***We the People: the Citizen & the Constitution***

2019-2020 High School Hearing Questions

Information, Tips, Analysis, & Resources from the Oregon high school We the People community

UNIT 1 / Q.3

**Ideas of power, rights, and limited government varied in the first state constitutions in the United States. Identify and explain some of these ideas and explain why there were some marked differences among the state constitutions.**

* What are someclassical republican and natural rightsideas in the Constitution that were first articulated in state constitutions?
* What role do state constitutions continue to play in the evolution of our constitutional system of government?

**Comments from Justice Jack Landau:**

*State constitutions actually came first. By 1776, nearly all of the states had adopted constitutions. All started with some explicit assertion of Enlightenment-era political philosophy. All state constitutions declared that individual citizens possess natural rights. Pennsylvania's 1776 Constitution, for instance said that all individuals need government to "enjoy their natural rights." Virginia’s 1776 Constitution declared “that all men are by nature free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity."*

*What were those natural rights? According to Pennsylvania's constitution, those rights are "the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety," as well the right "to worship Almighty God according to the dictates of their own consciences" and the right not to be "compelled to attend any religious worship." Virginia similarly proclaimed natural rights to "the enjoyment of life and liberty, and pursuing and obtaining happiness and safety." It proclaimed as well that the people have a right to be free of excessive bail and fines, freedom of press ("one of the great bulwarks of liberty"), and the right to free exercise (or freedom from) religion.*

*The state constitutions also invoked social compact theory, declaring that all government authority derives from the consent of the governed. Virginia's constitution, for example, said "that all power is vested in, and consequently derived from, the people.” The Massachusetts Constitution of 1780 declared that “the body politic is formed by a voluntary association of individuals; it is a social compact by which the whole people covenants with each citizen” to create a government for the common good.*

*State constitutions also included provisions that recalled principles of classical republicanism. Pennsylvania's, for instance, declared that, "every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his portion towards the expense of that protection, and yield his personal service when necessary." Virginia's declared that citizens must adhere "justice, moderation, temperance, frugality, and virtue."*

*At the same time, the state constitutions greatly varied. The variations reflected differences among the states in terms of their political cultures and economies. Pennsylvania’s, for example, was the most radical. It abolished property qualifications for voting and holding office. It created a unicameral legislature (Pennsylvania thought an upper house was too much like the aristocratic House of Lords). And it completely eliminated the office of governor (it was reasoned that a governor was just a king by another name). John Adams was aghast. He complained that the constitution was too democratic and that it would “produce confusion and every evil work.” South Carolina’s 1778 Constitution, on the other hand, imposed property qualifications for voting that were so high that 90 percent of all white adults were excluded. The Massachusetts Constitution of 1780 adopted a government of three branches -- a governor, a bicameral legislature, and an independent judiciary.*

*For research on state constitutions, see* <https://law.indiana.libguides.com/state-constitutions> , *and* <http://www.stateconstitutions.umd.edu/index.aspx> , *the Maryland Constitution Project. The best overall source on early state constitutions is Willi Paul Adams, The First American Constitutions.*

*As far as the continuing role of state constitutions, they permit states to experiment, within the limits of the Supremacy Clause. States are, as Brandeis said, "laboratories of democracy." Examples of state constitutional provisions that differ from the federal include: direct democracy (in 24 states), advisory opinions by courts, a right to an education, a right to remedy by due course of law, a right to uniform taxation, a right to a clean and healthful environment, and (my favorite) a right to liquor served by the glass. State constitutional equality guarantees predated the Fourteenth Amendment and have served as the basis for court decisions upholding the right to gay marriage, among other things.*