

Lesson 20: How Has the Right to Vote Been Expanded Since the Adoption of the Constitution?

Lesson Purpose

During the colonial period and the early years of the nation, suffrage –the right to vote– was generally restricted to white men who owned property. The majority of adult white men met this requirement, especially in rural areas. Other people – women, Native Americans, African Americans, indentured servants, and members of certain religious groups –usually were denied the right to vote. This lesson examines how the right to vote has been extended since 1787. The expansion of the franchise to include almost all citizens eighteen years of age or older represents one of the great themes in American history, in some respects the most important theme.

When you have finished this lesson, you should be able to describe the extension of the franchise as a result of changes in voting laws in Congress and various states, amendments to the Constitution, and decisions of the related to fundamental ideas and principles of American constitutional government.

TERMS AND CONCEPTS TO UNDERSTAND

Enfranchisement

Franchise

WHY IS THE FRANCHISE IMPORTANT IN THE AMERICAN CONSTITUTIONAL SYSTEM?

The term **franchise** refers to a right or privilege, in this context specifically the right to vote. Thus **enfranchisement** is the act of giving that right to vote to a person or a group of people. Representative government is based on the principle that the people have a say –either directly or indirectly—in determining who makes, executes, and judges the law that govern them and in holding those authorities accountable. The most basic way of participating in representative government is to vote in elections.

One of the legacies of the Greek and Roman democracies is that citizens should have an economic “stake” in a community in order to exercise the franchise intelligently. Greeks and Romans believed that property owners were more inclined than others to participate in politics and to act in the public interest because they have a stake in living in a healthy community. The colonist shared that view. In most colonies voting was a privilege limited to Protestant men who owned property. Property qualifications usually were low and land was cheap, which meant that thousands of colonists who would not have been able to vote in Europe were able to do so in America. For example, Virginia required only twenty-five acres of settled land or a hundred acres of unsettled land for enfranchisement. New York allowed otherwise qualified men to vote if they held lifetime leases but did not own the land outright. By European standards in the eighteenth century the franchise in America was generous and far exceeded the scope of the voting franchise in Great Britain. Yet while classes of Americans –women, Native Americans, religious minorities, slaves, and indentured servants—were still excluded from voting.

HOW WAS SUFFRAGE DETERMINED WHEN THE CONSTITUTION WAS ADOPTED?

The Constitutional Convention could not agree on uniform rules for suffrage. As a result the Constitution stated only that members of the House of Representatives were to be elected by the people in each state who, under state law, were eligible to vote for the lower house of their state legislature.

In other words the Constitution left it to each state to decide who could vote. Because state governments granted or denied the franchise, it follows that many of the early battles over voting rights took place in the states.

An early example occurred in New Jersey. That state's constitution of 1776 granted the franchise to "all inhabitants" who met property and residency requirements. Therefore for the next several years some African American men and women, and many widowed or unmarried women, voted in local elections. Married women could not meet the property requirement because their property automatically belonged to their husbands. In fact, a 1790 New Jersey election law expressly referred to voters as "he or she." But in 1807 in the name of so-called election reform, women were disenfranchised. African American men were disenfranchised in 1844.

Why do you Think?

Why do you think the Philadelphia Convention declined to establish nation-wide qualifications for suffrage?

How might the states' diverse property requirements for suffrage influence citizens' relationships to their governments?

HOW DID VOTING RIGHTS EXPAND FOR WHITE MEN?

The revolutionary intellectual and pamphleteer Thomas Paine identified at least one of the problems with linking the right to vote to property ownership:

"You require that a man shall have sixty dollars worth of property, or he shall not vote. Very well, take an illustration. Here is a man who today owns a jackass, and the jackass is worth sixty dollars. Today the man is a voter and goes to the polls and deposits his vote. Tomorrow the jackass dies. The next day the man comes to vote without his jackass and he cannot vote at all. Now tell me, which was the voter, the man or the jackass?"

Early in the 1800s Americans became more democratic and less aristocratic in their thinking. For example, American writer James Fenimore Cooper (1789-1851), author of *The Last of the Mohicans*, argued, "Every man who has wants, feelings, affections, and character has a stake in society." It followed that lack of property should not be a barrier to voting.

Some states, such as Massachusetts, retained property requirements out of the fear expressed by former president John Adams that anarchy and mob rule would erupt if men with no property had the right to vote. Virginia did not abolish its property requirement until 1851. But in 1802 Ohio, then a frontier state, gave the vote to almost all white men in an effort to attract settlers. Other western states followed suit, as did the northern "frontier" state of Maine in 1820. Older states gradually amended their election laws to remove property requirements. Most state voting reforms were accomplished peacefully. An exception was Rhode Island, one of the last states to remove the property requirement. In fact, it was the only state after 1840 not to have universal enfranchisement of white men. The leader for franchise reform there, a lawyer named Thomas Wilson Dorr (1805-1854), convened an extralegal "People's Convention" that drafted a new state constitution enfranchising all white men. This act of rebellion led to a brief, small-scale civil war. But the so-called Dorr Rebellion of 1841-1842 was quickly put down, and Dorr fled the state only to be arrested and imprisoned on his return. Rhode Island subsequently did adopt a new constitution that enfranchised both white and African American men, but the state did not eliminate the property requirement until the 1880s.

Another arena of enfranchisement involved approximately 80,000 free Mexican men residing in the territory that the United States conquered in the Mexican-American War of 1846-1848. The Treaty of Guadalupe Hidalgo that ended the war also enfranchised these men. However, states affected by the treaty resisted recognizing these rights. Violence, fraud, and discrimination forced many Mexican Americans to abandon their lands and return to Mexico. When Texas was admitted into the Union as a slave state in 1845 Mexican Americans who tried to vote risked beating, burning, or lynching. After the Civil War the same tactics used to deny voting rights to African Americans—from physical violence to literacy tests—often were also applied to Mexican Americans.

HOW DID AFRICAN AMERICAN MEN WIN—THEN LOSE—THE RIGHT TO VOTE?

The Fifteenth Amendment was added to the Constitution in 1870, five years after the Civil War. Although the Fifteenth Amendment granted the right to vote to African American men, most states in the South and several outside the South made it almost impossible for them to exercise the right. They were required to take literacy tests and to pay poll taxes. Some states enacted so-called grandfather clauses that permitted citizens to vote only if their grandfathers had been allowed to vote. Physical intimidation and threats of economic reprisals for voting were common. An economic reprisal is an action that limits or eliminates a source of income or makes goods and services more expensive to buy. By

I 910 fewer than twenty percent of African American citizens voted across most of the South. In some southern areas fewer than two percent voted.

As Unit Six will explain, the civil rights movement of the 1950s and 1960s galvanized the national government to exercise its power to protect African Americans against voting discrimination. Only then, almost a century later, was great progress made in ensuring the right to vote as guaranteed by the Fifteenth Amendment.

HOW WAS SUFFRAGE EXTENDED TO WOMEN?

During the middle years of the nineteenth century the struggle for freedom and equality for African Americans was closely linked to the campaign for woman suffrage. Many abolitionists worked for woman suffrage, just as many women worked to end slavery. For example, abolitionist Frederick Douglass (1818-1895), who had been born into slavery, participated in the meeting at Seneca Falls, New York, in 1848 that produced the Seneca Falls Declaration of Sentiments. The declaration was crafted by Elizabeth Cady Stanton (1815-1902) and other suffrage leaders. Echoing the Declaration of Independence, this declaration stated:

“We hold these truths to be self-evident: that all men and women are created equal. ... Such has been the patient sufferance of the women under this government, and such is now the necessity which constrains them to demand the equal station to which they are entitled.”

Most people who advocated equal rights for women believed that gaining the right to vote was an essential step toward achieving other rights. When Congress was considering the Civil War amendments, leaders of the women's rights movement tried to get the right to vote extended to women as well as to all men. These leaders, including the prominent suffragist Susan B. Anthony (1820-1906), whose likeness has since been featured on a one-dollar coin, hoped that their long support of the anti-slavery cause would be rewarded in the Fourteenth Amendment. But many male anti-slavery leaders refused to support suffrage for women, fearing that it would set back the cause of former slaves. Instead, they specifically included the term "male citizen" in reference to the right to vote in Section 2 of the Fourteenth Amendment.

In 1872 Anthony and other women went to the polls and insisted that they be allowed to vote. They pointed to Section 1 of the Fourteenth Amendment:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

They argued that women, as citizens, could not be denied access to the ballot. However, they were denied, and so they took their cause to the courts. In *Minor v. Happersett* (1875) the Supreme Court ruled that being a citizen does not mean that a person has the right to vote and

that states therefore could continue to deny the vote to women. The Court noted that citizenship and voting are not necessarily related, because aliens in the states of Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Minnesota, Missouri, and Texas who had announced their intention to become United States citizens-but were not yet citizens-enjoyed the franchise.

In 1869 Wyoming, while still a territory, gave women the right to vote. The story is told that subsequently, when considering Wyoming for statehood, certain members of Congress argued against this "petticoat provision. The Wyoming legislature replied that it would rather stay out of the Union for a hundred years than join without allowing women to vote. Wyoming was admitted to the Union. During the next fifty years several other western states extended the vote to women. This was the result of persistent hard work by women in those states and national leaders such as Anthony and Stanton. Eventually some eastern states joined the movement, and by 1918 more than half the states had enfranchised women.

Pressure for a woman suffrage constitutional amendment mounted during World War I, when women entered the workforce in record numbers and the United States fought a war to protect democratic rights in Europe. The uncertainty and slowness of state-by-state victories convinced suffragists to renew the fight for constitutional amendment. They vigorously lobbied Congress and President Woodrow Wilson until finally, in 1918, Wilson withdrew his opposition. In 1920 after a national campaign that included huge parade, demonstrations, picketing, and civil disobedience in Washington, D.C., Congress passed and sent to the states the Nineteenth Amendment. The amendment forbids states and the United States from denying or abridging the right of citizens to vote on the basis of sex. Within the year enough states ratified the amendment, and women finally gained the franchise.

HOW WAS THE FRANCHISE EXTENDED TO NATIVE AMERICANS?

The original Constitution mentions Native Americans, as "Indians," twice. Under Article I "Indians not taxed"-those who remained under tribal government-were excluded from state populations for purposes of apportioning taxes and determining representation in Congress. Article I also empowered Congress to "regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

These provisions reflected the position of the Framers, confirmed by opinions of the Supreme Court, that

Native Americans were not citizens of the United States or the states in which they resided. Native American tribes were distinct political entities, separate from states or the federal government, with whom the United States would deal on a basis similar to that with which it dealt with foreign nations.

Native Americans' early relationship with the federal government affected their rights in profound ways. They were "foreigners" and frequently were treated as enemies. The U.S. government often seemed to view them as problematic children. They were not citizens and had no right to vote. The Fourteenth Amendment did not change that status. Section 1 declares that citizenship is reserved for people subject to the jurisdiction of the United States.

In 1887 Congress enacted the Dawes Act, extending citizenship to Native Americans who were willing to give up their tribal affiliations. One effect of this act was to undermine tribal culture. Three years later the Indian Naturalization Act granted citizenship to Native Americans in an application process similar to immigrant naturalization. Then in 1924 Congress enacted the Indian Citizenship Act, extending the franchise to all “Indians born within the territorial limits of the United States.” This stream of legislation reflected a general expectation that tribal governments would wither and that Native Americans gradually would be assimilated into “mainstream” American society.

Many states were slow to comply with the Indian Citizenship Act of 1924. Native Americans encountered obstacles to voting, serving on juries, and giving testimony in courts. For example, New Mexico did not extend the franchise to Native Americans until 1962. Finally, Congress acted to address the problems that Native Americans and other minorities encountered in exercising the franchise by two means.

The first involved proposing the Twenty-fourth Amendment (1964), which prohibited states from denying or abridging the right of any citizen to vote for failure to pay a poll tax or any other tax to vote in election for national officials.

The second was enacting the Voting Rights Act of 1965, which outlawed discrimination against all minorities by banning voting requirements such as literacy tests, prohibiting the use of English fluency as a requirement for voting, and authorizing the national government to take control of voter registration in states where African Americans and other groups consistently had been denied voting rights.

HOW DID EIGHTEEN-YEAR OLDS WIN THE RIGHT TO VOTE?

Before 1971 only Alaska, Georgia, Hawaii, and Kentucky allowed person younger than age twenty-one to vote. In 1970, facing widespread protests against the Vietnam War and resistance to the draft, Congress amended the Voting Rights Act to state that no one age eighteen or older could be denied the right to vote on the grounds of age. This move was not without controversy. The *Oregon v. Mitchell* (1970), in a deeply divided vote, the Supreme Court held that Congress could regulate the voting age in national elections but not in state elections.

In response to the Supreme Court’s decision Congress proposed and sent the Twenty-sixth Amendment to the states. Ratified in 1971, this amendment prohibits both the United States and the states from denying or abridging the right to vote of citizens age eighteen or older.

WHAT DO YOU THINK?

What criteria should be used for determining whether changes in the franchise should be made constitutionally or by statute? Why?

What principles of American constitutional government are served by expansion of the franchise?

What arguments can you make for removing or denying the franchise to particular groups or individuals? Explain your reasoning.

Should the voting age be lowered ever further? If so, how low and why? If not, why not?