Civil Rights

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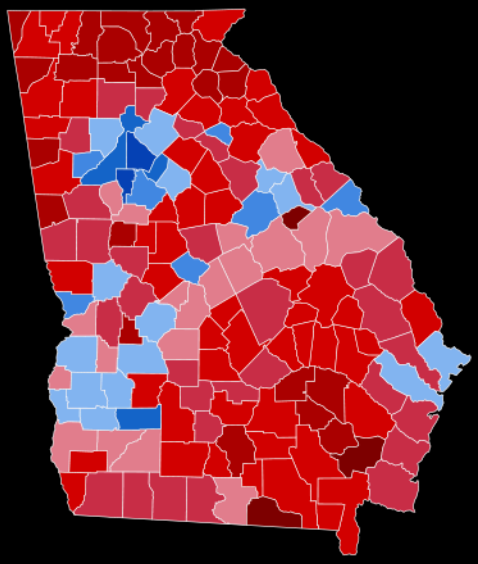


FIGURE 5.1 On August 6, 1965, President Lyndon B. Johnson meets with Atlanta native Martin Luther King, Jr. at the signing of the Voting Rights Act (left). Access to polling places, early voting, mail-in voting, and other considerations all have significant implications on voters rights, and any barriers can deeply influence elections. On the right side of the image, the 2024 Georgia election map shows the sharp differences in voting by location, with urban areas voting for Democratic candidates and the rest of the state voting largely Republican. (credit left: modification of "Lyndon Johnson and Martin Luther King, Jr. - Voting Rights Act" by Yoichi Okamoto/Wikimedia Commons, Public Domain; credit right: modification of "Georgia Presidential Election Results 2024" by ZackCarns/ Wikimedia Commons, Public Domain, based on data provided by the Georgia Secretary of State. Public Domain)

CHAPTER OUTLINE

5.1 What Are Civil Rights and How Do We Identify Them?
5.2 The African American Struggle for Equality
5.3 The Fight for Women's Rights
5.4 Civil Rights for Indigenous Groups: Native Americans, Alaskans, and Hawaiians
5.5 Equal Protection for Other Groups

INTRODUCTION The U.S Constitution and its founding principles of liberty, equality, and justice are admired and emulated the world over. However, not everyone living in the U.S. has enjoyed the same treatment and freedoms the law promises. When we consider the experiences of women, immigrants, people of color, LGBTQ people, people with disabilities, and other groups, a majority of Americans have been deprived of basic rights and opportunities, and sometimes of citizenship itself. This idea of America is, indeed, a work in progress.

The struggle for civil rights is a story of courageous individuals and social movements awakening fellow Americans, compelling lawmakers, and inspiring the courts to make good on these founding promises. While many changes must still be made, the past one hundred years have seen remarkable progress. Yet, as the rash of thinly-veiled voter suppression bills making their way through state legislatures demonstrate, (Figure 5.1), members of these groups still encounter prejudice, discrimination, and even exclusion from civic life.

What is the difference between civil liberties and civil rights? How did the African American struggle for civil rights evolve? What challenges did women overcome in securing the right to vote, and what obstacles do they and other U.S. groups still face? This chapter addresses these and other questions in exploring the essential

concepts of civil rights.

5.1 What Are Civil Rights and How Do We Identify Them?

LEARNING OBJECTIVES

By the end of this section, you will be able to:

- Define the concept of civil rights
- Describe the standards that courts use when deciding whether a discriminatory law or regulation is unconstitutional
- Identify three core questions for recognizing a civil rights problem

The belief that people should be treated equally under the law is one of the cornerstones of political thought in the United States. Yet not all citizens have been treated equally throughout the nation's history, and some are treated differently even today. For example, until 1920, nearly all women in the United States lacked the right to vote. Black men received the right to vote in 1870, but as late as 1940, only 3 percent of African American adults living in the South were registered to vote, due largely to laws designed to keep them from the polls.[1] Americans were not allowed to enter into legal marriage with a member of the same sex in many U.S. states until 2015. Some types of unequal treatment are considered acceptable in some contexts, while others are clearly not. No one would consider it acceptable to allow a ten-year-old to vote, because a child lacks the ability to understand important political issues, but all reasonable people would agree that it is wrong to mandate racial segregation or to deny someone **voting rights** on the basis of race. It is important to understand which types of inequality are unacceptable and why.

DEFINING CIVIL RIGHTS

Essentially, *civil rights* are guarantees by the government that it will treat people equally—particularly people belonging to groups that have historically been denied the same rights and opportunities as others. The due process clause of the Fifth Amendment to the U.S. Constitution enacted the Declaration of Independence's proclamation that "all men are created equal" by providing *de jure* equal treatment under the law. According to Chief Justice Earl Warren in the Supreme Court case of *Bolling v. Sharpe* (1954), "discrimination may be so unjustifiable as to be violative of due process."[2] Additional guarantees of equality were provided in 1868 by the **equal protection clause** of the Fourteenth Amendment, which states, in part, that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Thus, between the Fifth and Fourteenth Amendments, neither state governments nor the federal government may treat people unequally unless unequal treatment is necessary to maintain important governmental interests such as public safety.

We can contrast civil rights with *civil liberties*, which are limitations on government power designed to protect our fundamental freedoms. For example, the Eighth Amendment prohibits the application of "cruel and unusual punishments" to those convicted of crimes, a limitation on the power of members of each governmental branch: judges, law enforcement, and lawmakers. As another example, the guarantee of equal protection means the laws and the Constitution must be applied on an equal basis, limiting the government's ability to discriminate or treat some people differently, unless the unequal treatment is based on a valid reason, such as age. A law that imprisons men twice as long as women for the same offense, or restricting people with disabilities from contacting members of Congress, would treat some people differently from others for no valid reason and would therefore be unconstitutional. According to the Supreme Court's interpretation of the Equal Protection Clause, "all persons similarly circumstanced shall be treated alike."[3] If people are not similarly circumstanced, however, they may be treated differently. Asian Americans and Latinos overstaying a visa are similarly circumstanced; however, a blind driver or a ten-year-old driver is differently circumstanced than a sighted, adult driver.

IDENTIFYING DISCRIMINATION

Laws that treat one group of people differently from others are not always unconstitutional. In fact, the

government engages in legal discrimination quite often. In most states, you must be eighteen years old to smoke cigarettes and twenty-one to drink alcohol; these laws discriminate against the young. To get a driver's license so you can legally drive a car on public roads, you have to be a minimum age and pass tests showing your knowledge, practical skills, and vision. Some public colleges and universities run by the government have an open admission policy, which means the school admits all who apply, but others require that students have a high school diploma or a particular score on the SAT or ACT or a GPA above a certain number. This is a kind of discrimination, because these requirements treat people who do not have a high school diploma or a high enough GPA or SAT score differently. How can the federal, state, and local governments discriminate in all these ways even though the equal protection clause seems to suggest that everyone be treated the same?

The answer to this question lies in the *purpose* of the discriminatory practice. In most cases when the courts are deciding whether discrimination is unlawful, the government has to demonstrate only that it has a good reason to do so. Unless the person or group challenging the law can prove otherwise, the courts will generally decide the discriminatory practice is allowed. In these cases, the courts are applying the **rational basis test**. That is, as long as there's a reason for treating some people differently that is "rationally related to a legitimate government interest," the discriminatory act or law or policy is acceptable.[4] For example, since letting blind people operate cars would be dangerous to others on the road, the law forbidding them to drive is reasonably justified on the grounds of safety and is therefore allowed even though it discriminates against the blind. Similarly, when universities and colleges refuse to admit students who fail to meet a certain test score or GPA, they can discriminate against students with weaker grades and test scores because these students most likely do not yet possess the knowledge or skills needed to do well in their classes and graduate from the institution. The universities and colleges have a legitimate reason for denying these students entrance.

The courts, however, are much more skeptical when it comes to certain other forms of discrimination. Because of the United States' history of ethnic, racial, gender, and religious discrimination, the courts apply more stringent rules to policies, laws, and actions that discriminate on these bases (race, ethnicity, gender, religion, or national origin).[5]

Discrimination based on gender or sex is generally examined with **intermediate scrutiny**. The standard of intermediate scrutiny was first applied by the Supreme Court in *Craig v. Boren* (1976) and again in *Clark v. Jeter* (1988).[6] It requires the government to demonstrate that treating men and women differently is "substantially related to an important governmental objective." This puts the burden of proof on the *government* to demonstrate why the unequal treatment is justifiable, not on the individual who alleges unfair discrimination has taken place. In practice, this means laws that treat men and women differently are sometimes upheld, although usually they are not. For example, in the 1980s and 1990s, the courts ruled that states could not operate single-sex institutions of higher education and that such schools, like South Carolina's military college The Citadel, shown in Figure 5.2, must admit both male and female students.[7] Women in the military are now also allowed to serve in all combat roles, although the courts have continued to allow the Selective Service System (the draft) to register only men and not women.[8]



(a) (b)

FIGURE 5.2 While the first female cadets graduated from the U.S. Military Academy at West Point in 1980 (a), The

Citadel, a military college in South Carolina (b), was an all-male institution until 1995 when a young woman named Shannon Faulkner enrolled in the school.

Discrimination against members of racial, ethnic, or religious groups or those of various national origins is reviewed to the greatest degree by the courts, which apply the **strict scrutiny** standard in these cases. Under strict scrutiny, the burden of proof is on the government to demonstrate that there is a compelling governmental interest in treating people from one group differently from those who are not part of that group—the law or action can be "narrowly tailored" to achieve the goal in question, and that it is the "least restrictive means" available to achieve that goal.[9] In other words, if there is a non-discriminatory way to accomplish the goal in question, discrimination should not take place. In the modern era, laws and actions that are challenged under strict scrutiny have rarely been upheld. Strict scrutiny, however, was the legal basis for the Supreme Court's 1944 upholding of the legality of the internment of Japanese Americans during World War II, discussed later in this chapter.[10] Finally, **affirmative action** consists of government programs and policies designed to benefit members of groups historically subject to discrimination. Much of the controversy surrounding affirmative action is about whether strict scrutiny should be applied to these cases.

PUTTING CIVIL RIGHTS IN THE CONSTITUTION

At the time of the nation's founding, of course, the treatment of many groups was unequal: the rights of women were decidedly fewer than those of men, and neither they, the hundreds of thousands of enslaved people of African descent, or indigenous Americans were considered fully human, let alone U.S. citizens. While the early United States was perhaps a more inclusive society than most of the world at that time, equal treatment of all remained a radical idea.

The aftermath of the Civil War marked a turning point for civil rights. The Republican majority in Congress was enraged by the actions of the reconstituted governments of the southern states. In these states, many former Confederate politicians and their sympathizers returned to power and attempted to circumvent the Thirteenth Amendment's freeing of enslaved men and women by passing laws known as the **Black codes**. These laws were designed to reduce formerly enslaved people to the status of serfs or indentured servants. Black people were not just denied the right to vote, but also could be arrested and jailed for vagrancy or idleness if they lacked jobs. Black people were excluded from public schools and state colleges and were subject to violence at the hands of White people (Figure 5.3).[11]



FIGURE 5.3 A school built by the federal government for formerly enslaved people burned after being set on fire

during a race riot in Memphis, Tennessee, in 1866. White southerners, angered by their defeat in the Civil War and the loss of the enslaved people they considered property, attacked and killed formerly enslaved people, destroyed their property, and terrorized White northerners who attempted to improve the lives of freed men and women.

To override the southern states' actions, lawmakers in Congress proposed two amendments to the Constitution designed to give political equality and power to formerly enslaved people. Once passed by Congress and ratified by the necessary number of states, these became the Fourteenth and Fifteenth Amendments. In addition to including the equal protection clause as noted above, the Fourteenth Amendment also was designed to ensure that the states would respect the civil liberties of freed people. The Fifteenth Amendment was proposed to secure the right to vote for Black men, which will be discussed in more detail later in this chapter.

IDENTIFYING CIVIL RIGHTS ISSUES

Looking back, it's relatively easy to identify civil rights issues that arose, looking into the future is much harder. For example, few people fifty years ago would have identified the rights of gay or transgender Americans as an important civil rights issue, or predicted it would become one. Similarly, in past decades the rights of those with disabilities, particularly intellectual disabilities, were often ignored by the public at large. Many people with disabilities were institutionalized and given little further thought, and until very recently, laws remained on the books in some states allowing those with intellectual or developmental disabilities to be subject to forced sterilization.[12] Today, most of us view this treatment as barbaric.

Clearly, then, new civil rights issues can emerge over time. How can we, as citizens, identify them as they emerge and distinguish genuine claims of discrimination from claims by those who have merely been unable to convince a majority to agree with their viewpoints? For example, how do we decide if sixteen-year-olds are discriminated against because they are not allowed to vote, as some U.S. lawmakers are starting to suggest? We can identify true discrimination by applying the following analytical process:

1. *Which groups?* First, identify the group of people who are facing discrimination.
2. *Which right(s) are threatened?* Second, what right or rights are being denied to members of this group?
3. *What do we do?* Third, what can the government do to bring about a fair situation for the affected group? Is proposing and enacting such a remedy realistic?

GET CONNECTED!

Join the Fight for Civil Rights

One way to get involved in the fight for civil rights is to stay informed. The Southern Poverty Law Center (SPLC) is a not-for-profit advocacy group based in Montgomery, Alabama. Lawyers for the SPLC specialize in civil rights litigation and represent many people whose rights have been violated, from victims of hate crimes to undocumented immigrants. They provide summaries of important civil rights cases (https://openstax.org/l/29SPLCcivri) under their Docket section.

Activity: Visit the SPLC website (https://www.openstax.org/l/29splcwebsite) to find current information about a variety of different hate groups. In what part of the country do hate groups seem to be concentrated? Where are hate incidents most likely to occur? What might be some reasons for this?

LINK TO LEARNING

Civil rights institutes are found throughout the United States and especially in the south. One of the most prominent civil rights institutes is the Birmingham Civil Rights Institute, (https://www.openstax.org/l/29birmingcilrig) which is located in Alabama.

5.2 The African American Struggle for Equality

LEARNING OBJECTIVES

By the end of this section, you will be able to:

- Identify key events in the history of African American civil rights
- Explain how the courts, Congress, and the executive branch supported the civil rights movement
- Describe the role of grassroots efforts in the civil rights movement

Many groups in U.S. history have sought recognition as equal citizens. Although each group's efforts have been notable and important, arguably the greatest, longest, and most violent struggle remains that of African Americans, whose dehumanization was even written into the text of the Constitution in the clause counting them as three fifths of a person. Their fight for freedom and equality provided the legal and moral foundation for others who sought recognition of their equality later on.

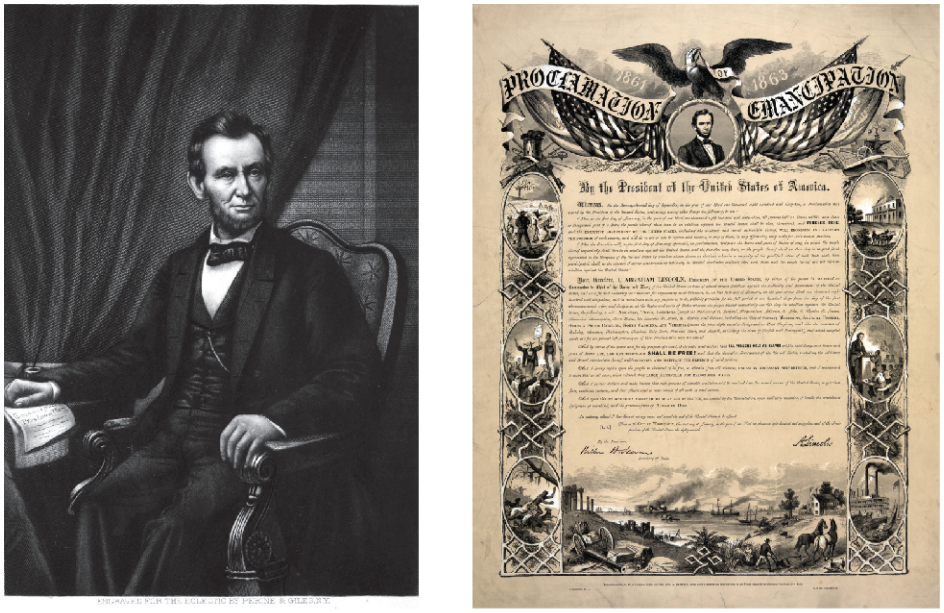
SLAVERY AND THE CIVIL WAR

In the Declaration of Independence, Thomas Jefferson made the radical statement that "all men are created equal" and "are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Yet, like other wealthy landowners of his time, Jefferson also owned dozens of other human beings as his personal property. He recognized this contradiction, personally considered the institution of **slavery** to be a "hideous blot" on the nation, and agreed to free those he held in bondage upon his death.[13] However, to forge a political union that would stand the test of time, he and the other founders—and later the framers of the Constitution—chose not to address the issue in any definitive way. Political support for abolition was very much a minority stance in the United States at the time, although after the Revolution many of the northern states followed the European example of fifty years prior in abolishing slavery.[14]

As the new United States expanded westward, however, the issue of slavery became harder to ignore and ignited much controversy. Many opponents of slavery were willing to accept the institution if it remained largely confined to the South but did not want it to spread westward. They feared the expansion of slavery would lead to the political dominance of the South over the North and would deprive small farmers in the newly acquired western territories who could not afford to enslave others.[15] Abolitionists, primarily in the North, argued that slavery was immoral and contrary to the nation's values and demanded an end to it.

The spread of slavery into the West seemed inevitable, however, following the Supreme Court's 1857 ruling in the case *Dred Scott v. Sandford*.[16] The justices rejected Scott's argument that though he had been born into slavery, his time spent in free states and territories where slavery had been banned by the federal government had made him a free man. In fact, the Court's majority stated that Scott had no legal right to sue for his freedom at all because Black people (whether free or enslaved) were not, and could not become, U.S. citizens. Thus, Scott lacked the standing to even appear before the court. The Court also held that Congress lacked the power to decide whether slavery would be permitted in a territory that had been acquired after the Constitution was ratified. This decision had the effect of prohibiting the federal government from passing any laws that would limit the expansion of slavery into any part of the West.

Ultimately, of course, the issue was decided by the Civil War (1861–1865), with the southern states seceding to defend "states' rights," specifically, the purported right to own human property, without federal interference.[17] Although at the beginning of the war, President Abraham Lincoln had been willing to allow slavery to continue in the South to preserve the Union, he changed his policies regarding abolition over the course of the war. The first step was the issuance of the Emancipation Proclamation on January 1, 1863 (Figure 5.4). Although it stated "all persons held as slaves . . . henceforward shall be free," the proclamation was limited in effect to the states that had rebelled. Enslaved people in states that had remained within the Union, such as Maryland and Delaware were not set free, nor were they in parts of the Confederacy already occupied by the Union army. Although enslaved people in rebel states were freed by federal decree, the relatively small Union troop presence made it impossible to enforce their release from bondage.[18]



(a) (b)

FIGURE 5.4 In this memorial engraving from 1865 (the year he was assassinated), President Abraham Lincoln is shown with his hand resting on a copy of the Emancipation Proclamation (a). Despite popular belief, the Emancipation Proclamation (b) actually freed very few enslaved people, though it did change the meaning of the war.

RECONSTRUCTION

At the end of the Civil War, the South entered a period called **Reconstruction** (1865–1877) during which state governments were reorganized before the rebellious states were allowed to be readmitted to the Union. As part of this process, the Republican Party pushed for a permanent end to slavery. A constitutional amendment to this effect was passed by the House of Representatives in January of 1865, after having already been approved by the Senate in April of 1864, and it was ratified in December of 1865 as the Thirteenth Amendment. The amendment's first section states, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." In effect, this amendment outlawed slavery in the United States.

The changes wrought by the Fourteenth Amendment were more extensive. In addition to introducing the equal protection clause to the Constitution, this amendment also extended the due process clause of the Fifth Amendment to the states, required the states to respect the privileges or immunities of all citizens, and, for the first time, defined citizenship at the national and state levels. People could no longer be excluded from citizenship based solely on their race. Although lack of political or judicial action rendered some of these provisions toothless, others were pivotal in the expansion of civil rights.

The Fifteenth Amendment stated that people could not be denied the right to vote based on "race, color, or previous condition of servitude." This construction allowed states to continue to decide the qualifications of voters as long as those qualifications seemed to be race-neutral. Thus, while states could not deny Black people the right to vote on the basis of race, they could deny it on any number of arbitrary grounds such as literacy, landownership, affluence, or political knowledge.

Although the immediate effect of these provisions was quite profound, over time the Republicans in Congress gradually lost interest in pursuing Reconstruction policies, and the Reconstruction ended with the end of military rule in the South and the withdrawal of the Union army in 1877.[19] Following the army's removal, political control of the South fell once again into the hands of White men, and violence was used to discourage Black people from exercising the rights they had been granted.[20] The revocation of voting rights, or

disenfranchisement, took a number of forms; not every southern state used the same methods, and some states used more than one, but they all disproportionately affected Black voter registration and turnout.[21]

Perhaps the most famous of the tools of disenfranchisement were **literacy tests** and **understanding tests**. Literacy tests, which had been used in the North since the 1850s to disqualify naturalized European immigrants from voting, called on the prospective voter to demonstrate his (and later, her) ability to read a particular passage of text. However, since voter registration officials had discretion to decide what text the voter was to read, they could give easy passages to voters they wanted to register (typically, white people) and more difficult passages to those whose registration they wanted to deny (typically, Black people). Understanding tests required the prospective voter to explain the *meaning* of a particular passage of text, often a provision of the U.S. Constitution, or answer a series of questions related to citizenship. Again, since the official examining the prospective voter could decide which passage or questions to choose, the difficulty of the test might vary dramatically between African American and white applicants.[22] Even had these tests been administered fairly and equitably, however, most African Americans would have been at a huge disadvantage, because few had been taught to read. Although schools for Black people had existed in some places, southern states had made it largely illegal to teach enslaved people to read and write. At the beginning of the Civil War, only 5 percent of Black people could read and write, and most of them lived in the North.[23] Some were able to take advantage of educational opportunities after they were freed, but many were not able to gain effective literacy.

In some states, poorer, less-literate white voters feared being disenfranchised by the literacy and understanding tests. Some states introduced a loophole, known as the **grandfather clause**, to allow less literate white people to vote. The grandfather clause exempted those who had been allowed to vote in that state prior to the Civil War and their descendants from literacy and understanding tests.[24] Because Black people were not allowed to vote prior to the Civil War, but most White men had been voting at a time when there were no literacy tests, this loophole allowed most illiterate white people to vote (Figure 5.5) while leaving obstacles in place for Black people who wanted to vote as well. Time limits were often placed on these provisions because state legislators realized that they might quickly be declared unconstitutional, but they lasted long enough to allow illiterate White men to register to vote.[25]

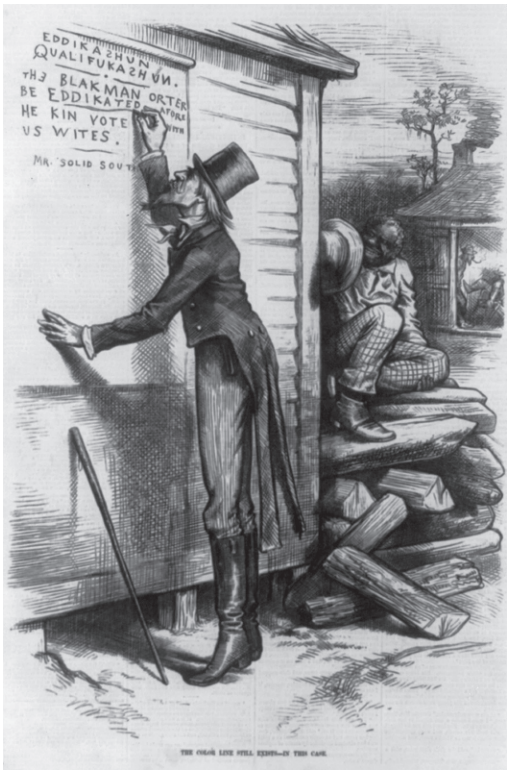
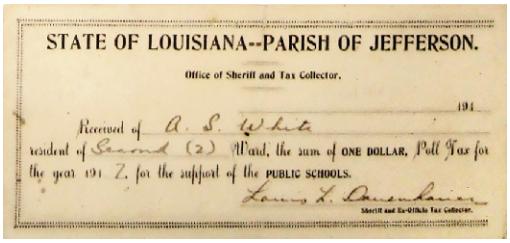


FIGURE 5.5 A magazine cartoon from 1879 ridicules the practice of illiterate, southern White people requiring that a "blakman" be "eddikated" before he could vote. The grandfather clause made such a situation possible.

In states where the voting rights of poor white people were less of a concern, another tool for disenfranchisement was the **poll tax** (Figure 5.6). This was an annual per-person tax, typically one or two dollars (on the order of $20 to $50 today), that a person had to pay to register to vote. People who didn't want to vote didn't have to pay, but in several states the poll tax was cumulative, so if you decided to vote you would have to pay not only the tax due for that year but any poll tax from previous years as well. Because formerly enslaved people were usually quite poor, they were less likely than White men to be able to pay poll taxes.[26]


STATE OF LOUISIANA--PARISH OF JEFFERSON.

Office of Sheriff and Tax Collector.

191

Received of A. S. White

resident of Second (2) Ward, the sum of ONE DOLLAR, Poll Tax for the year 191 7, for the support of the PUBLIC SCHOOLS.

Sheriff and Ex-Officio Tax Collector.

FIGURE 5.6 According to this receipt, a man named A. S. White paid his $1 poll tax in Jefferson Parish, Louisiana, in 1917.

Although these methods were usually sufficient to ensure that Black people were kept away from the polls, some dedicated African Americans did manage to register to vote despite the obstacles placed in their way. To ensure their vote was largely meaningless, the White elites used their control of the Democratic Party to create the **white primary**: primary elections in which only White people were allowed to vote. The state party organizations argued that as private groups, rather than part of the state government, they had no obligation to follow the Fifteenth Amendment's requirement not to deny the right to vote on the basis of race. Furthermore, they contended, voting for nominees to run for office was not the same as electing those who would actually hold office. So they held primary elections to choose the Democratic nominee in which only White citizens were allowed to vote.[27] Once the nominee had been chosen, they might face token opposition from a Republican or minor-party candidate in the general election, but since White voters had agreed beforehand to

support whoever won the Democrats' primary, the outcome of the general election was a foregone conclusion.

With Black people effectively disenfranchised, the restored southern state governments undermined guarantees of equal treatment in the Fourteenth Amendment. They passed laws that excluded African Americans from juries and allowed the imprisonment and forced labor of "idle" Black citizens. The laws also called for segregation of White and Black people in public places under the doctrine known as "separate but equal." As long as nominally equal facilities were provided for both races, it was legal to require members of each race to use the facilities designated for them. Similarly, state and local governments passed laws limiting neighborhoods in which Black and White people could live. Collectively, these discriminatory laws came to be known as **Jim Crow laws**. The Supreme Court upheld the separate but equal doctrine in 1896 in ***Plessy v. Ferguson***, inconsistent with the Fourteenth Amendment's equal protection clause, and allowed segregation to continue.[28]

CIVIL RIGHTS IN THE COURTS

By the turn of the twentieth century, the position of African Americans was quite bleak. Even outside the South, racial inequality was a fact of everyday life. African American leaders and thinkers themselves disagreed on the right path forward. Some, like Booker T. Washington, argued that acceptance of inequality and segregation over the short term would allow African Americans to focus their efforts on improving their educational and social status until White people were forced to acknowledge them as equals. W. E. B. Du Bois, however, argued for a more confrontational approach and in 1909 founded the National Association for the Advancement of Colored People (NAACP) as a rallying point for securing equality. White liberals dominated the organization in its early years, but Black people assumed control over its operations in the 1920s.[29]

The NAACP soon focused on a strategy of overturning Jim Crow laws through the courts. Perhaps its greatest series of legal successes consisted of its efforts to challenge segregation in education. Early cases brought by the NAACP dealt with racial discrimination in higher education. In 1938, the Supreme Court essentially gave states a choice: they could either integrate institutions of higher education, or they could establish an equivalent university or college for African Americans.[30] Southern states chose to establish colleges for Black people rather than allow them into all-White state institutions. Although this ruling expanded opportunities for professional and graduate education in areas such as law and medicine for African Americans by requiring states to provide institutions for them to attend, it nevertheless allowed segregated colleges and universities to continue to exist.

LINK TO LEARNING

The NAACP (https://www.openstax.org/l/29naacporg) was pivotal in securing African American civil rights and today continues to address civil rights violations, such as police brutality and the disproportionate percentage of African American people that die under the death penalty.

The landmark court decision of the judicial phase of the civil rights movement settled the ***Brown v. Board of Education*** case in 1954.[31] In this case, the Supreme Court unanimously overturned its decision in *Plessy v. Ferguson* as it pertained to public education, stating that a separate but equal education was a logical impossibility. Even with the same funding and equivalent facilities, a segregated school could not have the same teachers or environment as the equivalent school for another race. The court also rested its decision in part on social science studies suggesting that racial discrimination led to feelings of inferiority among Black children. The only way to dispel this sense of inferiority was to end segregation and integrate public schools.

It is safe to say this ruling was controversial. While integration of public schools took place without much incident in some areas of the South, particularly where there were few Black students, elsewhere, it was confrontational—or nonexistent. In recognition of the fact that southern states would delay school integration for as long as possible, civil rights activists urged the federal government to enforce the Supreme Court's decision. Bayard Rustin and A. Philip Randolph organized a Prayer Pilgrimage for Freedom in Washington, DC,

on May 17, 1957, in which approximately twenty-five thousand African Americans participated.[32]

A few months later, in Little Rock, Arkansas, governor Orval Faubus resisted court-ordered integration and mobilized National Guard troops to keep Black students out of Central High School. President Eisenhower then called up the Arkansas National Guard for federal duty (essentially taking the troops out of Faubus's hands) and sent soldiers of the 101st Airborne Division to escort students to and from classes, as shown in Figure 5.7. To avoid integration, Faubus closed four high schools in Little Rock the following school year.[33]



FIGURE 5.7 Opposition to the 1957 integration of Little Rock's all-White Central High School led President Eisenhower to call in soldiers of the 101st Airborne Division. For a year, they escorted nine African American students to and from school and to and from classes within the school. (credit: The U.S. Army)

In Virginia, state leaders employed a strategy of "massive resistance" to school integration, which led to the closure of a large number of public schools across the state, some for years.[34] Although ***de jure* segregation**, segregation mandated by law, had ended on paper, in practice, few efforts were made to integrate schools in most school districts with substantial Black student populations until the late 1960s. Many White southerners who objected to sending their children to school with Black students then established private academies that admitted only White students; many of these schools remain overwhelmingly White today.[35]

School and other segregation was and is hardly limited to the South. Many neighborhoods in northern cities remain segregated by virtue of "red lining" districts where minorities were allowed and not allowed to live. Restrictive real estate covenants bound White residents to not sell their houses to African Americans and sometimes not to Chinese, Japanese, Mexicans, Filipinos, Jews, and other ethnic minorities. In New York City in the late 1950s, a group of activist parents led by Mae Mallory protested the inadequate schools in their neighborhood; a court ruled that New York was engaging in de facto segregation, and forced the city to institute policies that would provide more equitable access.[36] More recently, banks have been fined for not lending to people of color to buy homes and start business at rates commensurate with similarly situated prospective White borrowers. Relegation of minority residents to less desirable neighborhoods has the practical effect of diminishing both generational wealth, and the tax base needed to build, maintain, and improve schools and other institutions that might hasten equality and integration.

In the postwar era of White flight, however, the Supreme Court had been evolving into a more progressive force in the promotion and preservation of civil rights. In the case of *Shelley v. Kraemer* (1948), the Supreme Court held that while such covenants did not violate the Fourteenth Amendment because they consisted of agreements between private citizens, their provisions could not be enforced by courts.[37] Because state courts are government institutions and the Fourteenth Amendment prohibits the government from denying people equal protection of the law, the courts' enforcement of such covenants would be a violation of the amendment. Thus, if a White family chose to sell its house to a Black family and the other homeowners in the neighborhood tried to sue the seller, the court would not hear the case. In 1967, the Supreme Court struck down a Virginia law that prohibited interracial marriage in *Loving v. Virginia*.[38]

LEGISLATING CIVIL RIGHTS

Beyond these favorable court rulings, however, progress toward equality for African Americans remained slow in the 1950s. In 1962, Congress proposed what later became the Twenty-Fourth Amendment, which banned the poll tax in elections to federal (but not state or local) office; the amendment went into effect after being ratified in early 1964. Several southern states continued to require residents to pay poll taxes in order to vote in state elections until 1966 when, in the case of *Harper v. Virginia Board of Elections*, the Supreme Court declared that requiring payment of a poll tax in order to vote in an election at any level was unconstitutional.[39]

The slow rate of progress led to frustration within the Black community. Newer, grassroots organizations such as the Southern Christian Leadership Conference (SCLC), Congress of Racial Equality (CORE), and Student Non-Violent Coordinating Committee (SNCC) challenged the NAACP's position as the leading civil rights organization and questioned its legal-focused strategy. These newer groups tended to prefer more confrontational approaches, including the use of **direct action** campaigns relying on marches and demonstrations. The strategies of nonviolent resistance and **civil disobedience**, or the refusal to obey an unjust law, had been effective in the campaign led by Mahatma Gandhi to liberate colonial India from British rule in the 1930s and 1940s. Civil rights pioneers adopted these measures in the 1955–1956 Montgomery bus boycott. After Rosa Parks refused to give up her bus seat to a White person and was arrested, a group of Black women carried out a day-long boycott of Montgomery's public transit system. This boycott was then extended for over a year and overseen by union organizer E. D. Nixon. The effort desegregated public transportation in that city.[40]

Direct action also took such forms as the sit-in campaigns to desegregate lunch counters that began in Greensboro, North Carolina, in 1960, and the 1961 Freedom Rides in which Black and White volunteers rode buses and trains through the South to enforce a 1946 Supreme Court decision that desegregated interstate transportation (*Morgan v. Virginia*).[41] While such focused campaigns could be effective, they often had little impact in places where they were not replicated. In addition, some of the campaigns led to violence against both the campaigns' leaders and ordinary people; Rosa Parks, a longtime NAACP member and graduate of the Highlander Folk School for civil rights activists, whose actions had begun the Montgomery boycott, received death threats, E. D. Nixon's home was bombed, and the Freedom Riders were attacked in Alabama.[42]

As the campaign for civil rights continued and gained momentum, President John F. Kennedy called for Congress to pass new civil rights legislation, which began to work its way through Congress in 1963. The resulting law (pushed heavily and then signed by President Lyndon B. Johnson after Kennedy's assassination) was the Civil Rights Act of 1964, which had wide-ranging effects on U.S. society. Not only did the act outlaw government discrimination and the unequal application of voting qualifications by race, but it also, for the first time, outlawed segregation and other forms of discrimination by most businesses that were open to the public, including hotels, theaters, and restaurants that were not private clubs. It outlawed discrimination on the basis of race, ethnicity, religion, sex, or national origin by most employers, and it created the Equal Employment Opportunity Commission (EEOC) to monitor employment discrimination claims and help enforce this provision of the law. The provisions that affected private businesses and employers were legally justified not by the Fourteenth Amendment's guarantee of equal protection of the laws but instead by Congress's power to regulate interstate commerce.[43]

Even though the Civil Rights Act of 1964 had a monumental impact over the long term, it did not end efforts by many southern White people to maintain the White-dominated political power structure in the region. Progress in registering African American voters remained slow in many states despite increased federal activity supporting it, so civil rights leaders including Martin Luther King, Jr. decided to draw the public eye to the area where the greatest resistance to voter registration drives were taking place. The SCLC and SNCC particularly focused their attention on the city of Selma, Alabama, which had been the site of violent reactions against civil rights activities.

The organizations' leaders planned a march from **Selma** to Montgomery in March 1965. Their first attempt to

march was violently broken up by state police and sheriff's deputies (Figure 5.8). The second attempt was aborted because King feared it would lead to a brutal confrontation with police and violate a court order from a federal judge who had been sympathetic to the movement in the past. That night, three of the marchers, White ministers from the north, were attacked and beaten with clubs by members of the Ku Klux Klan; one of the victims died from his injuries. Televised images of the brutality against protesters and the death of a minister led to greater public sympathy for the cause. Eventually, a third march was successful in reaching the state capital of Montgomery.[44]



(a) (b)

FIGURE 5.8 The police attack on civil rights demonstrators as they crossed the Edmund Pettus Bridge on their way from Selma to Montgomery on March 7, 1965, is remembered as "Bloody Sunday" (a). John Lewis's funeral procession crosses the Edmund Pettus bridge on July 26, 2020 (b). (credit a: modification of "Bloody Sunday-officers await demonstrators" by U.S. Department of Justice/Wikimedia Commons, Public Domain; credit b: modification of "Rep. John Lewis Funeral Procession Over Edmund Pettus Bridge" by C-SPAN/YouTube, Public Domain)

LINK TO LEARNING

The 1987 PBS documentary *Eyes on the Prize (https://www.openstaxcollege.org/l/29eyesonthepriz)* won several Emmys and other awards for its coverage of major events in the civil rights movement, including the Montgomery bus boycott, the battle for school integration in Little Rock, the march from Selma to Montgomery, and Martin Luther King, Jr.'s leadership of the march on Washington, DC.

The events at Selma galvanized support in Congress for a follow-up bill solely dealing with the right to vote. The Voting Rights Act of 1965 went beyond previous laws by requiring greater oversight of elections by federal officials. Literacy and understanding tests, and other devices used to discriminate against voters on the basis of race, were banned. The Voting Rights Act proved to have much more immediate and dramatic effect than the laws that preceded it; what had been a fairly slow process of improving voter registration and participation was replaced by a rapid increase of Black voter registration rates—although White registration rates increased over this period as well.[45] To many people's way of thinking, however, the Supreme Court turned back the clocks when it gutted a core aspect of the Voting Rights Act in *Shelby County v. Holder* (2013).[46] No longer would states need federal approval to change laws and policies related to voting. Indeed, many states with a history of voter discrimination quickly resumed restrictive practices with laws requiring photo ID; limiting early voting, ballot drop-off locations, and hours; and making registering and waiting to vote more onerous. Some of the new restrictions are already being challenged in the courts.[47]

Not all African Americans in the civil rights movement were comfortable with gradual change. Instead of using marches and demonstrations to change people's attitudes, calling for tougher civil rights laws, or suing for their rights in court, they favored more immediate action to prevent White oppression and protect their communities. Men like Malcolm X, and groups like the Black Panthers were willing to use other means to

achieve their goals (Figure 5.9).[48] Faced with continual violence at the hands of police and acts of terrorism like the bombing of a Black church in Alabama that killed four girls, Malcolm X expressed significant distrust of White people. He sought to raise the self-esteem of Black people and advocated for their separation from the United States through eventual emigration to Africa. In general, Malcolm X rejected the mainstream civil right's movement's integration and assimilation approach, and laid the foundation for the Black Power movement, which sought self-determination and independence for Black people. His position was attractive to many young African Americans, especially after Martin Luther King, Jr. was assassinated in 1968.



FIGURE 5.9 Martin Luther King, Jr. (left) and Malcolm X (right) adopted different approaches to securing civil rights for Black people. This occasion, a Senate debate of the Civil Rights Act of 1964, was the only time the two men ever met.

CONTINUING CHALLENGES FOR AFRICAN AMERICANS

The civil rights movement for African Americans did not end with the passage of the Voting Rights Act in 1965. For the last fifty years, the African American community has faced challenges related to both past and current discrimination, and progress on both fronts remains slow, uneven, and often frustrating.

Legacies of the *de jure* segregation of the past remain in much of the United States. Many Black people still live in predominantly Black neighborhoods where their ancestors were forced by laws and housing covenants to live.[49] Even those who live in the suburbs, once largely populated only by White people, tend to live in suburbs that are mostly populated by Black people.[50] Some two million African American young people attend schools whose student body is composed almost entirely of students of color.[51] During the late 1960s and early 1970s, efforts to tackle these problems were stymied by large-scale public opposition, not just in the South but across the nation. Attempts to integrate public schools through the use of busing—transporting students from one segregated neighborhood to another to achieve more racially balanced schools—were particularly unpopular and helped contribute to "White flight" from cities to the suburbs.[52] This White flight has created ***de facto* segregation**, a form of segregation that results from the choices of individuals to live in segregated communities without government action or support.

Today, a lack of well-paying jobs in many urban areas, combined with the poverty resulting from the legacies of slavery, Jim Crow era terror, and persistent racism, has trapped many Black people in under-served neighborhoods with markedly lower opportunity and life expectancy.[53] While the Civil Rights Act of 1964 created opportunities for members of the Black middle class to advance economically and socially, and to live in the same neighborhoods as the White middle class, their departure left many Black neighborhoods mired in poverty and without the strong community ties that existed during the era of legal segregation. Many of these neighborhoods continue to suffer from high rates of crime and violence.[54] Police also appear, consciously or

subconsciously, to engage in racial profiling: singling out Black people (and Latino people) for greater attention than members of other racial and ethnic groups, as former FBI director James B. Comey and former New York police commissioner Bill Bratton have admitted.[55] When incidents of real or perceived injustice arise, as recently occurred after a series of deaths of Black people at the hands of police in Ferguson, Missouri; Staten Island, New York; Baltimore, Maryland; Louisville, Kentucky; and Minneapolis, Minnesota, many African Americans turn to the streets to protest because they feel abandoned or ignored by politicians of all races.

While the public mood may have shifted toward greater concern about economic inequality in the United States, substantial policy changes to immediately improve the economic standing of African Americans in general have not followed. The Obama administration proposed new rules under the Fair Housing Act that were intended to lead to more integrated communities in the future; however, the Trump administration repeatedly sought to weaken the Fair Housing Act, primarily through lack of enforcement of existing regulations.[56] Meanwhile, grassroots movements to improve neighborhoods and local schools have taken root in many Black communities across America, and perhaps in those movements is the hope for greater future progress.

Other recent movements are more troubling, notably the increased presence and influence of White nationalism throughout the country. This movement espouses White supremacy and does not shrink from the threat or use of violence to achieve it. Such violence occurred in Charlottesville, Virginia, in August 2017, when various White supremacist groups and alt-right forces joined together in a "Unite the Right" rally (Figure 5.10). This rally included chants and racial slurs against African Americans and Jews. Those rallying clashed with counter-protestors, one of whom died when an avowed Neo-Nazi deliberately drove his car into a group of peaceful protestors. He has since been convicted and sentenced to life in prison for his actions. This event sent shockwaves through U.S. politics, as leaders tried to grapple with the significance of the event. President Trump said that "you had some very bad people in that group, but you also had people who were very fine people on both sides."[57]



FIGURE 5.10 As part of the "Unite the Right" rally on August 12, 2017, White supremacists and other alt-right groups prepare to enter Emancipation Park in Charlottesville, Virginia, carrying Nazi and Confederate flags. The rally was planned in part as a response to the removal of a statue of Robert E. Lee from the park earlier that year. (credit: Anthony Crider)

FINDING A MIDDLE GROUND

Affirmative Action

One of the major controversies regarding race in the United States today is related to affirmative action, the practice of ensuring that members of historically disadvantaged or underrepresented groups have equal access to opportunities in education, the workplace, and government contracting. The phrase *affirmative action* originated in the Civil Rights Act of 1964 and Executive Order 11246, and it has drawn controversy ever since. The Civil Rights Act of 1964 prohibited discrimination in employment, and Executive Order 11246, issued in 1965, forbade employment discrimination not only within the federal government but by federal contractors and

contractors and subcontractors who received government funds.

Clearly, Black people, as well as other groups, have been subject to discrimination in the past and present, limiting their opportunity to compete on a level playing field with those who face no such challenge. Opponents of affirmative action, however, point out that many of its beneficiaries are ethnic minorities from relatively affluent backgrounds, while White and Asian Americans who grew up in poverty are expected to succeed despite facing challenges related to their socioeconomic status and those related to educational issues in lower income areas.

Because affirmative action attempts to redress discrimination on the basis of race or ethnicity, it is generally subject to the strict scrutiny standard, which means the burden of proof is on the government to demonstrate the necessity of racial discrimination to achieve a compelling governmental interest. In 1978, in *Bakke v. California*, the Supreme Court upheld affirmative action and said that colleges and universities could consider race when deciding whom to admit but could not establish racial quotas.[58] In 2003, the Supreme Court reaffirmed the Bakke decision in *Grutter v. Bollinger*, which said that taking race or ethnicity into account as one of several factors in admitting a student to a college or university was acceptable, but a system setting aside seats for a specific quota of minority students was not.[59] All these issues are back under discussion in the Supreme Court with the re-arguing of *Fisher v. University of Texas*.[60] In *Fisher v. University of Texas* (2013, known as *Fisher I*), University of Texas student Abigail Fisher brought suit to declare UT's race-based admissions policy as inconsistent with *Grutter*. The court did not see the UT policy that way and allowed it, so long as it remained narrowly tailored and not quota-based. *Fisher II* (2016) was decided by a 4–3 majority. It allowed race-based admissions, but required that the utility of such an approach had to be re-established on a regular basis.

However, in *Students for Fair Admissions, Inc. v. Harvard* (and the companion *SFFA v. University of North Carolina*), fully 6 justices voted to declare that affirmative action in college admissions is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment[61]

Should race be a factor in deciding who will be admitted to a particular college? Why or why not?

5.3 The Fight for Women's Rights

LEARNING OBJECTIVES

By the end of this section, you will be able to:

- Describe early efforts to achieve rights for women
- Explain why the Equal Rights Amendment failed to be ratified
- Describe the ways in which women acquired greater rights in the twentieth century
- Analyze why women continue to experience unequal treatment

Along with African Americans, women of all races and ethnicities have long been discriminated against in the United States, and the women's rights movement began at the same time as the movement to abolish slavery in the United States. Indeed, the women's movement came about largely as a result of the difficulties women encountered while trying to abolish slavery. The trailblazing Seneca Falls Convention for **women's rights** was held in 1848, a few years before the Civil War. But the abolition and African American civil rights movements largely eclipsed the women's movement throughout most of the nineteenth century. Women began to campaign actively again in the late nineteenth and early twentieth centuries, and another movement for women's rights began in the 1960s.

THE EARLY WOMEN'S RIGHTS MOVEMENT AND WOMEN'S SUFFRAGE

At the time of the American Revolution, women had few rights. Although single women were allowed to own property, married women were not. When women married, their separate legal identities were erased under the legal principle of **coverture**. Not only did women adopt their husbands' names, but all personal property

they owned legally became their husbands' property. Husbands could not sell their wives' real property—such as land or in some states enslaved people—without their permission, but they were allowed to manage it and retain the profits. If women worked outside the home, their husbands were entitled to their wages.[62] So long as a man provided food, clothing, and shelter for his wife, she was not legally allowed to leave him. Divorce was difficult and in some places impossible to obtain.[63] Higher education for women was not available, and women were barred from professional positions in medicine, law, and ministry.

Following the Revolution, women's conditions did not improve. Women were not granted the right to vote by any of the states except New Jersey, which at first allowed all taxpaying property owners to vote. However, in 1807, the law changed to limit the vote to men.[64] Changes in property laws actually hurt women by making it easier for their husbands to sell their real property without their consent.

Although women had few rights, they nevertheless played an important role in transforming American society. This was especially true in the 1830s and 1840s, a time when numerous social reform movements swept across the United States. In 1832, for example, African American writer and activist Maria W. Stewart became the first American-born woman to give a speech to a mixed audience. While there was racism within the suffrage movement, including calls for segregated marches and a lack of scrutiny on the topic of lynchings, many women were active in the abolition movement and the temperance movement, which tried to end the excessive consumption of liquor.[65] They often found they were hindered in their efforts, however, either by the law or by widely held beliefs that they were weak, silly creatures who should leave important issues to men.[66] One of the leaders of the early women's movement, Elizabeth Cady Stanton (Figure 5.11), was shocked and angered when she sought to attend an 1840 antislavery meeting in London, only to learn that women would not be allowed to participate and had to sit apart from the men. At this convention, she made the acquaintance of another American woman abolitionist, Lucretia Mott (Figure 5.11), who was also appalled by the male reformers' treatment of women.[67]



(a)



(b)

FIGURE 5.11 Elizabeth Cady Stanton (a) and Lucretia Mott (b) both emerged from the abolitionist movement as strong advocates of women's rights.

In 1848, Stanton and Mott called for a women's rights convention, the first ever held specifically to address the subject, at Seneca Falls, New York. At the Seneca Falls Convention, Stanton wrote the Declaration of Sentiments, which was modeled after the Declaration of Independence and proclaimed women were equal to men and deserved the same rights. Among the rights Stanton wished to see granted to women was **suffrage,** the right to vote. When called upon to sign the Declaration, many of the delegates feared that if women demanded the right to vote, the movement would be considered too radical and its members would become a laughingstock. The Declaration passed, but the resolution demanding suffrage was the only one that did not

pass unanimously.[68]

Along with other feminists (advocates of women's equality), such as her friend and colleague Susan B. Anthony, Stanton fought for rights for women besides suffrage, including the right to seek higher education. As a result of their efforts, several states passed laws that allowed married women to retain control of their property and let divorced women keep custody of their children.[69] Amelia Bloomer, another activist, also campaigned for dress reform, believing women could lead better lives and be more useful to society if they were not restricted by voluminous heavy skirts and tight corsets.

The women's rights movement attracted many women who, like Stanton and Anthony, were active in either the temperance movement, the abolition movement, or both movements. Sarah and Angelina Grimke, the daughters of a wealthy slaveholding family in South Carolina, became first abolitionists and then women's rights activists.[70] Prominent Black and formerly enslaved women such as Sojourner Truth, Frances Ellen Watkins Harper, and Mary Anne Shadd Cary joined the women's movement after establishing themselves as key figures in the abolition movement. These women were known for direct, unorthodox, and effective arguments for the suffragist cause. Truth's "Ain't I A Woman" speech is among the most well known of the movement, and Cary, a lawyer, delivered a critical equality argument before the Senate Judiciary Committee..

Following the Civil War and the abolition of slavery, the women's rights movement fragmented. Stanton and Anthony denounced the Fifteenth Amendment because it granted voting rights only to Black men and not to women of any race.[71] The fight for women's rights did not die, however. In 1869, Stanton and Anthony formed the National Woman Suffrage Association (NWSA), which demanded that the Constitution be amended to grant the right to vote to all women. It also called for more lenient divorce laws and an end to sex discrimination in employment. The less radical Lucy Stone formed the American Woman Suffrage Association (AWSA) in the same year; AWSA hoped to win the suffrage for women by working on a state-by-state basis instead of seeking to amend the Constitution.[72] Four western states—Utah, Colorado, Wyoming, and Idaho—did extend the right to vote to women in the late nineteenth century, but no other states did.

Women were also granted the right to vote on matters involving liquor licenses, in school board elections, and in municipal elections in several states. However, this was often done because of stereotyped beliefs that associated women with moral reform and concern for children, not as a result of a belief in women's equality. Furthermore, voting in municipal elections was restricted to women who owned property.[73] In 1890, the two suffragist groups united to form the National American Woman Suffrage Association (NAWSA). To call attention to their cause, members circulated petitions, lobbied politicians, and held parades in which hundreds of women and girls marched through the streets (Figure 5.12).



FIGURE 5.12 In October 1917, suffragists marched down Fifth Avenue in New York demanding the right to vote. They carried a petition that had been signed by one million women.

The more radical National Woman's Party (NWP), led by Alice Paul, advocated the use of stronger tactics. The NWP held public protests and picketed outside the White House (Figure 5.13).[74] Demonstrators were often beaten and arrested, and suffragists were subjected to cruel treatment in jail. When some, like Paul, began hunger strikes to call attention to their cause, their jailers force-fed them, an incredibly painful and invasive experience for the women.[75] Finally, in 1920, the triumphant passage of the Nineteenth Amendment granted

all women the right to vote.



FIGURE 5.13 Members of the National Woman's Party picketed outside the White House six days a week from January 10, 1917, when President Woodrow Wilson took office, until June 4, 1919, when the Nineteenth Amendment was passed by Congress. The protesters wore banners proclaiming the name of the institution of higher learning they attended.

CIVIL RIGHTS AND THE EQUAL RIGHTS AMENDMENT

Just as the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments did not result in equality for African Americans, the Nineteenth Amendment did not end discrimination against women in education, employment, or other areas of life, which continued to be legal. Although women could vote, they very rarely ran for or held public office. Women continued to be underrepresented in the professions, and relatively few sought advanced degrees. Until the mid-twentieth century, the ideal in U.S. society was typically for women to marry, have children, and become housewives. Those who sought work for pay outside the home were routinely denied jobs because of their sex and, when they did find employment, were paid less than men. Women who wished to remain childless or limit the number of children they had in order to work or attend college found it difficult to do so. In some states it was illegal to sell contraceptive devices, and abortions were largely illegal and difficult for women to obtain.

A second women's rights movement emerged in the 1960s to address these problems. Title VII of the Civil Rights Act of 1964 prohibited discrimination in employment on the basis of sex as well as race, color, national origin, and religion. Nevertheless, women continued to be denied jobs because of their sex and were often sexually harassed at the workplace. In 1966, feminists who were angered by the lack of progress made by women and by the government's lackluster enforcement of Title VII organized the National Organization for Women (NOW). NOW promoted workplace equality, including equal pay for women, and also called for the greater presence of women in public office, the professions, and graduate and professional degree programs.

NOW also declared its support for the **Equal Rights Amendment (ERA)**, which mandated equal treatment for all regardless of sex. The ERA, written by Alice Paul and Crystal Eastman, was first proposed to Congress, unsuccessfully, in 1923. It was introduced in every Congress thereafter but did not pass both the House and the Senate until 1972. The amendment was then sent to the states for ratification with a deadline of March 22, 1979. Although many states ratified the amendment in 1972 and 1973, the ERA still lacked sufficient support as the deadline drew near. Opponents, including both women and men, argued that passage would subject women to military conscription and deny them alimony and custody of their children should they divorce.[76] In 1978, Congress voted to extend the deadline for ratification to June 30, 1982. Even with the extension, however, the amendment failed to receive the support of the required thirty-eight states; by the time the deadline arrived, it had been ratified by only thirty-five, some of those had rescinded their ratifications, and no new state had ratified the ERA during the extension period (Figure 5.14). In 2020, Virginia became the thirty-eighth state to ratify, though well after the deadline. That led the U.S. House of Representatives to consider and pass legislation to remove the original deadlines. However, the Senate did not take up the legislation. In 2021, Senator Lisa Murkowski (R-AK) and Senator Ben Cardin (D-MD) introduced a new joint resolution to remove

the deadline. That resolution has yet to be taken up by the Senate.[77]

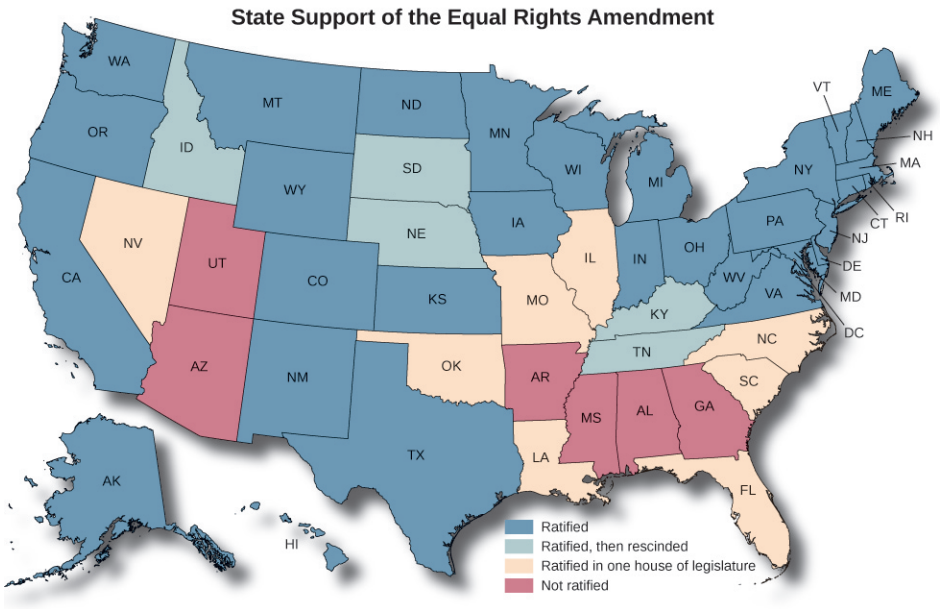


FIGURE 5.14 The map shows which states supported the ERA and which did not. The dark blue states ratified the amendment. The amendment was ratified but later rescinded in the light blue states and was ratified in only one branch of the legislature in the yellow states. The ERA was never ratified by the purple states. In 2020, Virginia voted to ratify the amendment, becoming the thirty-eighth state to do so. However, it was well past the deadline.

Although the ERA failed to be ratified, **Title IX** of the United States Education Amendments of 1972 passed into law as a federal statute (not as an amendment, as the ERA was meant to be). Title IX applies to all educational institutions that receive federal aid and prohibits discrimination on the basis of sex in academic programs, dormitory space, health-care access, and school activities including sports. Thus, if a school receives federal aid, it cannot spend more funds on programs for men than on programs for women.

CONTINUING CHALLENGES FOR WOMEN

There is no doubt that women have made great progress since the Seneca Falls Convention. Today, more women than men attend college, and they are more likely than men to graduate.[78] Women are represented in all the professions, and approximately half of all law and medical school students are women.[79] Women have held Cabinet positions and have been elected to Congress. They have run for president and vice president, and four female justices currently serve on the Supreme Court. Women are also represented in all branches of the military and can serve in combat.

While women's rights have progressed well beyond where they were in the 1800s, questions of equity continue. In 2021, the massive disparities between the facilities and housing for men and women in their respective NCAA national tournaments became front page news.[80] Also in the news recently were the disparities in pay and resources for the U.S. Men's and Women's National Soccer teams. Again, women received much less in terms of resources than men, despite (in this case) being the more successful international team and World Cup champions.[81] In the business world, women are still underrepresented in some jobs and are less likely to hold executive positions than are men.

Many believe the **glass ceiling**, an invisible barrier caused by discrimination, prevents women from rising to the highest levels of American organizations, including corporations, governments, academic institutions, and religious groups. Women earn less money than men for the same work. As of 2014, fully employed women earned seventy-nine cents for every dollar earned by a fully employed man.[82] This problem may be compounded by other factors, as women from under-represented groups are even more discriminated against than other women.[83] Women are also more likely to be single parents than are men.[84] As a result, more

women live below the poverty line than do men, and, as of 2012, households headed by single women are twice as likely to live below the poverty line than those headed by single men.[85] Women remain underrepresented in elective offices. As of June 2021, women held only about 27 percent of seats in Congress and only about 31 percent of seats in state legislatures.[86]

Women remain subject to sexual harassment in the workplace and are more likely than men to be the victims of domestic violence. Approximately one-third of all women have experienced domestic violence; one in five women is assaulted during her college years.[87]

Many in the United States continue to call for a ban on **abortion**, and states have attempted to restrict women's access to the procedure. For example, many states have required abortion clinics to meet the same standards set for hospitals, such as corridor size and parking lot capacity, despite lack of evidence regarding the benefits of such standards. Abortion clinics, which are smaller than hospitals, often cannot meet such standards. Other restrictions include mandated counseling before the procedure and the need for minors to secure parental permission before obtaining abortion services.[88] *Whole Woman's Health v. Hellerstedt* (2016) cited the lack of evidence for the benefit of larger clinics and further disallowed two Texas laws that imposed special requirements on doctors in order to perform abortions.[89] Furthermore, the federal government will not pay for abortions for low-income women except in cases of rape or incest or in situations in which carrying the fetus to term would endanger the life of the mother.[90]

To address these issues, many have called for additional protections for women. These include laws mandating equal pay for equal work. According to the doctrine of **comparable worth**, people should be compensated equally for work requiring comparable skills, responsibilities, and effort. Thus, even though women are underrepresented in certain fields, they should receive the same wages as men if performing jobs requiring the same level of accountability, knowledge, skills, and/or working conditions, even though the specific job may be different.

For example, garbage collectors are predominantly male. The chief job requirements are the ability to drive a sanitation truck and to lift heavy bins and toss their contents into the back of truck. The average wage for a garbage collector is $15.34 an hour.[91] Most people employed as daycare workers are female, and the average pay is $9.12 an hour.[92] However, the work arguably requires more skills and is a more responsible position. Daycare workers must be able to feed, clean, and dress small children; prepare meals for them; entertain them; give them medicine if required; and teach them basic skills. They must be educated in first aid and assume responsibility for the children's safety. In terms of the skills and physical activity required and the associated level of responsibility of the job, daycare workers should be paid at least as much as garbage collectors and perhaps more. Women's rights advocates also call for stricter enforcement of laws prohibiting sexual harassment, and for harsher punishment, such as mandatory arrest, for perpetrators of domestic violence.

INSIDER PERSPECTIVE

Harry Burn and the Tennessee General Assembly

In 1918, the proposed Nineteenth Amendment to the Constitution, extending the right to vote to all adult female citizens of the United States, was passed by both houses of Congress and sent to the states for ratification. Thirty-six votes were needed. Throughout 1918 and 1919, the Amendment dragged through legislature after legislature as pro- and anti-suffrage advocates made their arguments. By the summer of 1920, only one more state had to ratify it before it became law. The Amendment passed through Tennessee's state Senate and went to its House of Representatives. Arguments were bitter and intense. Pro-suffrage advocates argued that the amendment would reward women for their service to the nation during World War I and that women's supposedly greater morality would help to clean up politics. Those opposed claimed women would be degraded by entrance into the political arena and that their interests were already represented by their male relatives. On

August 18, the amendment was brought for a vote before the House. The vote was closely divided, and it seemed unlikely it would pass. But as a young anti-suffrage representative waited for his vote to be counted, he remembered a note he had received from his mother that day. In it, she urged him, "Hurrah and vote for suffrage!" At the last minute, Harry Burn abruptly changed his ballot. The amendment passed the House by one vote, and eight days later, the Nineteenth Amendment was added to the Constitution.

How are women perceived in politics today compared to the 1910s? What were the competing arguments for Harry Burn's vote?

LINK TO LEARNING

The website for the Women's National History Project (https://www.openstax.org/l/29womnathispro) contains a variety of resources for learning more about the women's rights movement and women's history. It features a history of the women's movement, a "This Day in Women's History" page, and quizzes to test your knowledge.

5.4 Civil Rights for Indigenous Groups: Native Americans, Alaskans, and Hawaiians

LEARNING OBJECTIVES

By the end of this section, you will be able to:

- Outline the history of discrimination against Native Americans
- Describe the expansion of Native American civil rights from 1960 to 1990
- Discuss the persistence of problems Native Americans face today

Native Americans have long suffered the effects of segregation and discrimination imposed by the U.S. government and the larger White society. Native Americans were not granted the full rights and protections of U.S. citizenship until long after African Americans and women were, with many having to wait until the Nationality Act of 1940 to become citizens.[93] This was long after the passage of the Fourteenth Amendment in 1868, which granted citizenship to African Americans but not, the Supreme Court decided in *Elk v. Wilkins* (1884), to Native Americans.[94] White women had been citizens of the United States since its very beginning even though they were not granted the full rights of citizenship. Furthermore, Native Americans are the only group of Americans who were forcibly removed en masse from the lands on which they and their ancestors had lived so that others could claim this land and its resources. This issue remains relevant today as can be seen in the recent protests of the Dakota Access Pipeline, which have led to intense confrontations between those in charge of the pipeline and Native Americans.

NATIVE AMERICANS LOSE THEIR LAND AND THEIR RIGHTS

From the very beginning of European settlement in North America, Native Americans were abused and exploited. Early British settlers attempted to enslave the members of various tribes, especially in the southern colonies and states.[95] Following the American Revolution, the U.S. government assumed responsibility for conducting negotiations with Indian tribes, all of which were designated as sovereign nations, and regulating commerce with them. Because Native Americans were officially regarded as citizens of other nations, they were denied U.S. citizenship.[96]

As White settlement spread westward over the course of the nineteenth century, Indian tribes were forced to move from their homelands. Although the federal government signed numerous treaties guaranteeing tribe members the right to live in the places where they had traditionally farmed, hunted, or fished, land-hungry White settlers routinely violated these agreements and the federal government did little to enforce them.[97]

In 1830, Congress passed the Indian Removal Act, which forced Native Americans to move west of the Mississippi River.[98] Not all tribes were willing to leave their land, however. The Cherokee in particular resisted,

and in the 1820s, the state of Georgia tried numerous tactics to force them from their territory. Efforts intensified in 1829 after gold was discovered there. Wishing to remain where they were, the tribe sued the state of Georgia.[99] In 1831, the Supreme Court decided in *Cherokee Nation v. Georgia* that Indian tribes were not sovereign nations, but also that tribes were entitled to their ancestral lands and could not be forced to move from them.[100]

The next year, in *Worcester v. Georgia*, the Court ruled that non-Native Americans could not enter tribal lands without the tribe's permission. White Georgians, however, refused to abide by the Court's decision, and President Andrew Jackson, who had fought in conflicts against Native Americans, refused to enforce it.[101] Between 1831 and 1838, members of several southern tribes, including the Cherokees, were forced by the U.S. Army to move west along routes shown in Figure 5.15. The forced removal of the Cherokees to Oklahoma Territory, which had been set aside for settlement by displaced tribes and designated Indian Territory, resulted in the death of one-quarter of the tribe's population.[102] The Cherokees remember this journey as the **Trail of Tears**.

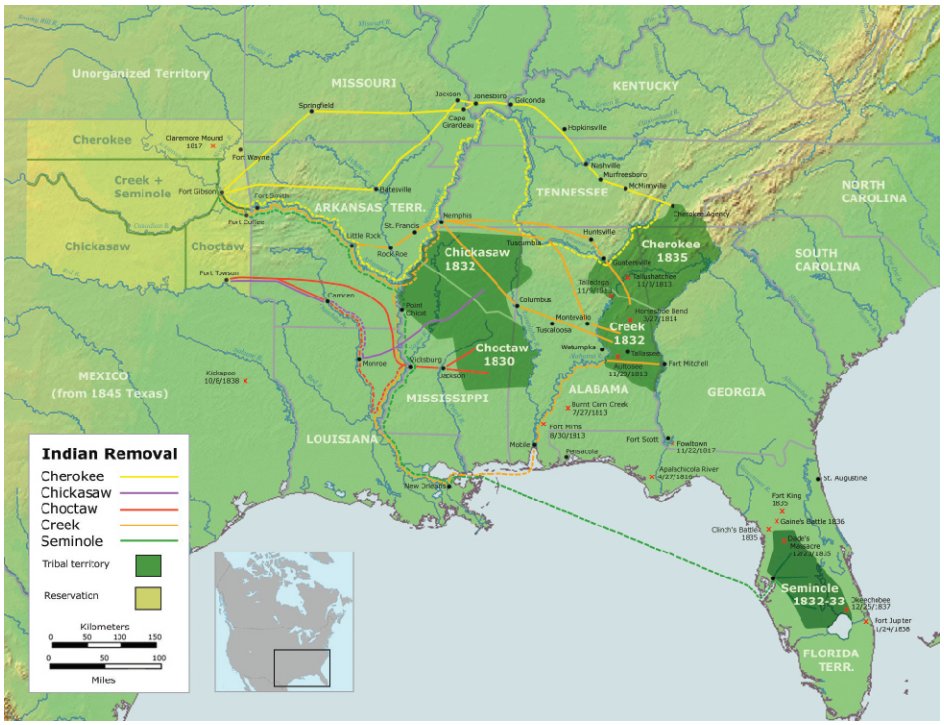


FIGURE 5.15 After the passage of the Indian Removal Act, the U.S. military forced the removal of the Cherokee, Chickasaw, Choctaw, Creek, and Seminole from the Southeast to the western territory (present-day Oklahoma), marching them along the routes shown here. The lines in yellow mark the routes taken by the Cherokee on the Trail of Tears.

By the time of the Civil War, most Indian tribes had been relocated west of the Mississippi. However, once large numbers of White Americans and European immigrants had also moved west after the Civil War, Native Americans once again found themselves displaced. They were confined to reservations, which are federal lands set aside for their use where non-Indians could not settle. Reservation land was usually poor, however, and attempts to farm or raise livestock, not traditional occupations for most western tribes anyway, often ended in failure. Unable to feed themselves, the tribes became dependent on the Bureau of Indian Affairs (BIA) in Washington, DC, for support. Protestant missionaries were allowed to "adopt" various tribes, to convert them to Christianity and thus speed their assimilation. In an effort to hasten this process, Native American children were taken from their parents and sent to boarding schools, many of them run by churches, where they were forced to speak English and abandon their traditional cultures.[103]

In 1887, the Dawes Severalty Act, another effort to assimilate Native Americans to White society, divided

reservation lands into individual allotments. Native Americans who accepted these allotments and agreed to sever tribal ties were also given U.S. citizenship. All lands remaining after the division of reservations into allotments were offered for sale by the federal government to White farmers and ranchers. As a result, Native Americans swiftly lost control of reservation land.[104] In 1898, the Curtis Act dealt the final blow to Indian sovereignty by abolishing all tribal governments.[105]

THE FIGHT FOR NATIVE AMERICAN RIGHTS

As Native Americans were removed from their tribal lands and increasingly saw their traditional cultures being destroyed over the course of the nineteenth century, a movement to protect their rights began to grow. Sarah Winnemucca (Figure 5.16), member of the Paiute tribe, lectured throughout the east in the 1880s in order to acquaint White audiences with the injustices suffered by the western tribes.[106] Lakota physician Charles Eastman (Figure 5.16) also worked for Native American rights. In 1924, the Indian Citizenship Act granted citizenship to all Native Americans born after its passage. Native Americans born before the act took effect, who had not already become citizens as a result of the Dawes Severalty Act or service in the army in World War I, had to wait until the Nationality Act of 1940 to become citizens. In 1934, Congress passed the Indian Reorganization Act, which ended the division of reservation land into allotments. It returned to Native American tribes the right to institute self-government on their reservations, write constitutions, and manage their remaining lands and resources. It also provided funds for Native Americans to start their own businesses and attain a college education.[107]



(a) (b)

FIGURE 5.16 Sarah Winnemucca (a), called the "Paiute Princess" by the press, and Dr. Charles Eastman (b), of the Lakota tribe, campaigned for Native American rights in the late nineteenth and early twentieth centuries. Winnemucca wears traditional dress for a publicity photograph.

Despite the Indian Reorganization Act, conditions on the reservations did not improve dramatically. Most tribes remained impoverished, and many Native Americans, despite the fact that they were now U.S. citizens, were denied the right to vote by the states in which they lived. States justified this violation of the Fifteenth Amendment by claiming that Native Americans might be U.S. citizens but were not state residents because they lived on reservations. Other states denied Native Americans voting rights if they did not pay taxes.[108] Despite states' actions, the federal government continued to uphold the rights of tribes to govern themselves. Federal concern for tribal sovereignty was part of an effort on the government's part to end its control of, and obligations to, Indian tribes.[109]

In the 1960s, a modern Native American civil rights movement, inspired by the African American civil rights movement, began to grow. In 1969, a group of Native American activists from various tribes, part of a new Pan-

Indian movement, took control of Alcatraz Island in San Francisco Bay, which had once been the site of a federal prison. Attempting to strike a blow for Red Power, a multi-faceted movement to increase the power of Native Americans united by a Pan-Indian identity and demanding federal recognition of their rights, they maintained control of the island for more than a year and a half. They claimed the land as compensation for the federal government's violation of numerous treaties and offered to pay for it with beads and trinkets. In January 1970, some of the occupiers began to leave the island. Some may have been disheartened by the accidental death of the daughter of one of the activists. In May 1970, all electricity and telephone service to the island was cut off by the federal government, and more of the occupiers began to leave. Over the course of the next year, the conditions on the island declined steadily and public opinion in the country turned decidedly against the occupiers. By June 1971, the few people remaining on the island were removed by the government. Though the goals of the activists were not achieved, the occupation of Alcatraz had brought national attention to the concerns of Native American activists.[110]

In 1973, members of the **American Indian Movement (AIM)**, a more radical group than the occupiers of Alcatraz, temporarily took over the offices of the Bureau of Indian Affairs in Washington, DC. The following year, members of AIM and some two hundred Oglala Lakota supporters occupied the town of Wounded Knee on the Lakota tribe's Pine Ridge Reservation in South Dakota, the site of an 1890 massacre of Lakota men, women, and children by the U.S. Army (Figure 5.17). Many of the Oglala were protesting the actions of their half-White tribal chieftain, who they claimed had worked too closely with the BIA. The occupiers also wished to protest the failure of the Justice Department to investigate acts of White violence against Lakota tribal members outside the bounds of the reservation.

The occupation led to a confrontation between the Native American protestors and the FBI and U.S. Marshals. Violence erupted; two Native American activists were killed, and a marshal was shot (Figure 5.17). After the second death, the Lakota called for an end to the occupation and negotiations began with the federal government. Two of AIM's leaders, Russell Means and Dennis Banks, were arrested, but the case against them was later dismissed.[111] Violence continued on the Pine Ridge Reservation for several years after the siege; the reservation had the highest per capita murder rate in the United States. Two FBI agents were among those who were killed. The Oglala blamed the continuing violence on the federal government.[112]



(a) (b)

FIGURE 5.17 A memorial stone (a) marks the spot of the mass grave of the Lakotas killed in the 1890 massacre at Wounded Knee. The bullet-riddled car (b) of FBI agent Ronald Williams reveals the level of violence reached during—and for years after—the 1973 occupation of the town.

LINK TO LEARNING

The official website of the American Indian Movement (https://www.openstax.org/l/29aimovement) provides information about ongoing issues in Native American communities in both North and South America.

The current relationship between the U.S. government and Native American tribes was established by the

Indian Self-Determination and Education Assistance Act of 1975. Under the act, tribes assumed control of programs that had formerly been controlled by the BIA, such as education and resource management, and the federal government provided the funding.[113] Many tribes have also used their new freedom from government control to legalize gambling and to open casinos on their reservations. Although the states in which these casinos are located have attempted to control gaming on Native American lands, the Supreme Court and the Indian Gaming Regulatory Act of 1988 have limited their ability to do so.[114] The 1978 American Indian Religious Freedom Act granted tribes the right to conduct traditional ceremonies and rituals, including those that use otherwise prohibited substances like peyote cactus and eagle bones, which can be procured only from vulnerable or protected species.[115] Another 1978 law, the Indian Child Welfare Act, prevented the frequent practice of removing Native American children from their homes and placing them non-Native American families. The law stated that if a child needed to be removed from their family for reasons of welfare and safety, they would be either placed with extended family, members of their own tribe, or members of another tribe—not with non-Native American families. (The law has been challenged, but in 2023 the Supreme Court ruled that it should remain intact.)[116]

In another important recent development, several federal court cases have raised standing for Native American tribes to sue to regain former reservation lands lost to the U.S. government. Through a key 5-4 decision by the Supreme Court in *McGirt v. Oklahoma*, Native Americans realized the most important advancement in rights since the reapplication of the Winters Doctrine (which led to a stronger footing for tribes in water negotiations). [117] The initial case taken up by the Court in 2019, *Carpenter v. Murphy*, which revolved around a murder case in Oklahoma, became quite salient, given the history of the Trail of Tears. At issue was whether Mr. Murphy committed murder on private land in the state of Oklahoma or on the Muscogee (Creek) reservation and who should have jurisdiction over his case. If the court decided to proclaim the land as a reservation, that would potentially lead to half the State of Oklahoma being designated as such.[118] After hearing arguments in late 2018, they did not hand down a decision in 2019. However, in the follow-up case, *McGirt v. Oklahoma*, the Court took the step that strengthened Native American rights. The landmark decision held that a large part of Oklahoma is tribal land. Moreover, the court argued that crimes committed on those lands are subject to federal, not state authority. In this case, Jimcy McGirt was convicted in Oklahoma state court in 1997 of various sexual crimes. McGirt challenged the conviction on the basis that Oklahoma lacked jurisdiction to prosecute a member of the Muscogee Creek Nation tribe for crimes committed on tribal land.[119]

In addition to gains in water rights and land rights, Native American tribes made other gains in recent decades. Tribes have robust and well-recognized governing institutions based on democratic principles. Moreover, many tribes now have governing compacts negotiated with the states where their ancestral lands lay. The proliferation of Indian gaming has further strengthened the success and political influence of the tribes. Finally, the appointment by President Biden, and subsequent Senate confirmation, of Rep. Deb Haaland (D-NM) as Secretary of the Interior was a powerful and pathbreaking moment. She is the first Native American to hold that position at Interior, which includes the Bureau of Indian Affairs.

ALASKA NATIVES AND NATIVE HAWAIIANS REGAIN SOME RIGHTS

Alaska Natives and Native Hawaiians endured many of the same abuses as Native Americans, including loss of land and forced assimilation. Following the discovery of oil in Alaska, however, the state, in an effort to gain undisputed title to oil rich land, settled the issue of Alaska Natives' land claims with the passage of the Alaska Native Claims Settlement Act in 1971. According to the terms of the act, Alaska Natives received 44 million acres of resource-rich land and more than $900 million in cash in exchange for relinquishing claims to ancestral lands to which the state wanted title.[120]

Native Hawaiians also lost control of their land—nearly two million acres—through the overthrow of the Hawaiian monarchy in 1893 and the subsequent formal annexation of the Hawaiian Islands by the United States in 1898. The indigenous population rapidly decreased in number, and white settlers tried to erase all trace of traditional Hawaiian culture. Two acts passed by Congress in 1900 and 1959, when the territory was

granted statehood, returned slightly more than one million acres of federally owned land to the state of Hawaii. The state was to hold it in trust and use profits from the land to improve the condition of Native Hawaiians.[121]

In September 2015, the U.S. Department of Interior, the same department that contains the Bureau of Indian Affairs, created guidelines for Native Hawaiians who wish to govern themselves in a relationship with the federal government similar to that established with Native American and Alaska Native tribes. Such a relationship would grant Native Hawaiians power to govern themselves while remaining U.S. citizens. Voting began in fall 2015 for delegates to a constitutional convention that would determine whether or not such a relationship should exist between Native Hawaiians and the federal government.[122] When non-Native Hawaiians and some Native Hawaiians brought suit on the grounds that, by allowing only Native Hawaiians to vote, the process discriminated against members of other ethnic groups, a federal district court found the election to be legal. While the Supreme Court stopped the election, in September 2016 a separate ruling by the Interior Department allowed for a referendum to be held. Native Hawaiians in favor are working to create their own nation.[123]

Despite significant advances, American Indians, Alaska Natives, and Native Hawaiians still trail behind U.S. citizens of other ethnic backgrounds in many important areas. These groups continue to suffer widespread poverty and high unemployment. Some of the poorest counties in the United States are those in which Native American reservations are located. These minorities are also less likely than White Americans, African Americans, or Asian Americans to complete high school or college.[124] Many American Indian and Alaskan tribes endure high rates of infant mortality, alcoholism, and suicide.[125] Native Hawaiians are also more likely to live in poverty than White people in Hawaii, and they are more likely than White Hawaiians to be unhoused or unemployed.[126]

5.5 Equal Protection for Other Groups

LEARNING OBJECTIVES

By the end of this section, you will be able to:

- Discuss the discrimination faced by Hispanic/Latino Americans and Asian Americans
- Describe the influence of the African American civil rights movement on Hispanic/Latino, Asian American, and LGBTQ civil rights movements
- Describe federal actions to improve opportunities for people with disabilities
- Describe discrimination faced by religious minorities

Many groups in American society have faced and continue to face challenges in achieving equality, fairness, and equal protection under the laws and policies of the federal government and/or the states. Some of these groups are often overlooked because they are not as large of a percentage of the U.S. population as women or African Americans, and because organized movements to achieve equality for them are relatively young. This does not mean, however, that the discrimination they face has not been as longstanding or as severe.

HISPANIC/LATINO CIVIL RIGHTS

Hispanic and Latino people in the United States have faced many of the same problems as African Americans and Native Americans. Although the terms **Hispanic** and **Latino** are often used interchangeably in discussions and sometimes in research, they are not the same. *Hispanic* usually refers to native speakers of Spanish or those descended from Spanish-speaking countries. *Latino* refers to people who come from, or whose ancestors came from, Mexico, Central America, South America, and some of the Caribbean islands, collectively known as Latin America. Not all Hispanics are Latinos and vice versa. People from Spain are Hispanic but are not Latino, while people from Brazil are Latino but not Hispanic. Both Hispanics and Latinos may be of any race or ethnicity; they may be of European, African, Native American descent, or they may be of mixed racial or ethnic background. We will use the term "Latino" here, also noting that many people use the terms Latinx or Latine to be more inclusive.[127]

Many Latinos became part of the U.S. population following the annexation of Texas by the United States in 1845 and of California, Arizona, New Mexico, Nevada, Utah, and Colorado following the War with Mexico in 1848. Most were subject to discrimination and could find employment only as poorly paid migrant farm workers, railroad workers, and unskilled laborers.[128] The Spanish-speaking population of the United States increased following the Spanish-American War in 1898 with the incorporation of Puerto Rico as a U.S. territory. In 1917, during World War I, the Jones Act granted U.S. citizenship to Puerto Ricans.

In the early twentieth century, waves of violence aimed at Mexicans and **Mexican Americans** swept the Southwest. Mexican Americans in Arizona and in parts of Texas were denied the right to vote, which they had previously possessed, and Mexican American children were barred from attending Anglo-American schools. During the Great Depression of the 1930s, Mexican immigrants and many Mexican Americans, both U.S.-born and naturalized citizens, living in the Southwest and Midwest were deported by the government so that Anglo-Americans could take the jobs that they had once held.[129] When the United States entered World War II, however, Mexicans were invited to immigrate to the United States as farmworkers under the Bracero (*bracero* meaning "manual laborer" in Spanish) Program to make it possible for these American men to enlist in the armed services.[130]

Mexican Americans and Puerto Ricans did not passively accept discriminatory treatment, however. In 1903, Mexican farmworkers joined with Japanese farmworkers, who were also poorly paid, to form the first union to represent agricultural laborers. In 1929, Latino civil rights activists formed the League of United Latin American Citizens (LULAC) to protest against discrimination and to fight for greater rights for Latinos.[131]

Just as in the case of African Americans, however, true civil rights advances for Hispanic and Latino people did not take place until the end of World War II. Hispanic and Latino activists targeted the same racist practices as did African Americans and used many of the same tactics to end them. In 1946, Mexican American parents in California, with the assistance of the NAACP, sued several California school districts that forced Mexican and Mexican American children to attend segregated schools. In the case of *Mendez v. Westminster* (1947), the Court of Appeals for the Ninth Circuit Court held that the segregation of Mexican and Mexican American students into separate schools was unconstitutional.[132]

Although Latinos made some civil rights advances in the decades following World War II, discrimination continued. Alarmed by the large number of undocumented Mexicans crossing the border into the United States in the 1950s, the United States government began Operation Wetback (*wetback* is a derogatory term for Mexicans living unofficially in the United States). From 1953 to 1958, more than three million Mexican immigrants, and some Mexican Americans as well, were deported from California, Texas, and Arizona.[133] To limit the entry of Hispanic and Latino immigrants to the United States, in 1965 Congress imposed an immigration quota of 120,000 newcomers from the Western Hemisphere.

At the same time that the federal government sought to restrict Hispanic and Latino immigration to the United States, the Mexican American civil rights movement grew stronger and more radical, just as the African American civil rights movement had done. While African Americans demanded Black Power and called for Black Pride, young Mexican American civil rights activists called for Brown Power and began to refer to themselves as **Chicanos**, a term disliked by many older, conservative Mexican Americans, in order to stress their pride in their hybrid Spanish-Native American cultural identity.[134] Demands by Mexican American activists often focused on improving education for their children, and they called upon school districts to hire teachers and principals who were bilingual in English and Spanish, to teach Mexican and Mexican American history, and to offer instruction in both English and Spanish for children with limited ability to communicate in English.[135]

MILESTONE

East L.A. Student Walkouts

In March 1968, Chicano students at five high schools in East Los Angeles went on strike to demand better education for students of Mexican ancestry. Los Angeles schools did not allow Latino students to speak Spanish in class and gave no place to study Mexican history in the curriculum. Guidance counselors also encouraged students, regardless of their interests or ability, to pursue vocational careers instead of setting their sights on college. Some students were placed in specialized classes for people with disabilities. As a result, the dropout rate among Mexican American students was very high.

School administrators refused to meet with the student protestors to discuss their grievances. After a week, police were sent in to end the strike. Thirteen of the organizers of the walkout were arrested and charged with conspiracy to disturb the peace. After Sal Castro, a teacher who had led the striking students, was dismissed from his job, activists held a sit-in at school district headquarters until Castro was reinstated. Student protests spread across the Southwest, and in response many schools did change. That same year, Congress passed the Bilingual Education Act, which required school districts with large numbers of Hispanic or Latino students to provide instruction in Spanish.[136]

Bilingual education remains controversial, even among Hispanic and Latino people. What are some arguments they might raise both for and against it? Are these different from arguments coming from non-Latinos?

Mexican American civil rights leaders were active in other areas as well. Throughout the 1960s, Cesar Chavez and Dolores Huerta fought for the rights of Mexican American agricultural laborers through their organization, the United Farm Workers (UFW), a union for migrant workers they founded in 1962. Chavez, Huerta, and the UFW proclaimed their solidarity with Filipino farm workers by joining them in a strike against grape growers in Delano, California, in 1965. Chavez consciously adopted the tactics of the African American civil rights movement. In 1965, he called upon all U.S. consumers to boycott California grapes (Figure 5.18), and in 1966, he led the UFW on a 300-mile march to Sacramento, the state capital, to bring the state farm workers' problems to the attention of the entire country. The strike finally ended in 1970 when the grape growers agreed to give the pickers better pay and benefits.[137]



(a) (b)

FIGURE 5.18 Protestors picket a grocery store in 1973, urging consumers not to buy grapes or lettuce picked by underpaid farm workers (a). The boycott, organized by Cesar Chavez and the United Farm Workers using the slogan "Sí se puede" or "Yes, it can be done!" (b), ultimately forced California growers to improve conditions for migrant

laborers.

As Latino immigration to the United States increased in the late twentieth and early twenty-first centuries, discrimination also increased in many places. In 1994, California voters passed Proposition 187. The proposition sought to deny non-emergency health services, food stamps, welfare, and Medicaid to undocumented immigrants. It also banned children from attending public school unless they could present proof that they and their parents were legal residents of the United States. A federal court found it unconstitutional in 1997 on the grounds that the law's intention was to regulate immigration, a power held only by the federal government.[138]

In 2005, discussion began in Congress on proposed legislation that would make it a felony to enter the United States illegally or to give assistance to anyone who had done so. Although the bill quickly died, on May 1, 2006, hundreds of thousands of people, primarily Latinos, staged public demonstrations in major U.S. cities, refusing to work or attend school for one day.[139] The protestors claimed that people seeking a better life should not be treated as criminals and that undocumented immigrants already living in the United States should have the opportunity to become citizens.

Following the failure to make undocumented immigration a felony under federal law, several states attempted to impose their own sanctions on unauthorized entry. In April 2010, Arizona passed a law that made illegal immigration a state crime. The law also forbade undocumented immigrants from seeking work and allowed law enforcement officers to arrest people suspected of being in the U.S. illegally. Thousands protested the law, claiming that it encouraged racial profiling. In 2012, in *Arizona v. United States*, the U.S. Supreme Court struck down those provisions of the law that made it a state crime to reside in the United States illegally, forbade undocumented immigrants to take jobs, and allowed the police to arrest those suspected of being illegal immigrants.[140] The court, however, upheld the authority of the police to ascertain the immigration status of someone suspected of being an undocumented entrant if the person had been stopped or arrested by the police for other reasons.[141]

Today, Latinos constitute the largest minority group in the United States. They also have one of the highest birth rates of any ethnic group.[142] Although Hispanic people lag behind non-Hispanic White people in terms of income and high school graduation rates, they are enrolling in college at higher rates than non-Hispanic White people.[143] Topics at the forefront of public debate during the Biden administration included immigration reform, the DREAM Act (a proposal for granting undocumented immigrants permanent residency in stages), and court action on executive orders on immigration. The first Trump administration was very active on issues of immigration and border security. Aside from the proposal to build a border wall, other areas of action have included various travel bans and the policy of separating families at the border as they attempt to enter the country. [144]

The 2024 presidential campaign between former President Donald Trump and Vice President Kamala Harris brought matters related to Latino immigration to the fore once again. Trump, who was elected to a second term and took office in January 2025, dramatized issues of safety and the border and in American communities, including Aurora, Colorado. After swearing in as president for a second four-year term of office, President Trump quickly authorized a widespread campaign by the U.S. Immigration and Customs Enforcement Service (ICE) to round up illegal immigrants across the country of Latino or Hispanic descent. ICE has been omnipresent in American communities, including state and local courts, public spaces and even schools. Some say that the sheer number of people questioned to date is well beyond lists of suspects that ICE might be reasonably expected to investigate who potentially pose a threat to public safety. While supporters of the approach say that the broad net cast by the Trump administration through ICE has led to an increase in legitimate detainments of suspects who pose such a threat, opponents argue that the sheer numbers of law-abiding persons questioned, who must prove their status or face arrest, has been overwhelming for the Latino and Hispanic communities and produced a great deal of fear.[145, 146, 147]

ASIAN AMERICAN CIVIL RIGHTS

As the rash of recent violence against them has shown, **Asian Americans** have also often been discriminated against and denied their civil rights. Often stereotyped as the "the model minority" (because it is assumed they are generally financially successful and do well academically), the underlying reality is complex. The truth is that Asian Americans have long faced discrimination. Indeed, in the nineteenth century, Asian people were among the most despised of all immigrant groups and were often subjected to the same laws enforcing segregation and forbidding interracial marriage as were African Americans and American Indians.

The Chinese were the first large group of Asian people to immigrate to the United States. They arrived in large numbers in the mid-nineteenth century to work in the mining industry and on the Central Pacific Railroad. Others worked as servants or cooks or operated laundries. Their willingness to work for less money than White workers led White workers in California to call for a ban on Chinese immigration. In 1882, Congress passed the Chinese Exclusion Act, which prevented Chinese from immigrating to the United States for ten years and prevented Chinese already in the country from becoming citizens (Figure 5.19). In 1892, the Geary Act extended the ban on Chinese immigration for another ten years. In 1913, California passed a law preventing all Asian people, not just the Chinese, from owning land. With the passage of the Immigration Act of 1924, all Asian people, with the exception of Filipinos, were prevented from immigrating to the United States or becoming naturalized citizens. Laws in several states barred marriage between Chinese and White Americans, and some cities with large Asian populations required Asian children to attend segregated schools.[148]

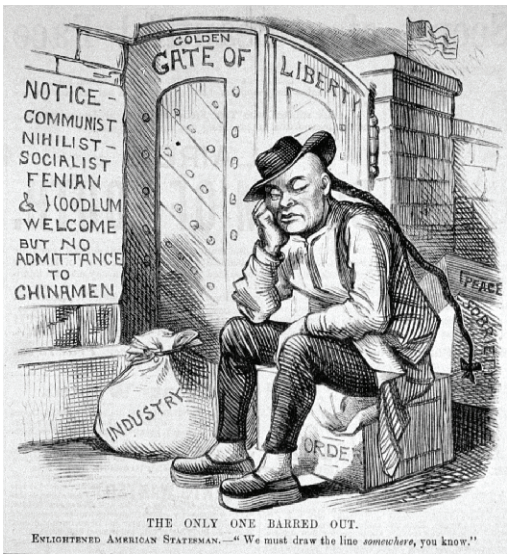


FIGURE 5.19 The cartoon shows a Chinese laborer, the personification of industry and sobriety, outside the "Golden Gate of Liberty." The Chinese Exclusion Act of 1882 has barred him from entering the country, while communists and "hoodlums" are allowed in.

During World War II, citizens of Japanese descent living on the West Coast, whether naturalized immigrants or Japanese Americans born in the United States, were subjected to the indignity of being removed from their communities and interned under Executive Order 9066 (Figure 5.20). The reason was fear that they might prove disloyal to the United States and give assistance to Japan. Although Italians and Germans suspected of disloyalty were also interned by the U.S. government, only the Japanese were imprisoned solely on the basis of their ethnicity. None of the more than 110,000 Japanese and Japanese Americans internees was ever found to have committed a disloyal act against the United States, and many young Japanese American men served in the U.S. army during the war.[149] Although Japanese American Fred Korematsu challenged the right of the government to imprison law-abiding citizens, the Supreme Court decision in the 1944 case of *Korematsu v. United States* upheld the actions of the government as a necessary precaution in a time of war.[150] When internees returned from the camps after the war was over, many of them discovered that the houses, cars, and

businesses they had left behind, often in the care of White neighbors, had been sold or destroyed.[151]



FIGURE 5.20 Japanese Americans displaced from their homes by the U.S. government during World War II stand in line outside the mess hall at a relocation center in San Bruno, California, on April 29, 1942.

LINK TO LEARNING

Explore the resources at Japanese American Internment (https://www.openstax.org/l/29japanamerint) and Digital History (https://www.openstax.org/l/29digitalhist) to learn more about experiences of Japanese Americans during World War II.

The growth of the African American, Chicano, and Native American civil rights movements in the 1960s inspired many Asian Americans to demand their own rights. Discrimination against Asian Americans, regardless of national origin, increased during the Vietnam War. Ironically, violence directed indiscriminately against Chinese, Japanese, Koreans, and Vietnamese caused members of these groups to unite around a shared pan-Asian identity, much as Native Americans had in the Pan-Indian movement. In 1968, students of Asian ancestry at the University of California at Berkeley formed the Asian American Political Alliance. Asian American students also joined Chicano, Native American, and African American students to demand that colleges offer ethnic studies courses.[152] In 1974, in the case of *Lau v. Nichols*, Chinese American students in San Francisco sued the school district, claiming its failure to provide them with assistance in learning English denied them equal educational opportunities.[153] The Supreme Court found in favor of the students.

Until recent attacks against Asian Americans during the COVID-19 pandemic, the Asian American movement was not as active as other civil rights movements. While not keeping them free from discrimination, their educational achievement and economic success placed Asian Americans in a much better position to defend their rights. Unfortunately, racist vitriol related to the origin of COVID-19 highlighted discrimination against Asian Americans and the formerly quiet movement has become highly salient. Hate crimes against Asian Americans increased 150 percent in 2020 and rose over 800 percent in New York City.[154]

THE FIGHT FOR CIVIL RIGHTS IN THE LGBTQ COMMUNITY

Laws against same-sex relations and relationships existed in most states throughout the nineteenth and twentieth centuries. By the late nineteenth century, homosexuality had come to be regarded as a form of mental illness as well as a sin, and gay men were often erroneously believed to be pedophiles.[155] As a result, lesbian women, gay men, bisexual people, and transgender people, currently known as the **LGBTQ** community, had to keep their sexual orientation hidden or "closeted." Secrecy became even more important in the 1950s, when fear of gay men increased and the federal government believed they could be led into disloyal acts through blackmail by Soviet agents. As a result, many men lost or were denied government jobs.[156] Fears of lesbians also increased after World War II as U.S. society stressed conformity to traditional gender roles and the importance of marriage and childrearing.[157]

The very secrecy in which lesbian, gay, bisexual, and transgender people had to live made it difficult for them to organize to fight for their rights as other, more visible groups had done. Some organizations did exist,

however. The Mattachine Society, established in 1950, was one of the first groups to champion the rights of gay men. Its goal was to unite gay men who otherwise lived in secrecy and to fight against abuse. The Mattachine Society often worked with the Daughters of Bilitis, a lesbian rights organization. Among the early issues targeted by the Mattachine Society was police entrapment of gay men in which plain-clothes police officers would enter neighborhoods or establishments known to be frequented by gay people, and act as if they were interested in a sexual encounter; then the police would arrest those they said propositioned them. Entrapment often posed serious risks, because men who were associated with homosexuality—even if never prosecuted—were at risk of losing their jobs, families, or other positions.[158]

Law enforcement abuses against LGBTQ people took many forms. Some of the activities were encoded in laws, while others were interpretations of older laws or simply policies of individual cities or departments. In many places, any act related to same-sex relationships, such as holding hands, kissing, or dancing, was forbidden in public. As a result, police frequently raided what were known as gay bars, often committing sexually humiliating acts against patrons. Transgender people faced some of the worst treatment. Dressing in drag would result in arrest and prosecution. Transgender people were subjected to public strip searches and were groped beneath their undergarments to determine their sex. Such treatment of LGBTQ people by law enforcement also left them unprotected from others who assaulted them.

In the 1960s, the gay and lesbian rights movements began to grow more radical, in a manner similar to other civil rights movements. In 1962, gay Philadelphians demonstrated in front of Independence Hall. In 1966, transgender sex workers who were tired of police harassment rioted in San Francisco. In June 1969, gay men, lesbians, and transgender people erupted in violence when New York City police attempted to arrest customers at a gay bar in Greenwich Village called the **Stonewall Inn**. The patrons' ability to resist arrest and fend off the police inspired many members of New York's LGBTQ community, and the riots persisted over several nights. New organizations promoting LGBTQ rights that emerged after Stonewall were more radical and confrontational than the Mattachine Society and the Daughters of Bilitis had been. These groups, like the Gay Activists Alliance and the Gay Liberation Front, called not just for equality before the law and protection against abuse but also for "liberation," Gay Power, and Gay Pride.[159]

Although LGBTQ people gained their civil rights later than many other groups, changes did occur beginning in the 1970s, remarkably quickly when we consider how long other minority groups had fought for their rights. The decade saw 18 states decriminalize same-sex relations, following Illinois and Connecticut, which had done so in the 1960s. In 1973, the American Psychological Association ended its classification of homosexuality as a mental disorder. In 1994, the U.S. military adopted the policy of "Don't ask, don't tell." This act, Department of Defense Directive 1304.26, officially prohibited discrimination against gay, lesbian, and bisexual people by the U.S. military. It also prohibited superior officers from asking about or investigating the sexual orientation of those below them in rank.[160] However, those gay, lesbian, and bisexual people who spoke openly about their sexual orientation were still subject to dismissal because it remained illegal for anyone except straight people to serve in the armed forces. The policy ended in 2011, and now gay, lesbian, and bisexual people may serve openly in the military.[161] Transgender people were banned from serving in the military in 1960. The ban lasted until 2016, when the government began a gradual process of expanding and altering the limitations on their service. In early 2021, the Biden administration announced that there would no longer be restrictions on military service by transgender individuals, that medical support for gender transition would be provided, and that procedures would be developed to change a service member's official gender marker. Upon taking office in 2025, Donald Trump signed an executive order banning transgender people from serving in the military; a judge blocked enforcement of the ban because it violated transgender people's constitutional rights. The ruling will likely undergo numerous appeals.

In 2003, in the case of *Lawrence v. Texas*, the Supreme Court ruled unconstitutional fourteen remaining states' laws that criminalized sexual intercourse between consenting adults of the same sex.[162] Beginning in 2000, several states made it possible for same-sex couples to enter into legal relationships known as civil unions or domestic partnerships. These arrangements extended many of the same protections enjoyed by heterosexual

married couples to same-sex couples. LGBTQ activists, however, continued to fight for the right to marry. Same-sex marriages would allow partners to enjoy exactly the same rights as married heterosexual couples and accord their relationships the same dignity and importance. In 2004, Massachusetts became the first state to grant legal status to same-sex marriage. Other states quickly followed. This development prompted a backlash among many religious conservatives, who considered homosexuality a sin and argued that allowing same-sex couples to marry would lessen the value and sanctity of heterosexual marriage. Many states passed laws banning same-sex marriage, and many gay and lesbian couples challenged these laws, successfully, in the courts. Finally, in *Obergefell v. Hodges*, the Supreme Court overturned state bans and made same-sex marriage legal throughout the United States on June 26, 2015 (Figure 5.21).[163]



FIGURE 5.21 Supporters of marriage equality celebrate outside the Supreme Court on June 26, 2015, following the announcement of the Court's decision in *Obergefell v. Hodges* declaring same-sex marriage a constitutional right under the Fourteenth Amendment. (credit: Matt Popovich)

The legalization of same-sex marriage throughout the United States led some people to feel their religious beliefs were under attack, and many religiously conservative business owners have refused to acknowledge LBGT rights or the legitimacy of same-sex marriages. Following swiftly upon the heels of the *Obergefell* ruling, the Indiana legislature passed a Religious Freedom Restoration Act (RFRA). Congress had already passed such a law in 1993; it was intended to extend protection to minority religions, such as by allowing rituals of the Native American Church. However, the Supreme Court in *City of Boerne v. Flores* (1997) ruled that the 1993 law applied only to the federal government and not to state governments.[164] Thus several state legislatures later passed their own Religious Freedom Restoration Acts. These laws state that the government cannot "substantially burden an individual's exercise of religion" unless it would serve a "compelling governmental interest" to do so. They allow individuals, which also include businesses and other organizations, to discriminate against others, primarily same-sex couples and LGBTQ people, if the individual's religious beliefs are opposed to homosexuality.

LGBTQ Americans still encounter difficulties in other areas as well. While the Supreme Court ruled in 2020 that employers cannot discriminate based on sexual orientation and transgender status, LGBTQ people are not protected from housing discrimination. The federal Department of Housing and Urban Development has indicated that refusing to rent or sell homes to transgender people may be considered sex discrimination, but there is no nationwide clarity on the law.[165] Violence and law enforcement targeting members of the LGBTQ community remains a serious problem; this violence occurs on the streets and in their homes.[166] The enactment of the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, also known as the Matthew Shepard Act, in 2009 made it a federal **hate crime** to attack someone based on gender, gender identity, sexual orientation, or disability and made it easier for federal, state, and local authorities to investigate hate crimes, but it has not necessarily made the world safer for LGBTQ Americans. Transgender rights have also been increasingly under scrutiny as 2021 brought a record number of pieces of anti-transgender legislation in state legislatures.[167] The U.S. Supreme Court, however, gave the transgender community a win when they chose not to hear a school's appeal of a lower court decision on a transgender student bathroom case.[168] Soon after, the

federal government indicated that it would follow the approach of many states in including a non-binary gender marker option on official documents, such as passports.

The Supreme Court provided another win in 2020 in Bostock v. Clayton County. This case involved reconciling Federal law regarding employment discrimination in governmental (*Bostock v. Clayton County*) and private organizations (*Altitude Express, Inc. v. Zarda, R.G. & G.R. Harris Funeral Homes, Inc. v. Equal Employment Opportunity Commission*). The plaintiff, Gerald Bostock, was fired from his position with the county for raising interest in a gay softball team while at work. In a 6-3 decision, the court found that an employer that terminates an employee for being gay or transgender is in violation of Title VII of the Civil Rights Act of 1964. Importantly, the Court (with Justice Neil Gorsuch writing for the majority) specifically indicated that discrimination due to sexual orientation or gender identity is equivalent to discrimination on the basis of sex, long prohibited by Title VII.

CIVIL RIGHTS AND THE AMERICANS WITH DISABILITIES ACT

People with **disabilities** make up one of the last groups whose civil rights have been recognized. For a long time, they were denied employment and access to public education. Many were institutionalized. A *eugenics* movement in the United States in the late nineteenth and early to mid-twentieth centuries sought to encourage childbearing among White people without disabilities and discourage it among those with physical or intellectual disabilities. Many states passed laws prohibiting marriage among people who had what were believed to be hereditary "defects." Among those affected were people who were blind or deaf, those with epilepsy, people with intellectual or developmental disabilities, and those with mental illnesses. In some states, programs existed to sterilize people considered "feeble minded" by the standards of the time, without their will or consent.[169] When this practice was challenged by a woman in a state institution in Virginia, the Supreme Court, in the 1927 case of *Buck v. Bell*, upheld the right of state governments to sterilize those people believed likely to have children who would become dependent upon public welfare.[170] Some of these programs persisted into the 1970s, as Figure 5.22 shows.[171]

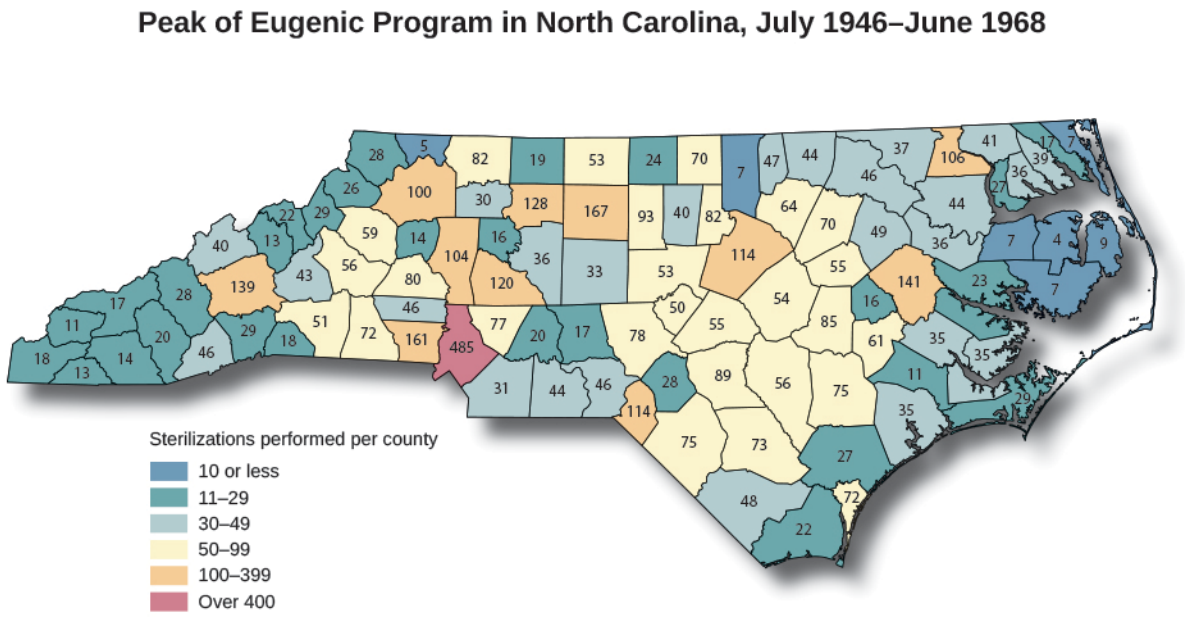


FIGURE 5.22 The map shows the number of sterilizations performed by the state in each of the counties of North Carolina between July 1946 and June 1968. Nearly five hundred sterilizations took place during this time period in the purple county.

By the 1970s, however, concern for extending equal opportunities to all led to the passage of two important acts by Congress. In 1973, the Rehabilitation Act made it illegal to discriminate against people with disabilities in federal employment or in programs run by federal agencies or receiving federal funding. This was followed

by the Education for all Handicapped Children Act of 1975, which required public schools to educate children with disabilities. The act specified that schools consult with parents to create a plan tailored for each child's needs that would provide an educational experience as close as possible to that received by other children.

In 1990, the Americans with Disabilities Act (ADA) greatly expanded opportunities and protections for people of all ages with disabilities. It also significantly expanded the categories and definition of disability. The ADA prohibits discrimination in employment based on disability. It also requires employers to make reasonable accommodations available to workers who need them. Finally, the ADA mandates that public transportation and public accommodations be made accessible to those with disabilities. The Act was passed despite the objections of some who argued that the cost of providing accommodations would be prohibitive for small businesses. While the ADA has inarguably improved opportunities for Americans with disabilities to receive public services equally and to pursue educational opportunities, challenges continue in this space. On college campuses, disability resource centers are often slow and understaffed, causing stress for students and professors alike.[172] And, in schools and colleges, full access to certain buildings and spaces remains elusive.[173]

LINK TO LEARNING

The community of people with disabilities is well organized in the twenty-first century, as evidenced by the considerable network of disability rights organizations (https://www.openstax.org/l/29natdisrightor) in the United States.

THE RIGHTS OF RELIGIOUS MINORITIES

The **right to worship** as a person chooses was one of the reasons for the initial settlement of the United States. Thus, it is ironic that many people throughout U.S. history have been denied their civil rights because of their status as members of a religious minority. Beginning in the early nineteenth century with the immigration of large numbers of Irish Catholics to the United States, anti-Catholicism became a common feature of American life and remained so until the mid-twentieth century. Catholic immigrants were denied jobs, and in the 1830s and 1840s anti-Catholic literature accused Catholic priests and nuns of committing horrific acts. Anti-Mormon sentiment was also quite common, and members of the Church of Jesus Christ of Latter-day Saints were accused of kidnapping women and building armies for the purpose of dominating their neighbors. At times, these fears led to acts of violence against these religious groups. For example, a convent in Charlestown, Massachusetts, was burned to the ground in 1834.[174] In 1844, Joseph Smith, the founder of the LDS Church, and his brother were murdered by a mob in Illinois.[175]

For many years, Jewish Americans faced discrimination in employment, education, and housing based on their religion. Many of the restrictive real estate covenants that prohibited people from selling their homes to Black people also prohibited them from selling to Jewish people, and a "gentlemen's agreement" among the most prestigious universities in the United States limited the number of Jewish students accepted. Indeed, a tradition of confronting discrimination led many American Jews to become actively involved in the civil rights movements for women and African Americans.[176]

Anti-semitism remains a significant issue in the United States and worldwide. According to the FBI, Jewish people or property are the most frequent targets of hate crimes motivated by religious bias. Jewish cemeteries and places of worship are frequently attacked or defaced, and insensitive jokes and frequent references to the Holocaust are widely used. Muslims have also experienced a rise in discrimination and hate crimes, and most Americans, including non-Muslims, report a belief that significant anti-Muslim sentiment exists in the United States. Although Title VII of the Civil Rights Act of 1964 prevents employment discrimination on the basis of religion and requires employers to make reasonable accommodations so that employees can engage in religious rituals and practices, Muslim employees are often discriminated against. Often the source of controversy is the wearing of head coverings by observant Muslims, which some employers claim violates

uniform policies or dress codes, even when non-Muslim coworkers are allowed to wear head coverings that are not part of work uniforms.[177] Hate crimes against Muslims have also increased, and many Muslims believe they are subject to racial profiling by law enforcement officers who suspect them of being terrorists.[178]

Many Christians have recently argued that they are being deprived of their rights because of their religious beliefs and have used this claim to justify their refusal to acknowledge the rights of others. The owner of Hobby Lobby Stores, for example, a conservative Christian, argued that his company's health-care plan should not have to pay for contraception because his religious beliefs are opposed to the practice. In 2014, in the case of *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court ruled in his favor.[179] As discussed earlier, many conservative Christians have also argued that they should not have to recognize same-sex marriages because they consider homosexuality to be a sin.

Key Terms

affirmative action the use of programs and policies designed to assist groups that have historically been subject to discrimination

American Indian Movement (AIM) the Native American civil rights group responsible for the occupation of Wounded Knee, South Dakota, in 1973

Black codes laws passed immediately after the Civil War that discriminated against freed people and other African Americans and deprived them of their rights

Brown v. Board of Education the 1954 Supreme Court ruling that struck down *Plessy v. Ferguson* and declared segregation and "separate but equal" to be unconstitutional in public education

Chicano a term adopted by some Mexican American civil rights activists to describe themselves and those like them

civil disobedience an action taken in violation of the letter of the law to demonstrate that the law is unjust

comparable worth a doctrine calling for the same pay for workers whose jobs require the same level of education, responsibility, training, or working conditions

coverture a legal status of married women in which their separate legal identities were erased

***de facto* segregation** segregation that results from the private choices of individuals

***de jure* segregation** segregation that results from government discrimination

direct action civil rights campaigns that directly confronted segregationist practices through public demonstrations

disenfranchisement the revocation of someone's right to vote

equal protection clause a provision of the Fourteenth Amendment that requires the states to treat all residents equally under the law

Equal Rights Amendment (ERA) the proposed amendment to the Constitution that would have prohibited all discrimination based on sex

glass ceiling an invisible barrier caused by discrimination that prevents women from rising to the highest levels of an organization—including corporations, governments, academic institutions, and religious organizations

grandfather clause the provision in some southern states that allowed illiterate White people to vote because their ancestors had been able to vote before the Fifteenth Amendment was ratified

hate crime harassment, bullying, or other criminal acts directed against someone because of bias against that person's sex, gender, sexual orientation, religion, race, ethnicity, or disability

intermediate scrutiny the standard used by the courts to decide cases of discrimination based on gender and sex; burden of proof is on the government to demonstrate an important governmental interest is at stake in treating men differently from women

Jim Crow laws state and local laws that promoted racial segregation and undermined Black voting rights in the south after Reconstruction

literacy tests tests that required the prospective voter in some states to be able to read a passage of text and answer questions about it; often used as a way to disenfranchise racial or ethnic minorities

Plessy v. Ferguson the 1896 Supreme Court ruling that allowed "separate but equal" racial segregation under the equal protection clause of the Fourteenth Amendment

poll tax annual tax imposed by some states before a person was allowed to vote

rational basis test the standard used by the courts to decide most forms of discrimination; the burden of proof is on those challenging the law or action to demonstrate there is no good reason for treating them differently from other citizens

Reconstruction the period from 1865 to 1877 during which the governments of Confederate states were reorganized prior to being readmitted to the Union

Stonewall Inn a bar in Greenwich Village, New York, where the modern Gay Pride movement began after rioters protested the police treatment of the LGBTQ community there

strict scrutiny the standard used by the courts to decide cases of discrimination based on race, ethnicity,

national origin, or religion; burden of proof is on the government to demonstrate a compelling governmental interest is at stake and no alternative means are available to accomplish its goals

Title IX the section of the U.S. Education Amendments of 1972 that prohibits discrimination in education on the basis of sex

Trail of Tears the name given to the forced migration of the Cherokees from Georgia to Oklahoma in 1838–1839

understanding tests tests requiring prospective voters in some states to be able to explain the meaning of a passage of text or to answer questions related to citizenship; often used as a way to disenfranchise Black voters

white primary a primary election in which only White people are allowed to vote

Summary

5.1 What Are Civil Rights and How Do We Identify Them?

The equal protection clause of the Fourteenth Amendment gives all people and groups in the United States the right to be treated equally regardless of individual attributes. That logic has been expanded in the twenty-first century to cover attributes such as race, color, ethnicity, sex, gender, sexual orientation, religion, and disability. People may still be treated unequally by the government, but only if there is at least a rational basis for it, such as a disability that makes a person unable to perform the essential functions required by a job, or if a person is too young to be trusted with an important responsibility, like driving safely. If the characteristic on which discrimination is based is related to sex, race, or ethnicity, the reason for it must serve, respectively, an important government interest or a compelling government interest.

5.2 The African American Struggle for Equality

Following the Civil War and the freeing of all enslaved people by the Thirteenth Amendment, a Republican Congress hoped to protect the freedmen from vengeful southern White people by passing the Fourteenth and Fifteenth Amendments, granting them citizenship and guaranteeing equal protection under the law and the right to vote (for Black men). The end of Reconstruction, however, allowed White Southerners to regain control of the South's political and legal system and institute openly discriminatory Jim Crow laws. While some early efforts to secure civil rights were successful, the greatest gains came after World War II. Through a combination of lawsuits, Congressional acts, and direct action (such as President Truman's executive order to desegregate the U.S. military), African Americans regained their voting rights and were guaranteed protection against discrimination in employment. Schools and public accommodations were desegregated. While much has been achieved, the struggle for equal treatment continues.

5.3 The Fight for Women's Rights

At the time of the Revolution and for many decades following it, married women had no right to control their own property, vote, or run for public office. Beginning in the 1840s, a women's movement began among women who were active in the abolition and temperance movements. Although some of their goals, such as achieving property rights for married women, were reached early on, their biggest goal—winning the right to vote—required the 1920 passage of the Nineteenth Amendment. Women secured more rights in the 1960s and 1970s, such as reproductive rights and the right not to be discriminated against in employment or education. Women continue to face many challenges: they are still paid less than men and are underrepresented in executive positions and elected office.

5.4 Civil Rights for Indigenous Groups: Native Americans, Alaskans, and Hawaiians

At the beginning of U.S. history, Indians were considered citizens of sovereign nations and thus ineligible for citizenship, and they were forced off their ancestral lands and onto reservations. Interest in Indian rights arose in the late nineteenth century, and in the 1930s, Native Americans were granted a degree of control over reservation lands and the right to govern themselves. Following World War II, they won greater rights to govern

themselves, educate their children, decide how tribal lands should be used—to build casinos, for example—and practice traditional religious rituals without federal interference. Alaska Natives and Native Hawaiians have faced similar difficulties, but since the 1960s, they have been somewhat successful in having lands restored to them or obtaining compensation for their loss. Despite these achievements, members of these groups still tend to be less educated, less likely to be employed, and more likely to have addictions or to be incarcerated than other racial and ethnic groups in the United States.

5.5 Equal Protection for Other Groups

Many Hispanic and Latino people were deprived of their right to vote and forced to attend segregated schools. Asian Americans were also segregated and sometimes banned from immigrating to the United States. The achievements of the African American civil rights movement, such as the Civil Rights Act of 1964, benefited these groups, however, and Latinos and Asians also brought lawsuits on their own behalf. Many, like the Chicano youth of the Southwest, also engaged in direct action. This brought important gains, especially in education. Recent concerns over immigration have resulted in renewed attempts to discriminate against Latinos, however.

For a long time, fear of discovery kept many LGBTQ people closeted and thus hindered their efforts to form a united response to discrimination. Since World War II, however, the LGBTQ community has achieved the right to same-sex marriage and protection from discrimination in other areas of life as well. The Americans with Disabilities Act, enacted in 1990, has recognized the equal rights of people with disabilities to employment, transportation, and access to public education. People with disabilities still face much discrimination, however, and LGBTQ people are frequently victims of hate crimes.

Some of the most serious forms of discrimination today are directed at religious minorities like Muslims, and many conservative Christians believe the recognition of LGBTQ rights threatens their religious freedoms.

Review Questions

1. A group of African American students believes a college admissions test that is used by a public university discriminates against them. What legal standard would the courts use in deciding their case?
   A. rational basis test
   B. intermediate scrutiny
   C. strict scrutiny
   D. equal protection

2. The equal protection clause became part of the Constitution as a result of _____.
   A. affirmative action
   B. the Fourteenth Amendment
   C. intermediate scrutiny
   D. strict scrutiny

3. Which of the following types of discrimination would be subject to the rational basis test?
   A. A law that treats men differently from women
   B. An action by a state governor that treats Asian Americans differently from other citizens
   C. A law that treats White people differently from other citizens
   D. A law that treats 10-year-olds differently from 28-year-olds

4. What is the difference between civil rights and civil liberties?

5. The Supreme Court decision ruling that “separate but equal” was constitutional and allowed racial segregation to take place was _____.
   A. *Brown v. Board of Education*

B. *Plessy v. Ferguson*
C. *Loving v. Virginia*
D. *Shelley v. Kraemer*

6. The 1965 Selma-to-Montgomery march was an important milestone in the civil rights movement because it _____.
A. vividly illustrated the continued resistance to Black civil rights in the Deep South
B. did not encounter any violent resistance
C. led to the passage of the Civil Rights Act of 1964
D. was the first major protest after the death of Martin Luther King, Jr.

7. What were the key provisions of the Civil Rights Act of 1964?

8. At the world's first women's rights convention in 1848, the most contentious issue proved to be _____.
A. A. the right to education for women
B. B. suffrage for women
C. C. access to the professions for women
D. D. greater property rights for women

9. How did NAWSA differ from the NWP?
A. NAWSA worked to win votes for women on a state-by-state basis while the NWP wanted an amendment added to the Constitution.
B. NAWSA attracted mostly middle-class women while NWP appealed to the working class.
C. The NWP favored more confrontational tactics like protests and picketing while NAWSA circulated petitions and lobbied politicians.
D. The NWP sought to deny African Americans the vote, but NAWSA wanted to enfranchise all women.

10. The doctrine that people who do jobs that require the same level of skill, training, or education are thus entitled to equal pay is known as _____.
A. the glass ceiling
B. substantial compensation
C. comparable worth
D. affirmative action

11. The Trail of Tears is the name given to the forced removal of this tribe from Georgia to Oklahoma.
A. Lakota
B. Paiute
C. Navajo
D. Cherokee

12. AIM was _____.
A. a federal program that returned control of Native American education to tribal governments
B. a radical group of Native American activists who occupied the settlement of Wounded Knee on the Pine Ridge Reservation
C. an attempt to reduce the size of reservations
D. a federal program to give funds to Native American tribes to help their members open small businesses that would employ tribal members

13. Briefly describe the similarities and differences between the experiences of Native Americans and Native Hawaiians.

14. Mexican American farm workers in California organized _____ to demand higher pay from their employers.
   A. the *bracero* program
   B. the League of United Latin American Citizens
   C. the United Farm Workers union
   D. the Mattachine Society

15. Which of the following best describes attitudes toward Asian immigrants in the late nineteenth and early twentieth centuries?
   A. Asian immigrants were welcomed to the United States and swiftly became financially successful.
   B. Asian immigrants were disliked by White people who feared competition for jobs, and several acts of Congress sought to restrict immigration and naturalization of Asian people.
   C. White people feared Asian immigrants because Japanese and Chinese Americans were often disloyal to the U.S. government.
   D. Asian immigrants got along well with White people but not with Mexican Americans or African Americans.

16. Why did it take so long for an active civil rights movement to begin in the LGBTQ community?

Critical Thinking Questions

17. What is the better approach to civil rights—a peaceful, gradual one that focuses on passing laws and winning cases in court, or a radical one that includes direct action and acts of civil disobedience? Why do you consider this to be the better solution?

18. Should public funds be used to provide programs for Native Americans, Alaska Natives, and Native Hawaiians even though no one living today was responsible for depriving them of their lands? Why or why not?

19. Although some Native Hawaiians want the right to govern themselves, others want to secede from Hawaii and become an independent nation. If this is what the majority of Native Hawaiians want, should they be allowed to do so? Why or why not?

20. If a person's religious beliefs conflict with the law or lead to bias against other groups, should the government protect the exercise of those beliefs? Why or why not?

21. In 1944, the Supreme Court upheld the authority of the U.S. government to order the internment of a minority group in the interest of national security, even though there was no evidence that any members of this group were disloyal to the United States. Should the same policy be applied today against U.S. Muslims or Muslim immigrants? Why or why not?

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