***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 3 / Q. 1

**“The right of voting for persons charged with the execution of laws that govern society is inherent in the word liberty, and constitutes the equality of personal liberty.”\* Although voting is essential for liberty and equality, individuals and groups in our country have been denied this right. How and why has this occurred?**

* Which branch of government is responsible for expanding voting rights, and how did it accomplish this expansion?
* Are voting rights best protected and expanded by state or national governments? Explain your position.

\* Thomas Paine, “Thomas Paine - Agrarian Justice,” Social Insurance History, Social Security Administration, accessed August 19, 2019, <https://www.ssa.gov/history/paine4.html>.

**Comments from Justice Jack Landau:**

*In Britain before the revolution, only adult men who owned a certain amount of property could vote. And in the colonies, the franchise was limited by either ownership of a specified amount (or value) of land or a specified amount of personal property (or, in South Carolina, payment of a tax). The basic idea was that men (and it was only men) who owned property had a sufficient stake in the community that they had a personal interest in the success of that community. In addition, it was thought that property owners were not dependent on others and so their judgment could be trusted. It was feared that those who were economically dependent (wage earners, for instance) could be too easily influenced by others. See Blackstone's Commentaries. The colonies also had residency requirements, to exclude transients who also were thought to have insufficient stake in the community. Women generally were barred, though in some New York and Massachusetts towns, propertied widows could vote. Depending on the colony, Catholics, Jews, Native Americans, and freed blacks could or could not vote.*

*Even after the revolution, the new state constitutions commonly included suffrage requirements. Connecticut limited the vote to those with at least 40 shillings of real estate or 40 pounds of personal property. Delaware required 50 acres of uncleared, or 12 acres of cleared, land. Pennsylvania abolished property requirements and imposed instead a poll tax. Massachusetts had an annual income requirement or real estate worth 60 pounds. Some southern states -- Georgia, South Carolina, Virginia excluded any persons of color. Vermont, however, had no suffrage requirement at all.*

*Note that none of the constitutions -- and even the federal Constitution -- said that there is a right to vote. The founders worried that, if voting is a right, if would be impossible to deny suffrage to anyone. As John Adams said, there would be "no end of it." The federal Constitution itself left it to the states to determine who could vote.*

*Between the revolution and the Civil War, most states eliminated property requirements. But a number of them inserted racial exclusions. Connecticut, Delaware, Illinois, Louisiana, Maryland, Mississippi, Michigan, Jersey, and Pennsylvania, among others, limited the vote to whites. Others, like Indiana and Kentucky, expressly excluded "negroes, mulattoes and Indians." Some states excluded from the vote any paupers, residents of any charitable institution, or others who were receiving any public assistance. Quite a few states adopted exclusions for those convicted of certain (often, "infamous") crimes.*

*With the ratification of the Fifteenth Amendment, states could no longer deprive anyone of the right to vote because of race. But following that, and well into the twentieth, states -- especially southern states that wanted to exclude black voters -- adopted literacy requirements and poll taxes. Meanwhile, Congress enacted the Dawes Act in 1887, which granted citizenship to Native Americans who were willing to abandon their tribes. In 1924, Congress enacted the Indian Citizenship Act, granting citizenship to all Native Americans born in the US. Even so, some states didn't allow Native Americans to vote (in New Mexico, only in 1962!).*

*In the late-nineteenth century, quite a few states allowed women to vote, but only in elections dealing with education. A few allowed women to vote in municipal elections, as well. All that changed with the ratification of the Nineteenth Amendment. In 1964, the Twenty-fourth Amendment prohibited poll taxes. And, in 1965, Congress enacted the Voting Rights Act, which prohibited literacy tests and discrimination in voting on the basis of race, color, or language minority status.*

*Still, to this day, a number of (especially southern) states are creating barriers to the ballot box in ways that are facially neutral but disproportionately affect minorities (e.g. voter ID laws), a number of which have been struck down by lower courts, state and federal.*

*Probably the best, and most thorough, history of voting in this country is Alexander Keyssar, The Right to Vote: The Contested History of Democracy in the United States. Michael Waldman, The Fight to Vote, is less of a scholarly account, but covers the same material. Carol Anderson, One Person - No Vote, is a terrific, passionate critique of current efforts to limit access to the ballot.*