupations.⁷⁸ None of these regulations establish racial qualifications, but it is probable that in practice they tend to discourage non-white persons from entering those occupations. Many of these acts have been attacked as violating article I sections 1, 7, 17 and 31 of our constitution, and our supreme court has held several of them un-

⁷³ N.C. Sess. Laws 1891, ch. 75.

⁷⁴ *State v. Moore*, 113 N.C. 698, 18 S.E. 342 (1893).

⁷⁵ N.C. Sess. Laws 1901, ch. 9, § 84.

⁷⁶ *State v. Hunt*, 129 N.C. 686, 40 S.E. 216 (1901).

⁷⁷ N.C. GEN. STAT. § 105-90 (1958).

⁷⁸ N.C. GEN. STAT. chs. 83-93A (1958).

constitutional.⁷⁹ The rule of law in this state is, well stated in *Roller v. Allen*,⁸⁰ involving an act creating a tile setters board in which Justice Higgins declared:

An act will be declared unconstitutional and its enforcement will be enjoined when it clearly appears either that property or fundamental human rights are denied in violation of constitutional guarantees. . . . The right to work and earn a livelihood is a property right that cannot be taken away except under the police power of the State in the paramount public interests for reasons of health, safety, morals or public welfare.⁸¹

In the case of *State v. Ballance*,⁸² Justice Ervin said, "the economic philosophy generally accepted in this country [is] that ordinarily the public is best served by the free competition of free men in a free market."⁸³ However, Justice Ervin did not point out how non-white workmen can escape the tradition in our State—and elsewhere—that they must be "hewers of wood and drawers of water."⁸⁴ Historically and by custom of long standing Negroes are assigned to menial and unskilled positions and it is with great difficulty that they break from this barrier despite their qualifications, education or training. As Hargrove Bowles, then Director of the State Department of Conservation and Development, said in 1962 "the Negro male laborer . . . wants to work. He can work. But he's underemployed and unemployed."⁸⁵ Our Negro citizens engage extensively in North Carolina in the ministry and in teaching. Very slowly more and more Negro lawyers, doctors, dentists and other skilled and professional workmen are finding places for their talents. Negroes still have a long way to go in this respect, but with better educational opportunities they are beginning to gain ground. The day has not yet come, though it may be dawning when they too may "enjoy the fruits of their own labor" in all trades and professions by a process of "free competition of free men in a free market."

⁷⁹ *Roller v. Allen*, 245 N.C. 516, 96 S.E.2d 851 (1957) (tile setters board); *State v. Ballance*, 229 N.C. 764, 51 S.E.2d 731 (1948) (photography board); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940) (dry cleaning board). See also Hanft & Hamrick, *Haphazard Regimentation Under Licensing Statutes*, 17 N.C.L. REV. 1 (1939).

⁸⁰ Note 79, *supra*.

⁸¹ 245 N.C. at 518, 96 S.E.2d at 854.

⁸² 229 N.C. 764, 51 S.E.2d 731 (1949).

⁸³ *Id.* at 771, 51 S.E.2d at 736.

⁸⁴ *Joshua* 9:21.

⁸⁵ EQUAL PROTECTION 85.

IV. THE RIGHT TO A FAIR TRIAL

So far as the constitution and the laws of this state are concerned, justice in North Carolina is color blind. There is nothing in the constitution or in the law that says one set of scales shall be used for one segment of our population and another set for another segment.

For many years Negroes took no part in the administration of justice in this state, except to serve as witnesses, defendants in criminal proceedings and as litigants. The U. S. Census shows that in 1920 there were 659 white policemen in this State—no Negro policemen.⁸⁶ In 1930 there were 1340 white policemen and 2 Negro policemen.⁸⁷ In 1940 there were 2155 white policemen and 3 Negro policemen.⁸⁸ In 1950 there were 3192 white policemen and 68 Negro policemen, including deputy sheriffs and marshals.⁸⁹ Neither the State Highway Patrol nor the State Bureau of Investigation employs any Negro law enforcement or investigation agents.⁹⁰ No Negroes are employed as judges of any of the state courts,⁹¹ as solicitors⁹² or as assistant solicitors.⁹³

For many years Negroes were systematically excluded from service on juries in North Carolina.⁹⁴ In Catawba County in 1961 a Negro defendant challenged the indictment against him on this ground. Judge J. Will Pless, Jr. sustained the challenge⁹⁵ in these words: "Upon this showing, there has been no Negro grand juror serving in Catawba County for 11 years and only about a dozen [Negro] jurors have served on trial juries. I have no choice, therefore, but to sustain the motion."⁹⁶

A case from Bertie County in 1948⁹⁷ revealed that although Negroes comprised more than fifty per cent of the total population at that time, they did not serve on grand or petit juries in the county

⁸⁶ *Id.* at 52.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Id.* at 53.

⁹¹ *Id.* at 56.

⁹² *Id.* at 55.

⁹³ *Ibid.*

⁹⁴ *Cf. State v. Hewitt*, Crim. No. 169, Catawba County Superior Court, N.C., Feb. 15, 1961.

⁹⁵ *Ibid.*

⁹⁶ EQUAL PROTECTION 56.

⁹⁷ *State v. Speller*, 229 N.C. 67, 47 S.E.2d 537 (1948).

and none had ever been summoned for jury duty. Apparently to make sure of this, names of Negro jurors were printed in red ink and the names of white jurors were printed in black ink. In recent years, though, Negroes have begun to serve regularly on juries in the more populous counties. In one county at least, the number of Negro jurors roughly approximates the percentage of Negro population and Negro taxpayers in the county.⁹⁸ Finally, there are less than 100 practicing Negro attorneys in this State, about 2 per cent of the total bar,⁹⁹ although the Negro population is about 25 per cent.¹⁰⁰

With these facts in mind one cannot help but wonder if the high crime rate among Negroes¹⁰¹ in North Carolina stems in part, at least, from the feeling among Negroes that the courts are not "their" courts. Of course, most practicing attorneys have learned from experience that in any litigation between a white man and a Negro, if there is any suggestion that the Negro has been treated unfairly a jury of white men will almost always find for the Negro. Defense attorneys are learning that in criminal cases a Negro juror is harder on a fellow Negro than is the average white juror.

The administration of justice is by no means an exact science. Juries sometimes take the law into their own hands in their effort to mete out justice as they see it. In the process of doing so, they sometimes compromise the right to a fair trial which every citizen has under our constitution and our law, but mankind has not yet devised a better system. We still believe that "No free-man shall be taken, or imprisoned, or disseised, or outlawed, or exiled or anywise destroyed . . . but by the lawful judgment of his peers . . ." ¹⁰² and this is one of those "civil rights" which we hold most dear in North Carolina.

⁹⁸ By personal interview the author has ascertained that under the present system of drawing jurors for the grand and petit juries in Mecklenburg County, all names are cast into a box and are drawn out by a child as provided by statute. There is no way of knowing from the jury slips whether the prospective juror is white or Negro. This would seem to assure a fair representation of Negro jurors.

⁹⁹ EQUAL PROTECTION 60.

¹⁰⁰ *Ibid.*

¹⁰¹ In the city of Charlotte, the Negro population is 27.9% of the total population. In the first six months of 1963, 85% of the Part I crimes (murder and aggravated assaults) were committed by persons of the Negro race.

¹⁰² MAGNA CARTA, ch. 39.

V. THE RIGHT TO OWN AND ENJOY PROPERTY

In general, property rights are considered sacred in our state. Article I, section 17 of the constitution echoes words quoted from the Magna Carta¹⁰³ when it states: "No person ought to be taken, imprisoned, disseized of his freehold . . . or in any manner deprived of his life, liberty or property, but by the law of the land."

In recent months the sit-in demonstrations staged by Negro citizens to dramatize their war against the practice of segregation in business places catering to the public generally have posed some interesting legal and constitutional questions as to where property rights end and personal rights begin. The constitution apparently would protect both sets of rights. But just where does the line between the two fall? The current controversy over the "right" of persons of the Negro race to receive service in eating establishments, hotels, moving picture theaters and like private places of business which formerly have served white people only has found its way into the courts in many cases,¹⁰⁴ several of them in this state,¹⁰⁵ and has been one of the compelling reasons back of the Civil Rights Bills which are now being considered by the Congress.¹⁰⁶ The cases in this state have usually arisen under a prosecution for trespass under section 14-126¹⁰⁷ (forcible entry and detainer) and section 14-134¹⁰⁸ (trespass on land after being forbidden).

In the case of *State v. Clyburn*,¹⁰⁹ our court said: "These statutes place no limitation on the right of the person in possession to object to a disturbance of his actual or constructive possession. The possessor may accept or reject whomsoever he pleases and for whatever whim suits his fancy."¹¹⁰ This sort of legal pronouncement, though, could not help but raise the question as to the right, legal and moral, of a businessman to advertise openly for public patronage and then to deny a part or all of his services and goods to a large portion of the general public solely on the basis of race.

¹⁰³ *Ibid.*

¹⁰⁴ *E.g.*, *Peterson v. City of Greenville*, 373 U.S. 244 (1963).

¹⁰⁵ *E.g.*, *State v. Avent*, 253 N.C. 580, 118 S.E.2d 47 (1961), *vacated*, 373 U.S. 375 (1963).

¹⁰⁶ *E.g.*, S. 1731, 88th Cong., 1st Sess. (1963).

¹⁰⁷ N.C. GEN. STAT. § 14-126 (1953).

¹⁰⁸ N.C. GEN. STAT. § 14-134 (1953).

¹⁰⁹ 247 N.C. 455, 101 S.E.2d 295, (1958).

¹¹⁰ *Id.* at 458, 101 S.E.2d at 298.

In the *Clyburn* case the court said: "Race confers no prerogative on the intruder."¹¹¹ But does race alone limit the right of an individual to trade with whom he wishes and to sit with others where he pleases in places of business which cater to the general public?

In *State v. Avent*,¹¹² Justice Parker says:

In the absence of a statute forbidding discrimination based on race or color in restaurants, the rule is well established that an operator of a privately owned restaurant privately operated in a privately owned building has the right to select the clientele he will serve, and to make such selection based on color, race or White people in company with Negroes or vice versa, if he so desires.¹¹³

And again in the same case the learned justice stated: "It [the judicial process here] is to punish the defendants for unlawfully and intentionally trespassing upon the lands of S. H. Kress and Company, and for an unlawful entry thereon, *even though it enforces the clear legal right of racial discrimination of the owner.*"¹¹⁴

But on appeal to the Supreme Court of the United States,¹¹⁵ the judgment against the defendants was vacated and the case was remanded to the Supreme Court of North Carolina on the basis of the decision of the Supreme Court of the United States in the case of *Peterson v. City of Greenville*,¹¹⁶ in which case the Court, speaking through Chief Justice Warren, said:

Consequently, these convictions cannot stand, even assuming, as respondent contends, that the manager would have acted as he did independently of the existence of the ordinance. . . . When a state agency passes a law compelling persons to discriminate against other persons because of race, and the State's criminal processes are employed in a way which enforces the discrimination mandated by that law, such a palpable violation of the Fourteenth Amendment cannot be saved by attempting to separate the mental urges of the discriminators.¹¹⁷

These cases, and these experiences, underscore the fact that in this day we are passing through a social revolution which is changing and will continue to change many concepts of social conduct. The

¹¹¹ *Ibid.*

¹¹² 253 N.C. 580, 118 S.E.2d 47 (1961), *vacated*, 373 U.S. 375 (1963).

¹¹³ *Id.* at 586, 118 S.E.2d at 51.

¹¹⁴ *Id.* at 590, 118 S.E.2d at 54. (Emphasis added.)

¹¹⁵ *Avent v. North Carolina*, 373 U.S. 375 (1963).

¹¹⁶ 373 U.S. 244 (1963).

¹¹⁷ *Id.* at 248.

lawyers and laymen alike might as well prepare themselves for sweeping changes in the law, whether by legislative action or by judicial decree.

VI. CONCLUSION

As we draw to the close of this "summer of discontent" of 1963, it might be well for the people of North Carolina to take a fresh look at the subject of civil rights in our state to determine how far we have gone in a realization of our goal of equal rights and equal opportunities for all and how far we have yet to go.

Most of us in North Carolina are proud of the fact that our state is looked upon as one of the more enlightened states in the Union and that it is a state where more genuine progress has been made in working out solutions to the difficult problems of race relations than any other state in the South. We are constrained to believe that this is due in part to a genuine love for liberty which the people of this state have and a realization of the fact that if there is to be freedom at all, there must be freedom for all.

North Carolina has no cause to be ashamed of its present record concerning the right of all qualified adults to vote in free elections. This has not always been the case but today any qualified person irrespective of his color can register and vote if he is willing to make the effort to do so.

The privileges of education have been extended to all of our people. Even the restraints and handicaps which some feel go with a segregated school system are beginning to melt away for as this paper is being written many hundreds of Negro children are being admitted to formerly all-white schools in North Carolina. The prospect is that before many years have passed, such segregation in schools as will continue to exist will result from residential situations rather than from a pre-determined design to keep the races separate in the schools.

The right of all of our citizens to obtain equal employment opportunities must depend primarily not upon the law itself but upon the willingness of the people who employ labor to give job opportunities to those who are best qualified irrespective of race. Because of long-standing custom and tradition, it will be many years before this goal is fully attained.

Concerning the right to a fair trial, I feel that we have prac-

tically attained that goal and that our courts will continue to mete out justice without fear or favor and without prejudice or bias.

One of the most difficult problems confronting us at this time is how we shall come to a solution of the demand of non-white people to receive equal service and consideration in those businesses and establishments which heretofore have maintained a segregated system. The difficulty here arises out of the long-prevailing custom in the South which discourages social contact between the races such as meeting and eating together. However, it may be that the ultimate answer to this problem has been discovered by the Chamber of Commerce of the City of Charlotte, which has called upon its members to abandon all segregation practices in those businesses which appeal for public patronage.¹¹⁸ It is probable that the members of the Charlotte Chamber of Commerce were actuated more by economic and moral considerations than by legal requirements in coming to this conclusion, although the City Council of Charlotte was probably more impressed with the legal futility of maintaining a segregated system when it recently repealed all of the segregation ordinances in the Charlotte City Code.¹¹⁹

In any event, the people of North Carolina are determined as a whole to meet the problems of this changing order through which we are now passing with calmness and with determination to the end that we may find just and lasting solutions to the problems which arise when persons of different ethnic origins must live and labor together, and in the process of doing so we shall show the same gratitude to God as did our forefathers when they stated:

We the people of the State of North Carolina, grateful to Almighty God, Sovereign Ruler of nations, for the existence of our civil, political and religious liberties . . . do, for the more certain security thereof, ordain and establish this Constitution.¹²⁰

¹¹⁸ Charlotte Observer, July 14, 1963, § B, p. 1, col. 4.

¹¹⁹ Charlotte Observer, June 11, 1963, p. 1, col. 1.

¹²⁰ N.C. CONST. preamble.