

Expansion of Rights and the New Jersey Constitution

While independence was being declared, the states began creating their own state governments and constitutions. These constitutions, and later the U.S. Constitution, were influenced by a century of political and scientific conversations around the rights of men. It also fostered the idea that the ultimate power of government lay with the people. The ideas promoted by the Declaration and these state constitutions led to opportunities for additional rights for more people.

The call for equality led some **enslaved** people to challenge that the revolutionary ideals of freedom and equality should include them. From the principle that the government draws its power from the people, many states expanded the opportunities to vote and participate in politics to include more people. This was especially true in New Jersey where a small group of women and people of African descent could vote for a period of 31 years from 1776-1807.

SLAVERY AND FREEDOM IN THE NEW NATION

At the beginning of the Revolutionary War, the institution of slavery existed in all 13 colonies. In 1776, the Declaration of Independence stated that “all men are created equal.” Enslaved people wondered if this revolutionary promise of equality might apply to their long-standing struggle for freedom. Some people thought slavery needed to end along with British rule, while others wanted to preserve the institution. This division was reflected in new state laws. Between 1776 and 1804, seven states adopted some form of **abolition**, but around the same time other states only made the laws of slavery harsher.

The controversy over slavery grew during the Revolutionary era for several reasons. Just days before the start of the Revolutionary War, a small anti-slavery movement began as state abolition societies were founded, many by **Quakers**. These societies questioned the cruelty of slavery and the contradiction between the ideals of the Declaration of Independence and the lives of enslaved people. Others saw the contradiction between a war fought for freedom and equality in a country that permitted enslaving humans.

People of African descent actively protested slavery and fought for freedom for themselves and their communities. They submitted petitions, engaged in rebellions, broke tools, left the sites of their enslavement, and even went to court. In 1781, an enslaved woman from Massachusetts named Bet pushed for her freedom. The Massachusetts Constitution went into effect in 1780 and stated that “all men are born free and equal.” Using this passage, she decided to sue for her freedom in a court of law with the help of a lawyer named Theodore Sedgwick. The court decided that she should be allowed to live her life as a free woman. Once she received her freedom, she changed her name to Elizabeth Freeman to mark her change in status.

“Any time while I was a slave, if one minute’s freedom had been offered to me, and I had been told that I must die at the end of that minute, I would have taken it just to stand one minute on God’s earth a free woman.” - Elizabeth Freeman

Two years later, also in Massachusetts, an enslaved man named Quok (or Quock) Walker also challenged his enslaved status in court. resulting in the state’s highest court declaring that “slavery is inconsistent with our own conduct

and Constitution.” Together with the Elizabeth Freeman decision, the Quock Walker trial effectively ended slavery in Massachusetts. Other states like Virginia and Maryland did not abolish slavery, but they passed laws making it easier for owners to free their enslaved population. One notable example is the slaveholder Robert Carter III of Virginia. In a move likely inspired by his religious beliefs, Carter issued a Deed of Gift in 1791 that gradually freed 453 people from enslavement.

However, the elimination of slavery and equal treatment for free people of African descent was far from complete. In some areas, the system of slavery became even harsher as enslavers worried about people escaping to free areas. No states south of Pennsylvania abolished slavery and in all states, laws **discriminated** harshly against free Blacks. Free people of African descent were often barred from holding certain jobs. Many schools did not admit free people of African descent and laws against **interracial** marriage were enacted.

VOTING BELIEFS IN BRITISH NORTH AMERICA

Before the Revolutionary War, each of the original 13 colonies and local communities had their own rules, restrictions, and ideas on who was able to vote and hold political office. Some colonies required a voter to own a certain amount of land, or a specific value of personal property, and/or to live in their town for a certain number of years. Voting requirements in British North America reflected the strong belief that only those who owned land had an interest in the success of their community. Others placed restrictions on which religions were allowed to vote as the majority of the population followed some form of Protestantism, but even certain Protestant groups were barred from voting. Most of the colonies also required voters to be at least 21 years old before they were eligible to vote.

Restrictions on voting also reflected established beliefs about race and gender. Most married women and **indentured servants** could not legally own property under **English common law**. Enslaved people were considered property, not persons, and generally could not own property. Election laws in colonial America reserved voting as a privilege for those who could meet the property qualification, which the lawmakers believed would keep undesirable people (the poor, women, people of African descent, and others) from being able to vote. Colonial America did not consider voting as a right for all.

STATE CONSTITUTIONS AND THE VOTE

After the Declaration of Independence broke political ties with Britain in 1776, the Continental Congress called upon the colonies, now called states, to create new constitutions. Unlike the British Constitution, which was an unwritten constitution consisting of customs, laws, and court decisions, the states all drafted written constitutions.

Based on the idea of **popular sovereignty**, state constitutions created **republican** forms of government. This meant that representatives were elected by the people to make laws on their behalf. The U.S. Constitution created a three-branch government in 1788, which included the Legislative branch, the Executive branch, and the Judicial branch. It gave the Legislative branch the most power of all the branches. During and after the Revolutionary War, all of the state constitutions gave the **legislature** the greatest powers, too. This allowed the people to have more of a voice in government. Most state constitutions also included either a declaration of rights or a bill of rights, which prevented the states from taking away what they considered to be basic rights, like freedom of speech, right to a trial by jury, and right of self-governance, from the people.

An important characteristic of new state constitutions was the expansion of voting rights. When most states drafted their constitutions, women and free people of African descent were not given the right to vote. Only five states included a specific statement that voters needed to be male. However, ten states referred to voters as “male” or “freemen” when discussing voting and elections. New Jersey, on the other hand, did things a little bit differently.

Unit 2 Big Idea

VOTING AND THE NEW JERSEY EXCEPTION

Like many colonies, New Jersey created a constitution to declare their state's independence from Great Britain. Adopted on July 2, 1776, the New Jersey Constitution set up the state government into three branches. It also included the rights of citizens and who was allowed to vote. This latter section was different from other newly declared states. In New Jersey, an exception occurred during 1776-1807 when the Revolutionary ideal of republican government allowed unmarried women and free people of African descent who owned property to vote.

The 1776 New Jersey Constitution included a voting **clause**, or section, that defined voters as "all free inhabitants" meeting specific property and residence requirements. While the Constitution used the male pronoun "he" when referring to its residents and citizens, the voting clause used the pronoun "they" to describe who could vote. This meant it did not specify a gender for voters. Some historians feel that referring to voters as "they" was an oversight. Others, however, believe that the state intentionally allowed women and free people of African descent the right to vote in recognition of their contributions to the war effort.

However, the New Jersey Constitution did not grant all women and people of African descent the right to vote. It was only those who owned "fifty pounds proclamation money clear estate." During this time, proclamation money referred to the standard value of colonial currency. It was a term first used in New Jersey law in 1705. The value of money rose and fell over time. In 1806, it was about the value of three horses or eight cows. Legislators may have assumed the property requirement would prevent most women, people of color, and other undesirable voters from voting. Instead, they had created an opening.

MORE INFORMATION

For more information on the roles and experiences of women and people of African descent during the Revolutionary War, explore *Liberty: Don Troiani's Paintings of the Revolutionary War* Teacher Resource Guide Unit 4: A Women's War and Unit 6: Soldiers of African Descent in the Revolutionary War.

<https://www.amrevmuseum.org/liberty-exhibit-teacher-resources>

THE REVOLUTIONARY "SHE"

New Jersey's 1776 Constitution lacked an **amendment** clause, or instructions for how to make changes. Due to this, election laws passed in 1790 and 1797 attempted to clarify the Constitution without changing the original document. The 1790 law used the words "he or she" when referring to voters. This law applied to only 7 of the 13 counties in the state, all in the western part of the state. Historians are still debating why it only applied to these counties, but they believe the heavy presence of Quaker and Federalist connections there may have influenced the law. However, by including the pronoun "she" in their description of voters, the new law made clear what the 1776 Constitution had only implied — that women were permitted to vote in New Jersey.

In 1797, the state legislature changed the state Constitution's election law again. For women voters, a small deleted clause in the 1797 voting law represented a big change. The new law kept the property requirements, but it did not include the term "clear estate," which meant clear ownership of property. This meant it was easier for people — including women — to prove ownership of property. More women appear to have voted after 1797, perhaps because of this change. Another important factor, however, is that this new law covered all 13 of New Jersey's counties. Voters across the state were referred to as "he or she."

INCREASING VOTERS

This deliberate and revolutionary “she” is believed to have been influenced by New Jersey Quakers and **Federalists**, who may have been motivated to include women voters in response to a growing **Democratic-Republican** population. One possible motivation for this could be that the Federalists believed they would have more support among women than their opponents. While the Quaker religion allowed women to be in charge of their own spiritual development, which allowed women to be more able to shape their own lives. It is thought this supported female voters in New Jersey. Regardless, as a result of the new laws, women who owned property (**widows** and single women) started casting their votes, giving a unique opportunity to New Jersey women to make their voices heard.

“All free inhabitants of this State of full age, and who are worth fifty pounds proclamation money... shall be entitled to vote for all public officers...and no person shall be entitled to vote in any other township or precinct, than that in which he or she doth actually reside at the time of the election.”

-New Jersey Electoral Reform Enrolled Law, 1797

Confusion also allowed for women to exercise the right to vote. Both the 1790 and 1797 laws did not include directions for how to confirm a voter’s possession of 50 pounds, other than the voter’s own words. In addition, the nation had started shifting currency from British pounds to American dollars. This made it difficult to accurately determine how much property a taxpayer had.

After the adoption of the 1797 law, the number of women voters at the polls significantly increased. An important election was affected by this increase. In Elizabethtown in 1797, a bitter contest for a seat in the New Jersey State Legislature broke out between the two candidates representing the major political parties, the Democratic-Republicans and the Federalists. Despite many women voters turning out to vote for the Federalists, the Democratic-Republican won the election by a very narrow margin, only 93 votes. This election caused many politicians to worry about the potential power of women to shape elections and the possibility that there had been fraudulent votes. What would this election mean for the future of women voters in the state?

WHO WERE THE NEW JERSEY WOMEN VOTERS?

The women who voted between 1776 and 1807 needed to meet the same property requirements as men. Because of this, they were either widowed or unmarried.

Married women were restricted by **coverture** laws, which said the property of a married woman belonged to her husband. Therefore, married women could not meet the property requirements. On the other hand, widows typically inherited a legal portion of their late husband’s estate while unmarried women may have inherited property from their male relatives or earned it through work. There are some examples of young women who voted up until they were married.

Researchers from the Museum of the American Revolution have discovered 18 poll lists from four New Jersey townships between 1797 and 1807, with nine of them listing names of women who voted. These poll lists include the names of 163 ordinary women who cast a **ballot**! This suggests that political participation was not limited to feminist writers and thinkers.

New Jersey was the only state in the Revolutionary Era to allow women to vote. It was one of only a few to allow people of African descent to vote. In both cases, this ability lasted only 31 years in New Jersey. In 1807, a state legislature changed New Jersey’s Constitution, limiting voters to white men who paid taxes. However, the legacy of this radical period in time continued to inspire future generations.