



Scholar Exchange: The Civil Rights Movement

Briefing Document

INTRODUCTION

When reading, learning, and teaching the [Civil Rights Movement](#) there are a few big ways that it is written about that hold back our real leaning and understanding of this moment in history and its past and connections to today:

1. Myth of Perpetual Racial Progress

Has racial progress occurred in America over time? YES, however it is not a perpetual march of progress that is guaranteed. People have fought, struggled, and died. It is not just a linear arch. Steps forward and huge reverses. We are teaching good citizens. How do you create change going forward if something to know? Life does not just get better. We must all make the change. Thus, the struggle for equality takes place over centuries and requires continual work in the face of violent opposition. Change is contingent on action—in words, in laws, in resistance, and in hearts and minds.

2. What is the Master Narrative?

You cannot teach the civil rights movement without teaching about Dr. Martin Luther King Jr. Our goal is to learn about the man, not just the hero. The real Dr. King held beliefs that evolved over time and how he was a part of a much larger movement. Learn more [here](#). It is not just about the 1950s with Martin, Rosa, and Johnson and all wrapped up by 1965 and 1968. Center a few individuals and the National Government. We need to deconstruct that to understand how all this change at the national level happened.

3. It is Hard to Talk About.

Teaching the Civil Rights Movement is hard because we have to be honest about racist views, people and racist violent acts.

Today, as the NCC we are going to look at the Civil Rights Movement and closely at the [civil rights](#) and [liberties](#) denied and hard fought for in American history.

Big idea:

The struggle for freedom of African Americans in America begins much earlier than the Civil Rights Movement of the 1950s and 1960s, as there is always fighting for freedom and resistance to oppression. The push for abolition starts as soon as [the Declaration of Independence](#) is signed and continues up to the Civil War. What happens after the Civil War, the American people ratified a series of transformational amendments—the [Thirteenth](#), [Fourteenth](#), and [Fifteenth](#) Amendments--to attempt to right [the wrongs of slavery](#). However, it would take nearly a century and the courage of many African Americans and their allies in the Civil Rights Movement to push for change and both Congress and the

Warren Court to begin to fulfill the promises of freedom and equality enshrined in these Amendments and the Declaration of Independence.

Big, Framing Questions and Class Goals:

- What was the Civil Rights Movement? When was it active? Who were some of its leaders? And what were some of the movement's core constitutional arguments?
- What did the [original Constitution](#) say about civil and political rights, and how did later amendments transform the Constitution?
- What was the [Warren Court](#), and what were some of its key rulings in the 1950s and 1960s?
- What were some of the key laws passed and constitutional amendments ratified during the Civil Rights Era?
- What is the constitutional legacy of the Civil Rights Movement and the Warren Court?
- What factors explain the dramatic changes in racial attitudes and practices that occurred between 1900 and 1950?
- How much did such [Supreme Court](#) decisions influence the larger world of race relations?

Many different sorts of factors—political, economic, social, demographic, ideological, international, and legal—account for the transformation in American racial attitudes and practices over time.

CIVIL RIGHTS CONNECTION TO AMERICA'S FOUNDING DOCUMENTS

Most Americans are familiar with the famous words and speeches of Martin Luther King, Jr., especially the "I Have a Dream" speech. How did these show the connection between the Civil Rights movement and our [founding documents](#)?

As we'll talk about more as we get into the teeth of these speeches and the movement itself, in the words of King, the Civil Rights leaders were trying to lay claim to that "promissory note" guaranteeing the equality of all—the Declaration of Independence. In particular, Civil Rights leaders could look to the Declaration of Independence famous words that "All men are created equal, endowed by their creator with the natural rights of "life, liberty, and the pursuit of happiness." They could also point to the Constitution's [Preamble \("We the People..."\)](#) and the [Reconstruction Amendments](#), especially the [Fourteenth Amendment](#), as showing the Constitution's promise of equality for all (due process, the Equal Protection Clause).

Two key constitutional amendments that come forth in this period: the [23rd](#) and [24th amendments](#).

[23rd Amendment:](#)

Grants the District of Columbia three electoral votes in the [Electoral College](#) under the requirements of [Article II](#) and the [12th amendment](#), "A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State."

24th Amendment:

Bans poll taxes in federal elections, “The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay poll tax or other tax.”

Both amendments gave Congress enforcement powers to enforce the article by “appropriate legislation.”

MAJOR ORGANIZATIONS BEHIND THE MOVEMENT

We should also introduce the major Civil Rights organizations involved in the movement briefly:

NAACP: National Association for the Advancement of Colored People

Founded in 1909 by the journalist Ida B. Wells, along with the Black intellectual W.E.B. Du Bois, Mary White Ovington, and Moorfield Storey. Much of what we know about lynchings over the South over the period, particularly in the 1890s and 1900s, comes from the journalism of Ida B. Wells. Several members came from the earlier “Niagara Movement,” beginning in 1905 with a meeting of 32 African-American leaders to deal with the problem of Jim Crow laws and new Southern constitutions which disenfranchised African-Americans. A race riot in Springfield, Illinois in 1808—Lincoln’s hometown—highlighted the need for a national organization to advance the cause of racial justice. Incorporated in 1911, its charter gave its mission: “To promote equality of rights and eradicate caste or race prejudice among citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law.”

SCLC: Southern Christian Leadership Conference

The Southern Christian Leadership Conference was formed in 1957 by Martin Luther King, Jr. (the first President), Ralph Abernathy, organizer Ella Baker, Fred Shuttlesworth, Bayard Rustin and other church leaders and activists. Like other major civil rights organizations, it made nonviolence its central tenant.

CORE: Congress of Racial Equality

The Congress of Racial Equality was formed in 1942 to “bring about equality for all people regardless of race, creed, sex, age, disability, sexual orientation, religion or ethnic background.” It was formed by James L. Farmer, Jr., organizer of the First Freedom Ride in 1961, George Houser, Bernice Fisher with the support of Bayard Rustin. The group was inspired by the example of Mahatma Gandhi’s teachings of non-violent resistance, in particular the 1930 Salt March in resistance to the British Salt Monopoly that led to Gandhi’s jailing. Gandhi himself was inspired by the 19th Century American writer and transcendentalist Henry David Thoreau and his idea of “civil disobedience.” Of the 50 original members, 22 were women and 2/3 were white.

LCCR: Leadership Conference on Civil Rights

The Leadership Conference on Civil Rights was founded in 1950 by Roy Wilkins, editor of *The Crisis*, the magazine of the NAACP, A. Philip Randolph, leader of the largest Black union, the Brotherhood of Sleeping Car Porters, and Arnold Aronson, the head of the National Jewish Community Relations Advisory Council. The LCCR coordinated the national legislative campaigns behind every major Civil Rights act beginning with the Civil Rights Act of 1957.

SNCC: Student Nonviolent Coordinating Committee

The Student Nonviolent Coordinating Committee was formed in April 1960 at a conference at Shaw University in Raleigh, North Carolina following the beginning of the sit-in movement in February 1960. Ella Baker was the highest-ranking woman in NAACP leadership by 1943 and as a founder of the SCLC, she helped organize the first major campaign of SCLC, the 1957 Prayer Pilgrimage for Freedom (A March on Washington which saw King give his “Give Us The Ballot” speech). Baker supported more egalitarian leadership structure and wanted the Civil Rights movement to look more like the Black church, with men and women in leadership positions. (She questioned the top-down leadership of organizations like SCLC saying “strong people don’t need strong leaders”).

Baker was the “Godmother” of the SNCC, quitting the SCLC to support the new organization and persuading the SNCC to form two wings—one for direct action, the other for voter registration drives. With CORE, she helped coordinate the Freedom Rides in 1961. Baker helped support and teach the student leadership of SNCC, including Diane Nash, Julian Bond, John Lewis, Stokely Carmichael, Bob Moses and Bernice Johnson Reagan. Other young leaders who emerged from SNCC included Fannie Lou Hamer, Ruby Doris Smith Robinson, James Bevel, and Marion Barry.

CONSTITUTIONAL REVOLUTION, FOUNDING DOCUMENTS, AND CIVIL RIGHTS

How is it that Civil Rights leaders, going back petitions for freedom in the 17th and 18th century and the creation of the abolitionist movement following the Declaration of Independence, utilized the [founding documents](#) to challenge slavery and into the modern era to push for greater equality?

Dr. King perhaps put it best in a speech that we’ll discuss more as we go through the events of the Civil Rights Movement—the “I have a Dream Speech.” He called the founding documents a “promissory note” and called on Americans, particularly white moderates, to push the government to enforce that promise of freedom and equality.

Back to “First Principles”: The Declaration of Independence and the Constitution

In America, constitutional revolutions—or major changes in the meaning of the [Constitution](#) over time—are typically fought for being going back to “first principles”—going back to the Founding Documents, the Declaration and the Constitution. This has a deep history, going back to Prince Hall, who in 1777 following the Declaration of Independence pushed the Massachusetts legislature to abolish slavery to Frederick Douglass, who most famously in his “What is to a Slave the Fourth of July” speech challenged his white audience to recognize that America had not lived up to the promise of the founding documents which guaranteed liberty and freedom to all men.

This is a constant thread running from the Revolutionary period through the mid-20th century. In the fight for abolitionism, Douglass stood out for his rhetoric but was part of a larger fight for abolition among a diverse movement and Black intellectuals were developing their own ideas about the founding documents throughout this time.

This struggle over time involved the work of African-American women as well, including leaders in the fight for abolition like Sojourner Truth, Harriet Tubman, and Francis Ellen Watkins Harper, leaders in the fight for suffrage like Harper, Mary Church Terrell and Ida B. Wells, and early leaders of the civil rights movement starting with the National Association of Colored Women in 1896 like Margaret Mary Washington and Josephine St. Pierre Ruffin.

Dr. Martin Luther King’s “I Have a Dream Speech” Under “First Principles”

King, in major speeches and writings like the “I Have a Dream” speech, the “Letter from Birmingham Jail,” and other speeches, like his “Give Us the Ballot” speech in 1957.

In that speech, given as part of the “Prayer Pilgrimage for Freedom,” King and other major Civil Rights leaders (Ella Baker, A. Philip Randolph, Bayard Rustin, Roy Wilkins, Fred Shuttlesworth) went to the Lincoln Memorial three years after [Brown v. Board of Education of Topeka \(1954\)](#) to demand the government fulfill the promise of the decision.

King opened his speech by stating that the denial of the right to vote, “this sacred right,” was a “tragic betrayal of the highest mandates of our democratic tradition.” Not only did he demand that the government grant and protect this right, but he argued with the right to vote would be their protection from segregation: “Give us the ballot, and we will no longer have to worry the federal government about our basic rights. . . we will by the power of our vote write the law on the statute books of the South and bring an end to the dastardly acts of the hooded perpetrators of violence . . . Give us the ballot, and we will quietly and nonviolently, without rancor or bitterness, implement the Supreme Court’s decision [in *Brown*]. . . ”

This is a theme in not only King’s work, but throughout the movement—Black citizens demanding their basic rights, particularly the core right in democratic society (the right to vote) most crucially, by going back to founding documents.

So, throughout American history, African-Americans were fighting for their rights and laying claim to the founding documents—the Declaration of Independence and the Constitution.

THE CIVIL WAR, RECONSTRUCTION ERA, AND THE 13TH, 14TH, AND 15TH AMENDMENTS

What happened after the passage of Jim Crow laws and the Supreme Court’s decision in [Plessy v. Ferguson](#) (1896)?

In 1909, the NAACP was founded and with it, a new legal strategy emerged on the part of African-American lawyers. They would attack piece by piece the structure of Jim Crow in order to grant the full equality under the law guaranteed by the [Fourteenth Amendment](#).

Recap of Civil War and Reconstruction Developments

First, we should briefly recap everything that happened since the Civil War. [Reconstruction and Civil War](#) amendments—the 13th, 14th, and 15th—are key to understanding what happens nearly a century later.

Recall that during the Civil War, President Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863, a military order which recognized the freedom of all enslaved persons in Confederate territory. Civil Rights leaders, including King, would consistently make reference to this promise of freedom and liberty—especially since 1963 was the centennial of the proclamation.

In order to make that freedom permanent and to get recognition of Black citizenship throughout the nation, a constitutional amendment was needed—Republicans generally weren’t sure that Congress could simply end slavery by

legislation, although some thought it possible. The [Thirteenth Amendment](#), passed by Congress narrowly on January 30, 1865 and ratified by that December, represented the permanent end of slavery.

Yet, Reconstruction took a turn when Lincoln was assassinated on April 14, 1865. Andrew Johnson, the Vice President who took over, was a slaveowner from Tennessee who stayed loyal to the Union. His version of Reconstruction was to force Confederate leaders to take a loyalty oath to re-enter government and that all returning states accept and ratify the Thirteenth Amendment. Otherwise, Johnson did not want to take any additional actions to guarantee equality and rights to the freedmen and women.

As a result, former Confederate states passed “Black Codes” greatly restricting the rights of African-Americans. Congress, looking to respond, formulated their own version of Reconstruction and at its center was the Civil Rights Act of 1866 and the [Fourteenth Amendment](#). At its heart, both recognized citizenship for all those born in American territory (birthright citizenship) along with equal rights guaranteed to all citizens in all states in the Union. (Equal Protection, Due Process, Privileges, or Immunities)

Ultimately, the [Fifteenth Amendment](#) would still be needed to stop racial discrimination against Black males in voting (proposed language that guaranteed a more universal right to vote was struck down). Congress also passed enforcement legislation—the Enforcement Acts of 1870, the Ku Klux Klan or Civil Rights Act of 1871, and the Civil Rights Act of 1875. The 1870 and 1871 acts allowed the federal government to prosecute private militias like the Ku Klux Klan for civil rights violations—which the Grant administration did—and the 1875 act sought to end discrimination in public accommodations and spaces—like parks.

Jim Crow and Rolling Back of Equality Protections

But the era of biracial legislatures at the state level, Black representatives, and robust civil rights legislation was brief—major economic issues arose in the 1870s along with growing dismay among conservative and moderate Republicans with the need to do more to guarantee Black equality. By the end of the decade, Democrats had reasserted political power (called “Redeemers”), troops were removed from the South to enforce African-American’s rights, and the Supreme Court had begun to roll back protections for equality in the Reconstruction Amendments while despite the destruction of the KKK, new white supremacist private militias began new campaigns of deadly intimidation.

In particular, the Civil Rights Cases (1883) saw the court strike down the Civil Rights Act of 1875, *Cruikshank* (1876) refused to apply the Bill of Rights to the states (requiring “state action” and declining to reach the murderous actions of private actors), gutted the “Privileges or Immunities” clause in *Slaughterhouse* (1873), upheld “Jim Crow” “separate but equal” laws in [Plessy v. Ferguson \(1896\)](#) and declined to intervene in various cases under the Fifteenth Amendment relating to voter sup

RACIAL CONFLICT IN THE EARLY TO MID-20TH CENTURY

African-Americans during the New Deal (1930s)

Nationally, but particularly in the South, African-Americans in the 1930s held more lower-paying jobs and faced both social and political discrimination. Between 1882 and 1930, more than 2,500 African-Americans were lynched by white mobs in mostly the South (that’s one African-American lynched a week over that period), President Roosevelt, despite pleas from Eleanor Roosevelt and his Black Cabinet, did not support legislation making lynching a federal crime because of fear of rejecting Southern Democrats. This political pressure from Southern politicians would be a consistent bulwark against civil rights legislation.

Lynchings were not the only form of persistent racial violence and terrorism (which also happened in the North, although much more frequently in the South). Race riots had roots back to the 1830s, at the beginnings of the abolitionist movement, in which mobs of thousands of white citizens would attack Black citizens and neighborhoods. In the wake of the World War I, during the “Red Summer” of 1919 over three dozen cities saw race riots, with the events in Washington D.C. and Chicago leading to 38 and 15 deaths, while the “Elaine Massacre” in Alabama saw between one or two hundred African-Americans killed.

The Scottsboro Boys Case (1931)

In 1931, Scottsboro, Alabama, nine young Black men were accused of rape by two white women on a freight train and despite inconsistencies in the stories of the two women, an all-white jury convicted all nine defendants, with eight receiving the death penalty. In 1932, the Supreme Court overturned the sentences because the defendants had been denied adequate legal counsel under the [Sixth Amendment](#). Ultimately, five were still convicted and sentenced to lengthy prison terms.

While the case was going on, a young Alabama African-American woman, Rosa, married Raymond Parks, a NAACP member participating in the raising of funds to support the defense of the Scottsboro Boys. By 1943, she was secretary of the Montgomery chapter of the NAACP, a position she held for 14 years. In 1944, she and Recy Taylor founded the Committee for Equal Justice, in order to bring attention to the racially motivated sexually assaults of Black women.

Along with the NAACP’s victories in [Guinn v. United States \(1915\)](#), striking down Oklahoma’s “grandfather clause,” which exempted most whites from the harsh voter restrictions and literacy tests), [Buchanan v. Warley in 1917](#) (striking down racial zoning) and [Moore v. Dempsey \(1923\)](#), striking down “mob-dominated trials” as a violation of due process under the Fourteenth Amendment in a case coming out of the 1919 Elaine Race Riots in Alabama), this was an early sign that it was possible piece-by-piece to win enough victories at the Supreme Court or lower courts to erode the power of Jim Crow.

Black Americans in World War II

Once the United States declared war on Japan and Germany after Pearl Harbor (Germany came second), they mobilized an army of millions through the draft, as well as expanding the federal bureaucracy and hiring millions of civilian workers from diverse backgrounds.

At the same time, the army remained segregated with almost one million African-Americans in uniform. The NAACP and other civil rights groups demanded change, saying, “A Jim Crow army cannot fight for a free world” and Langston Hughes, the poet, wrote that, “We are elevator boys, janitors, red caps, maids—a race in uniform.” Black leaders used the politics and ideological battle of World War II to raise the issue of civil rights. Civil rights leaders launched the “Double V campaign,” calling for victory over Nazism abroad and racism at home. As W.E.B. Du Bois said, “This is a war for freedom. Whose freedom? If it meant the freedom of Negroes in the Southern United States, my gun is on my shoulder.”

Undoubtedly veterans themselves led this cause—as they did in the postwar period in the 1870s-1890s after the Civil War, in which Black veteran organizations frequently asserted that their military service was proof of their claim to equal citizenship. But veterans too could be targets for racial violence.

There was notable resistance to this campaign, for instance, in Chicago, Baltimore, Philadelphia, and other cities, there were “hate strikes” that shut down factories when white workers refused to work alongside Black workers. Detroit was

particularly violent—as Life magazine put it in 1942, “Detroit is Dynamite. . . It can either blow up Hitler or blow up America.” African-Americans did not hesitate to protest during the war, rallying for defense jobs and pointing out with the millions in defense contracts and jobs, not enough had gone to African-Americans. In 1940, only 240 of the 100,000 aircraft workers in the U.S. were Black and most were janitors.

A. Philip Randolph, head of the Brotherhood of Sleeping Car Porters (Randolph was a long-time labor organizer of “Pullman Car” workers and founded the radical Black socialist *The Messenger* in 1917, where he pushed among other issues, resistance to the draft, the need for integration, and a campaign to end lynching), the largest Black labor union, announced plans for a march on Washington in the summer of 1941. This forced Roosevelt’s hand and he issued Executive Order 8802, which prohibited “discrimination in the employment of workers in defense industries or government because of race, creed, color, or national origin” and established the FEPC—Fair Employment Practice Committee.

Wartime developments helped lay the groundwork for the Civil Rights movement of the 1950s and 1960s. By 1945, the NAACP had grown ninefold to 450,000 members, while in Chicago, James Farmer founded the Congress of Racial Equality (CORE) in 1942, a group that would become nationally known in the 1960s for its direct-action protests and sit-ins. FEPC pushed Black leaders to organize against employment discrimination.

CORE, along with James Farmer’s Fellowship of Reconciliation (FOR), embraced the philosophy of nonviolent direct action under the model of Mahatma Gandhi of India. The philosophy of nonviolent direct action was that by protesting inequality in public demonstrations, the violence of the oppressors would be exposed to the greater public and would help raise both awareness and support for reform. New York’s Bayard Rustin led one of the earliest challenges to southern segregation, with the 1947 Journey of Reconciliation.

President Truman’s Executive Order 9981: Desegregation of the Armed Forces

On July 26, 1948, President Truman issued Executive Order 9981, ordering that, “there shall be equality of treatment and opportunity for all persons in the armed forces without regard to race, color, religion, or national origin.” Truman, like Justice John Marshall Harlan before him, had undergone a lifelong transformation from bigotry towards genuine support of civil rights. In June 1947, he gave a speech at the Lincoln Memorial before the NAACP, stating that, “As Americans we believe that every man should be free to live his life as he wishes. He should be limited only by his responsibility to his fellow countrymen. If this freedom is to be more than a dream, each man must be guaranteed equality of opportunity.”

Undoubtedly, the growing Civil Rights movement convinced Truman to change his mind—Randolph’s Committee Against Jim Crow in Military Service pressured Truman to desegregate the military and even successfully pushed Truman to send a message to Congress to follow all the recommendations of the Presidential Committee on Civil Rights (calling for robust federal action to ensure Black equality), including the abolition of poll taxes and restoring the Fair Employment Practice Committee.

Wartime Migration

As Blacks moved from southern farms to northern cities, they gained access to the vote, and they eventually began to wield significant clout in national politics. As Blacks secured better jobs and higher incomes, they acquired financial resources and heightened expectations with which to challenge the racial status quo and developed new social networks. Looking at a more specific example, the Black population in Los Angeles dramatically rose from approximately 63,700 in 1940 to about 350,000 in 1965, rising from 4% of L.A.’s population to 14%.

Black soldiers return home, use the G.I. Bill to go to college, trade school or graduate school, putting themselves in position to push back against segregation. Still, while the G.I. Bill (passed in 1944) did offer African-American soldiers and veterans more opportunities and benefits, it was administered unequally and in the context of Jim Crow and racial segregation. For instance, less than 100 of the 67,000 mortgages insured by the G.I. Bill went to African-Americans.

Generally, civilians moved to take high-paying defense jobs while families moved as men joined the armed forces. Around 15 million Americans moved during the war, half to another state. California received the most wartime migration, with 2.5 million new residents during the war and 10% of all federal dollars spent on the war going to California and 1/6 of the war materials were made by the state's factories.

As a result of these changes, particularly the growth of war industries, the pattern of rural-urban migration was accelerated—cities grew dramatically and new mobility made wartime cities vibrant with jazz clubs, bars, dance halls, and movie theaters growing as well.

Racial conflict also came with these changes—over a million African-Americans left the rural South for California, Illinois, Michigan, Ohio, and Pennsylvania, continuing the Great Migration that started earlier in the century.

Repeating the events of World War I (over 400,000 African Americans moved at that time to cities like St. Louis), with Blacks and whites competing for jobs and housing, racial conflicts broke out in more than a hundred cities in 1943. Detroit saw the worst violence, with a June 1943 white incited by southern-born whites and Polish Americans against Americans leaving 34 dead and hundreds injured.

POST-WAR CHANGES IN THE UNITED STATES

Big Idea

Things are changing and slowly getting better, although they are not perfect or even necessarily good. And it is primarily due to the efforts of African-Americans themselves, growing in their organizational and intellectual power.

The Growing Urban Crisis

The growth of poverty, the deterioration of old housing stock, and the persistence of racial segregation in housing helped produce this crisis. African-Americans working in cities tended to lower paying jobs and living in older apartment buildings. Despite the largest Black middle class which was thriving at the time, for poorer African Americans, upward mobility was more elusive giving housing restrictions, segregated schools, and the emerging urban-suburban divide.

Other Developments Within the Black Community

Although historically small, the Black middle class experienced large growth after World War II and it produced many of the most important civil rights leaders—ministers, teachers, trade unionists, attorneys, and others in the professional class.

The Black church is notable because of how long, in American history, it was the source of community, fights for justice, and African-American intellectual thought and constitutionalism. (The first African-American church was founded in Philadelphia by Richard Allen in 1794, the African Methodist Episcopal Church or the AME, with Allen aiming to build a community of free Blacks, bring literacy and education to African-Americans, and develop strategies to end slavery and

racial injustice) Thus, as a result, King was not the only example of Black ministers who help led the Civil Rights Movement. Fred Shuttlesworth, James Bevel, Ralph Abernathy, Bayard Rustin (a Quaker), Joseph Lowery, Hosea Williams, C.T. Vivian, as well as white Christian allies.

And it is important to realize that this was true not only in the 19th century in the push for abolition and civil rights during Reconstruction, but in the Jim Crow era. This includes prominent African American women who were leading suffragists and abolitionists who came out of the church, like Francis Ellen Watkins Harper (a nationally renowned poet, President of the Pennsylvania Women’s Christian Temperance Union, and one of the founders in 1896 of the National Association of Colored Women) or Harriet Forten Purvis, who helped found the first biracial abolitionist society, the Philadelphia Female Anti-Slavery Society in 1833.

In 1950, African Americans were 10% of the population, numbering 15 million, but in the South, they constituted 30-50% of the population in various states such as South Carolina and Mississippi. In these states, Jim Crow laws and segregation controlled every aspect of life—waiting rooms at public bus stations, bathrooms, eating in restaurants, public parks, libraries, drinking fountains. Additionally, African-Americans were kept out of government jobs and the best private jobs were reserved for whites. Segregation existed in the North as well, although it was less acute and widespread, and some states were freer than others and tended to occur in things like employment and housing discrimination rather than overt, government-mandated segregation.

RACE RELATIONS AND THE COLD WAR

Big Idea:

Just as Civil Rights leaders suggested that Americans should fight both Nazism abroad and racism at home, the Cold War against the Soviet Union and communism required condemnation of racism at home. As President Harry S. Truman said in 1947, “More and more we are learning how closely our democracy is under observation. . . we must correct the remaining imperfections in our practice of democracy.”

The Cold War helped and hurt the Civil Rights Movement. Truman worried about America’s image in the world and said that when Americans failed to live together in peace, it harmed “the cause of democracy itself in the whole world.” Further, when the Soviet Union used American racism to discredit the United States, “We cannot escape the fact that our civil rights record has been an issue in world politics,” the Presidential Committee on Civil Rights wrote.

But the Cold War also brought McCarthyism and the hunt for subversives at home, as civil rights opponents charged that racial integration itself was communistic and the NAACP was banned in many southern states as “anti-American.” In 1958, Supreme Court unanimously overturned such a law in [NAACP v. Alabama \(1958\)](#).

In 1956, Alabama sought to punish the NAACP’s support of the 1955 Montgomery Bus Boycotts in order to legally push them out of the state (alongside the threat of personal violence aided by the state). The state Attorney General in 1956 sued the NAACP for failing to qualify as a foreign corporation doing business in the state. The state further sought disclose of the NAACP’s financials and their membership lists.

Robert Carter, the lead NAACP lawyer, contested the order on the basis of the First Amendment, contending that it violated both freedom of speech and freedom of association. The grandson of Justice John Marshall Harlan, John Marshall Harlan II, wrote the unanimous opinion for the Court. He said that it was well established that compelling disclosure of affiliation with groups engaged in advocacy could be a restraint on First Amendment freedom of association. The NAACP made clear to the Court the consequences of Alabama getting their membership lists—it would expose members to economic reprisal, loss of employment, threat of physical coercion, and most significantly, death. Exposure would therefore induce members to withdraw or would-be members for joining in the first place.

The Court also stated that Alabama could not rely on a previous Supreme Court case that allowed New York to get a membership list of those citizens in the Ku Klux Klan because that decision "was based on the particular character of the Klan's activities, involving acts of unlawful intimidation and violence, which the Court assumed was before the state legislature when it enacted the statute, and of which the Court itself took judicial notice."

Voter Disenfranchisement

Voting-wise, less than 20% of eligible Black voters at the time were allowed to vote—stemming from poll taxes, literacy tests, violence and intimidation, fraud, and the use of the "white primary"—elections in which only white voters could participate.

THE ROAD TO *BROWN V. BOARD OF EDUCATION* (1954)

We all know about [Brown v. Board of Education of Topeka \(1954\)](#), but how do we get there?

It did not come out of nowhere, but was the result of both the brilliant, long-term strategy of the NAACP's lawyers and the efforts of the Civil Rights movement more broadly to move public opinion in favor of desegregation. As the masterful historian Michael Klarman argues, because Civil Rights legislation was blocked in Congress in the 1950s by Southern Democrats (at least strong legislation, as watered-down Civil Rights bills were passed by the Eisenhower Administration in the wake of Brown and Little Rock), civil rights activists sought two ways for change: northern state legislatures and the federal courts.

Winning the battle for state anti-discrimination laws meant creating new coalitions and alliances with trade unions, other liberal organizations like the Quaker American Friends Service Committee. The first victories came with fair employment laws in New York and New Jersey in 1945. But housing reform did not come until the 1960s.

As noted, the NAACP adopted a long-term strategy early on for fighting for legal equality. In the late 1930s, NAACP lawyers Thurgood Marshall, Charles Hamilton Houston, and William Hastie prepared the ground in a series of cases challenging racial discrimination, with the end goal to overturn [Plessy v. Ferguson \(1896\)](#), the Supreme Court case of 1896 upholding Jim Crow laws and "separate but equal" doctrine.

Marshall was the great-grandson of slaves and of modest origins, graduating from Lincoln University in 1930, a prestigious African-American school near Philadelphia, but he was denied admission to the University of Maryland Law School on account of race. He enrolled at the all-Black Howard University (now one of the Historically Black College and

Universities, otherwise known as an HBCU) and met Houston, a law school dean. Together with Hastie and six other attorneys, they began to deliberately select cases to challenge “separate but equal” policies.

The NAACP had taken on cases before this point and had already won some important victories before the Supreme Court. Most notably, in [Buchanan v. Warley \(1917\)](#), a unanimous Supreme Court strikes down “racial zoning” statute of Kentucky under “freedom of contract” and property protected by the Due Process Clause under the Fourteenth Amendment. The City of Louisville, Kentucky had a law which forbade any Black individuals to own or occupy any buildings in an area in which a greater number of white persons resided and forbade any white individuals from owning or occupying buildings in an area in which a greater number of Black persons resided. William Worley was a NAACP attorney who made an offer to Charles Buchanan for a residence in a predominately white neighborhood.

Thus, under existing precedent at the time—particularly, [Lochner v. New York](#) (recognizing “freedom of contract”), “racial zoning” restrictions were an unconstitutional restriction on the [Fourteenth Amendment](#) rights of property owners to freely sell to Black buyers. At the time, like Guinn, Worley seemed an outlier case, but the Civil Rights Movement was not gaining traction outside of the courts, and this, at least, suggested their strategy could work overtime to roll back Jim Crow.

CIVIL RIGHTS CASES LEADING UP TO *BROWN*

The Brown story starts in 1933, with Judge Nathan Ross Margold’s “Margold Report,” which recommended that the NAACP promote civil rights through the courts.

In 1936, Marshall and Houston won a state case that forced the University of Maryland Law School to admit qualified African Americans.

Missouri ex rel. Gaines v. Canada (1938)

[Missouri ex rel. Gaines v. Canada \(1938\)](#), U.S. Supreme Court does not strike down Plessy, but finds that states that provide only one educational institution must allow Blacks and whites to attend if there is no separate school for Blacks. Here, Lloyd Gaines applied for the University of Missouri Law School, but was denied admission by the Registrar for being Black. Gaines, with NAACP counsel, sued on the basis that this violated the [Fourteenth Amendment’s Equal Protection Clause](#). Thus, the Court found that the issue was that Missouri provided no opportunity for Black citizens to get legal education and paying for Gaines to go to another state’s law school was not sufficient.

This is an example of the NAACP’s strategy of “death by a thousand cuts.” It did not end segregation immediately, but it did pull back the restrictions of African-American liberties.

Morgan v. Virginia (1946)

In 1946, in the case of [Morgan v. Virginia \(1946\)](#), the Supreme Court struck down Virginia’s law enforcing racial segregation on public buses in interstate travel. The case was argued by William Hastie, former Governor of the Virgin Islands, and Thurgood Marshall. Instead of looking to the Equal Protection Clause, they argued that segregation of buses in interstate travel was a violation of the [Commerce Clause \(Article I\)](#). The question for the Court was whether the state

law burdened interstate commerce such that it was unconstitutional. The Court stated that such regulation or laws inhibits freedom of choice in choosing accommodations in a time in which people were traveling more than they had before. Thus, national uniformity in interstate travel and protecting national travel with uniform rules was found to outweigh the state's police powers.

The case reminds us that commerce clause will be a key Congressional power to Civil Rights legislation. As we will see with the Civil Rights Act of 1964, the commerce power was a "hook" to regulate racial segregation in interstate travel and public accommodations.

Shelley v. Kraemer (1948)

In [Shelley v. Kraemer \(1948\)](#), the Supreme Court overturned racially restrictive housing covenants, treating them as unenforceable (These were legal devices within neighborhood regulations meant to keep African-Americans or other races out of certain areas). Only six justices participated in the case, but all agreed that such covenants violated the Equal Protection Clause. The case came out of St. Louis, Missouri, where the home the Shelley family purchased in 1945 had a restrictive covenant on it since 1911 which prevented "people of the Negro or Mongolian Race" from occupying the property.

Thurgood Marshall and Loren Miller, a specialist in racial discrimination in housing, argued the case. (Miller was in fact Chief Counsel on the case, having argued many cases against restrictive covenants in lower courts and would return to the Supreme Court again in 1953 to argue a separate case regarding racially restrictive covenants)

The Court held that while private parties could make such an agreement, the enforcement of them in the courts was a form of "state action" which would violate the [Fourteenth Amendment](#). That is, if Courts were to enforce the contracts which did not allow African-Americans to live in certain neighborhoods, the state itself would be acting to uphold those restrictions. And if it did so, it would violate the Fourteenth Amendment's Equal Protection Clause.

[McLaurin v. Oklahoma \(1950\)](#)

Thurgood Marshall was again the lead lawyer arguing the case. The Supreme Court ruled that universities could not segregate Black students from others on campus. George McLaurin was denied his application to enter the University of Oklahoma's Doctorate in Education program on the basis of his race. He sued in the lower federal court, who issued an order or injunction against the school, which then provided him separate facilities, including a special table in the cafeteria, a special and separate library desk, a desk just outside the classroom doorway, and even given a different time for eating from other students. McLaurin sued, claiming that this supposedly separate but equal treatment violated the Fourteenth Amendment.

The Supreme Court unanimously agreed, ruling that discriminatory treatment on the basis of race in higher education was a violation of the Equal Protection Clause.

Sweatt v. Painter (1950)

On the same day, in [Sweatt v. Painter \(1950\)](#), the Supreme Court also unanimously struck down supposedly “separate but equal” programs in law schools in a suit involving Heman Marrion Sweatt, a Black man who applied to the University of Texas Law School. The Court cited in evidence the differences between the separate law school (“Texas State University for Negroes” which became Thurgood Marshall Law School) and the University of Texas: UT had 16 full-time professors and 3 part-time, the separate school only 5 full-time professors; UT had 850 students and a library with over four times the volumes, while the separate school had 23 students; and UT had moot court facilities, awards, and alumni programs that did not exist at the separate facility. All these facts showed how unequal the programs and treatment were.

The bottom line for both cases was not only that the plaintiffs McLaurin and Sweatt were admitted to these programs, but that the Supreme Court concluded that different treatment of students on the basis of race in higher education violated the [Constitution](#). The question now was whether that would apply to public primary schools.

BROWN V. BOARD OF EDUCATION OF TOPEKA (1954)

Facts and Background of the Case

In [Brown](#), the Supreme Court combined similar challenges from a variety of locations—namely, Kansas, South Carolina, Virginia, Delaware, and Washington D.C. These cases all involved African American students who had been denied admittance to white public schools. The challengers argued that these segregation laws violated the Fourteenth Amendment’s Equal Protection Clause and that separate could never be equal in public education.

The case started in Topeka, Kansas, where the school district refused to enroll the daughter of Oliver Brown (Linda) and the Browns joined with twelve other Black families to sue the school district with the help of the NAACP. Linda had to walk six blocks to ride a bus to a segregated school a mile away, when there was a white school seven blocks from her house.

However, in [Plessy v. Ferguson \(1896\)](#), the Supreme Court long ago upheld racial segregation law that provided “separate but equal” facilities and institutions for people of different races.

In [Brown](#), the Court on May 17, 1954 unanimously overruled [Plessy](#), holding that “separate but equal” facilities were, in reality, unequal, because separating the races resulted in a damaging brand of inferiority imposed on Black children. The Court’s Opinion (written by Chief Justice Earl Warren): “We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.” The opinion cited studies that showed the psychological and physical effects of segregation on minority students to show that “separate but equal” facilities were inherently unequal and thus unconstitutional.

Immediate Backlash Against the Decision

In the aftermath, Virginia Senator Harry F. Byrd called for “massive resistance” and Mississippi segregationist Tom P. Brady called May 17 “Black Monday” and called the decision an example of “totalitarian government” in the name of

“socialism and communism.” Half a million southerners joined White Citizens’ Councils to block school integration, while others joined the Ku Klux Klan at levels not seen since the violence of the 1920s.

101 members of Congress signed the “Southern Manifesto” in 1956 denouncing the decision as a “clear abuse of judicial power” and encouraging defiance of it by local and state officials.

In 1957, it reached crisis point in Little Rock, Arkansas, when nine Black students attempted to enroll at the all-white Central High School and Governor Orval Faubus called out the National Guard to bar them, with the support of white mobs. President Eisenhower acted to send 1,000 federal troops and to nationalize the Arkansas National Guard to protect the Black students, making him the first President since Ulysses Grant to use federal troops to enforce African-American rights.

The Supreme Court would have to step in again as well in 1958 in the case of [Cooper v. Aaron](#) to assert their final authority on constitutional questions. State officers and governors had a duty to obey the orders of the Court which rested on their final interpretation of the Constitution.

THE AFTERMATH OF *BROWN*: NONVIOLENT DIRECT ACTION OUTSIDE OF THE COURTS

So, *Brown* led to a lot of resistance in the South against integration. How did the Civil Rights movement itself respond? The year after *Brown*, with evidence that legal victories would not be enough to guarantee equal rights for African-Americans, the movement turned to nonviolent direct action and protest to make their voices heard and to demand their equal rights. There are two stories. There’s the *Brown* story—focusing especially on the NAACP and actions inside the courts, and then there is the Civil Rights Movement story—focusing on the importance of constitutional arguments (and social movement activism) outside of the courts. Of course, the two are related. And big constitutional change often requires both.

It often requires:

1. The [Constitution’s text](#) and/or new amendment(s);
2. Powerful constitutional arguments advanced by actors outside of the courts; and
3. Powerful constitutional arguments (and legal strategies) by lawyers inside the courts.

And, often, the most powerful arguments were rooted in the [founding documents](#)—the Declaration of Independence, the Constitution, the Gettysburg Address—themselves as a way for Civil Rights leaders to assert the promise of equality in American founding ideals.

In the wake of the murder of Emmett Till in Mississippi’s summer of 1955, (photos of Till’s mutilated body were shared nationally, giving Americans a gruesome look into racial violence, but despite eyewitness testimony, the all-white jury found the defendants innocent), civil rights advocates looked to embrace an old tactic for new ends: nonviolent direct action.

Examples of the Civil Rights Era’s Nonviolent Direct Action

Montgomery Bus Boycott

On December 1, 1955, Rosa Parks, a civil rights activist in Montgomery, Alabama, refused to give up her seat on a bus to a white man and was arrested for violating the local segregation law. She was acting as part of a larger strategy: Parks was a longtime member of the NAACP, and she and other female activists in the area had been planning such action for some time. Parks' arrest became a galvanizing force for the Black community's challenge to segregated buses.

Dr. Martin Luther King Jr. and Nonviolent Philosophy

Martin Luther King, Jr. was the new pastor of Montgomery's Dexter Street Baptist Church. King was the son of an Atlanta minister (of Ebenezer Baptist Church) who had embraced the teachings of Gandhi and worked closely with Bayard Rustin to deepen his belief in nonviolence and direct action that Rustin and the Fellowship of Reconciliation used during World War II. King was born Michael King, but his father, upon witnessing the rise of Nazism on a tour of Europe in 1934 and visiting the sites of Martin Luther, renamed himself Martin Luther King and his son as Martin Luther King, Jr. King graduated with a PhD from Boston University in 1955 after attending the Crozer Theological Seminary outside of Philadelphia.

A National Student-Led Sit-In Movement

In 1960, Greensboro, North Carolina is the beginning point of the student-led sit-in movement, which spreads to Nashville, Atlanta, and other major cities, from Dallas to Baltimore.

"Sit-in" means that these student activists would enter a segregated public place—here, a grocery counter—and sit in white-only areas and would remain seated even while white mobs crowded them, threatened, and harassed them, and physical assaulted them. Under the principles of non-violence, this was meant to again expose the violence required to uphold these unjust, unequal laws.

The Student Nonviolent Coordinating Committee (SNCC) played a major role. The Nashville movement, from February 13 to May 10 coordinated by the Nashville Student Movement, with Diane Nash, John Lewis, and Marion Barry among the student leaders. They were violently attacked during the sit-ins but refused to respond and once 150 students were arrested and their head lawyer's home was bombed, thousands of citizens demanded action from Mayor Ben West who finally opted to desegregate the lunch counters in downtown Nashville. As another student leader, James Lawson, later recalled about the success in Nashville, "We decided with great fear and anticipation we would desegregate downtown Nashville. No group of Black people or other people anywhere in the United States in the 20th century, against the rapaciousness of a segregated system, ever thought about desegregating downtown."

The Freedom Riders and Violent Backlash

In 1961, with the sponsoring of CORE (Congress of Racial Equality), the Freedom Ride begins and meets violent resistance in Alabama.

The year before, in 1960, the Supreme Court issued another landmark ruling in [Boynton v. Virginia](#). Following from the ruling in [Morgan v. Virginia](#), the Court ruled that segregation in public interstate travel was illegal because it violated the Interstate Commerce Act of 1887 and bus transportation was sufficiently related to interstate commerce to allow the

federal government to regulate it. Further, the link outlawed racial segregation in the restaurants and waiting rooms in terminals serving buses that crossed state lines.

By 1961, Civil Rights leaders saw that Southern leaders were once again ignoring the Supreme Court's ruling. As a result, they aimed to board interstate buses in the South in mixed racial groups to challenge local laws or customs that enforced segregation in seating. The first riders left Washington D.C. on May 4.

The violent reactions provoked by the Freedom Riders helped to bolster the Civil Rights Movement nationally, as images of white mobs attacking and even firebombing buses while state police stood by and other violence against riders showed the disrespect for the law and local violence used to enforce segregation in the South. Most famously, Bull Connor, the police commissioner of Birmingham, Alabama, worked with KKK supporter police Sergeant Tom Cook to organize violence against the riders once they entered the state along with the Ku Klux Klan. On May 14th, Mother's Day, a mob of Klansmen stopped two buses and attacked the first, slashing the tires and firebombing it. The mob held the door shut, but warning shots from the highway patrolmen backed off the crowd enough for the wounded riders to escape from getting killed or lynched.

The next Sunday, Civil Rights leaders convened at Ralph Abernathy's church in Montgomery, with more than 1,500 people packed in the church, including Dr. King and Fred Shuttlesworth (former head of the Alabama NAACP chapter and the pastor of Bethel Baptist Church in Birmingham, which endure three bombings as well as Shuttlesworth's home), a mob of over 3,000 whites surrounded the church, threatening assault and firebombing with only a few U.S. Marshalls to protect them with state and local cops standing by.

The Civil Rights leaders called President John Kennedy, who threatened to send in federal troops, forcing Alabama Governor John Patterson's hands to end the threat by sending out the national guard to disperse the mob. (Patterson famously said that, "I cannot guarantee protection for this bunch of rabble rousers"). Kennedy himself had been cautious about intervening too much in civil rights—he had yet to deliver on his campaign promise of a civil rights bill, fearing that he would lose the support of powerful southern senators.

The rides continued in other southern states, including Georgia, Mississippi, and North Carolina, with aid from the SNCC. In September 1961 in Jackson, Mississippi, 15 Episcopal Priests, including 3 Black priests, were arrested for "disturbing the peace" for refusing to leave the segregated coffee house. The priests sued under the Civil Rights Act of 1871 for violation of their civil rights. When this reached the Supreme Court in 1967 in [Pierson v. Ray](#), the Supreme Court for the first time held that the police officers were immune from a civil rights lawsuit—the first instance of what is known as "qualified immunity."

The freedom rides continued into December, but Civil Rights leaders now began to set their aims on new civil rights legislation.

University Integration and Violent Opposition

In 1962, James Meredith forces the integration of the University of Mississippi under the protection of federal troops.

Meredith, an Air Force Veteran from Mississippi, upon hearing President Kennedy's inaugural address, decided to apply for the segregated University of Mississippi in order to put pressure on the administration to protect African-American

civil rights. The University denied him twice in 1961, and Meredith sued with the support of the NAACP and Medgar Evers. The Fifth Circuit ruled that Meredith had a right to be admitted to a state school and the Supreme Court upheld that ruling. The lower court then issued an order to the University in September 1962 to admit Meredith.

Meredith ran into Democratic Governor Ross Barnett, who refused to admit Meredith, declaring that he would not allow for integration on his watch, working with the state legislature to charge Meredith with false charges of “voter registration fraud.” Ultimately, Barnett was pressured by President Kennedy to back down, but not without a violent riot first. Over 500 federal troops (border patrol, U.S. marshals, others) accompanied Meredith to register for the university. The riots that broke out with state troops removed forced Kennedy to nationalize the Mississippi National Guard and to use force—two white rioters were killed. But Meredith was ultimately enrolled on October 1st and graduated the following year.

THE PROMINENCE OF DR. MARTIN LUTHER KING JR. AND CIVIL RIGHTS DEMONSTRATIONS

Dr. King’s Momentous “Letter from a Birmingham Jail” Speech

In 1963, most know that thousands of Americans from all over the country joined the March on Washington in August, hearing King’s “I Have a Dream Speech”. But before this happened, Civil Rights leaders, including King, needed to validate their nonviolent direct action by focusing their actions and demonstrations on “the most segregated city in the United States”—Birmingham, Alabama.

In May, thousands of marchers protested employment discrimination in Birmingham’s department stores, while “Bull” Connor, the city’s public safety or police commissioner, ordered the city’s police to meet the marchers with violent force—snarling dogs, cattle prods, high-pressure fire hoses, all caught by television cameras for the evening news. On April 10, Circuit Judge W. A. Jenkins Jr. issued a blanket injunction (a general order) against “parading, demonstrating, boycotting, trespassing and picketing.” Leaders of the campaign announced they would disobey the ruling. King was arrested on April 12th along with fellow Civil Rights movement leaders Ralph Abernathy and Fred Shuttlesworth, and other marchers.

While in jail under brutal conditions, King wrote perhaps his most important distillation of his philosophy of nonviolent direct action, “Letter from Birmingham Jail.”

King said that it was dangerous to treat him and his followers as outside agitators, famously stating that, “Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly ... Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.”

King believed nonviolent direct action brought about “constructive tension.” tension was intended to compel meaningful negotiation with the white power structure, without which true civil rights could never be achieved. King argued that Black leaders drew on experience: “We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.”

King took issue with the notion of inevitable progress towards equal rights. African-Americans had waited and suffered long enough asking protection of their God-given natural and constitutional rights: "Perhaps it is easy for those who have never felt the stinging darts of segregation to say, 'Wait.'"

Henry David Thoreau famously argued for principles of "Civil Disobedience" and ignoring immoral laws. King believes this too, pointing to St. Augustine and Thomas Aquinas, saying, "submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law." According to St. Augustine, there was a moral responsibility to ignore unjust laws, for, "an unjust law is no law at all."

King looked to history as well, both to observe the Biblical story of disobeying the laws of Nebuchadnezzar and that everything Hitler did in Nazi Germany was "legal." Turning to the present situation, King said that segregation laws were immoral and unjust "because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority."

King did not necessarily see the Civil Rights movement as extreme, but rather moderate compared to other similar social movements. Yet, he also recognizes that Jesus and other great reformers in history were extremists—including Martin Luther, Thomas Jefferson, and Abraham Lincoln, as King quotes from the Declaration of Independence and "House Divided" speech. King asked: "So the question is not whether we will be extremists, but what kind of extremists we will be. Will we be extremists for hate or for love?" As he also reminds his audience, oppressed people cannot remain oppressed forever and the "urge for freedom will come eventually."

King also took aim at white moderates and Black nationalists as being dangerous, saying that Elijah Muhammed and his followers wrongly treated whites as the devil and rejected Christianity. To white moderates, King wrote that, "I should have realized that few members of a race that has oppressed another race can understand or appreciate the deep groans and passionate yearnings of those that have been oppressed, and still fewer have the vision to see that injustice must be rooted out by strong, persistent, and determined action." These moderates, King felt, impeded the path towards justice and freedom by not recognizing the righteous cause of the Civil Rights movement.

Finally, King argued that Americans had a moral choice to make—they could "preserve the evil system of segregation" or take the side of "those great wells of democracy. . . the Constitution and the Declaration of Independence." Like Frederick Douglass the century before, King both used the founding documents as a source of inspiration and aspiration but also a challenge to the nation who had not lived up to the promise of freedom in the Declaration and Constitution.

March on Washington and Dr. King's "I Have a Dream" Speech

President Kennedy, embarrassed by the arrest of King and the other Civil Rights leaders and the violence caught by the media, on June 11, after Alabama Governor George Wallace barred two Black students from the state university, Kennedy gave a TV address denouncing racism and promising a new civil rights bill. Civil Rights leaders called this the "Second Emancipation Proclamation." Meanwhile, the killing of Medgar Evers, president of the Mississippi NAACP chapter, by a white supremacist spurred the need for more action.

To marshal national support for Kennedy's bill, civil rights leaders took advantage of an already planned event in August first proposed by A. Philip Randolph in 1941 and revived by Randolph and Bayard Rustin at the beginning of the year. The "March on Washington" was meant to mark the centennial of the Emancipation Proclamation and under Randolph and Rustin's leadership, thousands of volunteers coordinated carpools, freedom buses, and freedom trains across the country.

On August 28, 1963, at the Lincoln Memorial, 250,000 people came for the "March on Washington for Jobs and Freedom." While Randolph and Rustin planned the event, King was the public face and his "I Have a Dream Speech" captured the public imagination.

King again harkened back to the founding documents and the Emancipation Proclamation, calling for an end to justice, patterning himself after Lincoln's "Gettysburg Address:" "Five score years ago, a great American (Lincoln), in whose symbolic shadow we stand today, signed the Emancipation Proclamation. This momentous decree came as a great beacon light of hope to millions of Negro slaves who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of their captivity. But one hundred years later, the Negro still is not free. One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languishing in the corners of American society and finds himself an exile in his own land. So we have come here today to dramatize a shameful condition. In a sense we have come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, Black men as well as white men, would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness. It is obvious today that America has defaulted on this promissory note insofar as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked 'insufficient funds.' But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. So, we have come to cash this check — a check that will give us upon demand the riches of freedom and the security of justice."

John Lewis, still a SNCC member, planned to give a more provocative speech, saying that the time "will come when we will not confine our marching to Washington" but would "march through the South, through the Heart of Dixie, the way Sherman did" and he planned to warn that they would "fragment the South into a thousand pieces and put them back together again in the image of democracy." But worried that the speech would alienate white supporters and derail the push for the Civil Rights Act, Rustin and the others got Lewis to deliver a more conciliatory speech. Yet, after the victories for national legislation in 1964 and 1965, a rift was emerging in the movement between Black nationalists and the nonviolent direct action movement.

While the March influenced public opinion, it did not change enough congressional votes—Georgia Senator Richard Russell led the opposition and refused to support any bill bringing about "social equality and intermingling and amalgamation of the races." Violence continued in the South, with white supremacists bombing a Baptist church in Birmingham in September, killing four Black girls in Sunday school, while Kennedy himself was killed on November 22.

Right here outside of Philadelphia in Chester County, the "Chester School Protests" took place between November 1963 and April 1964. Civil Rights leader James Farmer called it the "Birmingham of the North."

The demonstrations against de facto segregation even after *Brown* were led by the NAACP local leadership and Stanley Branche of the Committee for Freedom Now. Demonstrations were marked by violence and police brutality, as city workers were deputized as part of the force to put down the protests (as well as 50 state troopers). Ultimately, the state Human Relations Committee determined the city school board had violated the law and ordered the six mostly African-American schools to be desegregated.

CIVIL RIGHTS LAWS IN THE ERA OF PRESIDENT LYNDON B. JOHNSON

Upon becoming president, Lyndon Johnson promised to pass the civil rights bill, using his reputation as a former Senate majority leader and tough political bargainer to overcome the filibuster.

1964 Civil Rights Act

This legislation passed on July 2, 1964 after a 54-day filibuster by a 73-27 vote in the Senate.

- **Title II**

Title II banned discrimination based on race, color, religion, or national origin in hotels, motels, restaurants, theaters, and all other public accommodations engaged in interstate commerce.

Upheld by the Supreme Court the same year in [Heart of Atlanta Motel, Inc. v. U.S.](#) (1964) and [Katzenbach v. McClung](#) (1964). The larger story here is that a decade after *Brown*, with the constant efforts of the Civil Rights movement despite violent and persistent resistance, the branches of the Federal government joined the fight and returned to the promise of the Reconstruction amendments, using the enforcement powers given to Congress with the Supreme Court consistently upholding Congress's actions.

In *Heart of Atlanta*, the Court upheld Title II, prohibiting discrimination in public accommodations, as constitutional as an exercise of Congress's "Commerce" power. *Heart of Atlanta* was a 216-room hotel that refused to rent to African-Americans, in violation of the act. The owner, Moreton Rolleston, argued that people are not commerce themselves, that Due Process protected a property owner's right to choose who to do business with, and that forcing him to rent rooms to African-Americans was a form of "involuntary servitude" banned by the [Thirteenth Amendment](#).

The Court, with Justice Clark writing (and no dissents), observed that most of the hotel's business came from out-of-state and major highways, like I-75 and I-85. The Thirteenth Amendment arguments were dismissed as meritless.

In [Katzenbach v. McClung](#), the Court upheld another section of the act banning racial discrimination in restaurants because it also burdened interstate commerce. Here, Ollie's Barbeque was a Birmingham, Alabama restaurant seating 220 customers located on a state highway only 11 blocks from the interstate. The owner, Ollie McClung, argued that his business was too small, and he purchased so little food that crossed state lines that his business' effect on interstate commerce was too minimal to allow Congress to regulate it.

With Justice Clark writing for the Court again, they agreed with McClung that his business had little effect on interstate commerce. However, they found that in the aggregate, racial discrimination in restaurant did have a significant effect on interstate commerce. Clark concluded that such discrimination had a "direct and highly restrictive effect upon interstate travel by Negroes."

Under the aggregation principle of [Wickard v. Filburn \(1942\)](#) (and going back to [Gibbons v. Ogden \(1824\)](#), the landmark Marshall Court decision of 1824), Congress could regulate intrastate commerce (purely within a state) if it had aggregate (that is, put together on the whole) effect on interstate commerce.

- **Title III**

Title III prohibited state and municipal governments from denying access to public facilities on grounds of race, color, religion, or national origin.

- **Title IV**

Title IV applied the same restrictions to public schools, importantly granting the Attorney General to file suits to enforce the act.

- **Title V**

Title V expanded the Civil Rights Commission created by the Civil Rights Act of 1957 with expanded powers and new procedures.

- **Title VI**

Title VII of the act outlawed discrimination in employment on the basis of race, religion, national origin, and sex. (Equal Employment Opportunity) This continues to be a key basis for employment rights and was the basis for the Supreme Court's recent decision in *Bostock* extending the word "sex" to also protect against discrimination against transgender employees.

The SNCC and other groups organize the "Freedom Summer" strategy to register Black voters throughout the South.

24th Amendment

The [24th Amendment](#) states: "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax." Congress was given power to enforce these rights.

Ratified on January 23, 1964, proposed in August 1962. At this time, five states still had poll taxes—Mississippi, Texas, Virginia, Arkansas, Alabama. The Supreme Court in [Breedlove v. Suttles \(1937\)](#) had upheld the power of states to pass poll taxes. The amendment was first suggested by the Commission on Civil Rights established by President Truman in December 1946 by Executive Order, but little traction was gained on it in the 1950s. It was President Kennedy who returned to it, getting a conservative Democrat, Spessard Holland of Florida, to introduce the amendment.

In 1966, the Supreme Court ruled in [Harper v. Virginia Board of Elections \(1966\)](#) that any poll tax, not just those in federal elections, was unconstitutional.

Freedom Summer

The Civil Rights Act may have had real teeth and while Title I banned the unequal application of voter requirements, it did not ban poll taxes and other obstacles to Black voting. Thus, "Freedom Summer" was designed by Black organizations to be a major campaign in Mississippi to register voters with efforts of thousands of volunteers across the country.

With leadership from SNCC activist Robert Moses, the four majority civil rights organizations SNCC, CORE, NAACP and SCLC spread out across the state to establish freedom schools for Black children and conduct a major voter registration drive. Yet the opposition was so strong that only 1200 Black voters were registered while three civil rights workers (working with CORE to register voters) were murdered in Mississippi (as dramatized by “Mississippi Burning,” the murders were committed by KKK members, including a local deputy sheriff and the search for the bodies by the FBI took two months and the aid of 400 Navy sailors) and 37 Black churches burned or bombed.

The murders pushed the Mississippi Freedom Democratic Party, founded that year, to attend the 1964 Democratic National Convention, even though they were banned by the “whites only” Mississippi Democratic Party. Led by Fannie Lou Hamer, a former sharecropper who went on to co-found the National Women’s Political Caucus in 1971, Hamer asked “Is this America?” Hamer demanded that the MFDP be recognized by the convention, but Democratic leaders refused. The disappointed Robert Moses said, “I will have nothing to do with the political system any longer.”

Voting Rights Act of 1965

The story of the [Voting Rights Act](#) of 1965 begins with “Bloody Sunday”. King and the SCLC (Southern Christian Leadership Conference) who remained committed and thought another confrontation with southern injustice could provoke more necessary congressional action.

In March, James Bevel of the SCLC called for a march from Selma to the state capital of Montgomery to protest the murder of a voting rights activist. As soon as the six hundred marchers left Selma and crossed the Edmund Pettus Bridge, mounted state troopers assaulted them, using tear gas and clubs. Once more, the scene was caught by national television cameras and became known as “Bloody Sunday”—an “American tragedy,” according to President Johnson.

The Voting Rights Act of 1965 was signed by Johnson on August 6, outlawing literacy tests and other devices which prevented African-Americans from registering to vote and authorizing the attorney general to send federal examiners to register voters in any county where registration was less than 50%. The results were monumental. In 1960, only 20% of Black citizens were registered to vote and by 1971, the number had risen to 62%, while Black elected officials quadrupled from 1,400 to 4,900 between 1970 and 1980 and doubling again by the early 1990s.

As with the Civil Rights Act of 1964, the Supreme Court quickly upheld the Voting Rights Act as constitutional under the Fourteenth and Fifteenth Amendments.

In [South Carolina v. Katzenbach \(1966\)](#), the pre-clearance requirements of the act, which required states to change their voting systems if the state used literacy tests and if the voter turnout or registration was less than fifty percent by November 1, 1964.

In an 8-1 decision, Chief Justice Earl Warren upheld the act under [the Fifteenth Amendment’s “Enforcement Clause,”](#) which gave Congress full power to stop racial discrimination in voting. Further, he found that history showed the Fifteenth Amendment by itself insufficient to end such discrimination and Congress needed more than a case-by-case response to discrimination. As he said, “After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims.”

The sole dissenter, Justice Black, argued that Section V, the preclearance requirements, violated federalism by forcing states to get the approval of the federal government anytime it wishes to amend its laws.

In [Katzenbach v. Morgan](#), another 1966 case, the Court upheld Section IV of the act (specifically, Section 4(e) which sought to enfranchise New York's Puerto Rican population by making disenfranchisement illegal if based on the inability to read or write English), which banned some literacy tests, as a valid measure under Section V of the [Fourteenth Amendment \(the "Enforcement Clause"\)](#).

In a 7-2 decision, Justice Brennan applied another landmark Marshall Court case, [McCulloch v. Maryland \(1819\)](#), to show that the "Enforcement Clause" gave Congress a positive grant of power and Congress alone got to choose the appropriate means and purposes for carrying out that power. Brennan put forth the "ratchet theory," suggesting that Congress could "ratchet up" or enforce civil rights beyond what the Court had already protected, but not below. Justice Harlan, dissenting, argued that such a theory of Congressional power was a separation of powers issue because it took away power properly granted to the Courts and because the "Enforcement Clause" was not a power to create new rights, but to enforce existing rights.

THE CONTINUED FIGHT FOR CIVIL RIGHTS

Dr. King's "The American Dream" Speech

On July 4, 1965, King gives another notable speech, "The American Dream." King argued that the American dream, based on those famous words in the Declaration of "life, liberty, and the pursuit of happiness" was a dream of "amazing universalism" because it said: "all men."

He went on to say that the "dream goes on to say another thing that ultimately distinguishes our nation and our form of government from any totalitarian system in the world. It says that each of us has certain basic rights that are neither derived from or conferred by the state. In order to discover where they came from, it is necessary to move back behind the dim mist of eternity. They are God-given, gifts from His hands. Never before in the history of the world has a sociopolitical document expressed in such profound, eloquent, and unequivocal language the dignity and the worth of human personality. The American dream reminds us, and we should think about it anew on this Independence Day, that every man is an heir of the legacy of dignity and worth."

King also criticized America for having a "schizophrenic personality, tragically divided against herself" and that "we have proudly professed the great principles of democracy, but on the other hand we have sadly practiced the very opposite of those principles." King himself would be assassinated on April 4, 1968 while leading a strike of Black city sanitation workers.

Ongoing Civil Rights Issues

The 1960s would not be the end of either monumental legislation or major Supreme Court cases concerning the fight for equality and civil rights. That battle continues through today.

The 1968 Civil Rights Act passed after King's death added "hate crimes" to the federal law, passed the "Fair Housing Act" created the department of Housing and Urban Development (H.U.D.) and forbade discrimination in the buying, selling, renting and exercise of housing rights, and including the "Anti-Riot Act," which forbade the incitement of riots across state lines.

By the mid 1960s, the Civil Rights movement was splintering—and cracks were seen earlier in the tension between the SNCC and the SCLC. The rise of Black Nationalism and Black Power, led by Stokely Carmichael, an alumnus of SNCC, and following the example of Malcolm X and Marcus Garvey before him (who led the separatist African movement in the

1920s) and the subsequent rise of the Black Panthers. The question at the heart of this split was one that existed between Garvey and W.E.B. DuBois—whether integration and mutual respect was the route to greater freedom or permanent separation.

Desegregation of schools is a persistent issue as well, into the 1970s crisis of busing (the forced busing of students to integrated schools) and the continued desegregation of schools throughout the South into the 1980s. Yet, inequality in education and segregation in schools remains an issue today as well.

Voting rights remains a core constitutional issue for civil rights leaders. In 2013, the Supreme Court partially struck down Section V of the Voting Rights Act of 1965 in [Shelby County v. Holder](#)—the “preclearance” requirements, because the coverage formula being used was over 40 years old and had not been updated to reflect current needs, making it an unconstitutional restriction on state power. That decision remains contested and the push for additional voting rights measures from Congress remains current.

Criminal justice, which was at the heart of many of the Civil Rights battles in the 1950s and 1960s, remains part of the debate today. Read Kings full speech you were see references to police violence and parts that sound like they could be read today.

When we study this period, we give the thousands of people who fought to change rights in America respect for the blood they shed for all of our freedoms, but we must also understand that we can hear these same cries for freedom and change in the 1700s, 1800s, 1900s, and today. We must always remember that may “the arch of a moral universe bends towards justice” it only bends that way because of the constant and strong hand of WE the People pulling at it.

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