The Civil Rights Movement and the Constitution

Wilson Huhn
University of Akron School of Law, whuhn@uakron.edu

Please take a moment to share how this work helps you through this survey. Your feedback will be important as we plan further development of our repository.

Follow this and additional works at: http://ideaexchange.uakron.edu/ua_law_publications

Part of the Law Commons

Recommended Citation
http://ideaexchange.uakron.edu/ua_law_publications/109

This Article is brought to you for free and open access by The School of Law at IdeaExchange@UAkron, the institutional repository of The University of Akron in Akron, Ohio, USA. It has been accepted for inclusion in Akron Law Publications by an authorized administrator of IdeaExchange@UAkron. For more information, please contact mjon@uakron.edu, uapress@uakron.edu.
The Civil Rights Movement and the Constitution

Wilson R. Huhn

©2012
The Civil Rights Movement Expanded the Concept of Equal Protection

The Constitution now protects all Americans from unfair discrimination based upon race, gender, disability, or other characteristics.
The Civil Rights Movement Protected Other Freedoms

• It expanded Freedom of Speech

• It protected personal rights such as the Right to Marry

• It made it possible for Congress to enact civil rights laws
The Civil Rights Movement Changed the Way We Interpret the Constitution

The Constitution is now a living document
The Civil Rights Movement and the Constitution

I. The Bad Old Days
II. The Civil Rights Movement
III. The Principal Cases
IV. The Effect on the Constitution
I. The Bad Old Days

The Declaration of Independence protected the equality of all persons, but the Constitution did not.
All men are created equal

They are endowed by their creator with certain inalienable rights

Among these are life, liberty, and the pursuit of happiness

To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.
The Constitution of the United States

Slaves were counted as three-fifths of a person

Fugitive slaves had to be returned to their masters

The slave trade could not be abolished for a period of twenty years
The Framers’ Views on Slavery

Benjamin Franklin

Thomas Jefferson

Alexander Hamilton

George Washington
Before the Civil War, the Supreme Court Defended Slavery

*Prigg v. Pennsylvania* (1842) – The Supreme Court struck down a Pennsylvania law that gave African-Americans a hearing in court before they could be returned to slavery.

*Ableman v. Booth* (1859) – The Supreme Court upheld the Fugitive Slave Law “in all its provisions.”
Dred Scott v. Sandford (1857)

Dred Scott

Was he a free man? Was he a citizen?
The Supreme Court’s Decision in *Dred Scott*

- The Court found that Dred Scott was still a slave.
- The Court ruled that African-Americans, whether slave or free, could never be “citizens” of the United States.
- The Court decided that Congress did not have the power to outlaw slavery in the Territories because slaveholders have a constitutional right to their “property.”
The United States vs. the Confederacy

Abraham Lincoln
President of the United States

Jefferson Davis
President of the Confederacy
Civil War Deaths Compared to Other Wars

American Soldiers Killed in:

<table>
<thead>
<tr>
<th>War</th>
<th>Deaths</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revolution</td>
<td>25,000</td>
</tr>
<tr>
<td>Civil War</td>
<td>625,000</td>
</tr>
<tr>
<td>World War I</td>
<td>116,000</td>
</tr>
<tr>
<td>World War II</td>
<td>405,000</td>
</tr>
<tr>
<td>Korea</td>
<td>36,000</td>
</tr>
<tr>
<td>Vietnam</td>
<td>58,000</td>
</tr>
<tr>
<td>Iraq</td>
<td>4,800</td>
</tr>
</tbody>
</table>
200,000 African-Americans fought for the United States in the Civil War
The Civil War
Amendments to the Constitution

• 13\textsuperscript{th} Amendment (1865)

• 14\textsuperscript{th} Amendment (1868)

• 15\textsuperscript{th} Amendment (1870)
13th Amendment (1865)

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.
14th Amendment (1868)
First Sentence

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.
14th Amendment (1868)
Second Sentence

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
15th Amendment (1870)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
Civil Rights Legislation from the Period of Reconstruction

• Civil Rights Act of 1866 – Grants Citizenship, Equal Property and Contract Rights
• Civil Rights Act of 1871 – Ku Klux Klan Act
• Civil Rights Act of 1875 – Public Accommodations
The Supreme Court

In the decades after the Civil War, the Supreme Court narrowly construed the 13th, 14th and 15th Amendments and refused to enforce the civil rights laws that Congress adopted.
Supreme Court Decisions from the Age of Racism

- *Blyew v. United States* (1871) (reversing the murder conviction of two whites who had killed members of a black family on the grounds that removal of this case to federal court was improper because, the Court reasoned, the rights of the victim and the witness were not “affected” by the fact that blacks were not allowed to testify in State courts).
- *United States v. Reese* (1875) (striking down civil rights law protecting the right to vote).
- *Cruikshank v. United States* (1875) (reversing the convictions of the perpetrators of the Colfax Massacre, on the ground that the indictment had simply stated that the victims were black, instead of stating that the murders were committed because the victims were black).
Racist decisions, cont.

• *The Civil Rights Cases* (1883) (striking down the Civil Rights Act of 1875, a law prohibiting segregation in certain places of public accommodation).

• *Pace v. Alabama* (1883) (upholding Alabama statute forbidding blacks and whites from marrying or from having sex with each other),

• *United States v. Harris* (1883) (declaring a civil rights law, the Enforcement Act of 1871, to be unconstitutional, reversing the convictions of a lynch mob).

• *Baldwin v. Franks* (1887) (following *Harris* in finding the Ku Klux Klan Act to be unconstitutional insofar as it applies to private action).
Racist decisions, cont.

• *Plessy v. Ferguson* (1896) (upholding Louisiana law requiring segregated passenger cars on trains) (finding that the law was justified by “the established usages, customs and traditions of the people”).

• *Williams v. Mississippi* (1898) (upholding Mississippi election laws designed to disenfranchise blacks).

• *Cumming v. Richmond Board Of Education* (1899) (refusing to intervene when the City of Richmond closed the high school for blacks but kept the school for whites open).

• *Hodges v. United States* (1906) (overturning convictions of a group for interfering with the civil rights of others in violation of Civil Rights Act of 1866, in part because the statute could not be grounded upon the 14th Amendment, stating, “that the 14th and 15th Amendments do not justify the legislation is also beyond dispute, for they, as repeatedly held, are restrictions upon state action, and no action on the part of the state is complained of”).

• *Gong Lum v. Rice* (1927) (upholding racial segregation in the public schools).
Other Discriminatory Decisions

*Bradwell v. Illinois* (1873) (upheld an Illinois law prohibiting women from becoming lawyers).

*Chinese Exclusion Cases* (1884-1893) (upholding a law that prohibited immigration from China and prohibited immigrants from China from becoming American citizens).
The Supreme Court Failed to Prevent Violence Against African-Americans

In 1873, dozens and maybe hundreds of African-Americans were killed in the Colfax Massacre. The Supreme Court let the perpetrators go free in *Cruikshank v. United States*.

According to the Tuskegee Institute, between 1882 and 1951, 4,730 persons (including 3,437 blacks) were lynched in the United States, mainly in the South.
Buck v. Bell (1927)

Carrie Buck was sterilized against her will.

Justice Oliver Wendell Holmes called Equal Protection “the usual last resort of constitutional Arguments.”
Constitutional Wrongs
Before the Civil Rights Movement

• Before 1925, there was no protection for the Right to Privacy.
• In 1927, the Supreme Court referred to the Equal Protection Clause as “the usual last resort of constitutional arguments” – and it was right.
• Before 1930, the Supreme Court had never struck down a law for being in violation of the First Amendment.
• Before 1944, the State Action doctrine did not exist.
• Before 1954 it was constitutional for the law to require the segregation of the races.
• As late as 1960, less than 20% of blacks nationwide were registered to vote – less than 2% in Mississippi. White primaries, literacy tests, poll taxes, and malapportionment were used to keep blacks from voting or to deny them equal representation.
• Before 1967, it was constitutional for laws to prohibit interracial marriage.
Before 1938, the Supreme Court Did Little to Protect People’s Rights
II. The Civil Rights Movement 1955-1968

• Protests and Demonstrations
  – The Civil Rights Movement persuaded Congress to enact civil rights laws prohibiting acts of racial discrimination.

• Civil Rights Lawsuits
  – Civil Rights attorneys persuaded the courts to interpret the Constitution to declare that racial discrimination by the government is unconstitutional.
NAACP Founded, 1919

• Sought the adoption of statutes that would protect civil rights.

• Brought lawsuits that challenged racial discrimination in the courts.
Discrimination and Segregation

Truman desegregates the armed forces, 1948.

But in many states segregation and discrimination continued in schools, courthouses, and businesses, and African-Americans were prevented from registering to vote.
Rosa Parks Refuses to Sit in the Back of the Bus
Montgomery, Alabama, 1955
Little Rock, Arkansas, 1957
Opposition to School Integration
Freedom Riders
May 1961
James Meredith
Entering University of Mississippi
October 1, 1862
Birmingham, Alabama
1963

King in Birmingham Jail

16th Street Baptist Church
Martin Luther King Jr.: “I Have a Dream”
August 28, 1963
March from Selma to Montgomery
March 7, 1965: “Bloody Sunday”
Civil Rights Legislation in the Modern Era

• **Civil Rights Act of 1964**
  – Prohibits discrimination by businesses that are open to the public and prohibits employment discrimination

• **Voting Rights Act of 1965**
  – Prohibits the states from preventing persons from voting on account of race

• **Civil Rights Act of 1968 (Fair Housing Act)**
  – Prohibits discrimination in the sale or rental of housing
More than 40 names appear on the Civil Rights Memorial in Montgomery, Alabama. These persons were killed in the Civil Rights Movement, 1955-1968.
Emmitt Till

14-year-old boy beaten, blinded, shot
August 28, 1955
Medgar Evers

NAACP Field Organizer
Assassinated June 12, 1963
Birmingham 4

Killed in church bombing
September 15, 1963
Michael Schwerner, James Chaney, Andrew Goodman

Civil Rights workers killed by a deputy sheriff and other members of KKK
Philadelphia, Mississippi, June 21, 1964
James Reeb

Unitarian minister working for civil rights
attacked and killed by white mob armed with clubs
Selma, Alabama, March 9, 1965
Viola Liuzzo

Detroit housewife shot and killed by KKK members
Montgomery, Alabama
March 25, 1965
Dr. Martin Luther King Jr.

Leader, Montgomery Bus Boycott, 1955
Founder and President, Southern Christian Leadership Conference, 1957
Organized Birmingham demonstrations, 1963
Led March on Washington, 1963
Nobel Peace Prize, 1964
Assassinated, April 4, 1968
Civil Rights Memorial, Montgomery, Alabama
III. Civil Rights Litigation and the Principal Supreme Court Cases in Support of Civil Rights

Civil rights attorneys brought lawsuits to change the interpretation of the law
Thurgood Marshall

Chief Counsel, NAACP, 1940-1961
Won 29 out of 32 cases before the Supreme Court
Justice of the Supreme Court (1967-1991)
Legal Challenges
Facing the Civil Rights Movement

1. Secure the right to fair trial.

2. Eliminate segregation and obtain equal rights to education.

3. Protect the right to freedom of speech and association.

4. Obtain equal voting rights.

5. Make it possible for Congress to enact laws prohibiting racial discrimination by employers and businesses.

6. Ensure equal personal rights.
III. The Principal Supreme Court Decisions in Favor of Civil Rights (1938-1968)

- 1932 – *Powell v. Alabama*
- 1938 – *Gaines ex rel. Canada v. Missouri*
- 1944 – *Smith v. Allwright*
- 1948 – *Shelley v. Kraemer*
- 1950 – *Sweatt v. Painter, McLaurin v. Oklahoma State Regents*
- 1954 – *Brown v. Board of Education*
- 1958 – *Cooper v. Aaron*
- 1958 – *NAACP v. Alabama*
- 1961 – *Burton v. Wilmington Parking Authority*
- 1963 - *NAACP v. Button*
- 1963 – *Edwards v. South Carolina*
- 1964 – *Reynolds v. Sims*
- 1964 – *Heart of Atlanta Motel v. United States*
- 1965 – *Cox v. Louisiana*
- 1966 – *Harper v. Board of Elections*
- 1966 – *South Carolina v. Katzenbach*
- 1967 – *Loving v. Virginia*
1. The Right to a Fair Trial

The Due Process Clause of the Constitution provides:

“No person shall be deprived of life, liberty, or property without due process of law.”
Powell v. Alabama (1932)

Nine young African-American men were arrested for rape and nearly lynched.

Eight of them were sentenced to death after one-day trials.

The Supreme Court reversed their convictions.

Four of them were eventually released because there was no evidence against them.

The others were sentenced to prison.

The Scottsboro Defendants with their attorney, Samuel S. Leibowitz
2. Desegregation and Equal Opportunity in Education

Civil rights attorneys brought lawsuits seeking to end discrimination and segregation in public schools and universities.
Gaines ex rel. Canada v. Missouri
(1938)

Missouri refused to admit Lloyd Gaines to its only public law school. Instead it offered
Gaines $250 to attend law school out-of-state.

The Supreme Court ruled in favor of Gaines. This was the first
decision of the Supreme Court finding racial segregation in
education to be illegal.
Sweatt v. Painter (1950)
McLaurin v. Oklahoma State Regents (1950)

- Texas created a new, small, law school for blacks—four faculty members, few books
- Oklahoma admitted student to graduate program in education, forced him to sit in roped off area marked “colored section,” to sit at separate table in cafeteria, etc.
- The Supreme Court ruled in each case that these conditions were not “substantially equal” to those for whites
Brown v. Board of Education (1954)

• In many states the law prohibited children of different races from attending the same schools.

• *Plessy v. Ferguson* (1896) had allowed the state to require “separate but equal” facilities for the different races.

• In *Brown* the Supreme Court unanimously overruled *Plessy* and the doctrine of “separate but equal.”
• “In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written.”

• Segregation “may affect [children’s] hearts and minds in a way unlikely ever to be undone.”
Cooper v. Aaron (1958)

Arkansas Governor Orville Faubus ordered the Arkansas National Guard to prevent the integration of Central High School in Little Rock.
Little Rock, 1957

The Governor’s action encouraged white mobs to circle the school and threaten the black children.
President Eisenhower sent the United States Army to escort the nine African-American students to school.
The Court’s decision in Cooper v. Aaron

In an opinion signed by all nine justices, the Court said:

“Since the first Brown opinion three new Justices have come to the Court. They are at one with the Justices still on the Court who participated in that basic decision as to its correctness, and that decision is now unanimously reaffirmed. The principles announced in that decision and the obedience of the States to them, according to the command of the Constitution, are indispensable for the protection of the freedoms guaranteed by our fundamental charter for all of us. Our constitutional ideal of equal justice under law is thus made a living truth.”
Two Other Segregation Cases

- In *Shelley v. Kraemer* (1948), the Supreme Court ruled that the courts could not enforce restrictive covenants.

- In *Burton v. Wilmington Parking Authority* (1961), the Supreme Court ruled that a privately-owned restaurant located on publicly-owned property was not permitted to discriminate on the basis of race.
3. The First Amendment Rights to Freedom of Speech and Association

• Some public officials attempted to uphold racial segregation and discrimination by preventing people in the Civil Rights Movement from organizing and speaking.

• As a result, the United States Supreme Court was called upon to decide a number of important First Amendment cases.
NAACP v. Alabama (1958)

NAACP v. Button (1963)

- Alabama courts ordered NAACP to turn over its membership lists to be licensed within the state.

- Virginia tried to prevent NAACP attorneys from representing citizens in lawsuits.

- The Supreme Court ruled in both cases that these laws violated the First Amendment.
Edwards v. South Carolina (1963) and Cox v. Louisiana (1965)

• In both of these cases, the defendants were arrested for participating in peaceful civil rights protests.

• The Supreme Court ruled that the people have a right to demonstrate against their government, and that the arrests were unlawful.

- A police commissioner in Montgomery, Alabama, sued the New York Times for libel because an item that appeared in the newspaper contained some minor factual errors.
- The Alabama jury awarded him a verdict for $500,000.
- The Supreme Court reversed the verdict and ruled that the media has a constitutional right to criticize the government.
The First Amendment “was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people,” and it reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”
4. The Right to Vote

Before 1944 the “White Primary” system prevented African-Americans from being able to participate in the political process

In 1960 less than 2% of African-Americans in Mississippi were registered to vote – nationwide, less than 20%

Before 1963 malapportionment (unequal numbers of persons in voting districts) meant that white voters in rural areas had more power in elections

Before 1966 poll taxes prevented many poor people from being able to vote in state elections
Smith v. Allwright (1944)

• In Texas, African-Americans were excluded from the Democratic Party, and the Democratic Party won all the elections. The Democratic primary election was the “real” election.

• This was called the “white primary” system.

• The Supreme Court declared the “white primary” to be unconstitutional.

• This was also the first “state action” case.
Reynolds v. Sims (1964)

• Legislative districts in Alabama were malapportioned, meaning that some legislative districts had far more people than other districts.

• Most of the state legislators were elected by just 25% of the people.

• The Supreme Court struck down malapportionment on the theory of “one person, one vote.”
Chief Justice Earl Warren’s Opinion in Reynolds

“To the extent that a citizen's right to vote is debased, he is that much less a citizen”

“It would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators”

“The right of suffrage is a fundamental matter in a free and democratic society.”
Harper v. Virginia Board of Elections (1966)

- Before 1966, many states had poll taxes. At the time of the founding, many states required voters to own a certain amount of property.

- In *Harper* the Supreme Court declared that poll taxes are unconstitutional because they discriminate against the poor.
Justice William Douglas’ Opinion in *Harper*

“Voter qualifications have no relation to wealth ... [the right to vote is the same] whether the citizen, otherwise qualified to vote, has $1.50 in his pocket or nothing at all.”
5. The Power of Congress to Enact Civil Rights Laws

• The 13th, 14th, and 15th Amendments each contain an “enforcement clause” granting Congress the power to enforce those amendments.

• In addition, Congress has other powers as well, such as the power to regulate interstate commerce.

• During the Civil Rights era the Supreme Court ruled that Congress has the power to enact civil rights laws under each of these provisions.
Heart of Atlanta Motel v. United States (1964)

• In this case the Supreme Court upheld the Civil Rights Act of 1964, which prohibited acts of discrimination by hotels, restaurants, and other businesses that are open to the public. Another portion of the law prohibits employment discrimination.

• The Court ruled that Congress had the power to enact this law under the Commerce Clause because racial discrimination, on the whole, has a substantial effect on interstate commerce.
South Carolina v. Katzenbach (1966)

- In this case the Supreme Court upheld the Voting Rights Act of 1965.

- The Court held that Congress had the power to enact this law as valid under Congress’ power to enforce the 15th Amendment.
Jones v. Alfred H. Mayer Co. (1968)

- The owner of a piece of land refused to sell to an African-American.

- The purchaser sued the seller under a federal law.

- The Supreme Court held that Congress had the authority to enact this law under its power to enforce the 13th Amendment.
6. Personal Rights

• Another type of discriminatory law that was common involved personal rights such as the right to marry

• Before 1967, several states made it a crime for people of different races to marry each other
“The older generation's fears and prejudices have given way, and today's young people realize that if someone loves someone, they have a right to marry.”

_Mildred Loving_
IV. The Impact of the Civil Rights Movement on the Meaning of the Constitution

A. The Equal Protection Clause protects all groups from discrimination
B. All persons have an equal right to obtain an education
C. Every person is entitled to freedom of speech and freedom of association
D. All persons are entitled to an equal right to vote
E. Congress has the power to enact laws protecting people’s rights, and
F. The Constitution protects people’s personal rights
G. We now have a “living Constitution.”
A. Ending Segregation and Discrimination for All Groups

• In 1971, in *Reed v. Reed*, the Supreme Court began to outlaw gender discrimination.

• In 1985, in *City of Cleburne v. Cleburne Living Center, Inc.* the Court ruled that it was unconstitutional to discriminate against people solely because they are developmentally delayed.

• In 2003, in *Lawrence v. Texas*, the Court held that the government may not discriminate against people because of sexual orientation.

• Today, it is understood that the Equal Protection Clause protects *all* persons from laws that unjustifiably treat some people differently than others.
B. All Persons Have an Equal Right to Obtain an Education

• In *Plyler v. Doe* (1982), the Supreme Court ruled that the children of undocumented aliens have an equal right to attend the public schools.

• In *United States v. Virginia* (1996), the Supreme Court ruled that women could not be prohibited from attending a prestigious public college, the Virginia Military Institute.
C. Every Person Is Entitled to Freedom of Speech and Freedom of Association

- The Civil Rights Movement made it possible for all persons to secure the right to form associations, to conduct marches and demonstrations, and to speak freely to criticize the government.

- People have the right to express their ideas, no matter how unpopular those ideas are.

- The Supreme Court has upheld the First Amendment rights of unpopular groups such as Communists, the Ku Klux Klan, and the Westboro Baptist Church to freedom of expression.
D. All Persons Are Entitled to an Equal Right to Vote

• During the Civil Rights era the Supreme Court declared that every citizen is equal in regards to the right to vote.

• This principle means that the law may not deprive us of either the opportunity to vote, or the right to have our vote count just as much as other people’s votes.
E. Congress Has the Power to Enact Laws Protecting People’s Rights

• There are now federal laws that prohibit gender discrimination, age discrimination, and discrimination against persons with disabilities.

• Because of the decisions that the Supreme Court handed down during the 1960s, these other civil rights laws have also been upheld as constitutional.
F. The Constitution Protects People’s Personal Rights

- The Supreme Court has ruled that people have the right to make their own choices in their personal lives.

- This right has been extended to cover many types of decisions, including whether to have children, how to raise children, whom we may love, whom we may live with, whom we marry, and whether we may refuse certain types of medical care.

- The *Loving* case makes clear that the law may not dictate these choices to us; instead, we are free to make these choices for ourselves.
G. We Now Have a “Living Constitution”

- *Brown v. Board of Education* (1954): “We cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written.”


- *Cooper v. Aaron* (1958): The Supreme Court ruled that the states and the lower courts must be obedient to the Constitution and to the rule of law. The Court said that it is only through such obedience that the ideals of the Constitution – liberty, equality, and fairness – are made “a living truth.”