

Session II

Democracy's Development in America

[This overview is based largely on *The Rise of American Democracy: Jefferson to Lincoln* (2006) by Sean Wilentz, *The Second Founding* (2019) by Eric Foner, as well as on Dunn's *Setting the People Free*.]

The Early Republic

Elements of democracy existed in the infant American republic of the 1780s, but the republic was not democratic. The best measure of the widening and deepening of democracy during the nation's early history is the ever-increasing number of white men who were granted the right to vote and hold office. Conversely, the lengthy period of time in which the suffrage was denied to women, Black men, and the people of the First Nations shows that the expansion of American democracy, though steady, was highly selective.

Colonial charters imposed property qualifications for voting, usually requiring a voter to own real estate that was free and clear of any contingencies ("landed freeholds"). In newly settle areas where land was cheap, anywhere from 70% to 80% of white adult men could meet this requirement. In contrast, in older rural areas and in coastal towns and nascent cities, the percentage was as little as 40%. The major pre-Revolution advances of democracy took place in the lower houses of colonial legislature which allowed small farmers, artisans, local merchants, and others to vote for representatives.

Class and Cultural Divides

By the time of the Revolution, society in the thirteen colonies had developed two distinct political cultures.

Country Democracy:

Country Democracy was composed of farmers living near cities or river towns who could sell some of their crops commercially, plus hardscrabble settlers living beyond the frontier line who subsisted primarily on the produce of their own farms and what they could barter with neighbors. During the Revolution the households of ordinary farmers furnished the bulk of manpower and supplies used to fight the British and, consequently, ordinary farmers were able to exert heightened political leverage on the new Revolutionary governments, which they hadn't been able to do under colonial rule. Country Democrats lived far from commercial contacts and distrusted public projects as not in their interest. Far more isolated than their urban counterparts, they felt distanced from government and, when frustrated, turned more quickly to violence.

City Democracy

Mastery of abstract ideas and complex manual arts was as important for City Democrats as land was for Country Democrats. Mostly seaport dwellers, City Democrats were artisans and laborers connected to commerce, open to banking, and in favor of internal improvements. Cities were more diverse than the country, containing a greater variety of religionists: traditional Protestants, “Enlightenment” Protestants, deists, Jews, Catholics, as well as atheists. In addition to being religiously diverse, seaboard cities were also home to substantial numbers of people who were not from the British Isles and did not speak English.

Both Country and City Democrats were wary of political operations dominated by the well-connected gentry and merchants whom they viewed as nonproductive. They considered government’s chief function to be the promotion of personal independence and equal access to opportunity. Under the influence of the British constitutional system, the colonial elite believed that men who lacked economic independence also lacked a “will of their own” and could be bribed by the unscrupulous or tempted to plunder the rich. But despite the elite’s distrust of “the people”, by the mid-1780s the lower legislative houses of the Confederation’s thirteen states contained many more farmers, artisans, and men of middling wealth than did the preceding colonial legislatures.

The Constitution

Most wealthy and educated Americans had internalized the aristocratic class biases of English society. But winning a war, proclaiming “all men are created equal”, changed the outlook of many of those who were delegates to the Constitutional Convention and they struggled to strike the right balance between democracy and aristocracy.

Alexander Hamilton and Gouverneur Morris admired the English limited monarchy and proposed a government where a natural aristocracy of the rich and wellborn would dominate. Madison, the Constitution’s principal author, was of a different view. A patrician who was fiercely opposed to direct democracy, but believed strongly in representative democracy, he helped design the new government so that it did not align directly with the upper classes, yet contained features that served to “filter”, rather than eliminate, the political power of the lower classes. The result was a federation with built-in restraints on the direct influence of the people:

1. A Senate whose members were elected by the state legislatures, not directly by the people
2. A president chosen by an Electoral College whose members were chosen by the states, not directly by the people
3. A Supreme Court whose Justices were appointed for life by the indirectly elected president, with the advice and consent of the indirectly elected Senate.

The House of Representative was the only institution of the new government whose members were elected directly by the people.

Ratification

In the ratification process, a clash quickly developed between supporters of the proposed constitution (“Federalists”) and those who thought it would create an overly powerful central government (“Anti-Federalists”) and this divergence soon led to the creation of nation’s first political parties. The conflict reflected in part the divide between Country Democracy and City Democracy, with rural democrats opposed to what they saw as aristocratic aspects of the Constitution (the Senate, the Presidency) and urban democrats supportive of a stronger central government.

The Gradual Establishment of Universal White Male Suffrage

The Founders were predominantly rich and well educated and the Constitution they created favored their stratum of society. But as democracy advanced through the removal of barriers to voting, the political structure necessary to enforce class biases weakened and a more egalitarian ethos developed. The broadening of the suffrage was and continues to be the most significant indicator of the growth of American democracy.

“After the adoption of the federal constitution, the extension of the right of Suffrage in all the states to the majority the adult male citizens, planted a germ which has gradually evolved, and has spread actual and practical democracy and political equality over the whole union.” Thomas Jefferson

As of 1790, more than 50% of the 13 states had retained the freehold qualification for voting, substantially limiting white manhood suffrage. But by the end of 1821, twenty-one out of 24 states had essentially decoupled the right to vote from property-holding, although Virginia and North Carolina still had significant property restrictions and South Carolina had an extreme property requirement for office-holding, which bolstered the slaveholding elite. In 1830, Mississippi and Alabama adopted universal white manhood suffrage. In 1835 North Carolina allowed all white male taxpayers over 21 to vote for governor and Tennessee dropped its minimal residency requirement for adult white males. Between 1838 and 1845 Florida, Iowa, Louisiana, Texas, and Wisconsin adopted universal adult white male suffrage and in 1851 Virginia eliminated property requirements for voting, established popular election of the governor, and apportioned its lower house more fairly.

Voter Participation

Democracy, as measured by the number of eligible citizens voting, grew during Jefferson’s presidency. The percentage of eligible white males who voted reached 70% by 1808 in Massachusetts, New Jersey, and Pennsylvania and 80% in parts of North Carolina.

Electoral College

In 1804, Pennsylvania adopted direct election of presidential electors and by 1824 only six states still had legislatures do the choosing. By 1828, voters chose presidential electors in all but two states.

Women's Rights

Under the doctrine of "coverture", a legacy from English common law, a married woman's legal rights and obligations were subsumed by those of her husband. As a result, a married woman could not own property, sign legal documents, enter into a contract, obtain an education against her husband's wishes, or keep anything that she earned for herself. Frequently, a wife was absolved of liability for her own illegal actions, since it was assumed that she was acting under the orders of her husband rather than on her own account. Based on the legal fiction that a husband and wife are one person, coverture, as Justice Hugo Black wrote in his dissent in *United States v. Yazel* (1965): "worked out in reality to mean that though the husband and wife are one, the one is the husband." In contrast to wives, unmarried women had the right to own property and make contracts in their own name.

The profound patriarchal outlook exemplified by the doctrine of coverture made female suffrage almost an impossibility in the early history of the United States. Only in New Jersey, which granted the suffrage to "all inhabitants" in 1776, could women vote, and that right was eliminated in 1807. But from the late 19th Century into the early 20th, many states passed Married Women's Property Acts to eliminate or reduce the effects of coverture. However, women did not get the right to vote on a national basis until 1920 with the ratification of the Nineteenth Amendment. And in some states, certain aspects of the coverture doctrine, mainly those concerned with preventing a wife from unilaterally incurring debts for which her husband would be liable, survived into the 1960s.

Native Americans

Under the constitution, Native Americans were considered to belong to separate sovereign nations. Treated by European settlers as interlopers in their own land, the First Nations, were pushed inexorably westward and almost annihilated by disease, wars of aggression, and broken treaties. Although members of some tribes had become citizens as early as 1817, it was not until the passage of the Indian Citizenship Act of 1924, that citizenship was granted to them across the board. Citizens or not, however, many states still did not allow Native Americans to vote, and it took a 1948 Supreme Court decision to extend the franchise to all Native Americans.

Slavery / Black Voting Rights

Although the freehold requirement limited the number of qualified voters, as of 1790 free Black men could vote on equal terms with whites in New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland,

and North Carolina. But they were barred from voting in Virginia, South Carolina, and Georgia. In 1792, Black men could vote in Kentucky and by 1834, in Tennessee.

By 1804, all the states north of the Mason-Dixon Line had taken some steps to eventually eliminate slavery. But, to neutralize the increasing number of emancipated slaves who were able to vote, Connecticut, Delaware, Maryland, New Jersey, and New York disenfranchised Blacks. In 1816 Indiana banned both slavery and Black voting and in 1818 Illinois followed suit. In 1834, Tennessee adopted universal white male suffrage and, at the same time, eliminated the right of free Blacks to vote and, in 1835, North Carolina did the same. Finally, in 1838, Pennsylvania eliminated voting rights for Black men.

State legislatures appeared to view expanding the franchise as a zero-sum exercise where granting the right to vote to more white men necessarily entailed limiting or eliminating the voting rights of Black men. By 1848, in only five Northern states did Black men have the same right to vote as white men

Political Parties: Federalists and Democratic Republicans

Although the Federalist / Anti-Federalist conflict had come into sharp focus during the debates over the constitution, it was not a significant factor in the first presidential election where Washington was elected unanimously. And during Washington's first term the antagonism between Federalist Secretary of the Treasury Alexander Hamilton and Anti-Federalist Secretary of State Thomas Jefferson simmered but did not boil over. But after Washington was again elected unanimously in 1792, the differences between Hamilton and Jefferson, burst into the open and Jefferson ultimately resigned as Secretary of State.

By the time the third presidential election was held in 1796, the Federalists and the Anti-Federalists, who had since adopted the name Democratic Republicans, ran as members of distinct political parties. Federalist John Adams eked out a three-electoral-vote victory over Thomas Jefferson and, under the pre-Twelfth Amendment Constitution, Jefferson became Adams' Vice President. Adams, probably the least affluent of the Founders, was nevertheless an avowed elitist who epitomized the viewpoint of his fellow Federalists when he said that "[Most citizens were] unqualified for the management of affairs requiring intelligence above the common level." Accordingly, he viewed with dismay the continued expansion of the right to vote, presciently anticipating that the loosening of voting requirements would mean "new claims would arise; women will demand the vote; lads from twelve to twenty-one will think their claims not closely attended to; and every man who has not a farthing will demand an equal voice with any other, in all acts of state."

When Adams entered office, the ongoing war between France and Great Britain was causing great difficulties for American merchant shipping on the high seas and arousing intense animosity between the Federalists who were pro-British and Democratic-Republicans who were pro-French. In response to the sometimes-violent partisan

turmoil, Adams signed into law four bills, collectively known as the Alien and Sedition Acts. The Democratic-Republicans fiercely opposed these laws and the condescending, elitist attitude of the Federalists. They attacked the Adams Administration and fought for the proposition that in a republic, as Madison put it, “the power is in the people over the Government and not in the Government over the people.”

Jefferson

In the election campaign of 1800, Democratic-Republicans denounced the power of the rich and well-born, expressly addressing the class issue and, after the ballots were counted, Democratic Republicans Jefferson and Aaron Burr won 73 electoral votes each, while Adams came in third, with 65 votes. As a result of the tie, the election was decided in the House of Representatives where, after 35 ballots, Hamilton who disliked Jefferson, but hated Burr, convinced some Federalists to switch their votes and Jefferson was elected president.

On becoming President, Jefferson staffed the upper branches of federal civil service with men outside the clusters of wealthy families that Adams and the Federalists favored, stopped all prosecutions and sentences under the Sedition Acts and had Congress repeal most of the Alien Laws. Republicanism during Jefferson’s presidency repudiated Federalist contempt for the common man and tore down the barriers to his participation in politics. On the state and local level, Democratic-Republicans advocated profound changes in the legal system such as jury nullification, election of judges, and abolishing common law. They also backed free public schools

From 1798 to 1808 the Democratic-Republicans built state and county political machines, which boosted the number of people who voted and the percentage voting for the Democratic-Republicans, while the Federalists were far less active at this type of organizing. By 1815, Jeffersonian democracy had become the nation’s preeminent political power - - the proportion of the male population eligible to vote had grown as had the proportion of eligible voters who actually voted. The War of 1812, which led the Federalists of New England to threaten secession, helped destroy the already moribund Federalist Party.

Jackson

After losing to John Quincy Adams in the 1824 election, which was decided in the House of Representatives, Andrew Jackson defeated the incumbent president in 1828. Jackson, the first president from the West, was of rough Scots Irish descent and the antithesis of the refined and scholarly Adams.

By 1828, the Federalist Party (whose only president had been John Adams) had collapsed and its historical rival, the Democratic-Republican Party had split into the Democrats and the National Republicans. The campaign in 1828 may have been the dirtiest in the nation’s history. Jackson, the Democrat, was accused of being a bigamist and a murderer whose father was a mulatto, mother a prostitute, and wife an adulteress. In turn, National Republican Adams, who had served as American

Ambassador to Russia, was accused of having been a pimp for the Tsar and spending public monies to furnish the White House. And Henry Clay, the Speaker of the House in 1824 who Jackson claimed had delivered that election to Adams as the result of a “corrupt bargain”, was accused of being an embezzler, a gambler, and a frequent patron of brothels.

Beyond the personal invective, the candidates had fundamentally different ideas about how representative democracy should work. Adams believed that elected officials should do what they consider best for the country, not necessarily what their electors wanted them to do. This approach reflected the English rejection of “mandates”, allowing members of Parliament to use their own judgment and disregard the wishes of their constituents. In contrast, Jackson thought it was the essence of democracy for government officials to follow the will of those who elected them.

By 1828, voters had the power to choose presidential electors in all states but Delaware and South Carolina. Taking advantage of this sea change, Jackson created a political machine that established numerous pro-Jackson newspapers - - including an official Jackson newspaper in each state - - pioneered campaign fundraising with five-dollar-a-plate public banquets and other ticketed events, raised big money from bankers and businessmen in the larger cities, revolutionized political campaigning with mass participation in parades and rallies, and held straw votes at grand jury meetings and militia musters, a primitive form of polling.

The campaign focused most obviously and negatively on the character of the candidates, but underlying the attention paid to the personalities of the nominees was a more basic concern with the character and biases of each parties' voters. The educated, prosperous elite who were the bedrock of the National Republican Party, were scornful of the “lower classes” and resented their growing power. In turn, the newly enfranchised voters of the West, South, and the Eastern cities, mostly farmers and laborers, the backbone of the Democratic Party, distrusted the “upper classes”, whom they accused of being anti-democratic - - using their wealth to secretly influence public policy for their own benefit. In the voting, which began in September and ended in November, Jackson crushed Adams, garnering 178 electoral votes and 55.5% of the popular vote to Adams's 83 electoral votes and 44% of the popular vote. The election marked a dramatic expansion of the electorate, with 9.5% of Americans casting a vote for president, compared with 3.4% just four years earlier.

In 1832, the election revolved around the Second Bank of the United States (“BUS”). Chartered in 1816 during the Madison Administration and modeled on Alexander Hamilton's First Bank of the United States, BUS was private corporation that handled all fiscal transactions for the U.S. Government and was accountable to Congress and the U.S. Treasury. Twenty percent of the bank's capital was owned by the federal government and the bulk of the remaining 80% was held by a few hundred wealthy Americans. In July in the midst of the campaign, Jackson, who disliked banks and paper money in general, vetoed the renewal of the BUS charter and withdrew federal deposits

from the bank. Henry Clay, the National Republican candidate, strongly attacked Jackson on this issue, but when the votes were counted, Jackson had swept the country, including Pennsylvania, where BUS was headquartered. In an Electoral College landslide, Jackson received 219 electoral votes to Clay's 49.

Contributing significantly to Jackson's victory was the politically brilliant message that accompanied his veto of the Bank Bill:

Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth cannot be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial distinctions, to grant titles, gratuities, and exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society the farmers, mechanics, and laborers who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government. . . .

Jackson profoundly influenced American democracy both as president and as party leader where he transformed the nominating process itself. Presidential candidates had traditionally been picked by Congressional caucuses composed of each state's Senators and Representatives. In place of such caucuses, the Jacksonians substituted a national network of committees reaching up from the ward and township level to the quadrennial national convention. At each level, at least in principle, the popular will was ascertained and ratified. And, as noted above, Jackson's Democratic Party also revolutionized political campaigning.

Jackson democracy was chiefly a political movement for, and largely supported by, those who considered themselves producers pitted against what they viewed as the non-producer elite. His party's friendliness to labor was coupled with an increased wariness of the corrupting power of bankers, speculators, and wealthy business owners and a great receptivity to the view that if any classes of the community deserved the favor of the government, they were the farmers, mechanics, and other hardworking men. The Jacksonians made this way of thinking serve, at least until recently, as the basic credo of American liberal democracy.

Although Jefferson was an effective, democratically minded president, Jackson transformed the office and made it the focus of national leadership based on boldly democratic premises unavailable to Jefferson. From the mid-1790s to 1815, voting for president lagged behind voting for state and local offices. But in 1828, the turnout for the presidential election doubled to 56% and in 1840 it jumped to 80% a level that was maintained for the rest of the 19th Century.

The Whig Party - - Reaction to Jackson

The Democrat's overwhelming triumph in the 1832 election, spurred the formation of the Whig Party, an anti-Jackson political organization comprised of the followers of ex-president John Quincy Adams (the National Republicans), the remains of the Anti-Masonic Party, anti-Jackson elements of the Democratic Party, and a few left-over Federalists.

Whigs considered Jackson a demagogue and condemned the Democrats for playing the politics of class and becoming a party of the poor and ignorant that vilified "the rich and intelligent" as "aristocrats". The *Richmond Whig* accused the Jacksonians of destroying the political system created by the Founding Fathers and agonized that "the Republic has degenerated into a Democracy."

Whigs favored paper money issued by privately-owned banks and were comfortable with the boom-and-bust economy that resulted. And where Jacksonians blamed the periodic economic "panics" on the malign influence of banks and the inequity of the country's economic structure, Whigs, reflecting a strain of Calvinistic moralism, encouraged voters to understand economic success and failure in cultural ways - - poverty was the result of personal moral failure, not the fault of the economic system.

The Whigs argued that because America had an abundance of land and wealth, a shortage of free labor, no hereditary aristocracy, and a propertied class that had remained secure despite the poor having political power, U.S. society, if not totally classless, was one in which the interest of the moneyed class and the laboring class were identical. The Whigs proclaimed what was good for the wealthy was good for those trying to become wealthy and denounced the Jacksonians as ignoramuses for believing that class divisions actually existed and for failing to comprehend the unique genius of the country's egalitarian economy.

However, the Whigs' depiction of a classless and harmonious U.S. society was continually confronted with the reality that some citizens were better off than others, and that crime, pauperism, and drunkenness were getting worse despite rapid economic development. Strongly influenced by the Second Great Awakening's emphasis on individual agency, which was being preached in pulpits and at revival meetings throughout the land, the Whigs' response to these pathologies was to deny that they were attributable to social inequalities, an unfair economy, or institutional corruption (except for Democratic corruption) but were, instead, the result of individual moral failure. The Whig credo attracted both businessmen who extolled the "self-made man" and sincerely religious individuals who wanted to help those, like battered wives and abused Black people, whom they believed were victims of wicked people rather than of invidious class prejudices. In contrast, Jacksonian Democrats saw in America an economy that was inequitable and a society that was class-ridden.

Prelude to the Civil War

In 1846, the House of Representatives passed the Wilmot Proviso, which provided that "neither slavery nor involuntary servitude shall ever exist" in any territories acquired from Mexico as a result of the Mexican American War. The House vote on the proviso fractured both the Whig Party and the Democratic Party into Northern and Southern segments. Every Southern Whig and Democrat opposed it. Every Northern Whig and

fifty-two out of fifty-six Northern Democrats supported it. The Proviso failed to gain Senate approval.

In 1848, the Free Soil Party was founded with the slogan: “Free Trade, Free Labor, Free Soil, Free Speech, and Free Men.” Its election platform backed the federal government relieving “itself of all responsibility for the existence and continuance of slavery” and endorsed the abolition of slavery in the District of Columbia and the U.S. territories. Its nominee for president received only 10% of the vote.

In the decade preceding the Civil War, the South increasingly denounced Northern democracy as irresponsible and ruinous to the country. For its part, the North characterized government in the slave states as a perversion of democracy that was destroying the country. And although not particularly effective in returning runaway slaves, the Fugitive Slave Act of 1850, by denying jury trials to runaway slaves and seeking to force Northerners to form slave patrols, did succeed in increasing public sentiment in favor of abolition.

Southern systems of voting and political representation allowed wealthy slaveholders to dominate the courts, governorships, and legislatures throughout the slaveholding states. Antislavery leaders accused the South, with some justice, of being governed by an undemocratic oligopoly that numbered no more than 300,000 rich slave owners in a total human population of 9.1 million (of whom 3.5 million were slaves). In contrast, power was more widely dispersed in the North, where ordinary farmers, artisans, and laborers not only voted but held governmental offices. Southern politics could not tolerate any criticism of slavery for fear of destabilizing the system, while Northerners were far freer to write and say what they wanted about political subjects.

Dred Scott Decision

In 1846, two slaves living in Missouri, Dred Scott and his wife Harriet, sued their owner for false imprisonment claiming that their previous residency in Illinois and Wisconsin had automatically emancipated them. In 1857, the case came before the Supreme Court which ruled 7-2 against the Scotts. In the majority opinion, Chief Justice Taney wrote that “negroes of the African race had been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and *so far inferior, that they had no rights which the white man was bound to respect.*” (Emphasis supplied.) The decision was met with outrage in the North and jubilation in the South.

As antislavery sentiment became more widespread in the North, politicians in the South began to argue that slavery created an economy, society, and government that were superior to those of the crass and cutthroat North. Southerners asserted slavery was a benevolent, Christian institution which uplifted the slaves from the barbarism of their African ancestors, while the Yankees, in their ignorant, antislavery mania, were determined to destroy all order, grace, and social stability. To defend slavery, the epitome of inequality, the South began to characterize democracy itself as dangerously egalitarian. Virginian George Fitzhugh, taking direct aim at Jeffersonian democracy, declared, “Men are not entitled to equal rights” and then, turning the motto of the 17th

Century English Levellers on its head, went on the say, “some [men] were born with a saddle on their backs, and others booted and spurred to ride them. . .”

Lincoln

In the 1858 Illinois campaign for U.S. Senator, the debates between Democrat Stephen Douglas and Republican Abraham Lincoln captured the attention of the American public and propelled Lincoln to national prominence. The focus of all seven debates was on slavery with Lincoln arguing slavery was wrong and its extension to the states and territories of the United States should not be allowed. He did not advocate abolition and made it clear that he would not seek to outlaw slavery in the states where it already existed. Douglas argued in favor of letting the inhabitants of each territory choose whether or not to allow slavery, the so called “popular sovereignty” approach which the Douglas-sponsored Kansas-Nebraska Act had made the law of the land.

Election of 1860

In 1860 the Union was composed of 17 free states and 15 slave states. The paramount election issue was slavery and the four candidates differed on what had to be done. Republican Abraham Lincoln wanted to stop the spread of slavery in new territories and states. Northern Democrat Stephen A. Douglas championed the principle of popular sovereignty. Southern Democrat John C. Breckenridge wanted to protect slavery in the territories, but to allow the settlers to decide if slavery could continue when a territory became a state. Constitutional Union (the No-Nothings) John Bell believed in protecting slavery to the extent it was allowed by the Constitution but, in order to prevent war and preserve the Union, he wanted to stop its spread. In the election, Lincoln emerged victorious, receiving 39.6% of the popular vote and 59.4% of the electoral vote

By the time Lincoln took office in March 1861, seven of the eleven soon-to-be Confederate states had already seceded and the fact that slavery, not States’ Rights, was the reason for their leaving was made perfectly clear in 1861 by Alexander Stephens, Vice President of the Confederate States of America:

The prevailing ideas entertained by Jefferson and most the leading statemen of the time of the formation of the Constitution was that enslavement of the African was in violation of the laws of nature, that it was wrong in principle . . . and in the order of Providence the institution was evanescent and would pass away. . . .Our government [CSA] is founded upon exactly the opposite idea; its foundations are laid, its cornerstone rests upon the great truth, that the negro is not the equal to the white man; that slavery - - subordination to the superior race - - is his natural and normal condition . . . Our new government is the first in the history of the world based on this great physical, philosophical, and moral truth. . .”

Initially, Lincoln was only against the expansion of slavery beyond the states where it was legal and his movement to an abolitionist position was slow. But in January 1863, he issued the Emancipation Proclamation, which freed the approximately 3.1 million slaves in the territory controlled by Confederate forces - - the largest emancipation of slaves in history. Two years later, using all of his considerable political skill, he assured

the lasting abolition of slavery through Congressional approval of the Thirteenth Amendment.

Lincoln's Legacy - - The Three Civil War Amendments (the "Second Founding")

The Thirteenth 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.

The Thirteenth Amendment was the first amendment to expand the power of the federal government rather than restraining it. Lincoln's efforts in lobbying members of the House of Representatives were critical for its approval by Congress in January 1865. He did not live to see its ratification in December of that year.

Civil Rights Act of 1866

President Andrew Johnson vetoed the original bill and sent it back to Congress with the objection that the bill worked "in favor of the colored and against the white race." Congress then passed it over the president's veto.

The Act declared all persons born in the United States to be citizens of the U.S. (with the exception of subjects of a foreign power, and Indians who were considered members of their own tribal sovereignties). The Act effectively severed citizenship from race and overturned the *Dred Scott* decision. It also enumerated the rights of all citizens "of every race and color" to make and enforce contracts, sue, and be sued, and enjoy the full and equal benefits of the law. Although the Founders used the word "citizen" ten times in the Constitution, they never defined it. The Civil Rights Act was the first federal law to do so.

The Reconstruction Act of 1867

The Act placed the ex-Confederate states under temporary military rule, required that new governments be elected by black and white male voters and obligated these states to adopt new constitutions incorporating the right to vote regardless of race. Finally, it required them to adopt the Fourteenth Amendment

All the new state constitutions established state-supported public-school systems for white and black students. (None of the southern slave-holding states had a public education system before the war except North Carolina, which had one for white children.)

Fourteenth Amendment (1868)

No change in the Constitution since the Bill of Rights had so profound effect on American life as the Fourteenth Amendment. Although the amendment has five sections, only the first and the fifth are significant.

Section 1 provides:

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. 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.

Section 5 gives Congress the power to pass laws to enforce the amendment (a provision shared by the other two Civil War Amendments)

The Bill of Rights had restricted the power of the federal government. The Fourteenth Amendment, on the other hand, was intended to restrict the power of the states.

Fifteenth Amendment (1870)

The original Constitution said virtually nothing about the right to vote, leaving the regulation of suffrage in the hands of the states where, to a large extent, it remains today. Many Northerners, who were supportive of Black voting rights in the “traitorous” South, were wary of establishing Black male suffrage in the North. In addition, nativist sentiment among both Democrats and Republicans sparked by their fear of the growing numbers of Irish, Chinese, and Catholic immigrants, caused the Fifteenth Amendment to be written in negative language that focused solely on the vote of Black men:

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—

The alternative - - an amendment that was a general guarantee of suffrage for all citizens - - was rejected since, aside from antagonizing nativists, it could open the door to women’s suffrage and this, it was thought, would doom it. That the Amendment’s prohibition was subject to evasion was obvious from the start and in the Jim Crow South the Black man’s right to vote was quickly voided by poll taxes, literacy tests, felony disenfranchisement, etc., all of which white supremacists denied were related to race, color or slavery.

The Fifteenth Amendment and Women’s Suffrage

Republican members of Congress did not see any contradiction between the principle of equality that underlay Black emancipation and the second-class status of women. This patriarchal mindset made support for the Fifteenth Amendment problematic for feminists who had worked tirelessly both to oppose slavery and obtain the vote for women. Finding it hard that Black men, many of whom they considered educationally and culturally inferior to them, would get to vote before women did, the movement split into two organizations, one which actively supported the Fifteenth Amendment and the other which concentrated solely on women’s suffrage.

Republicans failed to acknowledge that their classifying voting as a fundamental right was totally inconsistent with barring women's suffrage. Reflecting that disconnect, the *New York Times* wrote that one "powerful argument in favor" of the Fifteenth Amendment was that, by settling the issue of voting rights, it put an end to "agitation" for women's suffrage.

Reconstruction

The 1871 the Ku Klux Klan emerged to terrorize southern Blacks and those whites who were working with the freed slaves. The second Enforcement Act (a/k/a, the Ku Klux Klan Act) gave federal forces extraordinary powers, and the Klan was quickly crushed.

Under the protection of U.S. military, the freed slaves of the South began to flourish. Black men voted and were elected to state and federal offices and Black children attended newly established public schools.

The Abandonment of Reconstruction

In the Election of 1876, the Democrat Tilden won 184 electoral votes, one vote shy of the 185 needed to win. Hayes, the Republican had 165. Since Tilden and Hayes electors in four states representing 20 electoral votes had each submitted votes for their candidate, both men claimed victory and the outcome remained in dispute. The impasse was not resolved by a Commission appointed by President Grant, but by the Compromise of 1877, an unwritten deal informally arranged among U.S. Congressmen, which provided: a) all remaining U.S. military forces would be withdrawn from the former Confederate states (federal troops were still stationed in Louisiana, South Carolina, and Florida); b) southern Democrats would be given the right to deal with Black people without northern interference; and c) Democrats would accept Republican Hayes as president. Without the protection of the federal government, Black people were quickly stripped of their rights, including the right to vote, by the white supremacist governments of the South.

The Supreme Court Limits the Civil Rights Amendments

Few Thirteenth Amendment cases were decided by the Supreme Court and, in those that were, the Court consistently rejected claims that forms of racial inequality were "badges and incidents of slavery" that violated laws passed under the Amendment's enforcement clause.

In the *Slaughterhouse Cases* (1873), the Supreme Court severely limited the scope of the Fourteenth Amendment. The Court ruled that the Amendment was not intended to fetter state governments by subjecting them to the control of Congress or to make the Supreme Court the "perpetual censor" of state law. The majority effectively read the "privileges and immunities" clause out of the Amendment and ignored the fact that the Fourteenth Amendment was passed precisely to provide Congressional oversight of the states' regulation of their citizens and that state and federal citizenship rights were meant to reinforce each other, not cancel each other out.

The *Civil Rights Cases* (1883) were brought under the Civil Rights act of 1875 by black plaintiffs to challenge their being denied hotel accommodations, access to public

transportation, exclusion from opera houses, etc., in numerous localities both North and South. The Court rejected the plaintiffs' claims, declaring the Fourteenth Amendment addressed only state action, which made most of the Act unconstitutional because it sought to punish discrimination by private business not by the state. By powerfully reinforcing the state action doctrine, leaving the intended beneficiaries of the Fourteenth Amendment without recourse, the Court immensely weakened the Amendment.

In *Plessy v. Ferguson* (1896), the plaintiff challenged a Louisiana law that required "equal but separate accommodations" for white and Black passengers, arguing that the Fourteenth Amendment had created national protection against invidious racial discrimination. The Court ruled 7-1 against Plessy, holding that so long as the facilities were equal, separation was not a "badge of inferiority" even if "the colored race" chose "to put that construction upon it. . . [but] if one race be inferior to others socially, the Constitution of the United States cannot put them upon the same plane." In his famous dissent, Justice Harlan wrote: "But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant ruling class of citizens. . . Our Constitution is color-blind." He found the Louisiana law violated both the Fourteenth and the Thirteenth Amendments. In the post-war period, the Court's Fourteenth Amendment decisions showed far more zeal in shielding corporations from state regulation than in protecting Black citizens from state sponsored racial discrimination.

In cases challenging voter suppression under the Fifteenth Amendment, the Supreme Court consistently declined to intervene as long as the challenged law did not explicitly mention race. And since the white supremacist legislators who drafted the voting laws rarely slipped up by expressly referring to the real targets of their racially discriminatory legislation, Black plaintiffs could not win in court.

Supreme Court decisions neutering the Civil War Amendments fed the backlash against Black civil rights, reflecting and reinforcing a cultural and scholarly viewpoint that characterized Reconstruction as a terrible and regrettable episode in the nation's history. The film *Birth of a Nation* (1915), brilliantly directed by the D.W. Griffith who revolutionized the new art of moviemaking, blamed disgruntled slaves and abolitionists for causing the Civil War, depicted slave-owners as kindly and caring, Black freedmen as lusting after white women and morally and mentally unworthy of freedom or suffrage, and Northerners who came south to aid the newly freed slaves as evil and unscrupulous "carpetbaggers". In contrast, the Ku Klux Klan was glorified - - portrayed as a heroically healing force restoring order to the chaos and lawlessness of Reconstruction. *Birth of a Nation* was immensely popular, at least among whites, and became the first "blockbuster" of the young American film industry. After its release, the Ku Klux Klan, which had been virtually destroyed by the federal government in the 1870s, experienced a spectacular rebirth in the North as well as the South.

At Columbia University in the period 1900 to 1930, Professor William A. Dunning and his students produced the first scholarly works on Reconstruction, which condemned Black suffrage as a catastrophic mistake. Dunning, immersed in the invidious pseudo-scientific racial theories of that era, wrote that inequality had to be the foundation of any stable society in the South. His colleague, John W. Burgess, argued that there are "vast differences in political capacity between the races, and that it is the white man's

mission. . . to hold the reins of political power.” The so-called Dunning School provided a scholarly foundation for the Jim Crow System of racial terrorism and suppression. Despite early and increasingly cogent criticism of this historical viewpoint, the Supreme Court continued well into the Twentieth Century to cite works of the Dunning School in its discussions of the historical background of the Civil War Amendments. And until around 1970, the Dunning School’s damning portrayal of Reconstruction as evil and African Americans as inferior remained the version of history that pervaded the nation’s schoolbooks.

The Nineteenth Amendment

In pre-Civil War America, the movements for abolition of slavery, women’s suffrage and Christian temperance were strongly allied. In 1848, Lucretia Mott and Elizabeth Cady Stanton organized the first Woman’s Rights Convention in Seneca Falls, New York and, while the convention’s major focus was on women’s suffrage, ending slavery was also an important topic and the ex-slave and prominent abolitionist Frederick Douglass was a featured speaker. Mott and Stanton were also strongly in favor of curbing the use of alcohol, convinced that men’s drinking was a major cause of domestic violence and neglect. In 1852, they founded the New York State Women’s Temperance Society to advocate for prohibition.

However, in 1868 and 1869 when the language of the Fifteenth Amendment was being debated, its sole focus on Black male suffrage and its failure to address female suffrage caused the Women's Rights Movement to fracture with Stanton and Susan B. Anthony, forming the National Woman Suffrage Association to give priority to women’s suffrage. In contrast, Lucy Stone and Douglass organized the American Woman Suffrage Association to support suffrage, first for Black men, and then for women.

With the ratification of the Fifteenth Amendment protecting, at least on paper, the Black man’s right to vote, feminists continued to agitate to secure women’s suffrage and to promote temperance through political action and these movements were mutually reinforcing. The momentum for women's suffrage increased steadily and U.S. entry into World War I helped further shift public perception of this issue. The National Woman's Party highlighted the contradictions of fighting abroad for democracy while limiting it at home by denying women the right to vote. Historically, serving in the military had provided a potent argument for extending the right to vote. As with the yeoman farmers of the Continental Army and the Black soldiers fighting for the Union, the women who served in World War I were an important factor in achieving female suffrage. President Wilson, who had opposed extending the vote to women, explained his change of position in a 1918 address to Congress:

We have made partners of the women in this war. Shall we admit them only to a partnership of suffering and sacrifice and toil and not to a partnership of privilege and rights? This war could not have been fought if it had not been for the services of women, services rendered in every sphere wherever men have worked and upon the very skirts and edges of the battle itself.

In 1920, the Nineteenth Amendment - - “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 sex” -

- was ratified. In the same year, the Eighteenth Amendment, which prohibited the sale or distribution of alcoholic beverages, went into effect.

Twenty-Third Amendment (1961)

This amendment, extending the right to vote in presidential elections to the residents of the District of Columbia, was supported by President Eisenhower and both presidential candidates, John Kennedy and Richard Nixon. D.C. was granted the same number of presidential electors as the least populous state, but not statehood. As a result, D.C. has no Senators, but it does send to Congress a representative, called a delegate, who can serve on committees and vote on committee matters and some procedural matters, but cannot vote on whether a bill will become law. Bills to grant the District of Columbia statehood have periodically been introduced in Congress and consistently rejected.

The Civil Rights Revolution

Jim Crow

The Supreme Court's failure to vindicate the rights of African Americans under the Civil War Amendments, culminating in *Plessy v. Ferguson*, coupled with the dominant national narrative endorsing innate Black inferiority propagated by the Dunning School effectively consigned African Americans to second-class citizenship from the late 19th Century through the first half of the 20th.

Under the legal principle of "separate but equal" racial segregation was pervasive, extending beyond intrastate public transportation to public schools, public places, restrooms, restaurants, drinking fountains, swimming pools, public parks, ocean beaches, public facilities, and interstate trains and buses. Facilities for African Americans were consistently inferior and underfunded compared to facilities for white Americans and, sometimes there were no facilities for the Black community at all. The U.S. military remained a bastion of racial segregation and in 1913. President Woodrow Wilson, a Southern Democrat, initiated the segregation of federal workplaces.

Jim Crow was especially oppressive in the South where, the ancient common law doctrine of civil death, in particular that aspect of the doctrine which stripped convicted criminals of their right to vote or hold office, encouraged local law enforcement to arrest African American men on trumped-up felony charges and the courts to convict them. The language of the Thirteenth Amendment, proscribing "involuntary servitude, "except as punishment for a crime", invited this type of racial oppression which achieved two white supremacist goals: it legally removed Black men from the voter rolls and condemned them to uncompensated labor in chain gangs and penal workhouses.

Beyond disenfranchised "felons", the vast majority of Black persons were prevented from voting by poll taxes, rigged "literacy" tests or, more simply, by violence or the threat of violence. Blatantly discriminatory laws were pervasive and Black subjugation was enforced by terror and lynching. Although not confined to the South, 85 percent of the estimated 5,000 lynchings in the post-Civil War period occurred in the Southern states. In 1921, white mobs organized by local officials in Tulsa, Oklahoma attacked

Black residents and businesses in the city's Greenwood District, known as "Black Wall Street", in what has been called "the single worst incident of racial violence in American history".

After World War II, however, the horror of the Holocaust, the rejection of invidious racial theories, the recognition that over one-half million African Americans had served in a war that was fought against racist regimes in the name of freedom, and America's claim to be the champion of liberty in the Cold War led to a critical reassessment of racial segregation in the United States. One of the first institutions to be affected by this reevaluation was the U.S. military, still overwhelmingly segregated. In 1948, President Truman issued an executive order mandating

there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin. This policy shall be put into effect as rapidly as possible . . .

Truman's order, issued at the urging of African American leaders, helped accelerate the movement for Black civil rights. The National Association of Colored People (NAACP) had for decades brought court challenges to Jim Crow laws with mixed results. But in 1954, the NAACP's legal efforts were crowned with success by the Supreme Court's unanimous decision in *Brown v. Board of Education*, which overruled *Plessy v. Ferguson* and its "separate but equal" standard. In an opinion by Chief Justice Earl Warren, the Court found that separate education facilities based on race were "inherently unequal" and therefore violated the Fourteenth Amendment's equal protection clause. The *Brown* decision provided further momentum to the Black struggle for civil rights that was taking place both in the courts and in the streets. Throughout the South, demonstrations, protests, acts of civil disobedience, and boycotts were planned and directed by Black organizations. Resistance in the form of bus boycotts, "sit-ins", mass marches, and a wide range of other nonviolent activities kept up the pressure on government to address discrimination against African Americans.

President Johnson and a Democratic Congress responded with three landmark acts of legislation. The Civil Rights Act of 1964, which explicitly banned all discrimination based on race, color, religion, sex, or national origin in employment, ended unequal application of voter registration requirements, and prohibited racial segregation in schools, the workplace, and public accommodations. The Voting Rights Act of 1965 restored and protected voting rights for minorities by authorizing federal oversight of registration and elections in areas with a history of racial disenfranchisement and under-representation of minority voters. Finally, the Fair Housing Act of 1968 banned discrimination in the sale or rental of housing.

Having secured the passage of landmark civil rights legislation and prevailed in critical Supreme Court decisions upholding these laws, the Civil Rights Revolution lost momentum. As its focus turned to economic justice and its protest activities moved North, it lost much of its white middle class support. Inner-city riots and the growing prominence of the Black Power movement, including the Black Panthers, who criticized the Black establishment for its emphasis on non-violence, its neglect of militancy and self-sufficiency, and its over-concern with white good will, further eroded the support of white Americans, some of whom were frightened by threats of violence, while others,

like post-Civil War Northerners, simply lost interest in the cause of racial justice and moved on to other concerns.

Twenty-Sixth Amendment

The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age

Over 2,700,000 American men and women served in Vietnam and most of those killed were under 21 years old. The historic argument that those who risked their lives defending America should be able to vote proved convincing once again and in 1971 Congress approved the Twenty-Sixth Amendment by overwhelming majorities and the states took less than a year to ratify it.

The Equal Rights Amendment (Twenty-Eighth Amendment?)

After the Nineteenth Amendment became law, Alice Paul, who was instrumental in securing its adoption, drafted the Equal Rights Amendment to insure women's equality. First introduced in Congress in 1923, then revised and reintroduced in the 1940s, the amendment provided: 1) Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex; 2) Congress shall have the power to enforce, by appropriate legislation, the provisions of the amendment.

Reintroduced again in 1971, the ERA was quickly approved by the House and Senate. By 1977, well before the 1979 deadline, the amendment had been ratified by 35 of the necessary 38 state and seemed a sure thing. But at that point, conservative women led by Phyllis Schlafly argued that the ERA would disadvantage housewives, cause women to be drafted into the military, deprive women of alimony, and eliminate labor laws favoring women. In the face of this conservative onslaught, the state legislatures of Idaho, Kentucky, Nebraska, Tennessee, and South Dakota voted to revoke their ERA ratifications. Due in part to the #Me Too movement, interest in the ERA has revived and in 2017 Nevada ratified the amendment, followed by Illinois and Virginia. These three states arguably bring the number of ratifications to the necessary 38 but owing to expired adoption deadlines and revocations by five states, the fate of the amendment is uncertain.