

OUTLINE

DEMOCRACY & DIVERSITY*

What is Democracy?

1. In a democracy, government leaders gain power by legal, peaceful means. They can be removed from office by the people or their elected representatives. In the United States, we elect our leaders through direct vote. The impeachment trial of President Clinton is an example of the process through which leaders could be removed-both bodies of the U.S. Congress, elected by the people, must vote to remove a president from office. In the U.S. the House of Representatives brings charges, and the Senate must vote by a two-thirds majority to remove a president from office.
2. Citizens of a democratic state have basic rights such as freedom of speech, freedom of the press, freedom of assembly, and freedom of religion. Individuals as well as groups are protected from unfair government actions or unequal treatment that may take away their lives, property, or freedom. In the U.S., our basic rights to free expression and civic participation are established in the First Amendment to our Constitution, and equal protection before the law is a guarantee of the Fourteenth Amendment.
3. Regular elections with two or more political parties, secret ballots, and majority rule are necessary elements of democratic society. Our federal leaders are elected for set terms-four years for presidents, six years for senators, and two years for members of the House of Representatives-and must seek re-election when those terms expire. The Twenty-Second Amendment states that no president can serve for more than two terms.
4. Individuals have the right to be represented when the government passes laws and establishes taxes; a legislature-our Senate and House of Representatives, elected by the residents of the 50 states-meets to make laws.
5. In a democracy, the media freely report news from around the world, presenting both favorable and unfavorable views of government actions.
6. The country's courts make rulings for and against the government, and help protect citizens from government, according to a constitution. Our Constitution limits the power of government, defines what it may and may not do, and describes how it is to be organized.

Origins of American Civil Involvement

* Materials derived from American Bar Association, Law Day 2000 Talking Points Handout.

Voting

7. The U.S. Constitution does not explicitly state the right to vote; though it states that the House of Representatives is to be "chosen ... by the People of the several States," in Article 1, Section 2. By omission, setting voter qualifications was left to the states; this left major groups-women, men without property, and African Americans-without the right to vote for decades to come.
8. Section 1 of the Fourteenth Amendment in 1868 forbade unequal treatment by state governments and thus extended voting rights to all citizens, regardless of race. The language in Section 2, however, limited voting rights to "male citizens...twenty-one years of age."
9. The Fifteenth Amendment, ratified in 1870, specifically stated that the right to vote "shall not be denied ... on account of race, color, or previous condition of servitude." The Nineteenth Amendment, not ratified until half a century later, declared that citizens could not be denied the right to vote on the basis of their sex, finally granting women the right to vote.
10. Though the Fifteenth Amendment's purpose is clearly stated, African-Americans were prevented from voting by various means until well into the second half of the twentieth century. Poll taxes, literacy tests, whites-only primaries, intimidation, and violence were practices used widely to keep blacks from voting. The Supreme Court cases *Smith v. Allwright*, in 1944, and *Terry v. Adams*, in 1953, outlawed several such exclusionary practices.
11. The Twenty-Fourth Amendment, ratified in 1964, went a step further toward eradicating exclusionary voting practices. It said that individuals could not be prevented from voting if they were unable to pay poll taxes. Many jurisdictions used poll taxes as a way to prevent the poor-and especially African-Americans-from voting.
12. *Voting Rights Act of 1965*. By 1965, black registered voters in the deep South were still virtually nonexistent. The national broadcasting of the Selma, Alabama police using violence against nonviolent civil rights protestors, affected many. The Voting Rights Act was passed to give teeth to the civil rights legislation of the previous years. It suspended the use of discriminatory tests that had been used in the southern states to prevent blacks from registering, and prohibited them from using any "voting qualifications or prerequisites to voting, or standard, practice or procedures with respect to voting," without first clearing it with the attorney general or a federal district court in Washington, D.C.
13. In the wake of the Vietnam War, many protested that they should not be compelled to serve in the armed forces, and potentially be killed, without having a voice in the electoral process. The Twenty-sixth Amendment, ratified in 1971, lowered the voting age to that of the draft-eighteen.

Juries

14. The jury was an important voice of early American colonists in raising objections against their British rulers. In the trial of John Peter Zenger, a newspaper printer accused of sedition, the jury was asked only to determine whether Zenger had in fact printed a newspaper critical of the king; a judge sympathetic to the king would decide whether he was guilty of sedition. Zenger's lawyer argued that the issues in the case involved an interplay between law and fact, and argued more generally for an expanded role of the jury: "Jurymen are to see with their own eyes, to hear with their own ears, and to make use of their own consciences and understandings, in judging the lives, liberties, or estates of their fellow subjects." The jury in the trial went against the judge's orders and returned a verdict of not guilty.
15. Tocqueville, visiting the United States in 1831, remarked that the American jury system served to "communicate the spirit of the judges to the minds of all citizens," and had the unique effect of educating the citizenry about the law. Jury service, besides being an important way for U.S. citizens to maintain an active role in their government, provides individuals with first-hand experience of the legal system, which in turn generates support for it.
16. Juries who refused to find guilt in cases brought under it effectively nullified America's Fugitive Slave Laws of 1850, under which abolitionists were could have been convicted for aiding slaves to escape.
17. The Fourteenth Amendment, which guaranteed equal treatment by state governments, guaranteed in theory the right to trial by jury of one's peers. It wasn't until the Supreme Court case *Strauder v. West Virginia*, however, in 1879, that blacks were allowed to serve on juries. In that case, the Court struck down a West Virginia law limiting jury service to "all white male persons," as a violation of the equal protection guarantee of the Fourteenth Amendment.
18. *Duncan v. Louisiana* (1968). Duncan had been given a sixty-day prison sentence for a misdemeanor battery charge without the benefit of a jury trial, because the Louisiana Constitution required juries only in capital cases or cases in which imprisonment or hard labor could be imposed. The Court ruled that individuals had the right to a jury of their peers, even for many minor petty offenses. Justice White highlighted the importance of the jury in the administration of equal justice: "providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge."
19. *Taylor v. Louisiana* (1975). Women came a step closer to full civic participation. The Court found "affirmative registration" for women for jury service, in which they were not automatically included on jury lists unless they registered, to be a violation of the Sixth Amendment guarantee of a jury drawn from a cross section of the community.
20. *Batson v. Kentucky* (1986). In the pre-trial process, lawyers for both sides in a case can

dismiss a set number of potential jurors without providing a reason: these dismissals are known as peremptory challenges. In this case, the Supreme Court pronounced peremptory challenges based solely on race unconstitutional. *Batson* was a black man charged with burglary and receipt of stolen goods. All four black potential jurors in his case were dismissed by the prosecution, and *Batson* was found guilty. The Supreme Court ruled that this was a violation of his Sixth Amendment right to a jury drawn from a cross section of the community, and his Fourteenth Amendment right to equal protection of the law.

Since *Batson*, courts have sought to insure that the use of peremptory strikes was not discriminatory to other races, religions and ethnicities. In 1994, the U.S. Supreme Court declared that striking jurors because of gender was also inappropriate. *J.E.B. v. Alabama*, 511 U.S. 127 (1994).

The most important development, however, was the expansion of *Batson* in *Georgia v. McCollum* in 1992. In that case the Court found that it was not simply the right of a criminal defendant to insure jurors of his race were not struck simply due to race, but that the individual juror had a constitutional right (guaranteed by the Equal Protection Clause) to serve as juror. This meant that no party -- not the criminal defendant, not the prosecution, not even a litigant in a civil trial -- could discriminate based on race, religion or gender and thereby violate the right of a juror to serve.

No Delaware court has ever found the prosecution or a civil litigant to have violated *Batson*. However, in *State v. Ashley*, the Delaware Superior recently prevented a white criminal defendant, who had killed an African-American, from striking African-American jurors in his murder trial.

Contemporary Democratic America

21. Modern jury lists are drawn from voter registration and driver's license lists, so that they are more likely to reflect the gender, racial, and ethnic makeup of the community. Many state governments, recognizing the importance and value of jury service, are passing laws to make juror service less burdensome. Previously, individuals with jobs deemed "important to society" (such as doctors and teachers) were granted automatic exemptions from jury service, but laws in many states are sharply limiting these exemptions. Other laws are shortening the amount of time an individual must serve and increasing the daily stipend jurors are paid, all in an attempt to make jury service possible for a greater number.
22. Legislation allowing citizens to vote when they renew their driver's licenses, for example, and mail-in voting for shut-ins, are examples of recent efforts by many states to further broaden voter participation.
23. Challenges of fairness will persist in the coming centuries, as the American social landscape continues to evolve. Only through continuing active involvement can we remain an informed populace that pursues equal justice for everyone.

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