

## Exam 2 Grading Notes

### **Question 1 changing constitutional understandings in Jim Crow, Civil Rights**

- Many answers overused the phrase “separate but equal” in their description of the Jim Crow Era. While this phrase does originate from a court case in the era, it does not always adequately describe the reality of citizens in the Jim Crow states. “Segregation” with an acknowledgement of “Disenfranchisement” is a better descriptions of the era. Further, many answers struggled to describe the Constitutional understanding that changed after “separate but equal” was authored. The best answers made a clear connection to the 14<sup>th</sup> Amendment (usually the Equal Protection Clause).
- Our readings and class discussions placed the start of the Jim Crow Era at 1890. It was fine to pick an event before this period *as long as the answer hinted at how that event influenced understandings post-1890*.
- At its core, the Jim Crow Era was about the reduction of civil rights for former enslaved citizens and their descendants. Although some answers tried, it was difficult to have a convincing answer that argued understandings changed in a pro-civil rights direction in this era.
- As we discussed during class, Brown v. Board of Education was a crucial step in the Civil Rights Revolution (Ackerman calls it the ‘signal’). However, it is difficult to argue that Brown, on its own, universally changed understandings about the 14<sup>th</sup> Amendment (recall enforcement problems, Southern Manifesto, etc.).

### **Question 2 role of parties**

- Coordinate the actions of like-minded people to elect candidates, promoting realization of a democratic idea of popular participation in government decisions
- Produce majorities (prevent contingent elections), again making elections democracy-friendly
- More general, facilitate democratic elections by providing nomination and campaign processes
- Gatekeeping (vs. demagogues)
- Maintain tolerance of legitimate opposition
- On promoting checks and balances (“vigilance” in one McCormick passage)—but note also that parties inhibit checks and balances when the same party controls House, Senate, and Presidency.

### Question 3 effect of democratic ideal on the constitution

- Most important effect would be the change in the constitutional vision from rule by men of republican virtue determining the true public interest, to officials -- especially a president -- able to claim a mandate from the people to institute the policies he promised and they voted for.
- Several innovations in basic electoral process resulted from the dem. Ideal: popular-based parties nominating candidates in a national convention (and general acceptance of that); elimination of property qualifications for voting; election as the culmination of platforms/promises and a “theatrical campaign”.
- It’s hard to work the 12<sup>th</sup> Amendment (curing “fatal defect”) into this, without arguing that the early party system really couldn’t have persisted without a nascent democratic ideal. But after all, “parties of notables” were already designating VP candidates and organizing support around a ticket, so wasn’t the 12<sup>th</sup> necessary anyway?

### Question 4 administrative state

(a) threaten constitutional principles

- Rules/laws made by unelected officials
- Interest group influence magnified by complex process
- (be sure to get clear the relevant principle being threatened—dem/rep ideal? Stability vs. coup?)
- Problems with APA, as identified by Pierce
- Claims of unitary executive powers (but need to connect this to resulting limitations on congressional oversight)

(b) promote or protect const. prin.

- Internal checks & balances, such as inspectors general
- Bureaucratic overlap to promote publicity or informing of elected superiors
- Factors producing semi-powered bureaucracy
- Recent political feedback to APA rules,

### Question 5 constitutional hardball

In general, the answers struggled to adequately engage with the definition of hardball offered by Fishkin and Pozen (Part B). As one-third of the question, failing to interact with the definition was significant. Notice that the question itself essentially described the needed definition: “by describing what constitutional convention was violated or what rapid constitutional shift was being sought.”

- Many answers struggled with historical details while answering this question. One or two misstatements are of minor consequence, but more substantive errors make it difficult to find an answer convincing.
- The best answers organized their response to clearly indicate when they were talking about Part A, B, and C. Weaker answers, for example, dispersed their answer to Part C throughout the course of the text, making it difficult to see a coherent line of thinking.