
The Student and the Vote

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coverage, is now interpreted as embracing the generic category of things used to support workmen involved in construction, alteration, or repair. Thus, any device falls within its prohibitions merely upon the intent of the person in charge that the object be used by the workmen as a support. Throughout its judicial history, the legislative purpose of protecting workmen has never fallen from the consciousness of the courts, and it shall continue to be interpreted accordingly, with most presumptions geared to the preservation of this valuable cause of action.

Richard Loritz

THE STUDENT AND THE VOTE

Every state in the Union requires that a person maintain a "residence" in the local election district for a specified length of time before becoming eligible to vote. If this person is a student receiving a formal education in the district, he may find unusual difficulty in proving that he has maintained proper "residence" when he presents himself to vote. Furthermore, when an election is contested by appropriate procedure, the contestant may seek to invalidate the vote of a student at a local institution, contending that the student did not fulfill the "residence" requirement. In this comment some of the solutions offered by the courts to controversies such as these will be critically compared with the policy and purpose behind the requirement of "residence."¹

The general public policy behind the election laws of the states is found in the political bridgework of the Nation. The essence of the republican form of government that somehow the United States shall guarantee to every state in the Union is that there be a body of citizens entitled to vote, in whom the supreme power of government resides to be exercised by their chosen representatives. The ideals of popular sovereignty and democracy to which this Nation claims to adhere demand that the ballot be distributed to all members of the governed community. The infusion of these ideals into the republican government creates a situation in which the only voter qualification consistent with public policy is one justified by necessity and reason.

Voter qualification laws traditionally have been of two basic types. Certain of these laws demand from the prospective voter some objective assurances of a responsible attitude, such as minimum age or minimum

¹ Some of these controversies concern "residence" within the state for the required time. Other such controversies, where "residence" within the state itself is not questioned, concern "residence" within the appropriate local political subdivision (e.g., election district). The problems are the same for both types of controversy, as well as for the hybrids.

literacy. Others demand of the prospective voter some objective manifestations of membership in the governed community, such as "residence."²

In *Dale v. Erwin*³ students at Shurtleff College claimed that the labor that they furnished to satisfy a road tax entitled them to vote. The court did not consider the road tax as relevant because the statute exacted labor indiscriminately from all "inhabitants." The court rather considered the exercise of the vote to be a privilege of the town and said:

One who has a home in a town in this State is, by the laws of the State, liable to town duties, to be taxed on his personal property, to be enrolled in the militia, and placed on the jury lists and serve as jurymen, and to be chosen to fill town or country offices, if of a mature age and possessed of other proper qualifications, and he is entitled to all the privileges of the town, and to receive its support in the event of his becoming a pauper.⁴

The court pointed out that these students had not paid taxes on any property and had not otherwise acted as townspeople. This seems to be begging the question, for taxes, militia duty, and other obligations are demanded only of community members. Anyone who pays these taxes and serves in the militia tends collaterally to demonstrate his place in the community. But, in order to decide whether or not these taxes ought to be paid and these services ought to be rendered, the court must decide whether the person is a community member. Therefore, a different approach will have to be taken in utilizing "residence" to demonstrate community membership.

Certain assumptions must be made. In Massachusetts, where the advisory opinion is utilized, the House of Representatives asked if residence at a public institution in the Commonwealth for the sole purpose of obtaining an education would be a residence within the meaning of the Constitution, so as to give a person who has his means of support from another place a right to vote, or subject him to the liability to pay taxes in the town.⁵ In constructing the framework of an answer the Supreme Judicial Cover advised:

Certain maxims on this subject we consider to be well settled, which afford some aid in ascertaining one's domicil.⁶ These are, that every person has a

² See generally Bernard, *Election Laws* 68 (1950) (Chart I: Minimum Periods of Residence for Voting Purposes).

³ 78 Ill. 170 (1875).

⁴ *Id.* at 182.

⁵ Opinion of the Justices, 46 Mass. 587 (1843) (Advisory opinion).

⁶ There is no good reason to equate "residence" to "domicile" as did the Justices. The discussion which follows by the Court of Appeals of Maryland is most enlightening. "But there is, it seems to us, a broad distinction between domicile, in a legal and technical sense, by which one's *civil status* and the rights of persons and property

domicil somewhere; and no person can have more than one domicil at the same time, for one and the same purpose. It follows, from these maxims, that a man retains his domicil of origin till he changes it, by acquiring another. And it is equally obvious, that the acquisition of a new domicil does, at the same instant, terminate the preceding one.⁷

It seems fair to assume that a person is a member of some community on a given community level.⁸ He retains that community membership until he abandons it and gains another inconsistent with it.⁹ His membership in the community does not depend on the extent of his participation in its affairs.¹⁰

Because of these assumptions, the vote of an otherwise qualified person who has never left the town of his birth is never challenged. But the man who attempts to vote in a district (or state, or both) other than where he was born raises the question of whether there has been a change of residence to the new district.

Although, theoretically, a person could have ties to a community in which he has never set foot, strong considerations support the notion that only a person who is physically present can acquire "residence." As the Supreme Judicial Court of Massachusetts said:

The objects intended to be secured by the constitutional limitation of the right of suffrage to the town in which the voter has his home, were opportunity to ascertain the qualifications of the voter, and the prevention of fraud upon the public by multiplying the votes of the same person.¹¹

Physical presence as the sole test of residence would totally disregard community membership. Visitors and intruders must be distinguished

are determined, and the residence required by the Constitution as a qualification for the exercise of political rights. 'Domicile' in a legal sense, has, as we all know, a fixed and definite meaning, and yet the word domicile is nowhere to be found in the Constitution. In prescribing the qualifications of voters . . . the person must be a 'resident' or must 'reside' for the time specified within the State or county. The object in thus prescribing residence as a qualification for the exercise of the right of suffrage, was not merely for the purpose of identifying the voter and as a protection against fraud, but also that he should become in fact a member of the community, and as such have a common interest in all matters pertaining to its government. The framers of the Constitution were dealing with the question of residence for political purposes, and which although analogous in many respects, is not to be understood in the same sense as domicile in law by which the rights of persons and property are governed." *Shaeffer v. Gilbert*, 73 Md. 66, 70-71, 20 Atl. 434, 435 (1890).

⁷ *Id.* at 589.

⁸ Refer to note 1, *supra*.

⁹ These acts are not correlative. Conceivably a man could abandon his old residence and skip about from one new residence to another, not remaining in any one new residence long enough to perfect political status or tax liability.

¹⁰ Thus even a modern-day Simon Stylytes, living on his pillar in an American desert, would be allowed to vote.

¹¹ *Putnam v. Johnson*, 10 Mass. 488, 502 (1813).

from community members. Thus "residence" must include the abstract factors involved in the mental disposition (*animus*) of the community member. Physical presence coupled with the proper disposition for the required length of time would constitute "residence."

The exact constituents of the disposition for community membership have remained the interests of social scientists, but courts have been concerned at least with the intentions of the party claiming residence.¹²

In *Dale v. Erwin* the court looked upon a residence as "a home which the party is at liberty to leave, as interest or whim may dictate, but without any present intention to change it."¹³

The Supreme Court of Indiana in the case of *Pedigo v. Grimes*¹⁴ allowed the votes of students who entered the State University at Bloomington, subsequently determining that it should be their residence. The court commented that if the individuals had gone to Bloomington with the intention of remaining simply as students they would not have acquired a residence without a change of intention. The court pointed out that "Where, however, the intention is formed to make the college town the place of residence, and that place is selected as the domicile, then the person who does this in good faith becomes a qualified voter."¹⁵

Another court faced with a similar problem suggested the following test in the case of *Shaeffer v. Gilbert*:¹⁶

. . . [T]he question is what is the meaning, and what is necessary to constitute "residence" as thus used in the Constitution? It does not mean, as we have said, one's permanent place of abode, where he intends to live all his days, or for an indefinite or unlimited time; nor does it mean one's residence for a temporary purpose, with the intention of returning to his former residence when that purpose shall have been accomplished, but means, as we understand it *one's actual home* in the sense of having no other home, whether he intends to reside there permanently, or for a definite or indefinite length of time. . . . And to acquire such residence, that is, residence by choice, one must remove to this State, or being an actual resident of the State, he must remove from one county to another, with the *bona fide* intention of abandoning his former place of residence, and of making this State or the county to which he removes his *actual home* for a *definite* or an *indefinite* period of time; and if with such intention he continues to reside in the county to which he was removed, for the length of time prescribed by the Constitution, he is entitled to be registered as a voter.¹⁷

¹² See, e.g., *Hall v. Shoenecke*, 128 Mo. 661, 31 S.W. 97 (1895).

¹³ 78 Ill. 170, 181 (1875). See previous discussion.

¹⁴ 113 Ind. 148, 13 N.E. 700 (1877).

¹⁵ *Id.* at 151-52, 13 N.E. at 702.

¹⁶ 73 Md. 66, 20 Atl. 434 (1890).

¹⁷ *Id.* at 71, 20 Atl. at 435. See also *People v. Osborn*, 170 Mich. 143, 135 N.W. 921 (1912); *Hall v. Schoenecke*, 128 Mo. 661, 31 S.W. 97 (1895); *Chomeau v. Roth*, 230 Mo. App. 709, 718, 72 S.W. 2d 997, 999 (1934); *Fry's Election Case*, 71 Pa. St. 302, 309 (1872); *Siebold v. Wahl*, 164 Wis. 82, 87, 159 N.W. 546, 548 (1916) (concurring opinion).

It seems that an intention to remain forever, except for temporary sojourns and in the absence of unforeseen circumstances, is wholly consistent with the disposition for residence. It also seems that the legislatures have provided the measure of time necessary for acceptance into the community. Thus, assuming that a given statute prescribed a one-year residence period, if a person has abandoned his former residence (also a matter of disposition) and is physically present in the new place for one year, having had the intention to remain, except for unforeseen circumstances and temporary sojourns, for one year, he shows a residence in the new place to which the usual assumptions will apply.¹⁸

The difficult problem is deciding whether the former residence has been abandoned. Since sentimental men who intend to return to the boyhood farm town at their retirement from the railroad are not questioned as prospective voters when otherwise qualified, and since formal education commonly consumes more time than residence laws prescribe, the answer to the question of abandonment lies not in the intention to return to a former residence but in other circumstances. In an appropriate case indications that the former residence has been retained might be maintenance of sleeping facilities, storage of personal belongings, or unemancipation from the parental family.¹⁹

Constitutional and statutory provisions in forty-three states provide, in substance, that for purposes of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while a student at any institution of learning.²⁰ These laws could be interpreted to mean that no student could ever effect a change of residence, because the requisite physical presence could never be the physical presence of

¹⁸ The physical presence and the disposition must coexist. *Berry v. Wilcox*, 44 Neb. 82, 89, 62 N.W. 249, 251 (1895). But the proper disposition can later unite with physical presence begun before. *Pedigo v. Grimes*, 113 Ind. 148, 153, 13 N.E. 700, 702 (1887). Cf. Opinion of the Justices, 46 Mass. 587, 589 (1843) (Advisory opinion).

¹⁹ See *Ashbar v. Wahl*, 164 Wis. 89, 159 N.W. 549 (1916).

"We have the situation here of a student in one of the departments of the university whose work is, in the natural order of things, at the end of a college course; entirely emancipated from his family for a long period of time; earning his own living and exercising the right of voting elsewhere than at the home of his parents and thereby necessarily claiming a home other than with such parents; no returning to the home of his parents after temporary absence therefrom, and further, with no present intention of returning to his former residence. . . ." *Id.* at 90, 159 N.W. at 550. But see *Anderson v. Pifer*, 315 Ill. 164, 146 N.E. 171 (1925).

"The fact that a student does not expect to return home after he finishes school is not a very important one, for most persons expect, when they graduate, to enter some kind of business for themselves." *Id.* at 168, 146 N.E. at 173.

²⁰ See generally 37 A.L.R. 138 (1923) (Annotation). For the constitutional provisions see Legislative Drafting Research Fund, *Constitutions of the United States* (2 vols.) (1962).

anyone who was attending an institution of learning.²¹ This interpretation clearly violates the public policy of wide distribution of the ballot, and fails to further the legislative purpose for the residence laws: Identification of the community member. Instead this interpretation avoids any distinction between the "Joe College" of popular conception and the business man who takes "brush-up" classes on Sunday mornings. In the case of *People v. Osborn*,²² the court posed the hypothetical example of the college student, with many ties to the parental family and home, whose parents and family all move to the college town. The court was compelled to reject the interpretation excluding the student because, to the court, such a result in the hypothetical instance would be irrational.²³ Rather these laws should be read as warnings from the lawmakers that, in their opinion, many school "kids" are mischievous rascals who might find disruption of local politics a diverting pastime, and that many students maintain the appearances of a new residence without abandoning the old one.

Perhaps this is what the Supreme Court of Louisiana had in mind when it declared:

The accepted rule seems to be that the effect of such a constitutional provision is not to disqualify a student from gaining or losing a residence at the seat of the institution he is attending, but to render his presence at or absence from the institution primarily without effect as to his political status. . . .²⁴

In the decision *In re Ward*,²⁵ the court pointed out that this interpretation was clearly the intent of the framers of the provision as found in the *Dialogues* of the Constitutional Convention of 1867. The court further commented:

It would seem that this the sensible and proper way to regard this constitutional provision, and any other interpretation would give to a person who has no desire to learn how to read and write, and who moves from place to place, the right to acquire a residence for voting, and debar the student, ambitious to perfect his knowledge upon all subjects within the mental grasp, from the right to vote on questions of political importance which he appreciates keenly, and which he is training his mind to understand more fully.²⁶

²¹ This seems to have been the underlying attitude in Fry's Election Case, 71 Pa. St. 302 (1872) snubbing "vague notions of liberty and personal rights, which often impress the mind, and lead it to incline against what may seem to be a restraint." *Id.* at 311. This case was regarded as "ancient" and thereby ignored in *Berry v. Wilcox*, 44 Neb. 82, 86, 62 (N.W. 249, 250 (1895)).

²² 170 Mich. 143, 135 N.W. 921 (1912).

²³ *Id.* at 148, 135 N.W. at 923; approved in Attorney General *ex rel* Miller v. Miller, 266 Mich. 127, 253 N.W. 241 (1934).

²⁴ *Holmes v. Pino*, 131 La. 687, 689, 60 So. 78, 78 (1912).

²⁵ 20 N.Y.S. 606 (1892).

²⁶ *Id.* at 610-11.

Some courts, cautioned by these constitutional provisions and statutes, and impressed by the "popular" conception of the student, have required proof of acts independent of the stay as a student to establish the disposition necessary for residence.

This rule first was expressed in *Matter of Goodman*,²⁷ in the New York Court of Appeals. Petitioner had not lived with his father for twelve years. For seven years he had traveled in the West. He then moved into a rooming house in New York City. After a few months he entered Union Theological Seminary, taking a part-time job as a mission worker for a local church group. While a student he found a new room nearer the Seminary. The court denied his petition to register from the new address and suggested that his residence was still in the first rooming house. The court stated:

We do not mean to say that a voter may not change his legal residence into a new district in spite of the fact that he becomes a student in an institution of learning therein, but the facts to establish such a change must be wholly independent and outside of his presence in the new district as a student, and should be very clear and convincing to overcome the natural presumption. . . . The intention to change is not alone sufficient. It must exist, but must concur with and be manifested by resultant acts which are independent of the presence as a student in the new locality. It is only in quite exceptional cases that such a result could be reached, and nothing in the one before us takes the situation out of the constitutional rule.²⁸

In a case that soon followed, the rule was assailed as harsh and unnecessary. To this the response was made: "It may be urged that the enforcement of this rule will render it nigh impossible for a student to establish a residence in a seminary of learning, but the very obvious answer is that the letter and spirit of the Constitution contemplate such a result. . . ."²⁹

Although any person who could show connections with the community distinct from connections at a school³⁰ would clearly qualify as a voter (if the prior residence had been abandoned), some cases seem to have made the rule the reason for the rule.

In *Matter of Barry*³¹ and *In re McCormack*³² major seminarians at Saint Joseph's, in Yonkers, were denied the ballot despite the fact that

²⁷ 146 N.Y. 284, 40 N.E. 769 (1895).

²⁸ *Id.* at 287-88, 40 N.E. at 770.

²⁹ *Matter of Garvey*, 147 N.Y. 117, 123, 41 N.E. 439, 441 (1895).

³⁰ For as the Missouri Appellate Court has said:

"If . . . residence for voting purposes must have some connection or identification it could not better be evidenced than by a participation in the community's public affairs by those who claim no other community as their residence." *Chomeau v. Roth*, 230 Mo. App. 709, 719, 72 S.W.2d 997, 999 (1934).

³¹ 164 N.Y. 18, 58 N.E. 12 (1900).

³² 86 App. Div. 362, 83 N.Y.S. 847 (1903).

they had renounced their former residences expressly as a prerequisite to admission.

Members of the Franciscan Order, bound by its rule in all matters, while preparing for ordination, were turned away. The court said:

If they continue as students until ordained as priests, during their residence at the seminary as such, their status is clearly fixed, and under the Constitution they cannot during such studentship acquire a residence which entitles them to registration in the district where they make their sojourn.³³

The New York Court of Appeals carried the rule furthest by holding that even though abandonment of the former residence was established by independent acts (letters to various officials) other independent acts would have to be shown to establish the acquisition of a new residence.³⁴

However when Columbia University established "Shanks Village" to accommodate student veterans who had families, a protracted controversy ensued over voting in the local election district. The trial court³⁵ and the appellate division,³⁶ while deciding that wives and parents of students, living with them, must be allowed to vote, firmly stated that the students themselves were not so entitled. The Court of Appeals reversed the case of *Robbins v. Chamberlain* with these remarks:

Our Constitution and our statutes, for sufficient reasons, have decreed that those who attend colleges and seminaries away from their family homes and live in college residential halls during the college year in the fashion conventional before the war, do not, thereby and without more, become qualified to vote in the communities in whose life and doings these students had so limited a part and so limited an interest. The mischief against which the law was aimed was the participation of an unconcerned body of men in the control through the ballot-box of municipal affairs in whose further conduct they have no interest, and from the mismanagement of which by the officers their ballots might elect, they sustain no injury.³⁷ . . . However, that old concept of semi-cloistered college life has little to do with the way these petitioners are getting their education. They are married men who have left their parental firesides and gone out on their own, with their wives and children. Their living arrangements at Shanks Village bear small resemblance to an old-fashioned college community, but are more like the kind of new-fashioned company-owned housing projects, which great industries build near their factories to attract and serve their employees and their employees' families. These students are family men, not college boys away from their parental homes. True, their tenure of occupancy at Shanks Village can continue only while they are students, but,

³³ In re Gardiner, 101 Misc. 414, 424, 167 N.Y.S. 26, 31 (1917).

³⁴ In re Blankford, 241 N.Y. 180, 149 N.E. 415 (1925). See also In re Foster, 123 Misc. 852, 206 N.Y.S. 853 (1924), which turned on the fact that the applications were filed late, but approved in general terms of the above cases.

³⁵ 189 Misc. 1020, 76 N.Y.S.2d 624 (1947).

³⁶ 272 App. Div. 1034, 74 N.Y.S. 2d (1947).

³⁷ Citing *Silvey v. Lindsay*, 107 N.Y. 55, 60, 13 N.E. 444, 446 (1887).

since they have no other homes, their tenure is "temporary" or "indefinite" only in the same sense as the tenure of the occupant of a city apartment house.³⁸

Without the "independent acts" rule the Robbins case would not have seemed so revolutionary. Yet the case was properly decided in the light of public policy and the purpose of the election laws. The rule ought not be used in the cases to follow.³⁹ Rather the courts should decide future cases involving students by distinguishing community members from others by the residence requirement according to the public policy of a society striving to achieve democratic ideals.

The worst fears of the well-entrenched citizenry will not be realized. The great mass of collegiate "intruders" will not qualify to vote so as to use the local policies as a diversion or sport. But no person will be "disfranchised" because he chooses to obtain an education.

Allen J. Hoover

³⁸ 297 N.Y. 108, 111-12, 75 N.E.2d 617, 618 (1947).

³⁹ The rule appeared since Robbins in New York in the Application of People *ex rel* Singer, 118 N.Y.S.2d 91 (1952), accompanied by a soulful apology to the spurned voters and an appeal to the orderliness of legal institutions. (This decision was affirmed by a series of memoranda, 282 App. Div. 919, 125 N.Y.S.2d 637 (1952).)